

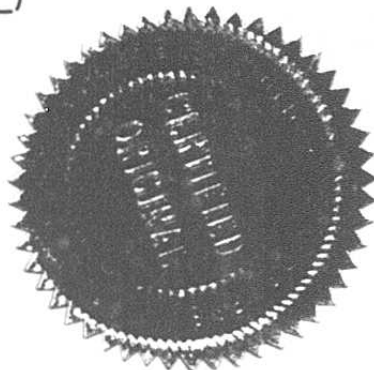
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Power and) DOCKET NO. 900796-EI
Light Company for Inclusion of the)
Scherer Unit No. 4 Purchase in Rate)
Base, including Acquisition Adjustment)

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Florida Public Service Commission



PROCEEDINGS:

Prehearing Conference

BEFORE:

MICHAEL McK. WILSON,
Hearing Officer

DATE:

Monday, December 3, 1990

TIME:

Commenced at 1:40 p.m.
Concluded at 2:35 p.m.

PLACE:

101 East Gaines Street
Tallahassee, Florida

REPORTED BY:

JANE FAUROT
Notary Public in and for the
State of Florida at Large

ACCURATE STENOGRAPHY REPORTERS, INC.
100 SALEM COURT
TALLAHASSEE, FLORIDA 32301
(904) 878-2221

DOCUMENT NO.

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On behalf of Florida Power and Light Company

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On behalf of Coalition of Local Governments

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On behalf of Florida Municipal Power Agency

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On behalf of the Commission Staff

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I N D E X

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P R O C E E D I N G S

1
2 CHAIRMAN WILSON: Call the hearing to order. Read
3 the notice, please.

4 MR. TELLECHEA: Pursuant to notice, this time and
5 place has been scheduled for a prehearing conference in
6 Docket Number 900796-EI, petition of Florida Power and
7 Light Company for inclusion of the Scherer Unit No. 4
8 purchase in rate base, including acquisition adjustment.

9 The purpose of the prehearing conference is more
10 particularly described in the notice.

11 CHAIRMAN WILSON: Take appearances of Counsel.

12 MR. BUTLER: My name is John Butler, I'm with the
13 law firm of Steel, Hector, and Davis, appearing on behalf
14 of Florida Power and Light Company. Also here with the
15 same firm appearing on behalf of Florida Power and Light
16 Company is Matthew M. Childs.

17 MR. BRYANT: Frederick M. Bryant, Moore, Williams,
18 Bryant, Peebles, and Gautier, on behalf of the Florida
19 Municipal Power Agency.

20 MS. KAUFMAN: Vicki Gordon Kaufman, Lawson,
21 McWhirter, Grandoff and Reeves, 522 East Park Avenue,
22 Suite 200, Tallahassee, 32301, on behalf of Nassau Power
23 Corporation.

24 MR. HOWE: Roger Howe with the Office of the Public
25 Counsel, 111 West Madison Street, Room 812, Tallahassee,

1 Florida 32399-1400, appearing on behalf of the Citizens
2 of the State of Florida.

3 MR. MURRELL: Frederick J. Murrell, with the law
4 firm of Schroder and Murrell, 1001 Third Avenue West,
5 Suite 375, Bradenton, Florida 34205, appearing on behalf
6 of the Coalition of Local Governments.

7 MR. CHRIST: M. Robert Christ, 101 East Gaines,
8 Tallahassee, Florida, appearing on behalf of the
9 Commission Staff.

10 MR. TELLECHEA: Ed Tellechea, 101 East Gaines
11 Street, Tallahassee, Florida, appearing on behalf of the
12 Commission Staff.

13 MR. SMITH: I'm David Smith with the Commission's
14 Division of Appeals, appearing as counsel to the
15 Commissioners.

16 CHAIRMAN WILSON: How shall we proceed?

17 MR. CHRIST: I don't think there are any pending
18 motions or anything that won't be heard by the panel, so
19 I guess we will just go through the prehearing order and
20 see if we have any mistakes, unless somebody else has any
21 preliminaries.

22 MR. BUTLER: In regards to pending motions, one
23 thing that I would like to bring up is there is listed in
24 here as a pending motion, our motion in opposition to
25 FMPA's intervention, and it is noted that oral argument

1 would be held on that at the beginning of the hearing.
2 FPL is prepared to have that motion ruled on in the
3 absence of oral argument, and therefore it could, you
4 know, the ruling could go forward as soon as the Hearing
5 Officer felt appropriate.

6 CHAIRMAN WILSON: Let's do it now. Would it be fair
7 to argue now?

8 MR. BUTLER: I'm saying we are prepared to do it
9 without oral argument.

10 CHAIRMAN WILSON: Do you want me to rule on the
11 motion?

12 MR. BUTLER: Yes.

13 CHAIRMAN WILSON: I don't know if I have those. Do
14 I have those?

15 MR. CHRIST: They're not part of this.

16 CHAIRMAN WILSON: In the absence of oral argument, I
17 will do it before the hearing, probably today or
18 tomorrow.

19 MR. CHRIST: That is what I thought we were going to
20 do anyway before the hearing. Unless there is some other
21 preliminary matters by other parties --

22 CHAIRMAN WILSON: Anything else? All right, let's
23 get to the order then.

24 Any problem with the order of witnesses?

25 MS. KAUFMAN: Mr. Chairman, Nassau's witness, Doctor

1 Thomas, is listed as the last witness, and he has a
2 scheduling conflict. We would like to request that he be
3 permitted to testify some time on December 12th, whenever
4 there would be an appropriate break.

5 CHAIRMAN WILSON: Does anybody have a problem with
6 trying to schedule Doctor Thomas at a convenient point
7 for his schedule? All right, we will do that. What days
8 is this scheduled for?

9 MR. BUTLER: 11th through 13th.

10 CHAIRMAN WILSON: All right.

11 MS. KAUFMAN: Thank you.

12 MR. MURRELL: Mr. Chairman -- I'm sorry, go ahead.

13 MR. HOWE: Chairman Wilson, our office would ask
14 that our witness, Robert Scheffel Wright, be scheduled
15 for the 13th, if possible. Mr. Wright is in law school
16 exams during this time period and has an exam on the
17 12th, so as late as possible on the 12th, or preferably
18 on the 13th.

19 CHAIRMAN WILSON: All right. It is probably pretty
20 tough for him to decide where he would rather be, isn't
21 it? Which course does he have? Nevermind.

22 MR. MURRELL: Mr. Chairman, the witness for the
23 Coalition of Local Governments, H.G. Wells, does not
24 appear on the draft, and I would just like to have him
25 added. We are not specifically particular about location

1 in the order, unless I am misreading it.

2 CHAIRMAN WILSON: No, I don't see him on there,
3 either.

4 MR. MURRELL: I believe that is my error, Mr.
5 Chairman, but everyone is on notice that we do intend to
6 present him as a witness, and his prefiled testimony --

7 CHAIRMAN WILSON: We have his prefiled testimony?

8 MR. MURRELL: Yes, sir.

9 MR. TELLECHEA: Was he listed on the prehearing
10 statement you provided us with?

11 MR. MURRELL: Apparently not. I am going to assume
12 it was my error. I don't have that with me, I will have
13 to pull it. I have got an amended prehearing statement
14 coming out, because I did not have at the time I filed it
15 a full scope of the issues. I didn't have the ultimate
16 issues, and now we are intending to respond to the
17 ultimate issues as I will later in this hearing.

18 CHAIRMAN WILSON: All right, that's no problem.
19 Other than that, the witness order looks fine.

20 MR. BUTLER: I have one other point in that regard.
21 We would like to have FPL's witnesses who are testifying
22 as rebuttal go after the other direct witnesses, and that
23 would be --

24 CHAIRMAN WILSON: That would be Mr. Waters, Mr.
25 Gower and Mr. Silva?

1 MR. BUTLER: That's right.

2 CHAIRMAN WILSON: All right.

3 MR. BUTLER: And our preference would be for Mr.
4 Gower to be the last of those.

5 MR. CHRIST: You mean you want Mr. Waters to come on
6 twice?

7 MR. BUTLER: Yes. Mr. Waters would come on twice
8 and Mr. Gower would come on twice.

9 CHAIRMAN WILSON: Would the order be to have Waters,
10 Silva and Gower?

11 MR. BUTLER: That would be fine.

12 CHAIRMAN WILSON: Anything else in order of
13 witnesses?

14 MS. KAUFMAN: Mr. Chairman, the issues that Doctor
15 Thomas will address are not correctly enumerated there.
16 I can do that on the record, or provide --

17 CHAIRMAN WILSON: Why don't you provide that to
18 Staff Counsel after this prehearing.

19 MR. MURRELL: With the Chair's permission, I will do
20 the same thing regarding Mr. Wells.

21 MR. BUTLER: As will I regarding FPL's witnesses.

22 CHAIRMAN WILSON: Are we ready to move to the issues
23 themselves?

24 MR. BUTLER: I would note, if you are going over
25 exhibits, passing over exhibits, that on Page 6 I think

1 what happened with Mr. Wells testimony is that it is
2 listed as an exhibit. I think that is probably
3 inappropriate there.

4 CHAIRMAN WILSON: It certainly is, that will be
5 corrected.

6 MR. MURRELL: There is an exhibit to that testimony,
7 Mr. Chairman, but that is correct, and, as I say, in
8 defense of all, other than myself, I am quite sure it was
9 my error.

10 CHAIRMAN WILSON: All right. Issue 1?

11 MR. CHRIST: Mr. Chairman, could we find out whether
12 there is any problem with the positions, first?

13 CHAIRMAN WILSON: You mean the general statement of
14 positions? Has everyone had an opportunity to review
15 those?

16 MR. CHRIST: Those are the ones that were supplied to
17 us by the various parties.

18 CHAIRMAN WILSON: I know.

19 MR. BUTLER: There is a very minor word change on
20 there that I would like to make, can I give that to
21 Staff?

22 CHAIRMAN WILSON: If there is any problem with the
23 way those are worded, if you will provide those
24 corrections to Staff Counsel. Are there any concerns or
25 comments about Issue 1? Does FMPA not intend to take a

1 position at all on this issue?

2 MR. BRYANT: That's correct.

3 CHAIRMAN WILSON: So yours would be no position at
4 this time.

5 MR. BRYANT: Yes.

6 CHAIRMAN WILSON: What about Issue 2? Does Public
7 Counsel anticipate taking a position on this issue?

8 MR. HOWE: Chairman Wilson, very likely. By taking
9 no position at this time we are trying to reflect the
10 thoughts that we feel there is insufficient information
11 at this time, since we are still receiving discovery, to
12 reach a conclusion on this issue. And that is generally
13 our position with quite a few of these issues. If you
14 will note that the statement of positions for our
15 witnesses also reflects that fact, the inability at this
16 time to determine whether the purchase of Scherer Unit
17 No. 4 is in the best interest of FPL's ratepayers.

18 CHAIRMAN WILSON: This one, though, is whether there
19 is a need for additional capacity.

20 MR. HOWE: I understand that. We have pursued this
21 in discovery, and we have certain responses to deposition
22 exhibits, and I think some discovery is still out on this
23 issue. And, generally, at each point, our no position at
24 this time means we are in the process of formulating a
25 position and trying to determine whether the purchase is,

1 in fact, in the customer's best interest.

2 CHAIRMAN WILSON: Is the discovery or information
3 you have requested different from the kinds of
4 information that have been available either in the annual
5 planning process, that information that has been provided
6 there as well as the information that was provided for
7 the, was it the Fort Lauderdale units that we did the
8 need for about six months ago? I mean, it's not like
9 this issue has just sprung up on us out of the blue here.

10 MR. HOWE: I understand. For example, one of our
11 witnesses, Mr. Carlton Bartels, takes the position that
12 it would appear that changed circumstances, the signing
13 of the amendments to the Clean Air Act, may make certain
14 demand-side planning issues more relevant to a
15 determination of whether additional capacity should be
16 met through the acquisition of new generating facilities.
17 So all I can tell you at this time is that our experts
18 tell us that they are not prepared to take a definitive
19 position on this issue.

20 CHAIRMAN WILSON: They have been provided the
21 information that was available in those other --

22 MR. HOWE: Yes, sir.

23 CHAIRMAN WILSON: -- those other hearings and things
24 that have been provided to the Commission?

25 MR. HOWE: Yes, sir.

1 CHAIRMAN WILSON: All right.

2 MR. BUTLER: Mr. Chairman, at this point it may be
3 about as good as any to bring this up in view of your
4 exchange with Mr. Howe. As I understand, the parties
5 have the opportunity to revise their testimony subsequent
6 to the original filing dates reflecting results of the
7 discovery.

8 We have provided a lot of the discovery, I think it
9 is around 80 percent, are the numbers outstanding, and
10 intend on, hopefully, by Wednesday of this week to have
11 virtually all of the discovery responded to, and would
12 like to have a cut-off of at least knowing if there are
13 going to be changes to testimony and positions of this
14 sort prior to beginning the hearing next week. I would
15 like to propose that Friday be that point in time.

16 CHAIRMAN WILSON: The hearing begins on Wednesday?

17 MR. BUTLER: Tuesday.

18 MR. HOWE: Tuesday afternoon, I believe.

19 CHAIRMAN WILSON: If you get all the responses to
20 discovery by this Wednesday, would that be a reasonable
21 deadline for notification as to whether there is going to
22 be changes in testimony by Friday?

23 MR. HOWE: Yes, except I didn't understand that we
24 were proceeding along that path. What I had understood
25 to be stated previously when we had an oral argument on

1 our motion to postpone the hearing date was that our
2 witnesses would have the opportunity to address
3 additional matters at the hearing. The schedule has not
4 contemplated the filing of additional testimony. I would
5 assume our witnesses, based on the discovery, are going
6 to want to make certain comments about how the discovery
7 fleshes out their understanding of the need for this
8 unit, whether our office is, in fact, in opposition to
9 the purchase of the unit, and also whether other
10 alternatives to the purchase of the unit have been
11 properly pursued by the utility.

12 CHAIRMAN WILSON: Mr. Butler, would I be safe in
13 assuming that what you want to know is if there is going
14 to be testimony by other witnesses that varies
15 substantially from either the positions that have been
16 taken or issues raised in the previously filed testimony,
17 you would like to have some notice of it before the day
18 of the hearing?

19 MR. BUTLER: That's right.

20 CHAIRMAN WILSON: I am trying to recall. I think
21 you are correct, Mr. Howe, that our discussion in that
22 oral argument on the motion was that parties would have
23 an opportunity to present additional testimony at the
24 hearing, but we did not discuss, or, as you said, I don't
25 think we contemplated having an additional filing of

1 further direct testimony.

2 MR. BUTLER: And if I created that impression, I
3 apologize. Your understanding is the same as mine. I
4 called it testimony because I think whether it is
5 prefiled or given orally it is going to be testimony, I
6 assume you have it given under oath and part of the
7 record for the proceeding, so we would just like to know
8 if there is going to be some substantial revision orally
9 starting next Tuesday to the testimony that has been
10 prefiled that we would be advised of that, and hopefully
11 some sort of general summary of what you expect the
12 changes to relate to.

13 CHAIRMAN WILSON: I don't think that is an
14 unreasonable request, and I think you could either give
15 that by phone, or if you just wanted to do some sort of
16 proffer of what the additional, the essence of your
17 additional testimony would be. Would that be adequate,
18 Mr. Butler?

19 MR. BUTLER: Yes.

20 MR. HOWE: I don't have any problem with that. I
21 would assume that I probably couldn't get you that before
22 Monday. What I am thinking is if we received discovery
23 from you by Wednesday and copy it, we might be able to
24 Fed-Ex it to Boston to our one witness so he would
25 receive it Thursday. Depending on his schedule, I would

1 hope that he could get some word back to us at the
2 earliest on Monday. Now, I would think that if we are
3 not going to start until Tuesday afternoon, our witnesses
4 wouldn't be taking the stand, or no intervenors witnesses
5 would be taking the stand probably until sometime
6 Wednesday. So I would try to get word to you, say, by
7 Monday.

8 CHAIRMAN WILSON: Is the representation that you
9 have been supplied approximately 80 percent of
10 outstanding discovery accurate?

11 MR. HOWE: I can't dispute that. I honestly don't
12 know. We have got some discovery that was hand-delivered
13 either late this morning or early this afternoon that I
14 haven't gone through at all. And, of course, we haven't
15 copied it and sent it out. I don't know how the 80
16 percent was calculated, is that the number of
17 interrogatories?

18 CHAIRMAN WILSON: That is not terribly material, I
19 am trying to determine what the position of the witnesses
20 are to give at least a preliminary idea of what areas
21 they are going to delve into in testimony that might not
22 otherwise be represented in their current testimony.

23 MR. HOWE: I can say we will make every effort to
24 get a response to Mr. Butler or Mr. Childs by Monday.

25 CHAIRMAN WILSON: If you know Friday, provide it

1 Friday. Otherwise on Monday.

2 MR. HOWE: That is fair enough.

3 MR. MURRELL: Mr. Chairman, is this to apply to all
4 parties?

5 CHAIRMAN WILSON: Yes.

6 MR. MURRELL: Just for the Chairman's reference, we
7 have received none of the discovery that we have
8 requested. I understand that that is because of the
9 truncated time period, but --

10 CHAIRMAN WILSON: When did you request the
11 discovery?

12 MR. MURRELL: I don't really know, but it was
13 certainly less than 30 days ago. I am not complaining
14 about the time frame, I am just saying the 80 percent is
15 not 80 percent of all discovery requests. We have
16 received zero percent of our discovery requests, and, of
17 course, if we get them by Wednesday we will do our best
18 to turn that around. I am not expecting to be in the
19 state on Friday, so it may make it very difficult for me
20 to respond, even if Mr. Wells takes a position on Friday,
21 before Monday.

22 MR. BUTLER: Mr. Murrell is correct, by the way,
23 about him not having received any. We have been treating
24 it, not entirely, but largely on a first-in/first-out
25 basis, and I think theirs were the last we have received.

1 But they are in what we are committing to provide by
2 Wednesday.

3 CHAIRMAN WILSON: As soon as you or your witness
4 knows, and if you could make alternative arrangements to
5 have Mr. Wells or someone else make some summary of his
6 testimony and provide it --

7 MR. MURRELL: It could be we will meet the Friday,
8 we will do our best efforts on that, Mr. Chairman,
9 without question, we received ours on November 12th.

10 CHAIRMAN WILSON: Late requests for discovery hardly
11 puts you in a position to surprise parties with
12 testimony.

13 MR. MURRELL: Yes, sir, I understand that, Mr.
14 Chairman, but we were not allowed to intervene until
15 order of the Commission of the 24th, which we didn't
16 receive it until the 27th of October.

17 CHAIRMAN WILSON: When did you apply for
18 intervention?

19 MR. MURRELL: I will have to reflect here, I've got
20 mine torn apart for these depositions, Mr. Chairman.

21 CHAIRMAN WILSON: Well, that's not material at this
22 point.

23 MR. TELLECHEA: Chairman Wilson, since the parties
24 are going to be providing us with positions on somewhat
25 of a late date, can you please tell us what day you would

1 like the prehearing order due, that way we can have all
2 this information on the date of the hearing.

3 CHAIRMAN WILSON: I feel certain the Commissioners
4 would like to have a copy of it to take home Monday
5 night. It is always good to read these things while you
6 are watching Monday Night Football, it puts you in a
7 combative mood for the next day.

8 MR. TELLECHEA: So Staff would appreciate it if we
9 are provided with your positions as soon as possible,
10 also.

11 CHAIRMAN WILSON: Have parties been providing those
12 on disks?

13 MR. TELLECHEA: Yes, they have.

14 CHAIRMAN WILSON: If that will continue, that is, I
15 am sure, very helpful.

16 The other thing is parties, this is sort of generic,
17 but I am going to bring it up here anyway, when a party
18 has a witness that follows somebody else's witness as a
19 witness that precedes them makes comment on, or through
20 cross examination or by whatever means, remarks on some
21 issue that the party would not have had the opportunity
22 to address in prefiled testimony, I have never seen the
23 logic in not allowing the subsequent witnesses to comment
24 on a prior witness' testimony. And the fact that it does
25 not appear in prefiled testimony, I don't really consider

1 to be objectionable, although we always hear objections
2 about that. So I would give you warning right now that I
3 would intend to allow those kinds of questions as long as
4 they don't constitute some sort of surprise. I mean, you
5 can't squeeze something, a camel through the eye of a
6 needle, but if something is fairly raised in one witness'
7 testimony, and the first time you hear it is at the
8 hearing, I think it is fair for subsequent witnesses to
9 have an opportunity to comment about it. I am glad I
10 have finally gotten that off my chest.

11 Issue 3?

12 MR. BUTLER: Mr. Chairman, if I might, just for
13 clarification on the point you just made, would the
14 summary of a subsequent witness be an acceptable place to
15 make that sort of comment?

16 CHAIRMAN WILSON: Actually, I think it is better to
17 have a summary of the witness' prefiled testimony, and
18 then if there is that kind of a comment that it be done
19 in response to a direct question so that parties are
20 alerted to the fact that that is what is coming.

21 MR. BUTLER: But it could be done right at the end
22 of a summary?

23 CHAIRMAN WILSON: I think so.

24 Roger, do you anticipate that you will be providing
25 the Staff with positions, or you will be able to take

1 these positions on these issues prior to their issuing
2 the prehearing order before hearing?

3 MR. HOWE: I can't commit to that. I have spoken
4 about this matter with Mr. Shreve, and our office
5 position is essentially, we just are not currently in a
6 position to know, or to formulate a conclusion whether
7 this is in the best interest of FPL's customers.

8 CHAIRMAN WILSON: Would you know that by the time
9 the hearing begins?

10 MR. HOWE: I would hope so.

11 CHAIRMAN WILSON: Are there any comments on Issue 3?
12 Issue 4? Does the Coalition of Local Governments intend
13 to take a position on this issue?

14 MR. MURRELL: Mr. Chairman, I apologize to you, but
15 I cannot respond to that. I thought I had covered that.
16 And I am quite surprised at our position on this matter.
17 And, again, it is something I have to take credit for. I
18 will have to find out within the hour and get with Staff
19 and get with Florida Power and Light. It could be that
20 our position will be through striking the words "position
21 at this time," it would be "no", and Mr. Wells will be
22 proffered as a witness.

23 CHAIRMAN WILSON: What if FMPA, Mr. Bryant?

24 MR. BRYANT: We don't know the answer to that yet,
25 Mr. Chairman. We are still looking at the prefiled

1 testimony and discovery.

2 CHAIRMAN WILSON: Will you be in a position to take
3 a position on that issue at the beginning of the hearing?

4 MR. BRYANT: I would hope so.

5 CHAIRMAN WILSON: Issue 5? Issue 6?

6 MR. HOWE: Chairman Wilson, to clarify our position,
7 it can remain as stated, but I would like to make it
8 clear that by taking, saying no we are keeping the issue
9 in contention, our position remains basically the same
10 with all of them. It appears to us at this time that FPL
11 may not have reasonably considered alternative supply
12 site sources of capacity, but I want to make that clear
13 that our statement of no carries that qualification, and
14 that also might change before the hearing.

15 CHAIRMAN WILSON: It might change after the hearing,
16 as well.

17 MR. HOWE: That is very true.

18 CHAIRMAN WILSON: We are all openminded individuals;
19 so if a persuasive case is made, it could go either way.

20 MR. BRYANT: Mr. Chairman, on Issue 5 and 6 for
21 FMPA, you can strike "at this time". We have no position
22 on 5 and 6.

23 CHAIRMAN WILSON: All right. Issue 7? Mr. Howe, is
24 that the same --

25 MR. HOWE: Yes, sir.

1 CHAIRMAN WILSON: -- as you expressed for 6?

2 MR. HOWE: And that follows through basically on all
3 our positions, that we wanted to keep the matters in
4 contention until discovery and so forth was received, and
5 basically our position is that we just don't know at this
6 time.

7 CHAIRMAN WILSON: Mr. Bryant, your position is no
8 position at all on this issue?

9 MR. BRYANT: No, I am going to leave it as it is.

10 CHAIRMAN WILSON: Issue 8? Would someone briefly
11 explain what Issue 9 is to me?

12 MR. HOWE: This may be one of our issues. I will
13 need to double-check to be sure. Yes, it is, it was
14 identified in our preliminary list of issues as Issue
15 Number 6. The reason for the issue is in the letter of
16 intent, as we interpret it as appended to the testimony
17 of Mr. Cepero, it indicates that if Florida Power and
18 Light is not able to receive power from Scherer Unit No.
19 4 that it will be banked for Florida Power and Light's
20 benefit and received at a later date. And we have talked
21 to Mr. Cepero about this on deposition last Wednesday,
22 and it still requires some clarification. We are not
23 certain whether it was just an abundance of caution in
24 which Florida Power and Light included that position in
25 the letter of intent, or whether there is, in fact, some

1 concern that they won't be able to receive the capacity
2 from Scherer Unit No. 4 in the same increments, the same
3 time frame as they are accepting ownership interest
4 pursuant to the delivery schedule.

5 CHAIRMAN WILSON: All right.

6 MR. BUTLER: Chairman Wilson, I have an additional
7 witness for this and a few of the other issues, should I
8 just give that to Staff?

9 CHAIRMAN WILSON: Provide that to Mr. Christ
10 following the prehearing conference.

11 Issue 10? Issue 11?

12 MR. BRYANT: Mr. Chairman, FMPA would be just no
13 position on 11.

14 CHAIRMAN WILSON: Issue 12? Is Issue 12 going to be
15 subject to testimony, do you know?

16 MR. HOWE: Yes, sir. Our witnesses have both
17 addressed their ability under this expedited schedule to
18 take a definitive position on the prudence of this
19 purchase. It might develop that based on discovery and
20 so forth they receive that they will retreat from that
21 position. But at the time they filed their testimony,
22 which was, I believe, November 21st, a great deal of data
23 was not available.

24 MR. CHRIST: Staff would change its position to no
25 position on that.

1 CHAIRMAN WILSON: Are the parties taking a position
2 that you have been prejudiced by this schedule, or that
3 you just don't like it? I read the positions in the
4 prehearing order, and basically what it says is if we
5 took more time it would be better for everybody, but
6 nobody really says any more than that, is the way I read
7 it.

8 MS. KAUFMAN: Mr. Chairman, I will be glad to
9 address that. I think Nassau's position is that they are
10 prejudiced by the schedule being followed in this case.

11 MR. MURRELL: That is also the position of CLG, Mr.
12 Chairman.

13 MR. HOWE: And I will have to state that our
14 position would be that we may be prejudiced. The fact
15 that we haven't been able to formulate positions, we view
16 this case as even though there is no rate change
17 requested, this is a \$615 million addition to FPL's rate
18 base. It has all the normal attributes and aspects of a
19 rate case in which they were asking to increase their
20 rate base by that amount. It would normally follow an
21 eight-month file and suspend schedule. It isn't anywhere
22 remotely related to an eight-month file and suspend
23 schedule, it is on an extremely rapid schedule. One of
24 our other problems is we are being asked to go to hearing
25 on a letter of intent that will, by definition --

1 CHAIRMAN WILSON: You are rearguing what we heard in
2 there the other day.

3 MR. HOWE: It might be, but it is one of the reasons
4 we feel we are being prejudiced.

5 CHAIRMAN WILSON: I don't want to hear your
6 arguments about prejudice today, I was asking whether
7 that is the position you take, because there is nothing
8 for me to rule on here.

9 MR. HOWE: It is.

10 CHAIRMAN WILSON: All right. Issue 13.

11 MR. CHRIST: Mr. Chairman, could we go back to that
12 issue you were just talking about and try to find out
13 from the parties what kind of ruling they would expect
14 from the Commission on that issue? I mean, I don't see
15 how it can be an issue.

16 CHAIRMAN WILSON: It is kind of peculiar. I am
17 really not sure what to do with it, that is why I am
18 trying to figure out exactly what it is that was being
19 claimed.

20 MR. CHRIST: If the Commission has legally deprived
21 them of their due process, that is their legal argument.

22 CHAIRMAN WILSON: Is this really a factual argument?

23 MR. BRYANT: It is factual to the extent of whether
24 or not the events, quote, facts, give rise to the
25 prejudice. To that extent yes, sir, it is. And I think

1 only upon review of the record would you have the factual
2 foundation, if any, for a demonstration of prejudice, and
3 thus the winning point on an appeal, with that a point on
4 appeal.

5 MR. CHRIST: But do you need a separate issue on
6 that? Isn't that just part of your cross examination,
7 "Were you able to make a determination?" And if the guy
8 says, "No, I didn't time," there is your answer.

9 CHAIRMAN WILSON: Let me suggest this that you all
10 think about this issue and be prepared to tell exactly
11 how you are going to handle this issue at the beginning
12 of the hearing on Tuesday, because I want to know.

13 MR. BRYANT: What do you mean by that, Mr. Chairman?

14 CHAIRMAN WILSON: Is every time somebody answers a
15 question up there they are going to say, "Well, I'd love
16 to answer this, but I have been severely prejudiced by
17 the schedule of this hearing, and I protest because my
18 due process rights have been violated, but let me just
19 tell you this." If we are going to do that every other
20 question then I want to understand at the beginning how
21 we are going to frame these objections and how this point
22 is going to be made so we can get --

23 MR. BRYANT: I would hope from my perspective --
24 that would not be my thought from my client's
25 perspective.

1 CHAIRMAN WILSON: I hope not, too. You don't get to
2 sit here day after day and hearing all kinds of hearings,
3 Mr. Bryant.

4 MR. BRYANT: I think, at least my client, and I
5 think the others are saying the same thing, that this is
6 an extremely important issue to many, many people, just
7 as evidenced by the lateness of the discovery being
8 completed, which is not to cast aspersions upon anyone,
9 it is just that it is very difficult to formulate
10 appropriate responses for a hearing under that type of
11 time schedule.

12 CHAIRMAN WILSON: Well, let me suggest that my
13 experience in the last two years over in the legislature,
14 and with issues that were raised by parties in the
15 legislature, I am extremely sensitive to the length of
16 time that it takes this Commission to process any issue
17 in front of the Commission, or any proceeding. My
18 inclination is in light of the extreme criticism that the
19 Commission has received on a number of occasions in the
20 legislature and elsewhere about the length of time that
21 we take, is to proceed with the greatest alacrity
22 possible consistent with our schedule and the resources
23 of the Commission, and that is what I intend to do, and
24 that is what we have done here.

25 MR. BRYANT: Sure. Depending upon whether or not

1 you are a condemned man or not, though. I would think if
2 one were a condemned man, he would rather you take it
3 slow.

4 CHAIRMAN WILSON: I agree that where you stand
5 depends on where you sit.

6 MR. BRYANT: And this is not a big argument with us,
7 I do have my own concerns about the schedule, and
8 certainly I don't sit on your side of the table, and you
9 have your own problems with your own schedules that we
10 recognize, we don't take issue with that.

11 CHAIRMAN WILSON: Issue 13.

12 MR. BRYANT: On FMPA's position, I think we would
13 add on the second line between needed and capacity the
14 word generation, that might make it a little bit clearer.

15 MR. TELLECHEA: That is between the words needed and
16 capacity?

17 MR. BRYANT: Right. What we are speaking to is the
18 addition of needed generation capacity, and one might
19 think it to mean transmission capacity.

20 MR. TELLECHEA: Thank you.

21 CHAIRMAN WILSON: Any other comments on this issue?
22 Issue 14?

23 MR. BRYANT: FMPA would be just no position at this
24 time.

25 MR. HOWE: Chairman Wilson, I would say for Public

1 Counsel on this one we would say it is the same as our
2 position on Issue No. 1.

3 CHAIRMAN WILSON: All right. Any other comments on
4 14?

5 MR. TELLECHEA: Mr. Howe, would you like your
6 position on Issue 14 to reflect your position on Issue 1,
7 then, in the prehearing order?

8 MR. HOWE: For my purposes --

9 CHAIRMAN WILSON: It is the same position as Issue
10 No. 1.

11 MR. HOWE: The position on Issue Number 1 will be
12 fine.

13 CHAIRMAN WILSON: Issue 15.

14 MR. BRYANT: FMPA's position would be just no
15 position.

16 MR. HOWE: Chairman Wilson, I think this one might
17 deserve some discussion about whether we even need to
18 retain it. And the reason is the Company's petition was
19 filed, and as we read the Company's testimony it asked
20 for the inclusion of the unit plus an acquisition
21 adjustment in rate base, and did not at any point
22 explicitly state, you know, that it would be approved on
23 a pro rata basis, or how it was to be incorporated into
24 the Company's rate base. If it is the understanding of
25 all parties that the way the asset would come into rate

1 base would be incrementally as Florida Power and Light
2 assumes an ownership interest, we may not need this
3 issue.

4 MR. BUTLER: Well, that is a correct understanding
5 of FPL's proposal.

6 CHAIRMAN WILSON: And this is an issue that you had
7 raised.

8 MR. HOWE: Let me be absolutely sure.

9 CHAIRMAN WILSON: I think it is.

10 MR. HOWE: Yes, it is, it was our Issue No. 9 in our
11 preliminary list of issues, and it was raised for that
12 reason. The petition itself, as I remember it, stated --
13 asked for current authority to include the purchased
14 price plus acquisition adjustments in rate base, and it
15 did not have any qualifiers following it, so that was the
16 reason for the issue.

17 CHAIRMAN WILSON: And the representation, or the
18 fact that it is only going to come in as ownership
19 interest is realized removes this issue?

20 MR. HOWE: Yes, sir.

21 CHAIRMAN WILSON: Anybody have any objection to
22 dropping that issue in light of that?

23 Good.

24 Issue 16?

25 MR. BUTLER: Chairman Wilson, on Issues 16, 17 and

1 18, FPL's positions got switched, and what happened is
2 that the position stated here for 16 is the position for
3 17. The position stated for 17 is the position on 18.
4 And the position stated on 18 is the one that should be
5 here for 16.

6 CHAIRMAN WILSON: All right. We can easily
7 straighten that out.

8 MR. TELLECHEA: Mr. Butler, you said the position on
9 16 is 17?

10 MR. BUTLER: 16 would be the one for Issue 17. 17
11 would be for 18. And the one stated for 18 would go back
12 to 16.

13 CHAIRMAN WILSON: All right. Any other comments on
14 Issue 16?

15 I have some concern about how far into each of these
16 issues we are really going to be able to get, but I am
17 willing to leave them in here and we will make that
18 determination at hearing.

19 All right. Any comments on those three issues?

20 MS. KAUFMAN: Mr. Chairman, Issue 17 and 18 were
21 raised by Nassau Power --

22 CHAIRMAN WILSON: I might have guessed.

23 MS. KAUFMAN: We will withdraw Issue 17 and Issue
24 18.

25 CHAIRMAN WILSON: All right. Any parties have any

1 objection to that?

2 Issue 19?

3 MR. MURRELL: Mr. Chairman, CLG changes its position
4 to no.

5 CHAIRMAN WILSON: FMPA, does your position remain no
6 position at this time?

7 MR. BRYANT: Yes, sir.

8 CHAIRMAN WILSON: Do you intend to take a position
9 on this?

10 MR. BRYANT: I don't know yet, sir, but at the time
11 of hearing I will.

12 Issue 20?

13 MR. MURRELL: Mr. Chairman, the Coalition of Local
14 Governments changes its position to no.

15 CHAIRMAN WILSON: All right.

16 MR. BRYANT: Mr. Chairman, FMPA's position will be
17 no position.

18 CHAIRMAN WILSON: Issue 21?

19 MR. BRYANT: No position for FMPA, Mr. Chairman.

20 CHAIRMAN WILSON: Does the Coalition of Local
21 Governments intend to take a position on this issue, or
22 do you know at this point?

23 MR. MURRELL: Mr. Chairman, I believe I will know
24 within an hour.

25 CHAIRMAN WILSON: You can provide that to Staff?

1 objection to that?

2 Issue 19?

3 MR. MURRELL: Mr. Chairman, CLG changes its position
4 to no.

5 CHAIRMAN WILSON: FMPA, does your position remain no
6 position at this time?

7 MR. BRYANT: Yes, sir.

8 CHAIRMAN WILSON: Do you intend to take a position
9 on this?

10 MR. BRYANT: I don't know yet, sir, but at the time
11 of hearing I will.

12 Issue 20?

13 MR. MURRELL: Mr. Chairman, the Coalition of Local
14 Governments changes its position to no.

15 CHAIRMAN WILSON: All right.

16 MR. BRYANT: Mr. Chairman, FMPA's position will be
17 no position.

18 CHAIRMAN WILSON: Issue 21?

19 MR. BRYANT: No position for FMPA, Mr. Chairman.

20 CHAIRMAN WILSON: Does the Coalition of Local
21 Governments intend to take a position on this issue, or
22 do you know at this point?

23 MR. MURRELL: Mr. Chairman, I believe I will know
24 within an hour.

25 CHAIRMAN WILSON: You can provide that to Staff?

1 MR. MURRELL: I certainly will, and I will also
2 contact Florida Power and Light if there is any change.
3 In fact, John, I will contact you one way or the other.

4 MR. BUTLER: Thank you.

5 CHAIRMAN WILSON: FP&L has proposed an additional
6 issue, is that correct?

7 MR. BUTLER: We have, but we are prepared to
8 withdraw it at this point.

9 CHAIRMAN WILSON: Does anybody have an objection to
10 withdrawing that? Are you suggesting that you will
11 withdraw it?

12 MR. BUTLER: Yes.

13 CHAIRMAN WILSON: All right. Anything else?

14 MR. BUTLER: Mr. Chairman, we would like to inquire,
15 if we could, at this point if the Coalition of Local
16 Governments, which local governments they are
17 representing in this proceeding? Would it be possible
18 for for you to identify them?

19 MR. MURRELL: I understand that there may have been
20 some additions, but I can tell you what I have the
21 information on right now, John, Mr. Butler, if you will
22 give me just a minute. I had all of my file broken apart
23 for the deposition of Witness Cepero, which was just
24 taking place just before we came over here to this
25 hearing, Mr. Chairman, I apologize for the disarray.

1 CHAIRMAN WILSON: Would it be adequate for you to
2 have a list of those before the hearing begins on
3 Tuesday, or do you need those today?

4 MR. MURRELL: There certainly could be a change, and
5 that would be best for me.

6 CHAIRMAN WILSON: If you would have a list ready,
7 because I was kind of curious myself, just out of
8 curiosity.

9 MR. MURRELL: It would be in addition to those we
10 listed when we first filed.

11 CHAIRMAN WILSON: All right.

12 MR. MURRELL: And I think we have some specifically
13 listed in our prehearing statement, but I will check on
14 that and get a complete list for both the Chair and all
15 parties.

16 CHAIRMAN WILSON: Is there anything further that we
17 need to take up today?

18 MR. CHRIST: Could I ask the parties to stick around
19 so we can clear up some logistics.

20 CHAIRMAN WILSON: If you have some corrections about
21 the prehearing order, or Staff Counsel may have some
22 questions of you all, if you all will stay and get this
23 all cleared up, I would appreciate it.

24 The hearing is adjourned. Thank you.

25 (The hearing concluded at 2:35 p.m.)

CERTIFICATE OF REPORTER

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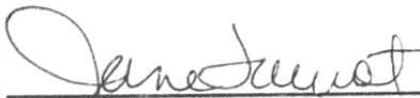
STATE OF FLORIDA)
COUNTY OF LEON)

I, JANE FAUROT, Court Reporter, Notary Public in and for the State of Florida at Large:

DO HEREBY CERTIFY that the foregoing proceedings was taken before me at the time and place therein designated; that before testimony was taken the witness/witnesses were duly sworn; that my shorthand notes were thereafter reduced to typewriting; and the foregoing pages numbered 1 through 35 are a true and correct record of the proceedings.

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

WITNESS MY HAND AND SEAL this 5th day of December, 1990, in the City of Tallahassee, County of Leon, State of Florida.



JANE FAUROT, Court Reporter
Notary Public in and for the
State of Florida at Large

My Commission Expires: July 16, 1993