

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
TALLAHASSEE, FLORIDA

IN RE: Investigation into the equity ratio and return on equity of Florida Power & Light Company. (Deferred from the 11/3/98 Commission Conference; staff has filed an appendix to the recommendation.)

DOCKET NO. 981390-EI

COPY

BEFORE:

CHAIRMAN JULIA A. JOHNSON
COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER JOE GARCIA
COMMISSIONER E. LEON JACOBS

PROCEEDING:

AGENDA CONFERENCE

ITEM NUMBER:

6**

DATE:

December 1, 1998

PLACE:

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APPEARANCES:

MATTHEW CHILDS, Esquire, representing FPL
VICKI GORDON KAUFMAN, Esquire, representing FIPUG
BRAD COX, representing EquiPower
ANDY BERTRON, Esquire, representing Florida ALERT

STAFF RECOMMENDATION

Issue 1: Should the Commission hold a hearing to determine the appropriate equity ratio and return on equity (ROE) for Florida Power & Light Company (FPL)?

Recommendation: Yes. Staff believes information exists suggesting that FPL's equity ratio is excessive and that its currently authorized ROE, 12.0%, exceeds a reasonable return required by investors. The Commission should hold a limited proceeding hearing to determine the appropriate equity ratio and ROE for FPL for all regulatory purposes.

Issue 2: Should this docket be closed?

Recommendation: No. The docket should remain open for a hearing.

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COMMISSIONER DEASON: Item 6.

COMMISSIONER CLARK: Mr. Chairman, I'm not sure we can resolve this in the time left. Maybe we could go to the ones that are revocations of certificates.

COMMISSIONER DEASON: Those items begin on what number?

* * * * *

COMMISSIONER DEASON: Item 6.

MR. DEVLIN: Commissioners, in this case staff originally recommended that the Commission hold hearings to deal with FPL's return on equity and equity ratio. I think it was two agendas back we took it up and you asked the parties in the docket, staff and Florida Power & Light to see whether we could get together and come up with a resolution to the issues at hand.

We have had several meetings since that time, and there has been a lot of give and take. And as of this morning FPL has framed a proposal that staff would support and recommend that the Commission adopt, and I think FP&L is going to give an overview of that.

We tried to get copies of that one-page proposal to all the Commissioners this morning to give you a heads up. I'm hoping Chairman Johnson received a copy

1 through fax in Orlando.

2 CHAIRMAN JOHNSON: Yes, I receive it about an
3 hour and a half ago.

4 MR. DEVLIN: Great. Normally when we have such a
5 major change in a recommendation we would defer to the
6 next agenda and give time for a thorough analysis in
7 writing. In this instance, though, deferring to the
8 next agenda could mess up our planned hearing dates if
9 the Commission opted to go to hearing. We have
10 hearing dates planned for February 9th and 10th, and
11 it's hard to get hearing dates soon after that. That
12 is the reason we are not recommending deferring it.

13 But that, of course, is your decision. I think
14 at this point we have the company here to perhaps give
15 an overview of the proposal.

16 COMMISSIONER DEASON: Okay. Mr. Childs.

17 MR. CHILDS: Commissioners, my name is Matthew
18 Childs for Florida Power & Light Company. At the
19 agenda on November 3rd, there was what I took to be
20 some strong direction to Florida Power & Light Company
21 and the staff and others that were interested to meet
22 and see if there was a way to resolve the concerns
23 that staff had raised in their original recommendation
24 to the Commission.

25 We met on a number of occasions. It seemed like

1 we met every other day, I'm sure we didn't. But I
2 think that the matter received a lot of attention by
3 all parties. It ultimately appeared that there --
4 there could be a way to try to resolve this matter,
5 and I think that was probably due to the diligence of
6 everyone that participated, and I thank all concerned
7 for that diligence.

8 The proposal that staff has just referred to is
9 one page, and it is the substance of the proposal that
10 we would make. It is a total package deal that we
11 would ask you to consider, and ask that you consider
12 it favorably. I want to emphasize a couple of points
13 as to this proposal.

14 First of all, as identified in the first
15 paragraph, we would extend the current amortization
16 plan through the year 2000. The current plan that we
17 are in goes through 1999. Secondly, Florida Power &
18 Light Company has agreed that -- and this is in the
19 last unnumbered paragraph below paragraph number one,
20 is that Florida Power & Light Company has agreed to a
21 minimum \$140 million a year amortization amount,
22 that's a fixed amount independent of what actual
23 revenues will be. And then layered in on top of that
24 is a continuation of the amortization as it has been
25 written before.

1 In addition, Florida Power & Light Company has
2 agreed that it would lower the return on equity range,
3 this is identified in Paragraph Number 3, from 10.2 to
4 12.2 with a midpoint of 11.2 for all regulatory
5 purposes, and would cap its adjusted equity ratio at
6 the number there on an adjusted basis of 55.83
7 percent.

8 We believe that we have made a substantial
9 movement, and we think that negotiations throughout
10 have been negotiations in good faith and were
11 fruitful. One point that I want to bring up, we have
12 discussed it with the staff, and I hope that it's not
13 viewed as too much of a glitch, but it was always
14 understood that Item Number 4 there, which refers to
15 another item on your agenda today, Item Number 9, that
16 we were concerned, and had voiced this from the
17 beginning in our discussions with the staff that this
18 item, if you saw fit to approve it, would be approved
19 on a proposed agency action basis. And then if we
20 participated or didn't participate on Item 9, and
21 there is a protest of the action you take in this
22 docket, Number 6, then we would have lost our
23 opportunity to make any comments to you about Item
24 Number 9 on your agenda.

25 What we had suggested is that the portion of Item

1 Number 9 which relates to the only item that we had
2 cared to comment on, and I'm not going to get to the
3 substance of it, but the area that addressed the \$3
4 million a year amortization for nuclear plants that
5 you approved several years back, that that be simply
6 deferred when you vote on Item Number 9. I want to
7 make that point, that we ask that that be done so that
8 we do not find ourselves mousetrapped on the issues.
9 I don't think that is any -- that's not the intention
10 of staff, and it's not our intention. Unfortunately,
11 it's a bit cumbersome.

12 COMMISSIONER DEASON: Mr. Childs, can you explain
13 that again. I'm a little confused as to what your
14 intent is concerning Item 9 and the 30 million.

15 MR. CHILDS: All right. If you would look to the
16 agenda, I have the summary of all the items, where it
17 has on -- for Item Number 9, it's Page 14, under Issue
18 3. If you will go down to about four lines under the
19 recommendation for Issue 3, you will see the reference
20 to these allocations relate to the additional
21 depreciation and nuclear amortization expense
22 recorded. And then it does on to the end of the
23 sentence.

24 What we are simply asking you to do is to defer
25 voting on the nuclear amortization expense recorded,

1 defer voting at this time. Not that you defer
2 forever, but that you defer at this time. This is
3 addressed in detail, Commissioner, on -- in the large
4 staff recommendation for Item 9. It is on Page 4.
5 And it starts about halfway through the second full
6 paragraph on Page 4 and continues down into the last
7 paragraph on that page.

8 This has been a long process, and I think the
9 Commission may have appreciated that even though it
10 recommended that the parties get together and attempt
11 to negotiate it. We think that we have been conscious
12 of trying to move forward, and we think that we have
13 made real progress. And we hope that this is
14 acceptable to you.

15 We believe that it does continue to provide an
16 avenue to take what I have referred to earlier as the
17 longer term view of the effort by the company to not
18 only reduce its costs on a longer term basis, but to
19 address some balance sheet concerns that have been
20 expressed before. It does that.

21 We also think that it is positive and that it
22 reduces uncertainty at this time, and we firmly
23 believe that it is a much better exercise than
24 proceeding to hearing without knowing where anyone is
25 going to come out.

1 So, we offer this. Please understand that what
2 we have on this one-page document is a description of
3 the substance of the proposal that we are offering,
4 and we will stand by it if it is adopted by a final
5 order of this Commission.

6 COMMISSIONER DEASON: Other parties who wish to
7 address the Commission?

8 MS. KAUFMAN: I do, Commissioner Deason.

9 Vicki Gordon Kaufman of the McWhirter Reeves law
10 firm. I am here on behalf of the Florida Industrial
11 Power Users Group. The settlement that Florida Power
12 & Light has proposed to you this afternoon was
13 essentially communicated late in the day yesterday,
14 and we met as early as this morning before the agenda
15 was scheduled to begin to discuss it.

16 As Mr. Devlin mentioned in his remarks to you,
17 this is obviously a major change from the
18 recommendation that was before you the last time we
19 were here. I have not had an opportunity either to
20 communicate this to my clients or to do any sort of an
21 analysis of it.

22 And I would recommend that you might want to do
23 the same before you move and approve something like
24 this. What we would suggest that you do in this
25 regard today is to defer this item, but with one

1 interrupt you for just a second. Are you indicating
2 that this Commission has the authority to unilaterally
3 lower FP&L's return on equity without giving them the
4 opportunity, a due process opportunity to address the
5 Commission on that decision?

6 MS. KAUFMAN: Well, Commissioner Deason, I think
7 obviously you could do it as a PAA or, alternatively,
8 I think you should hold the money subject to refund.
9 And I think we discussed that at the prior agenda
10 conference. I certainly would not recommend that you
11 take no action, because if you don't then -- and they
12 remain at their current return on equity, obviously
13 you won't have control over those funds until a final
14 decision is made.

15 COMMISSIONER DEASON: So you want us to defer
16 everything except for a return on equity and issue a
17 PAA order lowering the return on equity, realizing
18 that it may be protested and that it ultimately could
19 take longer to adjust the ROE as opposed to taking the
20 entire matter to hearing.

21 MS. KAUFMAN: Right. But in any event,
22 Commissioner Deason, I think that the Commission has
23 the authority to hold the money subject to refund
24 pending the hearing, and that's what I would suggest
25 that you do.

1 The final point I wanted to make was Mr. Childs
2 -- I thought I heard him say that this was a package,
3 and that he hopes you accept it and that you issue a
4 final order. And, again, we would suggest to you that
5 -- you have parties here. I know I have two clients
6 that have filed petitions to intervene in this matter
7 that haven't been acted on yet, but they obviously
8 have a substantial interest in this.

9 And I would suggest to you that anything that you
10 do here has to be issued as a PAA at this point in
11 time, because we have not been to hearing on any of
12 these issues. Thank you.

13 MR. COX: Commissioners, my name is Brad Cox, I'm
14 an officer with EquiPower. Equipower is a consulting
15 firm that provides electricity management services to
16 various trade associations. Among our clients here in
17 Florida are the Florida Retail Federation, Florida
18 Health Care Association, and the Florida Hotel and
19 Motel Association. On their behalf, we have monitored
20 the negotiations that have been going on between staff
21 and Florida Power & Light since staff filed the
22 recommendation on October the 22nd.

23 This morning we received a copy of the proposed
24 settlement that is before you. And the purpose for my
25 being here today is to report to you that we are

1 unable to support that settlement, because we do not
2 believe it provides sufficient benefits to our
3 constituent companies.

4 The bottom line is I believe the staff has
5 determined that --

6 COMMISSIONER DEASON: Excuse me. Are you
7 indicating that there are no benefits to your clients
8 above the status quo, or are you indicating you feel
9 like if you go to hearing you can get more benefits
10 than what is contained in this agreement?

11 MR. COX: What I'm trying to indicate is that I
12 feel that there should be a sharing of benefits, and
13 the balance that has been struck in this proposed
14 settlement does not provide enough benefit to the
15 ratepayer.

16 COMMISSIONER DEASON: Not enough benefit?

17 MR. COX: Yes.

18 COMMISSIONER DEASON: But do you agree that this
19 is an improvement, a vast improvement over the status
20 quo?

21 MR. COX: I really can't say based on what I know
22 at this point. However, our primary concern which we
23 have voiced during the negotiation process is that
24 however this matter is resolved, it should include
25 some form of current refund or current benefit to the

1 ratepayer as opposed to maintaining rates at current
2 levels and having those benefits deferred until some
3 point in the future.

4 COMMISSIONER DEASON: Thank you.

5 MR. BERTRON: Commissioners, my name is Andy
6 Bertron with Huey, Guilday and Tucker here in
7 Tallahassee. We represent the Florida Alliance for
8 Lower Electric Rates Today, or Florida ALERT. Florida
9 ALERT is a coalition of 22 members ranging from
10 commercial and retail entities such as Publix and
11 McDonald's, industrial companies such as Georgia
12 Paper, and business associations such as Florida
13 Hospital Association, Building Owners and Managers
14 Association, and the Florida Retail Federation.

15 First of all, just to echo the comments of Ms.
16 Kaufman and Mr. Cox before me, at this time we are
17 uncomfortable drawing too many conclusions from what
18 we see before us, given that this final settlement was
19 just agreed to this morning. With 22 members we need
20 some time to get with our members and get back with
21 them before we have a better understanding of how this
22 will effect each of them individually.

23 But suffice it to say, like Mr. Cox, it's unclear
24 to us how this will benefit our members, especially
25 with the monies not going back to the ratepayers today

1 and instead being put into these accounts and deferred
2 to future times. It's unclear to us what the need is
3 to do that in these accelerated depreciation and
4 amortization accounts. Likewise, we believe that the
5 appropriate way to handle this, regardless of your
6 action is with a PAA.

7 Thank you.

8 COMMISSIONER DEASON: What is staff's position on
9 the necessity to issue this as a PAA?

10 MR. DEVLIN: If that's a legal question, I guess
11 I'll try to answer it. I thought it would be issued
12 as a PAA.

13 COMMISSIONER DEASON: So it will be issued as a
14 PAA?

15 MR. DEVLIN: Yes.

16 COMMISSION STAFF: That is my understanding,
17 also.

18 MR. CHILDS: For the record, so did I.

19 COMMISSIONER CLARK: But you were just saying you
20 needed a final order to --

21 MR. CHILDS: Ultimately, it has to be final.

22 COMMISSIONER CLARK: Right.

23 MR. CHILDS: You initially issue a PAA, but it
24 becomes final once the time for protest is passed. My
25 point is simply that you can't, I think, be in a

1 situation of picking and choosing as to what you
2 protest and, say, well, I will go with this, but not
3 with that.

4 COMMISSIONER DEASON: So it is your position that
5 the order should be issued as PAA, but if there is --
6 you cannot pick and choose what is protested and what
7 is accepted because the settlement is a -- it's a
8 package?

9 MR. CHILDS: That's correct. Although -- and I
10 don't want to argue the point, because I had
11 anticipated that it would be a PAA. But you have
12 issued on utilities agreeing to lower their ROE, for
13 instance, you have done that by a final order.
14 Because that is the -- you did it for Florida Power &
15 Light, I think, in 1995 or '93, that that is a change
16 against their interest. But we hadn't intended that
17 you do that now.

18 COMMISSIONER DEASON: Questions, Commissioners.

19 COMMISSIONER JACOBS: I am prepared to offer a
20 motion. I think this is a very positive step, but I
21 agree that we are probably not prepared today to give
22 this full consideration, and I would be prepared to
23 make a motion that we defer it at least one agenda, to
24 the 19th.

25 COMMISSIONER CLARK: That's the 15th, right?

1 COMMISSIONER DEASON: Well, I have a few
2 questions, and depending on the answers to those
3 questions, I may not feel the necessity to defer it.
4 I mean, I have had the opportunity to review this, and
5 I do have some questions, and so I will just proceed
6 with my questions. And then if that triggers any
7 other questions, we will take it from there.

8 And I guess I will direct these to Mr. Childs,
9 and then if staff wants to offer anything, any
10 additional clarification, I would welcome that, as
11 well.

12 I'm looking at the second paragraph, actually
13 it's number one, but it is the second paragraph under
14 item one. And it's talking about the possibility of
15 future regulatory assets, and that they would be
16 established pursuant to future Commission orders. And
17 as I understand it, if there are such regulatory
18 assets created, that the Commission would have the
19 authority to extend the plan for purposes of
20 addressing those regulatory assets. Is that correct,
21 Mr. Childs?

22 MR. CHILDS: Yes. And I would say, however, that
23 you would, if there were these additional assets
24 created, the Commission would have two options. It
25 would have the option to determine whether to include

1 the recovery of those regulatory assets through this
2 type of a plan and, but not necessarily a foregone
3 conclusion, whether to extend the plan for that
4 purpose. So it's for both.

5 COMMISSIONER DEASON: So it's not automatic that
6 if the regulatory assets are created for whatever
7 reason, that the plan has to be extended or that the
8 revenues derived from this plan would have to be
9 applied for that purpose. But it would be within the
10 Commission's discretion to apply it in that manner.

11 MR. CHILDS: That's right. It would take a
12 conscious decision by this Commission and an order by
13 this Commission.

14 COMMISSIONER DEASON: I have, I guess, a
15 clarifying question. The very next paragraph, talking
16 about the fuel remaining in nuclear plants that may be
17 attributable to customers prior to the end of 1999,
18 and I just need some clarification as to, I guess, the
19 physics of nuclear fuel and how fuel that is existing
20 at the time of decommissioning is attributable to
21 customers prior to 1999.

22 MR. CHILDS: I will try. My understanding is
23 that this is attempting to address the cost of nuclear
24 fuel that will be in the reactor when the reactor
25 ceases commercial operation. The fuel will not -- it

1 will have, I guess the potential and therefore a cost
2 associated with the fuel for further operation beyond
3 that point, but the unit will not continue to operate.
4 And this is, as the reactors continually refuel as you
5 go through time, the old is taken out and I guess in
6 some cases it's not fully used up, and new fuel is put
7 in and moved around.

8 The concern that we had was that we would
9 potentially have a cost associated with the unused
10 fuel remaining in the reactor at the time of
11 decommissioning and the question of, well, who should
12 pay for the fuel now that the reactor is not operating
13 anymore. And we raised, Florida Power & Light raised
14 this as a potential item that could be addressed
15 through the amortization plan.

16 But also this wording is supposed to convey that
17 it is not a foregone conclusion that any fuel will be
18 amortized through this plan, or any fuel costs will be
19 amortized, but that the Commission in the fuel
20 adjustment docket will address that issue and decide,
21 and that's why, in effect, the word was changed from
22 is to may just this morning, will decide whether there
23 is any costs that fits into that category, and, as
24 well, if there is, whether it's appropriate to
25 amortize it through this program.

1 COMMISSIONER DEASON: So that policy question
2 will be addressed within the fuel docket?

3 MR. CHILDS: That's correct.

4 COMMISSIONER JACOBS: I have a brief question on
5 that. So, you said it would be upon decommissioning,
6 so if the license were renewed, that doesn't sound
7 like that would -- those provisions would apply?

8 MR. CHILDS: I beg your pardon?

9 COMMISSIONER JACOBS: If the reactor's license
10 were renewed, then those provisions wouldn't apply?

11 MR. CHILDS: Well, I guess so, except that I
12 would assume that even if the reactor's license were
13 renewed, that you would still have the question. You
14 may decide that it had been renewed and extended
15 sufficiently far that you weren't going to address it.
16 But ultimately it will be decommissioned. And even
17 though you may extend the license for a year or two,
18 or whatever, you are going to be left nevertheless
19 ultimately with fuel, unused fuel and costs in the
20 reactor.

21 COMMISSIONER JACOBS: But the question wouldn't
22 come until you reach the point of decommissioning. So
23 you wouldn't address that question if, indeed, your
24 license renewal were received?

25 MR. CHILDS: We would address that question. I

1 mean, I would assume that if someone were concerned,
2 we would address what our current estimate is of
3 license expiration and concerns associated with that.
4 It would be our expectation that it would be addressed
5 in any docket addressing that issue.

6 COMMISSIONER CLARK: But with respect to this
7 issue of amortization, you really have that in there,
8 because when does your license, at least for one of
9 your plants, expire?

10 MR. CHILDS: I don't recall when it expires. But
11 the reason it is in there is because it's, well, we
12 may -- we thought it was appropriate, and we
13 understand about the concerns about establishing it
14 and discussed that perhaps we would do that in the
15 fuel docket as well as the question of whether there
16 would be a disagreement as to whether it was even
17 appropriate. So we identified it so that if you
18 decide to approve the plan, it will be understood that
19 if you make the second decision that it could go into
20 the plan. And it would be understood and known in
21 advance that that is something that we were looking at
22 that could go in if you made that subsequent decision.

23 COMMISSIONER CLARK: You could use the money for
24 that purpose?

25 MR. CHILDS: That's right.

1 COMMISSIONER DEASON: Still under item one, the
2 last paragraph under item one, it talks about the
3 dollar amounts and the calculation mechanism for
4 amounts that are available for amortization purposes.
5 I take it the 140 million is -- that is a flat amount,
6 and regardless of your future revenues, that amount
7 is basically guaranteed?

8 MR. CHILDS: That's right.

9 COMMISSIONER DEASON: And that the revenue
10 forecasts are based upon '96, but we were going to be
11 using actual revenues as they are derived by the
12 company, correct?

13 MR. CHILDS: Correct. So if revenues actually
14 exceeded what is stated here as the mid-band, then we
15 would be, we would have the 140 million plus all of
16 the 83.2 difference between the mid-band and the low
17 band.

18 And then if you moved up higher so that actual
19 revenues were in excess of that, then the next
20 increment of at least 50 percent of revenues above the
21 mid-band would kick in.

22 COMMISSIONER DEASON: Item 2 addresses the
23 potential situation of there being monies available,
24 and all targeted amortization amounts have been
25 achieved, and that the Commission then would retain

1 the ability to have final determination over the
2 utilization of any remaining amounts.

3 And I take it there is no limitation on the
4 Commission's ability to dispose of those amounts by --
5 and, more specifically, what I mean is that the
6 potential for cash refunds would exist at that time,
7 is that correct, Mr. Childs?

8 MR. CHILDS: I don't know. I mean, I know you
9 didn't mean it this way, but there would be
10 potentially some limitations, but we did not mean to
11 restrict it so that you could not make a refund if you
12 determined that to be appropriate.

13 COMMISSIONER DEASON: I mean, it is not intended
14 to exclude cash refunds?

15 MR. CHILDS: No, it's not.

16 COMMISSIONER DEASON: I want staff to explain to
17 me how -- in their view, how this item, this proposed
18 stipulation relates to Item 9 on today's agenda, and
19 in particular how the 30 million in nuclear
20 amortization expense is to be handled. And if you
21 could make a distinction between past amounts which
22 have been amortized or have been accumulated and the
23 future amounts. I understand the 30 million would
24 continue in the future?

25 MR. DEVLIN: Yes. And, Pat, correct me if I'm

1 wrong, but what we were trying to do in the
2 depreciation recommendation was take the \$30 million
3 accruals that were ordered two or three years back,
4 the three years worth, \$90 million that were
5 designated or name nuclear amortization. And back in
6 that case, and that was like two cases back, the
7 Commission kept it open on what the final disposition
8 would be for those dollars. And we felt this would be
9 an appropriate time to move what is accumulated to
10 date. \$90 million where we have a need.

11 COMMISSIONER DEASON: Those reserve deficiencies
12 which this study has identified?

13 MR. DEVLIN: To a great extent the package I'm
14 in, they are nuclear deficiencies. So they seem to
15 relate with the concept of accumulated and nuclear
16 amortization reserve for a nuclear deficiency that is
17 now being defined.

18 We wanted to put the rest, the debate on whether
19 that was contentious or not by trying to get the
20 company to agree not to speak against that idea, and
21 that is what number four is on the proposal. And I
22 guess what they are saying is if this proposal goes by
23 the wayside because the Commission doesn't adopt it or
24 doesn't protest it, or what have you, they still want
25 to maintain the right to be able to speak their mind

1 on the disposition of that \$90 million.

2 COMMISSIONER DEASON: Mr. Childs, you agree with
3 that, then, is that correct?

4 MR. CHILDS: That's correct.

5 COMMISSIONER DEASON: In Item 5, the last item,
6 it talks about the requirement to effectuate the --
7 effectuating financing in a least cost approach. My
8 question is that if an issue arises about that, how is
9 it to be resolved?

10 I mean, I would think that it is incumbent upon
11 the company in any -- even if there was or was not a
12 stipulation, always to try to effectuate financing in
13 the most cost-effective manner.

14 MR. DEVLIN: We had a lot of difficulty with that
15 provision, and I sometimes wonder what the value of
16 that provision is, but what we were trying get at is
17 to promote the idea of as they move into a
18 construction cycle, as it appears they are doing,
19 promote the idea of using debt as opposed to equity.
20 We weren't able to get that kind of a commitment.
21 This is about as far as we could go.

22 Trying to get at the equity ratio issue. You
23 know, the equity ratio had been growing the last
24 couple of years, and one way of dealing with that is
25 as a construction cycle takes place they could be

1 issuing debt.

2 COMMISSIONER DEASON: Well, I guess I'm -- what
3 are we achieving by this, because it seems to me that
4 that is something the company is always incumbent upon
5 them to do, something the Commission always monitors.
6 Obviously we don't dictate specifically to them what
7 sources of capital they are to pursue and at what cost
8 rates. It's their management decision and utilization
9 of their experts to achieve a cost-effective financing
10 program. So I guess I'm not opposed to this language,
11 I'm just curious as to what it achieves within this
12 stipulation.

13 MR. DEVLIN: Not a whole lot, in my opinion. I
14 mean, again, it was one of those areas that we were
15 trying to get more explicit and we really weren't able
16 to. And we ended up maybe as a way of dealing with
17 the issue of equity ratio, we ended up agreeing to a
18 cap.

19 COMMISSIONER DEASON: Well, that was going to be
20 my next question. Obviously there is a cap, and
21 that's -- the company, I suppose, is free to finance
22 in whatever -- they could exceed that cap, but for
23 monitoring purposes and for regulatory purposes and
24 for purposes of calculating these accruals for
25 amortization purposes it's going to be -- we are going

1 to use the ratio that has been capped at 55.83
2 percent, correct?

3 MR. DEVLIN: That's correct.

4 COMMISSIONER DEASON: Mr. Childs, you agree with
5 that as well, is that correct?

6 MR. CHILDS: That's correct.

7 COMMISSIONER DEASON: That's all the questions I
8 have.

9 COMMISSIONER CLARK: I have a question with
10 respect to the calculation of the off-balance sheet
11 obligations. How much does that account for in
12 adjusting the equity? If you didn't count them -- I
13 understand the return on equity you calculated in the
14 original recommendation did not treat the off-balance
15 sheet as debt, is that correct?

16 MR. DEVLIN: I believe that's correct. The
17 effect of the off-balance sheet obligations is
18 approximately 9-1/2 percentage points you would add to
19 that 55.8. So, you know, if we didn't take into
20 account the off-balance sheet obligations, you know,
21 we're looking at an equity ratio of 65.2 or something
22 like that.

23 COMMISSIONER CLARK: And what is -- what is their
24 equity now?

25 MR. DEVLIN: 65.7 percent forecasted for '98

1 without recognizing the off-balance sheet obligations.

2 COMMISSIONER CLARK: And I take it you agree with
3 the way it is treated in Standard and Poors'
4 methodology?

5 MR. DEVLIN: Well, that's not necessarily true,
6 and I guess that should be a premise not only for
7 staff, but the company I'm sure would agree that this
8 is an art, not a science, and there is a lot of give
9 and take and compromise. This is one of those
10 elements where compromise took place. I guess I can
11 say that I agree that some recognition should be
12 given. Whether complete recognition should be given
13 is somewhat debated.

14 COMMISSIONER CLARK: Okay.

15 COMMISSIONER DEASON: But you are in agreement
16 that Standard and Poors methodology would be utilized
17 for purposes of the calculation required under the
18 stipulation?

19 MR. DEVLIN: That's true.

20 COMMISSIONER CLARK: Let me ask a question
21 procedurally. If we issue this as a PAA, when will it
22 go out? Actually, as I understand your recommendation
23 that we take it up now and that we issue it is so that
24 if it is protested we can still use those dates for
25 hearing.

1 MR. DEVLIN: I believe that's correct. I think
2 really what we were concerned about with the hearing
3 dates was that if you deferred a decision today on
4 what was proposed, that while it would certainly be
5 reasonable in light of the fact that this was just
6 presented, it would impact the time that the parties
7 would have to prepare for the hearing.

8 We would be looking at a pretty tight schedule
9 for prefiled testimony and discovery using the hearing
10 dates that we have, the February 9th and 10th dates.
11 Looking at the calendar, I'm not sure that these dates
12 are available. It looks like April is the next chance
13 that we have.

14 COMMISSIONER CLARK: When do you anticipate
15 issuing the order on the PAA?

16 MR. DEVLIN: The order would have to be issued by
17 December 21st at the latest.

18 COMMISSIONER CLARK: And then how long do parties
19 have to review it?

20 MR. DEVLIN: 21 days.

21 COMMISSIONER CLARK: So how long is that going to
22 -- assuming we issue it as a PAA, how long do they
23 have to respond?

24 MR. DEVLIN: They would have the 21 days from the
25 date that the order is issued to --

1 COMMISSIONER CLARK: Well, in effect 42 days to
2 look this over and decide if it is in their best
3 interest, is that right?

4 MR. DEVLIN: 41.

5 COMMISSIONER CLARK: Okay.

6 MR. DEVLIN: So if this was approved in a PAA and
7 was protested, I think the February 9th and 10th
8 hearing dates that we have now would likely be used.

9 COMMISSIONER CLARK: Ms. Kaufman, let me ask you
10 what is wrong with that procedure, it gives you the
11 time that you need to review it and respond?

12 MS. KAUFMAN: What is wrong with issuing it as a
13 PAA? Well, I don't think procedurally there is
14 anything wrong with it, and I want to make it clear
15 that FIPUG did participate in the settlement meetings
16 and did make some of the same comments that we have
17 made to you today. We are just not convinced at this
18 point in time that this is the appropriate path to
19 follow.

20 COMMISSIONER CLARK: Well, will 42 days give you
21 time to review it and --

22 MS. KAUFMAN: Yes. I think --

23 COMMISSIONER CLARK: I don't see you in any
24 different position if we issue the PAA today than if
25 we don't. And it has the advantage of securing those

1 dates, and it's my own view that if we are going to go
2 to hearing, the sooner the better.

3 MS. KAUFMAN: Well, Commissioner Clark, I guess
4 it goes back to some of my original comments. I think
5 if you hold the money subject to refund, we don't all
6 have to rush to try and make these February hearing
7 dates. And I'm not so sure that there is any reason
8 that we should be letting the hearing dates drive what
9 action you all should take in this case.

10 COMMISSIONER DEASON: Ms. Kaufman, I'm not sure
11 that even if the Commission were inclined simply to
12 reduce the company's ROE to the 11.2 percent, or the
13 range of 10.2 to 12.2, that that in and of itself
14 necessarily identifies any monies subject to refund.

15 There are a myriad of issues which you are well
16 aware of which go along with return on equity.
17 Perhaps return on equity is the ultimate measuring
18 stick, but before you get to that point there are
19 many, many different issues and calculations that go
20 into determining potential overearnings.

21 MS. KAUFMAN: (Inaudible, microphone not on) --
22 and we were trying to do our best in the short time
23 frame to come up with some stopgap measure that we
24 could use short of having you accept this proposal.
25 And, again, I think holding the money subject to

1 refund is probably the best way to do that.

2 COMMISSIONER DEASON: Well, I agree with you that
3 it is a valuable safeguard, but there are due process
4 procedures and procedures that have to be followed,
5 and I think probably the safest and the quickest way
6 to get to the ultimate resolution or whatever it is is
7 to issue this as a PAA, and if it goes to hearing, it
8 goes to hearing. I don't see where we are going today
9 to be able to wave a magic wand and come up with an
10 ROE and then identify a dollar amount and put it
11 subject to refund. We are not capable of doing that,
12 and I don't think that affords necessary due process
13 procedures.

14 MS. KAUFMAN: Well, Commissioner Deason, I
15 understand what you are saying, and perhaps I don't
16 agree with it, but I would agree with Commissioner
17 Clark that in the 40-some days that we will have to
18 review this, you know, it may be that we will come to
19 agree with this proposal. It may be that there will
20 be another compromise that the parties can work out.

21 I guess the point of my presentation to you is
22 that we have not had sufficient time. We are very
23 concerned with more money and a substantial amount of
24 money going into this accelerated depreciation
25 program. We just don't think that that is the right

1 course to take at this point in time, and particularly
2 to extend the program beyond 1999.

3 COMMISSIONER JACOBS: So would you want to speak
4 to that issue (inaudible) as well as what you propose
5 as an alternative to that?

6 MS. KAUFMAN: Are you talking about if we were to
7 go to hearing?

8 COMMISSIONER JACOBS: Yes. Would you want to
9 have Item 9 still on the table, the portion of Item 9
10 that deals with that still on the table when we go to
11 hearing?

12 MS. KAUFMAN: Yes, sir.

13 COMMISSIONER DEASON: Well, let me say that I'm
14 comforted by the fact that this plan is certainly
15 advantageous to customers above the status quo. Now,
16 I understand there is arguments that perhaps there is
17 more that should be somehow identified, and if we
18 follow the necessary due process procedures perhaps we
19 could get to that point.

20 But to me without question this proposal that is
21 in front of us is a great leap above what we have now.
22 It is a great benefit to customers. We have \$140
23 million guaranteed. If there is nothing that is done
24 at the end of 1999, all of this goes away and there is
25 nothing there. And this is even in addition to what

1 we have already been able to achieve. So, I don't
2 think any -- this proposal is a great benefit to
3 customers without question.

4 Now, I understand the issue that -- and I
5 understand Ms. Kaufman and others to say, well,
6 perhaps it's not enough, and that you want additional
7 time to look at that to make an assessment of that.
8 And I think that by issuing the PAA we are going ahead
9 and capturing these tremendous benefits which I feel
10 confident that if our staff has signed off on it that
11 there is a great deal of merit to that.

12 Obviously I have not participated in negotiations
13 and am not privy to that, but in years past in a
14 different role I had been involved in some of those
15 things, and I understand the complexity and the give
16 and take and some of the hard positions that are
17 taken. And I feel encouraged that the parties, even
18 though we do have parties here who are not ready at
19 this point to sign off, that they did become involved
20 in the negotiations. And that we, as a Commission,
21 tried to encourage parties to do that, and one last
22 effort perhaps to avoid a hearing. And I think if we
23 issue this as a PAA that we may end up going to
24 hearing, but at least the parties will have more than
25 ample time to make that assessment and who knows,

1 perhaps we can avoid a hearing.

2 Kep (phonetic) is determined that these benefits
3 are substantial and sufficient and that we can bring
4 closure to this, and go ahead and capture these
5 benefits and the company can go about and know the
6 parameters in which they need to go ahead and manage
7 and plan for the company's operations and to provide
8 quality service to its customers. So, I guess that's
9 where I am on it.

10 But if there are no further questions, I will
11 entertain a motion, or if there are further questions
12 obviously we will entertain those, as well.

13 COMMISSIONER JACOBS: One question. If we -- and
14 this is to staff. If we approved it today, where are
15 we in terms of -- well, I guess if we -- and I guess
16 the other question would be we don't go to hearing,
17 but we would like modifications, where are we? At
18 that point we are looking to go back, the parties to
19 go back to negotiations and approve whatever
20 modifications we would like, or the alternative to be
21 to go to hearing?

22 COMMISSIONER GARCIA: I'm sorry, Leon, I didn't
23 understand what the question was.

24 COMMISSIONER JACOBS: If we look at this document
25 in 42 days and there are some recommendations brought

1 from other parties which we think are reasonable and
2 we would like to see incorporated in the document, are
3 the options at that point for the parties either to
4 renegotiate this agreement or to go to hearing?

5 MR. DEVLIN: Well, I think once you have issued
6 the PAA order the option is to go to hearing, and I
7 suppose that --

8 COMMISSIONER JACOBS: And if we are 40 days down
9 the road then the hearing dates are cut the window is
10 what I'm hearing.

11 MR. DEVLIN: Well, the February 9th and 10th
12 dates would be out, but I don't know that that was --
13 we weren't concerned about keeping those dates in the
14 event of a protest, I think we wanted to let you know
15 that if you deferred a decision today until the next
16 agenda and then decided that we needed to go to
17 hearing, then we would be on a tight schedule for a
18 February 9th and 10th hearing, which we would like to
19 keep. But if there is a protest once the order is
20 issued, we can see what hearing dates are available at
21 that time.

22 MS. KAUFMAN: Commissioner Jacobs --

23 MR. DEVLIN: Go ahead.

24 MS. KAUFMAN: I'm sorry. I guess it would be my
25 view that even if there is a protest, if all the

1 parties agree we would have the opportunity to
2 present, you know --

3 COMMISSIONER JACOBS: We will just stipulate at
4 that point.

5 MS. KAUFMAN: -- modifications or an entirely
6 different proposal. And if that obviated the need for
7 the hearing, so be it. If it didn't, we would go to
8 hearing.

9 COMMISSIONER CLARK: Mr. Chairman, I am prepared
10 to move that we accept the proposal and issue a PAA
11 embodying the elements of the proposal as outlined in
12 this one-page statement.

13 COMMISSIONER GARCIA: I will second the motion.

14 COMMISSIONER DEASON: There has been a motion and
15 a second. All in favor say aye.

16 (Unanimous affirmative vote.)

17 COMMISSIONER DEASON: All opposed? I'm sorry, is
18 Chairman Johnson with us?

19 CHAIRMAN JOHNSON: Yes. I said aye.

20 COMMISSIONER DEASON: I'm sorry, I didn't hear
21 you. So it was unanimous. Very well. Show then that
22 the motion passes unanimously, and that disposes of
23 Item 6.

24 COMMISSION STAFF: Thank you, Commissioners.

25 COMMISSIONER CLARK: I would like to tell the

1 staff and the parties I appreciate them working on
2 that, and I want to indicate to the parties who are
3 still reviewing that, to encourage you to continue to
4 do that and work for a settlement, but I feel this
5 procedure gets us to where we need to be the fastest.

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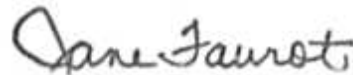
STATE OF FLORIDA)

COUNTY OF LEON)

I, JANE FAUROT, RPR, do hereby certify that the foregoing proceeding was transcribed from cassette tape, and the foregoing pages number 1 through 37 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.

DATED THIS 14th day of December, 1998.



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