

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
TALLAHASSEE, FLORIDA

IN RE: Petition by The Citizens of the State of Florida for
a full revenue requirements rate case for Florida Power &
Light Company.

DOCKET NO. 990067-EI

COPY

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

PROCEEDING: AGENDA CONFERENCE

ITEM NUMBER: 10A**

DATE: March 16, 1999

PLACE: 4075 Esplanade Way, Room 148
Tallahassee, Florida

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APPEARANCES:

JACK SHREVE, Esquire, representing OPC
RON LAFACE, Esquire, representing Coalition for
Equitable Rates
JOHN McWHIRTER, Esquire, representing FIPUG
MATTHEW CHILDS, Esquire, and Mr. Evanson representing
FPL

STAFF RECOMMENDATION

Issue 1: Should the Commission approve the Stipulation entered into by Florida Power & Light Company (FPL), OPC, the Florida Industrial Power Users Group (FIPUG), and the Coalition for Equitable Rates (the Coalition)?

Primary Recommendation: Yes. The Stipulation should be approved.

Alternative Recommendation: No. The stipulation should not be approved.

Issue 2: Should this docket be closed?

Recommendation: Yes. Absent a timely appeal of the Commission's final order, no further Commission action will be required and the docket should be closed.

P R O C E E D I N G S

1
2 CHAIRMAN GARCIA: All right. So we are going to
3 begin the agenda today on Item Number 10A. Very good.
4 All right, we'll hear from staff to introduce this and
5 then we'll go to Mr. Shreve and --

6 COMMISSION STAFF: I'm not sure I want to do it,
7 Chairman Garcia, but as you can see we have quite a
8 panel of guests here today, you might want to hear
9 from the parties to get an overview of the
10 stipulation. That's why we're here. We have a
11 recommendation, a primary and alternative
12 recommendation. One supporting the stipulation, one
13 supporting the concept of going to a rate case.

14 CHAIRMAN GARCIA: Okay.

15 COMMISSION STAFF: We didn't have a lot of time
16 to analyze this and, therefore, we have basically
17 tried to identify areas of concern or areas that
18 needed we thought special attention from the
19 Commission, so I would suggest you get an overview
20 from the parties. We could delve into why the primary
21 is --

22 CHAIRMAN GARCIA: Very good, and I'm sure they'll
23 make a commentary on those issues. Mr. Shreve.

24 MR. SHREVE: I would like to be able to reply to
25 the staff recommendation because there are some things

1 in there that I think are practically improper when
2 you take into consideration the past actions of the
3 staff of the Public Service Commission. But a brief
4 overview of our settlement is a \$350 million rate cut
5 with a safety net or cap and a sharing above certain
6 revenue figures.

7 We've moved to a revenue cap because of past
8 actions of the staff and the Public Service Commission
9 when we have had settlement agreements that have been
10 interpreted in a way that they were not intended, so
11 we have moved to a revenue cap so that we would be
12 assured of getting certain sharing for the customers.

13 I think basically everything has been discussed,
14 we feel that we have a good settlement here. I would
15 like an opportunity to reply when the staff discusses
16 their recommendations. I think the president of
17 Florida Power & Light would like to make a couple of
18 comments. We feel that we have accomplished something
19 here for the people of the State of Florida, for all
20 of the customers of Florida Power & Light, and would
21 like to have it approved.

22 CHAIRMAN GARCIA: Thank you, Mr. Shreve.

23 MR. EVANSON: Well, I am delighted to be here to
24 urge your approval of this agreement with the Office
25 of Public Council. The agreement includes rate cuts

1 that will benefit our customers by over
2 \$1 billion during a three-year term.

3 First, let me express my appreciation to Jack
4 Shreve. This agreement would not have been possible
5 without his leadership, his knowledge, determination
6 and resolve to reach a fair and balanced settlement
7 without going through a costly time consuming
8 adversarial rate case was really the key to reaching
9 the settlement. And I'd also like to thank FIPUG and
10 the Coalition for Affordable and Equitable Rates for
11 supporting the settlement. And I'd also like to thank
12 the staff of the Public Service Commission for the
13 work that they did with us last year in trying to
14 resolve a number of these issues.

15 Now, let just say a few words about the rate
16 reductions. They do amount to \$350 million a year or
17 about \$1 million a day, and every customer from the
18 residential to the large commercial industrial will
19 see a significant reduction of rates, on average more
20 than 6 percent. Residential customers will save about
21 \$5 a month or \$60 a year.

22 The last time our prices were this low was in
23 October of 1983, sixteen years ago, and in real terms
24 our prices are the lowest they've ever been since the
25 history of the company. And as you know, we go back

1 to 1925. And, furthermore, under the agreement
2 customers can see additional savings in the form of
3 special rebates if our annual revenues exceed certain
4 threshold amounts.

5 Now, I would have to ask what makes rate
6 reductions of this magnitude possible. And quite
7 simply, I think it's the dedicated work of our own FPL
8 employees over the entire decade of the 1990s in
9 lowering our cost structure and improving performance
10 and operations. We have significantly reduced our
11 operating and maintenance expenses. On a unit of
12 output basis per kilowatt hour they are down 33
13 percent since 1990.

14 But we've done a lot more than control costs.
15 Our operations are generally the best that they've
16 ever been. For example, last year our fossil units
17 operated at 94 percent availability, which were the
18 best for comparable plants in the United States. And
19 back in 1990 their availability was 77 percent. Our
20 nuclear plants operated at 93 percent availability
21 versus 67 percent back in 1990. And at year end,
22 Turkey Point was ranked number one in the country by
23 the World Association of Nuclear Operators, and St.
24 Lucie was ranked number three at that time. So the
25 best nuclear facilities, dual plants in the country.

1 And, as you know, we've been making
2 significant improvements in reliability of our
3 systems. Last year we decreased the time the average
4 customer was without power by 27 percent, and I can
5 assure you we are absolutely committed to continue
6 making improvements in reliability. So while our
7 employees have been working harder and smarter over
8 this period, these rate reductions also would not have
9 been possible without sound regulation. And over a
10 number of years this Commission has set the regulatory
11 tone and framework with the view toward the long-term
12 benefit of Floridians, and I think your approval of
13 our special amortization program is a good example of
14 that.

15 So, in my opinion, this agreement demonstrates
16 that regulation in Florida work and that you don't
17 need deregulation to lower prices. We've really
18 proven that. And if you look to California, which
19 some people hold up as the model to deregulation,
20 California customers will be paying 42 percent more
21 than our customers after this is approved. So I would
22 urge quick action of the Commission in approving the
23 settlement and thank you for allowing me to make these
24 comments.

25 MR. LAFACE: Mr. Chairman, Ron LaFace

1 representing the Coalition for Equitable Rates. I
2 would also like to urge the Commission to approve this
3 settlement. The way the settlement is structured the
4 rate cut goes into effect the day after approval,
5 which means a million dollars day start accruing to
6 the benefit of customers of Florida Power & Light
7 tomorrow and will show up on their first bill thirty
8 days out from that.

9 And I would like to also say that there is some
10 question on the staff's part, but remember the first
11 case we intervened on was the return on equity
12 case and the staff recommendation in that case would
13 not have any rate reductions until the year 2000.
14 That's \$700 million later, so we're very anxious to
15 effectuate this settlement and appreciate the --

16 (Inaudible).

17 MR. LAFACE: No, sir.

18 MR. McWHIRTER: Mr. Chairman, I too urge you most
19 earnestly to approve this settlement, this magnificent
20 settlement. And great credit goes to Jack Shreve. He
21 has done things that I think are phenomenal and far
22 better than I think we could have achieved without
23 him. He has carried the ball and done a marvelous
24 job.

25 I don't want to undersell your staff, because

1 your staff laid the predicate for what has gone after
2 that. Your staff developed the information that has
3 enabled us to see what was going on in Florida Power &
4 Light's operation and triggered Mr. LaFace and I
5 protesting your last settlement, and Jack, like a
6 white knight on a golden steed, ran forward, took the
7 ball, and produced this magnificent settlement. And I
8 think he deserves great applause.

9 Every joyous group has to have I guess one
10 curmudgeon and that happens to be me in this instance.
11 And it's not because of the recommendation, it's
12 because of the post-settlement comments made by Mr.
13 Evans. And I just -- in the same arena where those
14 comments were made, I think it appropriate to say,
15 hmmm, are you sure that's true?

16 He says that this settlement proves that
17 regulation works. Actually, the settlement proves
18 that regulation doesn't work. Your staff's ultimate
19 recommendation said we would like to have a full rate
20 review and full understanding of Florida Power &
21 Light's operation. It acknowledged, however, and this
22 is the problem with regulation, that when we performed
23 that study this million dollar a day rate reduction
24 won't start happening for probably eight months to a
25 year. So if went through the normal regulatory

1 process, without the settlement, it would happen much
2 later, and that's why we approved the settlement
3 without having all the information in hand.

4 The other comment made was that Florida customers
5 on average are doing better than states where there is
6 competition, and cites California. I was intrigued by
7 that when they first made the comment last week, and I
8 went back to the internet and I pulled down the
9 Department of Energy study, and it turns out that the
10 average residential customer of the Florida Power &
11 Light system actually pays 60 percent more than the
12 average residential customer of San Diego.

13 COMMISSIONER CLARK: Mr. McWhirter --

14 CHAIRMAN GARCIA: Isn't that based on usage?

15 COMMISSIONER CLARK: -- is that the bill or the
16 rate?

17 MR. McWHIRTER: It's based on the bill. And the
18 bill is -- and the customer -- let me say this to you,
19 the customers are concerned about the bill, not the
20 rate. I don't care if I'm charged 50 cents a kilowatt
21 hour if I only have to pay \$10.

22 COMMISSIONER CLARK: Well, that's not how
23 Californians felt about it. They ultimately cared
24 about the rates, and that's why they have
25 deregulation.

1 MR. McWHIRTER: That's right. Those California
2 citizens who paid less than the Florida Power & Light
3 customers sponsored and fostered --

4 CHAIRMAN GARCIA: Mr. McWhirter, when we can
5 regulate the weather in Florida, I'm sure that that
6 will be an issue that will come before us. But maybe
7 we can move on with this.

8 MR. McWHIRTER: But I will conclude my remarks by
9 saying I applaud Florida Power & Light in the way it
10 has responded. It has done a good job. I just don't
11 think we need to get into the side issues of whether
12 regulation is working or not. Regulation does need to
13 be studied. You're doing a good job, and I hope
14 you'll keep regulating, and I hope you'll keep doing
15 the same good job you are today.

16 CHAIRMAN GARCIA: We'll hear from staff, and I'll
17 take objection to the comments of Jack Shreve dressed
18 in white on a golden steed. I always see him more as
19 a Don Quixote type figure defending Florida's
20 ratepayers, and he always has been a --

21 MR. McWHIRTER: Mr. Chairman, he would rather be
22 dressed in gold. It's now totally appropriate that
23 Florida Power & Light owns windmills.

24 CHAIRMAN GARCIA: Tim. I mean, we've all read
25 it. I think we've read the primary and the

1 alternative, and I think maybe you could tee them up
2 and if Commissioners have questions, because we don't
3 have any questions or any parties there, so just tee
4 them up and then while the Commissioners ask questions
5 specifically.

6 MR. DEVLIN: I could give just a prelude, we
7 don't have to go into a lot of detail. But the main
8 thing was the trade off between the stipulation and
9 all the benefits associated with it are significant,
10 in my opinion, and going to a rate case, what might
11 happen in a rate case eight to twelve months down the
12 road. And that's what we're trying to articulate in
13 our recommendation. And we can go any direction you
14 want to go to do that.

15 I mean, my position is that there is just too
16 much up front benefits to risk what could happen
17 twelve months from now.

18 CHAIRMAN GARCIA: Okay.

19 MR. DEVLIN: In a rate case there may be more or
20 may be less in terms of a rate reduction, and I'm not
21 sure, there is a certain element of uncertainty there.
22 And then the other part, the other basis of my
23 recommendation, is the Commission based on Bob Elias'
24 interpretation, still reserves the authority to
25 interject itself if earnings get out of line. That's

1 the basis of the primary recommendation.

2 But, again, I think it's really important, so you
3 might want to talk a little bit about the alternative
4 recommendation, but also it's really important to deal
5 with areas that we think need clarifying.

6 CHAIRMAN GARCIA: I'm sorry?

7 MR. DEVLIN: Areas that we think need clarifying,
8 and we have them listed throughout the recommendation.
9 Perhaps we can go through those one at a time. Or do
10 you want to -- maybe you want to hear a few comments
11 about the alternative recommendation before we do
12 that.

13 CHAIRMAN GARCIA: All right. Beth.

14 MS. SALAK: I'm representing alternative staff,
15 and our position is basically that we believe that
16 FPL, while we appreciate all the work Mr. Shreve has
17 done and we agree that an upfront rate reduction of
18 \$350 million is extremely hard to recommend against,
19 but we believe there are benefits associated with
20 reviewing FP&L's earnings. We believe that the person
21 -- Mr. Shreve has proposed to go for a full revenue
22 requirements case would give us the opportunity to
23 look at that there is the possibility of a different
24 outcome at the end of the rate case. Perhaps to a
25 greater long-term benefit of the customers, and we're

1 suggesting that (inaudible).

2 CHAIRMAN GARCIA: Okay, thank you. Yes, Mr.
3 Shreve.

4 MR. SHREVE: I probably want to speak to that,
5 too. The staff did not mention the possibility of the
6 -- if you go through a full-blown rate case that there
7 will be less benefits to the customers, and should you
8 continue the staff recommendation in view of
9 write-offs that they've had, there probably would be a
10 great deal less.

11 The staff of the Public Service Commission and
12 the Public Service Commission have had the opportunity
13 to bring a full-blown rate case at anytime they wanted
14 to and have neglected to do it. Have on contrary made
15 it a purpose to agree with Florida Power & Light in
16 the last ROE docket that was filed by them to put
17 forth a plan that would have extended through the year
18 2000 without any rate case.

19 I think it's very strange that they would come
20 forward at this time and say they would rather have
21 this particular settlement killed and go through a
22 rate case when they have neglected and hesitated to go
23 through a rate case when they could have gotten these
24 benefits at any time they wanted to.

25 We've watched it through '97, '98, '99, and 2000,

1 and then an extension in '99 on through the year 2000
2 of the third agreement. They also did not mention
3 that we have a safety net on this that you would not
4 have in a rate case. There would be no money subject
5 to refund held after a rate case, you would have to
6 wait until you had a history and see how much could be
7 refunded. We have a safety net in place above a
8 certain amount of revenue that would give a refund to
9 the customers.

10 There are other -- there was also a comment, and
11 we've gone on now to the alternative recommendation,
12 about the way the benefits were divided among the
13 customers. We divided the benefits exactly the same
14 way the Public Service Commission and the Public
15 Service Commission staff recommended in the last FP&L
16 rate cut, which took effect in January of 1990, which
17 was based on a per kilowatt hour basis. Their
18 recommendation in Gulf Power today is based on a per
19 kilowatt hour basis, and the last St. Lucie nuclear
20 plant, which was an increase, a very large increase
21 was based on a per kilowatt hour basis.

22 This is an excellent settlement. It is much --
23 we have been four or five years of staff
24 recommendations and agreeing with Florida Power &
25 Light without passing on any rate cuts to the

1 customers. I think this should be approved. It's a
2 \$350 million rate cut, with the possibility of refunds
3 for the customers.

4 CHAIRMAN GARCIA: Okay. Commissioners, do you
5 have any questions, or would you like to work it
6 through -- Mr. Devlin said he wanted to touch on some
7 issues that he wanted clarified, but if you would
8 rather just ask them questions and then have them go
9 through it.

10 COMMISSIONER DEASON: My personal preference
11 would be allow Mr. Devlin to go through the areas that
12 he thinks need some clarification.

13 CHAIRMAN GARCIA: Okay.

14 MR. DEVLIN: Thank you, Mr. Chairman. If you
15 could turn to Page 3, and we may have to shuttle some
16 staff back and forth, I don't have all the answers
17 here, but I just think these areas need to be touched
18 upon.

19 And the first area is, you know, what happens to
20 the current expense plan up to the point where rate
21 reductions would take place in the event that the
22 Commission approves this situation. And we just want
23 to point out that that is still an area that we
24 haven't resolved yet, and how the expense plan would
25 work up through, let's say, April 15th of this year.

1 There is some 50 to \$70 million at stake here, so --

2 COMMISSIONER DEASON: Let me -- if we're going to
3 take these one-by-one, I'll ask questions now if
4 that's okay.

5 CHAIRMAN GARCIA: Absolutely.

6 COMMISSIONER DEASON: Is it your concern that the
7 stipulation -- I know the stipulation addresses the
8 fact that the amortization would cease with the
9 implementation of the settlement, correct?

10 MR. DEVLIN: Right.

11 COMMISSIONER DEASON: And staff doesn't have a
12 problem with that concept, it's just a question of
13 clarification as to how you calculate what the
14 amortization would be from the beginning of this year
15 to the implementation of the settlement, correct?

16 MR. DEVLIN: That's correct. There is a
17 disagreement right now apparently, at least an
18 ambiguity between some of the staff. We haven't had a
19 chance to work it out at this point.

20 COMMISSIONER DEASON: Okay. I guess if there is
21 -- I guess this raises kind of a general question. No
22 matter how well-crafted the stipulation is going to
23 be, at some point there is probably going to be some
24 question. That's just the way it is with anything
25 that you write down in paper, whether it be

1 legislation or a rate case order or whatever, there is
2 going to be questions. And I guess my question, and
3 I'll address it to the parties, if there is a
4 situation and maybe this is a good example, when it
5 comes to the Commission to implement something under
6 the settlement and there is a legitimate difference of
7 opinion as to what the stipulation provides, how do we
8 reconcile that?

9 How do we address -- because this is something
10 that's going to have to be done, a dollar amount is
11 going to have to be calculated, and apparently there
12 is some disagreement between our staff and the
13 company. How do we go about calculating that number
14 and still be fair to the essence of the stipulation?

15 COMMISSION STAFF: If there is any disagreement
16 the Commission would ultimately make the decision to
17 resolve that disagreement. As long as it comes out to
18 \$1.1 billion I think we can work around everything
19 else.

20 COMMISSIONER DEASON: Mr. Childs.

21 COMMISSION STAFF: I think Mr. Childs has --

22 MR. CHILDS: Well, you know, I assume that the
23 matters that are not addressed by the stipulation
24 would be addressed by the Commission, and I happen to
25 think that this is a matter that is not addressed by

1 the stipulation.

2 CHAIRMAN GARCIA: I'm sorry, Mr. Childs, I didn't
3 hear the last thing you just said. If you could bring
4 the mike a little bit closer. Thank you.

5 MR. CHILDS: Sorry. This is not a matter that is
6 addressed by the stipulation. The stipulation
7 addresses when you seek the amount if there is any
8 question at all is under that separate arrangement,
9 and with all due respect, I don't think there is a
10 disagreement. I think FPL is proposing to do what it
11 has been doing for the last number of years, that has
12 been given to the staff and the staff has reviewed.
13 They may have a different point of view at this time,
14 but I think basically it's a separate issue, it's not
15 part of the stipulation and settlement.

16 COMMISSIONER JACOBS: Can we bring a
17 recommendation back onto that docket then, under the
18 prior docket? Is that how we do that?

19 MR. CHILDS: I would think that if there is a
20 question as to the amount that is expensed under that
21 prior docket that it would be addressed in that
22 docket.

23 CHAIRMAN GARCIA: Okay. Mr. Devlin, is that
24 satisfactory to you?

25 MR. DEVLIN: Yes, sir. I didn't hear everything

1 that was said, I apologize, but one of the things --
2 in the interest of time, this could be grueling to go
3 through each of one of our items, and most of them are
4 not significant in materiality, and what we could do
5 is if the Commissioners had any areas that they wanted
6 to --

7 CHAIRMAN GARCIA: I think that might be more --

8 MR. DEVLIN: Otherwise, we're going to interpret
9 the stipulation the way we have it laid out in our
10 recommendation.

11 CHAIRMAN GARCIA: Okay.

12 MR. DEVLIN: And that would be what would be in
13 the order.

14 CHAIRMAN GARCIA: Very good. And I don't think
15 the parties have any problem with that. Good. All
16 right. So, Commissioners, do you have any questions?

17 Commissioner Jacobs.

18 COMMISSIONER JACOBS: The point came up, and I
19 think it's a valid point, it was raised by Mr. Shreve
20 on the allocation issue. And that is that we have --
21 we have historically looked at users in how we do
22 that. Help me understand what the trade-offs are?

23 MR. DEVLIN: Basically, the issue we raised with
24 regard to the allocation is that in a full
25 requirements proceeding costs are allocated to rate

1 classes -- well, base rate costs largely are allocated
2 based on each class' contribution to the peak demand.
3 The way the reduction is proposed to be allocated is
4 on an energy basis, which is kind of a mismatch, and
5 that's what we were pointing out.

6 For example, in the cost recovery clauses, such
7 as the capacity cost recovery clause, where they
8 recover demand related production plant costs, we do
9 use a demand allocator to allocate those costs to the
10 customers. So it was the staff's belief that it would
11 be more appropriate to use a demand allocator to, in
12 effect, allocate the reduction.

13 Mr. Shreve is correct, we have done reductions in
14 the past on a per kilowatt hour basis, but I believe
15 that it would be more appropriate to use the demand
16 allocator, so basically that's what we want to bring
17 to the Commission's attention with that particular
18 concern.

19 COMMISSIONER JACOBS: One of your principal
20 issues was simply that we need to study to find out
21 what the final allocation -- to determine the
22 allocations of cost.

23 MR. DEVLIN: Well, neither a demand allocator or
24 a pure energy allocator would be strictly correct. In
25 order to be strictly theoretically correct you would

1 have to do a full requirements rate case, conduct a
2 cost of service study. So any method of allocating
3 the reduction in the absence of a full cost study is
4 going to be an estimate, it's not going to be
5 theoretically correct.

6 The staff just believes that it would be more
7 equitable since a large portion of those costs that
8 are recovered through base rates are allocated on a
9 demand basis as opposed to an energy basis that it
10 would be more correct to use as a demand allocator in
11 order to spread that decrease among the classes.

12 COMMISSIONER DEASON: Mr. Chairman --

13 CHAIRMAN GARCIA: Yes.

14 COMMISSIONER DEASON: -- I'm sorry, I don't mean
15 to cut off the questions, but I would like to provide
16 a comment in this regard. First of all, let me say
17 that I appreciate staff raising the issue. Obviously
18 it's their responsibility to try to identify all areas
19 that raise a legitimate question or areas that appear
20 to be ambiguous and get it on the table and let us
21 have an opportunity to explore it and make sure that
22 we're comfortable with them.

23 Let me say that I'm comfortable with what is in
24 the stipulation, the way the rate reduction is to be
25 allocated between the customer classes. And the

1 reason I say that is that, first of all, I think it's
2 paramount for the Commission to place this stipulation
3 in context. That is, it is a negotiated settlement.
4 All the parties brought something to the table, all
5 the parties wanted something, and I'm sure all the
6 parties in getting something probably gave up
7 something. And that's just the way that process
8 works. So it's very difficult for us to go beyond
9 that. And that to me on it's surface the way -- using
10 a kilowatt hour basis serves two other purposes. One,
11 I think it is simplistic, and it is easy for customers
12 to understand, and it's the same rate per kilowatt
13 hour.

14 Now, I understand that there are reasons to use
15 demand allocators when we go to a rate proceeding, but
16 we're not in a rate proceeding. And staff has just
17 indicated any time you do a cost of service study
18 there is estimates involved in that, as well, and it
19 is not a precise science. If we went a rate case,
20 those -- we could have a different cost of service
21 study and it could be entirely different.

22 There is just so many unknowns, and we know that
23 there are positive benefits to be gained right now. I
24 don't have a -- I personally, as one Commissioner,
25 don't have a problem with the kilowatt hour concept.

1 COMMISSIONER JACOBS: I think where I am is, I do
2 want to make sure that we give proper deference, and I
3 think that there has been substantial efforts and I
4 want to applaud the effort that has been given, and I
5 don't mean to cast anything on that. The only concern
6 I have is, ultimately this is -- by the end of the
7 third year on this we'll find ourselves in a position
8 where we have no further intelligence about how to do
9 -- where we are and where we go from there.

10 I think the parties have done a great job here.
11 In the essence of time, let me make a suggestion here.
12 It is my understanding that we could do a cost of
13 service study on our own motion, and I'm reading
14 staff's -- staff's recommendation that we retain that
15 authority. Under that interpretation I would be
16 willing to move forward today, but clearly registering
17 my intent to place additional focus on this particular
18 issue under that authority. And I think it would be
19 fair to the parties to make note that if we approve
20 this stipulation I'm very concerned about the analysis
21 done by staff as to the potential authority that we
22 have going forward and this would be an issue that I
23 would think would be primary under that.

24 MR. SHREVE: I think there is a concern as to
25 what happens at the end of the three-year time frame,

1 and I think all of us, including Florida Power & Light
2 and the other parties, understand that we're going to
3 have to be ready at the end of that time to make some
4 move, whether we're going to be happy with the rates
5 at that time, or whether or not we're going to be
6 going forward for another additional rate cut, or
7 whether Florida Power & Light after this rate cut
8 might be coming in after their other investments for a
9 rate increase.

10 Your staff and this Commission hasn't had a cost
11 of study done in a long time, and this Commission has
12 made exactly the same type of division or allocation
13 as to what we did in this case. We're all going to
14 have to be watching that.

15 I really think it's a little bit strange that the
16 Commission staff would come up with this, pointing
17 something out. I don't know what they're
18 recommending. Although it's not in the
19 recommendation, it's in Mr. Devlin's recommendation to
20 approve it, and I appreciate Mr. Devlin's thoughts and
21 what he has said, and I think he is exactly correct in
22 what he has said, but then to come out with something
23 that's just taking a shot while not recommending
24 turning it down is nothing more than a shot.

25 They know -- they know or should know that this

1 is the same policy this Commission has been carrying
2 out in the recent past. As of today in their own
3 recommendation they're recommending that. I guess
4 he's criticizing the Gulf Power recommendation of the
5 staff. If he's recommending going through a
6 full-blown rate case, then we're talking about not
7 getting this benefit for quite some time for the
8 customers.

9 COMMISSIONER JACOBS: Let me be clear. And I
10 don't want to speak for any other Commissioner, but I
11 think the benefits of this agreement are substantial
12 and deserve full consideration. And my concern, while
13 weighed against those benefits I don't think today
14 measure up to canceling those benefits. But what I
15 want to be real clear about is that ultimately we will
16 face that moment of truth. And when we approach that
17 moment of truth we ought to do so with the information
18 that's necessary to make that decision. And the
19 argument that we should continue a practice simply
20 because it is a practice, while having some merit, I
21 think has limited merit if we have the opportunity to
22 come with full information and with knowledge about
23 how to make that decision. So that's my point. My
24 point it not to denounce or take away any credit from
25 what you've done.

1 MR. SHREVE: No, and I don't have any problem
2 with your view of this. The problem I have is with
3 the staff of the Public Service Commission. What you
4 might as well understand is, I feel that all of the
5 customers should benefit from this settlement, and I
6 think they do. I am the one person that has always
7 advocated for the residential ratepayer to try and
8 make sure that they were treated fairly, and I think
9 they are.

10 COMMISSIONER JACOBS: I think that's true.

11 MR. SHREVE: But for the staff to take a shot
12 like this, while not really recommending anything.
13 Now, what your saying is we should go through this
14 cost of study service when we have a full-blown rate
15 case. I don't think there is any doubt about that,
16 but when we talk about going through that you're
17 talking about evidence and information put on by
18 Florida Power & Light, by FIPUG, by the retail
19 federation. You're talking about a full-blown
20 procedure that is going to be time consuming. And I
21 guess what really bothers me is that they would come
22 out with something like this, while on the other hand
23 going exactly the opposite way, and I think it's
24 nothing more than a shot by staff that has not taken
25 action like this in the past.

1 CHAIRMAN GARCIA: Thank you, Mr. Shreve.

2 MR. DEVLIN: If I could respond to that.

3 MR. LAFACE: Mr. Chairman, just for edification
4 of the Commission, when Mr. Shreve lost his knighthood
5 with me was when I tried to get more of a settlement
6 for my client and he told me I couldn't get it because
7 the Commission had done it this way in the past two
8 cases. So I wanted more than we got.

9 CHAIRMAN GARCIA: I understand that, and I think
10 we're getting into an issue here that --

11 COMMISSIONER DEASON: And that's my point
12 precisely. I'm sure that -- I was not a party to
13 those negotiations, but I'm sure that there was a lot
14 of give and take, and it's very difficult to insert
15 ourselves behind those negotiations and if the end
16 result on the surface appears fair and reasonable, I
17 don't think that we need to take it further than that,
18 and that's why I'm comfortable with it.

19 CHAIRMAN GARCIA: If there are --

20 Mr. Chairman, I do have one other question, and
21 if I get -- and I don't mean to cut off the debate,
22 but I have one other question, and then after that
23 question I'm prepared to make a motion.

24 CHAIRMAN GARCIA: Okay.

25 COMMISSIONER DEASON: The question that I have

1 concerns the potential for an amortization amount and
2 the way it could be booked to a separate reserve
3 account and how that could have an effect on the
4 appreciation rates. I'm not saying I have a problem
5 with that, I just want to understand at least from
6 staff's prospective what that language in the
7 stipulation means.

8 COMMISSION STAFF: Staff is concerned that in the
9 future when depreciation rates are reset at the end of
10 the stipulation period, the amount that has the extra
11 amortization will not be included in the calculations
12 of the rate and will result in rates that are not
13 theoretically what we would like to see.

14 COMMISSIONER DEASON: But if there is to be extra
15 amortization that's at the discretion of the company,
16 that's 200 million per year, is that correct?

17 COMMISSION STAFF: Right, that's correct.

18 COMMISSIONER DEASON: Okay, alright. And the
19 last question I have concerns -- and I think this has
20 probably already been answered, but I just want to
21 confirm it. This Commission would obviously continue
22 to have our jurisdiction over quality of service.
23 And, first of all, I want to say I agree with Mr.
24 Evanson that the company has identified an area, and
25 they have made a concerted effort to address

1 reliability and outages and things of that nature and
2 information that I've seen reported has shown a
3 tremendous increase in that area and an expenditure of
4 great resources on the company's part to make those
5 improvements. So I'm not saying that there is a
6 problem with all these services, I just wanted to make
7 sure that the Commission would still have our
8 jurisdiction over quality of service even after this
9 settlement is approved. Is that correct?

10 MR. DEVLIN: Yes.

11 COMMISSIONER DEASON: Okay. With that Mr.
12 Chairman, I'd like to make a motion that we approve
13 our primary staff recommendation, which would be to
14 approve the settlement agreement. Let me be the first
15 to congratulate the parties in reaching this
16 settlement. I think it is in it's magnitude -- this
17 is historic in the magnitude of this, but I also want
18 to congratulate our staff. I think they laid a lot of
19 predicate work.

20 I think this Commission to some extent needs to
21 realize that we have endeavored over a number of years
22 to try to eliminate a lot of cost. A lot of those are
23 regulatory costs. Tried to get depreciation in
24 agreement with where it should be, there were
25 deficiencies in the past. We've taken those efforts,

1 and I think we're seeing the fruits of those efforts
2 now.

3 And I also agree with Mr. Evanson that the
4 management and employees of the company have taken a
5 great deal of effort to maintain a high quality of
6 service with fewer people and try to obviously work
7 under a tighter budget. So I think everyone should be
8 congratulated. I want to make sure that everyone is,
9 because I feel very good about this settlement and
10 this stipulation. I think that there are going to be
11 tremendous benefits which are going to be obtained
12 almost immediately, and that is probably the biggest
13 benefit of this settlement. And with those remarks I
14 would move approval.

15 COMMISSIONER CLARK: Second.

16 MR. EVANSON: Before you vote, I had one last
17 thing I wanted to say. And I'm sorry to interrupt you
18 at this point, but there was earlier comments that I
19 wanted to address so that there was no
20 misunderstanding in the settlement.

21 CHAIRMAN GARCIA: Okay.

22 MR. EVANSON: I think it was said that to take
23 the staff recommendation as settlement, to take
24 everything in the staff recommendation as being
25 (inaudible) settlement, and with all due respect, we

1 take exception to that, and urge you that the
2 settlement is the settlement, that's the document
3 before you. One of the suggestions, and there was
4 some time spent on this in the recommendation, is that
5 to the Commission's authority with respect to a
6 settlement and your continuing jurisdiction. To me
7 that's a matter that the Commission's jurisdiction and
8 it's authority is what it is. I'm a little reluctant
9 to accept a gloss on that jurisdiction as a condition
10 of approval of the settlement. And, you know, I think
11 the idea of telling the Commission that it has to come
12 back and review rates to determine if they are
13 reasonable or not is a time when the staff is
14 suggesting to you that you should be looking to return
15 on equity as opposed to the mechanism in the
16 settlement which is based on revenue for sharing, and
17 that's an important point. I do think that the
18 staff's legal analysis may need to be updated to
19 reflect the decision of the Supreme Court where we
20 challenged a decision by this Commission on very much
21 similar grounds when you approved a standard offer
22 contract for purchase of some cogenerators for thirty
23 years. And said that once you made that decision you
24 weren't going to redo the decision. And we said,
25 well, you know, things change. And the court said you

1 can't make that decision. And that's thirty years.
2 Here we have a three-year settlement where we're
3 proposing what the mechanism is. All of the parties
4 have accepted that. I don't think we should debate at
5 this point what the Commission's authority is, but I
6 think that we ought to --

7 CHAIRMAN GARCIA: You're simply saying that the
8 Commission's authority is what the Commission's
9 authority is.

10 MR. EVANSON: It is, and we are asking you to
11 approve this stipulation which says that you will look
12 to revenues in future years as the basis to determine
13 what should be done in terms of refunds to customers.

14 COMMISSIONER CLARK: Under the stipulation. And
15 if we would have any authority beyond that we would
16 debate that at that time? I guess -- the issue that I
17 would guess that staff has brought up is that can we
18 bind future Commissions.

19 MR. EVANSON: And what I'm suggesting to you is
20 that when I said I think that what they wrote needs to
21 be read in connection with the decision by the Supreme
22 Court in 1993 that said you could make a decision on
23 prudence and have that decision last for thirty years.
24 And I'm saying that we submit to you that the benefits
25 of this transaction is a three-year deal, but it's a

1 prudent deal and the mechanism ought to at least last
2 for three years.

3 COMMISSIONER CLARK: By approving it we are
4 saying that it will last three years.

5 MR. EVANSON: That's right.

6 COMMISSIONER JACOBS: I interpreted it -- correct
7 me if I'm wrong, but I thought I interpreted it fairly
8 -- like it was a broader concern on staff, and that
9 was that we were deviating from the historical
10 practice of looking at rate of authorized return. And
11 in doing so by accepting this agreement we might be
12 restricting our ability to do so in the future for
13 this particular company. Is that correct?

14 MR. CHILDS: Yes. The Commission's charge is to
15 establish rates which are fair, just, and reasonable

16 --

17 (Simultaneous conversation.)

18 MR. CHILDS: I'm sorry, I didn't --

19 COMMISSIONER JACOBS: We use the range of that
20 vehicle.

21 MR. CHILDS: Historically, yes.

22 COMMISSIONER JACOBS: And now we're going to be
23 using revenues.

24 MR. CHILDS: The parties have agreed to use
25 revenues as a basis to decide whether the rates of

1 Florida Power & Light company are fair, just, and
2 reasonable.

3 COMMISSIONER JACOBS: And so the concern is to
4 what extent during the course of this agreement we
5 have the authority to look at this company from the
6 context of the authorized range.

7 MR. CHILDS: Well, I would say that it's just a
8 little bit broader than that, and that is tie it back
9 to the question of whether the rates are fair, just,
10 and reasonable on a going-forward basis, and not just
11 a particular numeric authorized or achieved return on
12 equity.

13 CHAIRMAN GARCIA: Okay. Mr. Shreve.

14 COMMISSIONER JACOBS: Let me ask a question again
15 real quick. Now, Mr. Chiles, your argument would be
16 that we have that jurisdiction, but you wouldn't want
17 to -- you would want it always to be interpreted in
18 the context of the language of this agreement?

19 MR. CHILDS: That's right. That you have looked
20 at it and said that for this company under these
21 circumstances this settlement is good and we approve
22 it and we know what it means.

23 CHAIRMAN GARCIA: But you in no way, Mr. Childs,
24 are saying that we would give up our jurisdiction --

25 MR. CHILDS: I'm not saying you give up your

1 jurisdiction, no, but I'm saying when you exercise it
2 now in approving it you are exercising your
3 jurisdiction and saying you think that it is an
4 appropriate settlement.

5 CHAIRMAN GARCIA: Correct.

6 MR. ELIAS: And if I could just quote through --

7 CHAIRMAN GARCIA: Mr. Elias, excuse me for a
8 second. Mr. Shreve had asked to speak.

9 MR. SHREVE: Mr. Elias said that we're
10 determining what is fair and reasonable rates by a
11 revenue mechanism. The revenue mechanism is
12 determining the possibility of a refund that in a rate
13 case you would not have. The company has given us
14 that safety net, so to speak. That is now on a
15 revenue basis, and the reason it's on a revenue basis
16 is because in the past we have put in some language
17 that said the issues would be the same as in the last
18 rate case.

19 We did that in the Tampa Electric settlement, and
20 the staff said, well, no, that's not really what you
21 meant when you said that. So now we're taking away
22 that and we're not going to lose that benefit for the
23 customers anymore. We're saying above a certain
24 amount of revenue there is a refund available. We
25 have also put in here a range of 10 to 12 with a

1 midpoint of 11, which is lower than the staff of the
2 Public Service Commission agreed to with Florida Power
3 & Light. That range is for all purposes. We have
4 determined what the rates are under this and we under
5 this settlement cannot change what your authority is.
6 We went through the same thing with the Florida Power
7 settlement. We can bind ourselves, but we're not
8 trying to change what your authority is. If you have
9 it, you have it; if you don't, you don't.

10 CHAIRMAN GARCIA: I don't think anyone disagrees
11 with that, Mr. Elias, and I don't think you do,
12 either.

13 MR. ELIAS: Good.

14 CHAIRMAN GARCIA: With that said, we have a
15 motion and a second by Commissioner Clark.

16 COMMISSIONER CLARK: Mr. Chairman, I would
17 indicate that I really can't add anything beyond what
18 Commissioner Deason said, only that I don't think I
19 would like to negotiate with Mr. Shreve under any
20 circumstances.

21 MR. CHILDS: Mr. Chairman, the approval though
22 should just be a simple approval of the settlement,
23 not going into a forty page discourse from staff.

24 COMMISSIONER DEASON: Let me clarify my motion,
25 okay? I did technically move approval of the primary.

1 Maybe I misspoke. I want to approve the stipulation
2 and the stipulation provides what the stipulation
3 provides. Our jurisdiction is what our jurisdiction
4 is, okay? And we're not giving up any of our
5 jurisdiction, in my opinion. We can't. I mean, our
6 jurisdiction is what it is by law and we can't, you
7 know, change that.

8 But I wanted it understood that my motion tried
9 to include the clarification that we discussed here
10 today, and I guess that's when I said move primary.
11 I'm willing to move approval of the stipulation
12 consistent with the discussion that has taken place
13 here today.

14 CHAIRMAN GARCIA: And I think the parties openly
15 said that clearly if there was any discussion on these
16 issues this is the forum --

17 COMMISSIONER DEASON: And that's the
18 clarification I want to make sure is that as I
19 indicated earlier, no matter how well-crafted a
20 stipulation is, or an order from this Commission,
21 whatever, in the future there may be a question and
22 that this Commission is going to ultimately have to
23 decide that interpretation if it comes to that.
24 Hopefully, everything will go so smoothly there is no
25 controversy whatsoever. But in the event that there

1 is, that's still resides with the Commission.

2 CHAIRMAN GARCIA: All right. We have a motion
3 and Commissioner Clark agrees with that, and seconds
4 it --

5 COMMISSIONER JACOBS: One very brief point. I
6 would be interested in hearing from staff and from the
7 parties to contact -- not today, but I'll be
8 interested in understanding the extent which we can
9 look at doing a cost of service study outside of a
10 rate case.

11 CHAIRMAN GARCIA: Okay. Commissioner Johnson,
12 did you want to say anything before we call the vote?

13 COMMISSIONER JOHNSON: I agree with all the
14 comments made by Commissioner Deason. In the first
15 instance, I was prepared to move staff with the
16 clarifications that they were suggesting that we do
17 upfront, but understanding that we have continuing
18 jurisdiction. To the extent that there is ambiguity
19 that needs to be resolved, I'm sure it will be back
20 before us. With that, I'm in favor of the motion.

21 CHAIRMAN GARCIA: Very good. I'm going to move
22 -- I'm going to vote with Commissioner Deason on this.
23 I want to again express -- first of all, I want to
24 commend staff. I think today that the message
25 unfortunately wasn't as clear as it should have been

1 from staff, but I think you're trying to be honest
2 with your position. However, I think what Jack Shreve
3 did for Florida ratepayers today under very difficult
4 circumstances and in a very complex way, I think
5 Commissioner Deason called it simplistic, but I hope
6 it's not that, it's exactly the opposite.

7 COMMISSIONER DEASON: No, I was referring simply
8 to the kilowatt hour concept. I mean, that's easy for
9 customers and for us to understand.

10 CHAIRMAN GARCIA: It's even easy for me. I can
11 even understand it, which I think is great. And I
12 think today staff -- I think staff put the ball in
13 play, and Jack Shreve I think scored a touchdown for
14 Florida ratepayers today, and I think he is to be
15 commended. I think the company's willingness to
16 negotiate is to be commended, and the parties came
17 together here. Clearly this is good for Florida, and
18 I want to say that I may have some problems with Mr.
19 Evanson's definition of competition in California, but
20 we'll discuss that on another occasion.

21 That said, we have a motion and a second. All
22 those in favor signify by saying aye.

23 (Unanimous affirmative vote).

24 CHAIRMAN GARCIA: All those opposed. Show it
25 approved 5-0. Commission will take a -- Commissioner,

1 yes?

2 MR. SHREVE: If I could, I would like to thank
3 the Commission for their consideration of this in such
4 a hurry. We think the ratepayers are going to benefit
5 by your actions. I would like to thank all the
6 parties. It's been a pleasure to work with them.
7 We've had a lot of arguments and hard discussions, but
8 we do feel that this is really in the best interest of
9 the ratepayers and thanks to you for helping us get
10 this up and get this benefit to them in a hurry.

11 CHAIRMAN GARCIA: Thank you, Mr. Shreve.

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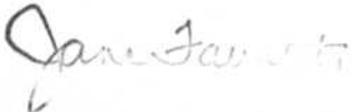
STATE OF FLORIDA)

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 41 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 21st day of March, 1999.



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