DOCKET NO. 890148-EI

OFFICIAL RECOGNITION DOCUMENTS

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M. Commission's Tax Savings Rule. 25-14.003 F.A.C.

N. Commission's 1987 Tax Savings Report Form and Instructions

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Commission Records Relating To Various FIPUG Allegations and Arguments

P. Transcript passages from prior Oil Backout proceedings reflecting the extent to which the parties and the Commission acknowledged the uncertainty in predicting oil prices.

Q. Transcript passages reflecting the extent to which the parties and the Commissioners indicated that oil backout project qualification is based on uncertain fuel forecasts and, that forecasts should be conservative, but once it is determined that the primary purpose of a project is economic oil displacement and the project is qualified, project qualification is not to be revisited and recovery of the project through an Oil Backout Cost Recovery Factor is to continue even if projections prove to be incorrect.

R. Transcript passages from prior Commission proceedings reflecting FIPUG's and Public Counsel's prior attempt to establish that the primary purpose of FPl's Oil Backout Project is economic oil displacement and that FPL was recognizing improper Project benefits in its economic analysis of the Project.

S. Transcript passages from prior Commission proceedings reflecting FIPUG's position that recovery of Oil Backout Project Costs and Coal By Wire Costs on an energy basis (¢/kWh basis) is unfair and inappropriate.

1-27-81, Amended 12-30-82, Formerly 25-17.15, Amended 3-27-86

25-17.016 Oil-Backout Cost Recovery Factor.

(1) Definitions. For the purpose of this rule, the following words and phrases shall have the following meaning:

(a) "Non-Oil Fuel" means coal, natural gas, wood, combustible refuse, biomass, or any derivatives of such non-oil fuels.

(b) "Conversion Cost" means costs as determined by the Commission to be reasonable and necessary for the conversion of an existing oil-fired, steam cycle, generating unit to also burn a non-oil fuel, a combination of non-oil fuels, or a non-oil/oil fuel mixture. Such costs shall include, but not be limited to, engineering, administrative and legal costs; the cost of environmental studies and pollution control or abatement equipment; non-oil fuel transportation equipment, unloading, processing, storage, preparation, or mixing facilities; refuse removal or disposal equipment, equipment and facilities necessary to permit the combustion of non-oil fuels, the cost of retro-fitting or refurbishing boilers to permit the combustion of non-oil fuels; and the cost of all other facilities reasonable and necessary to allow the conversion of an existing oil-fired, steam cycle, generating unit to also burn a non-oil fuel, a combination of non-oil fuels, or a non-oil/oil fuel mixture, whether such costs are incurred before or after the date of initial conversion of such facility. Such costs shall also include the reasonable costs of capital, taxes, and operating and maintenance costs associated with such conversion, until such costs are recovered as provided in subsequent sections.

(c) "Cumulative Present Value of Expected Net Savings" means cumulative present value of the total net savings associated with the proposed oil-backout project, including but not limited to annual oil/non-oil fuel expense differential less the projected annual straight line depreciation expense over the "used and useful" life of the proposed project, less the annual incremental cost of capital expense associated with the proposed project; less the annual oil/non-oil tax expense differential associated with the proposed project; less the annual oil/non-oil operating and maintenance expense differential, exclusive of fuel expense, of the proposed project; less the differential cost associated with the early retirement of existing plant and the derated capacity, if any; less any other costs incurred specifically as a result of the proposed oil-backout project, plus any other benefits specifically conferred as a result of the proposed oil backout project whether such costs or benefits are incurred before or after the commercial in-service date of the proposed project.

(2) Purpose.

(a) The Oil-Backout Cost Recovery Factor is to be utilized for the recovery of costs of implementing any of the following supply-side, oil conservation measures the primary purpose of which is the economic displacement of oil generated electricity in Florida and which are to be funded in the manner set forth in subsection (4) below:

1. Conversion Cost. Conversion of an existing oil-fired, steam cycle, generating unit to also burn a non-oil fuel, a combination of non-oil fuels, or a non-oil/oil fuel mixture. To the extent technologically practicable and cost-effective provisions for future economic fuel switching and multi-fuel firing capability shall be made in order for such a conversion project to qualify for cost recovery through the Oil-Backout Cost Recovery Factor.

2. Transmission Line Construction Cost. Construction of transmission lines including any related land and land rights, substations, and support electrical equipment, within Florida when the primary purpose of the construction of the lines is to increase the importation or transfer of non-oil derived electrical energy on either a firm or a non-firm basis.

3. At the discretion of the Commission, other major supply-side oil conservation measures whose primary purpose is the economic displacement of oil-fired generation in the State of Florida.

(b) The Oil-Backout Cost Recovery Factor shall not be used for either the recovery of the costs of a project the primary purpose of which is to serve increased megawatt demand or for the recovery of the costs of a new generating unit.

(3) Qualification Procedures.

(a) Upon receipt of a petition from a utility, or on the Commission's own motion, public hearings shall be held to determine whether to authorize a proposed project and whether the Oil-Backout Cost Recovery Factor may be used to recover the costs of the project. Such determination shall be based on a finding by the Commission that:

1. The primary purpose of the proposed project is the economic displacement of oil-fired generation in the State of Florida;

2. It has been shown by a preponderance of the evidence that there will be a positive Cumulative Present Value of Expected Net Savings to retail customers in Florida within the first ten (10) years of commercial operation of the proposed project; and

3. It has been shown by a preponderance of the evidence that a proposed project is the most economical alternative available.

(b) The annual oil/non-oil fuel expense differential used to calculate Cumulative Present Value of Expected Net Savings should, if practicable, be derived by computer simulations of the utility's dispatch with and without the proposed project. To the extent practicable, a banded forecast of oil and non-oil fuel prices and incremental cost of capital shall be employed to calculate an expected case estimate and worst case estimate of Cumulative Present Value of Expected Net Savings. The present value discount rate shall be based on the utility's projected incremental after-tax cost of capital for the proposed oil-backout project.

(c) The determination of whether the

Oil-Backout Cost Recovery Factor is to be used to recover the costs of a proposed project shall normally be made by the Commission prior to or in conjunction with licensing and prior to construction of the proposed project, unless waived by the Commission.

(4) Costs to Be Recovered and Cost Recovery Procedures.

(a) Upon a determination by the Commission that a proposed oil-backout project has met the conditions of subsections (2) and (3), a utility may be granted the authority by the Commission to recover the cost of such qualifying oil-backout project through an Oil-Backout Cost Recovery Factor calculated and applied in conjunction with the Fuel and Purchased Power Cost Recovery Clause. The revenues to be collected through the Oil-Backout Cost Recovery Factor for a qualified oil-backout project shall be the sum of the straight line depreciation expense over the "used and useful" life of the qualified oil-backout project, plus the cost of capital for the qualified oil-backout project, plus the actual tax expense of the qualified oil-backout project, plus the oil/non-oil operating and maintenance expense differential of the qualified oil-backout project which would normally be included in base rates plus two-thirds of the actual net savings associated with the project (if positive) to be applied as additional depreciation.

(b) No costs of a qualified oil-backout project that are reflected in the base rates of utility shall be recovered through the Oil-Backout Cost Recovery Factor.

(c) Upon full depreciation of the qualified oil-backout project, cost recovery pursuant to 25-17.015(4)(a)1. shall terminate and only the actual oil/non-oil operating and maintenance expense differential, exclusive of fuel expense, of the qualified oil-backout project which would normally be included in base rates shall be recovered through the Oil-Backout Cost Recovery Factor until such time as these costs are included in the base rates of the utility.

(d) Once approved by the Commission, the costs of a qualified oil-backout project shall continue to be recovered through the Oil-Backout Cost Recovery Factor until such time as they are included in the base rates of the utility. Normally, the remaining unrecovered costs of the qualified oil-backout project shall be rolled into the utility's base rates without altering the the depreciation period at the utility's next rate base filing and cost recovery for the qualified oil-backout project through the Oil-Backout Cost Recovery Factor shall terminate at the time the new rates are placed into effect. To the extent, however, that two-thirds of the actual net savings associated with the qualified oil-backout project in any six-month period exceeds those costs rolled into base rates, these additional revenues shall continue to be collected through the Oil-Backout Cost Recovery Factor and applied toward the accelerated recovery of the investment cost of the qualified oil-backout project until such time as the investment is fully repaid.

(e) The Oil-Backout Cost Recovery Factor applicable to a qualified oil-backout project shall be estimated every six months in conjunction with the Fuel and Purchased Power Cost Recovery Clause commencing with the first six-month period in which the qualified oil-backout project is placed into commercial service. The estimate shall be based on the most current projections of oil and non-oil fuel prices, other operation and maintenance expenses, taxes, and kilowatt-hour sales and on the actual cost of capital for the qualified oil-backout project. A true-up adjustment, with interest, shall be made at the end of each six-month period to reconcile differences between estimated and actual data.

(f) Upon a showing by a preponderance of the evidence, the Commission, in order to preserve the financial integrity of a utility, may authorize the commencement of recovery through the Oil-Backout Cost Recovery Factor prior to the placement into commercial service of an approved project.

(5) Accounting.

(a) All revenues derived through the Oil-Backout Cost Recovery Factor shall be applied solely to the cost of the qualified oil-backout project. Separate subaccounts shall be established to specifically identify amounts applicable to each qualified oil-backout project to record:

1. The cost of construction,
2. The plant in-service cost,
3. The depreciation of the plant when it is placed into service;
4. The capital used to fund the construction of the project;
5. The operation and maintenance expenses pertaining to each project, and
6. The tax expense pertaining to each project.

(b) Each qualified oil-backout project shall be separately identified to permit application of appropriate capital recovery schedules. Associated plant and reserve activity, balances, and the capital recovery schedule expenses shall be maintained as side records. The recovery schedule shall be designed to recover the investment of each qualified oil-backout project by the date of retirement of existing plant.

(c) In capitalizing any cost of capital on a project, the allowance for funds used during construction rate shall be computed using the cost of capital used to fund the project.

(6) Once the costs of a qualified oil-backout project have been recovered, the applicability of the Oil-Backout Cost Recovery Factor shall terminate.

(7) Extraordinary Retirements. Ratemaking treatment of the costs of extraordinary retirement of plant equipment associated with the construction of a qualified oil-backout project shall be considered by the Commission on a case-by-case basis along with the calculation of the Oil-Backout Cost Recovery Factor. Such extraordinary retirements shall be identified at the time the utility petitions the Commission for approval of a qualifying oil-backout project.

Specific Authority 366.05(1) FS. Law Implemented 366.82(5) FS. History—New 2-25-82, Amended 8-31-82, Formerly 25-17.16.

ANNOTATIONS

Guidelines

Oil-Backout Rule itself provides specific qualifications requirements pursuant to which Public Service Commission determines whether a project qualifies under rule. Waiver provision of subsection (3)(c) merely allows for approval of projects under rule where such projects were begun before rule was adopted or before Commission is able to act on a petition for approval, and the utility must begin the project to obtain its full benefits. Subsection (3)(c) has adequate guidelines and standards to safeguard against arbitrary action by Commission. Commission's application of amended cost recovery factor rule was not retroactive ratemaking. Citizens of State v. Public Service Commission, 448 So. 2d 1024 (1984).

PART II RESIDENTIAL CONSERVATION SERVICE PROGRAM

25-17.051 Definitions. As used in this part:

(1) The following acronyms apply:

(a) "PSC" or "Commission" refers to the Florida Public Service Commission.

(b) "DOE" refers to the U. S. Department of Energy.

(c) "DACS" refers to the Florida Department of Agriculture and Consumer Services.

(d) "RCS" refers to Residential Conservation Service.

(2) "Eligible customer" means the owner or occupant of a residence who receives a bill for service from a utility.

(3) "New customer" means the owner or occupant of a residence who becomes an eligible customer after the utility servicing that residence has distributed its initial Program Announcement.

(4) "Residence" means any mobile home, single family detached structure, or unit of a multi-unit structure, which is occupied as a dwelling.

(5) "Utility" shall have the same definition as appears in section 366.82(1), F.S.

(6) "Energy conservation audit" means an energy analysis of a residence in which the utility performs a comprehensive onsite evaluation of the residence in accordance with Rule 25-17.055 and if applicable, provides installation and financing arrangements and inspections, pursuant to Rules 25-17.053 through 17.061 of this chapter.

(7) "Customer assisted (mail in) audit" means an energy analysis of a residence in which the utility supplies to the eligible customer a data collection form which is completed by the customer and, upon receipt of the completed form the utility analyzes the data and submits to the customer the results of its evaluation.

(8) "Alternative (walk-through) audit" means an energy analysis of a residence in which a qualified auditor walks through the residence making extensive observations as to the physical structure and components, performs simplified heat gain and heat loss computations, and advises the customer of what energy conservation practices and measures would be feasible to implement.

(9) "Conservation practices" refer to the following energy conservation techniques:

(a) Furnace efficiency maintenance and adjustments;

(b) Nighttime temperature setback;

(c) Reduction of thermostat setting in winter;

(d) Increase of thermostat setting in summer;

(e) Installation of water flow restrictors in showers and faucets;

(f) Reduction of hot water temperatures;

(g) Reduction of energy use when residence is unoccupied;

(h) Plugging leaks in attics, basements, and fireplaces;

(i) Sealing leaks in pipes and ducts;

(j) Efficient use of shading;

(k) Use of clotheslines instead of dryers;

(l) Cooling system efficiency maintenance and adjustments.

(10) "Conservation measures" refer to the following energy conservation techniques:

(a) Replacement of furnaces or boilers;

(b) Replacement of central air conditioning;

(c) Caulking of windows and/or doors;

(d) Weatherstripping of windows and/or doors;

(e) Installation of duct or pipe insulation;

(f) Use of water heater insulation;

(g) Use of heat-reflective, heat gain retardant, and heat-absorbing window or door material;

(h) Installation of clock thermostats;

(i) Installation of wall insulation;

(j) Installation of ceiling insulation;

(k) Replacement of furnace burner (oil);

(l) Replacement of resistance heat with heat pump or natural gas furnace;

(m) Installation of load management devices, where load management rates are offered;

(n) Installation of waste heat recovery water heating systems;

(o) Insertion of plastic window panels;

(p) Installation of storm or thermal windows;

(q) Installation of floor insulation;

(r) Installation of heat pump or natural gas water heaters;

(s) Use of any of the following renewable resource measures:

1. Solar domestic water heating;

2. Solar swimming pool heating (where pools are presently heated with a non-renewable resource).

(11) "Cost-effective" means that the present value of the savings realized over the next 10 years by implementation of the conservation measure is greater than or equal to the present value of the cost of implementing the measure.

(12) "State Plan" means the Florida Residential Conservation Service State Plan, dated June 3, 1981, prepared by the Governor's Energy Office and the Commission and submitted to the United States Department of Energy.

(13) "Five-Star Rating System" means a simplified summary which expresses audit results with zero to five stars denoting the energy efficiency of the residence relative to the potential to improve

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Adopting of Rule 25-17.16, F.A.C., Oil-Backout Cost Recovery Factor.	)	DOCKET NO. 810241-EU
	)	ORDER NO. 10363
	)	ISSUED: 10-30-81

The following Commissioners participated in the disposition of this matter:

Joseph P. Cresse, Chairman
Gerald L. Gunter
John R. Marks, III
Katie Nichols
Susan W. Leisner

ORDER PROPOSING RULE ADOPTION

BY THE COMMISSION:

Pursuant to the provisions of Sections 120.54 and 366.05(1), Florida Statutes, and under the authority of Section 366.82(5) Florida Statutes, this Commission, on its own motion, proposes to adopt Rule 25-17.16, as set forth in Appendix "A" attached hereto.

The attached rule, entitled Oil Back-out Cost Recovery Factor, is proposed under the authority of Section 366.82(5), Florida Statutes, 1980 Supplement. That section provides that reasonable and prudent unreimbursed costs for energy audits, conservation programs or the implementation of a utility's plan for meeting the energy conservation goals may be added to the rates which would otherwise be charged by a utility. The attached rule provides for the adding of such costs to rates when the conservation program employed is the conversion of an oil-fired generating unit, construction of transmission lines to import or transfer non-oil-derived electrical energy or other major supply-side oil conservation measures.

It is therefore,

ORDERED by the Florida Public Service Commission that Rule 25-17.16, as set forth in Appendix "A", is hereby proposed. It is further

ORDERED that notice hereof by given in accordance with Section 120.54, Florida Statutes. It is further

ORDERED that, if requested by any affected person, within fourteen (14) days after publication of notice hereof in the Florida Administrative Weekly, a public hearing on proposed Rule 25-17.16 will be held on Monday, November 30, 1981, at 9:30 A.M. in Room 106, Fletcher Building, 101 East Gaines Street, Tallahassee, Florida 32301. If no hearing is requested, the proposed rule will be adopted by the Commission without further notice.

By order of the Florida Public Service Commission, this 30th day of October, 1981.

Steve Tribble

25-17.16 OIL-BACKOUT COST RECOVERY FACTOR

(1) PURPOSE.

(a) The Oil-Backout Cost Recovery Factor is to be utilized for the recovery of costs of implementing any of the following supply-side, oil conservation measures the primary purpose of which is the economic displacement of oil generated electricity and which are to be funded by the cost savings resulting from the displacement of oil-fired generation in the near future.

1. Conversion of an existing oil-fired, steam cycle, generating unit to also burn a non-oil fuel such as coal, coal-oil mixture, coal-water mixture or any combination of such non-oil fuels;
2. Construction of transmission lines within Florida when the primary purpose of the construction of the lines is to increase the importation or transfer of non-oil derived electrical energy on either a firm or a non-firm basis; and
3. At the discretion of the Commisrion, other major supply-side oil conservation measures whose primary purpose is the economic displacement of oil-fired generation in the State of Florida.

(b) Under no circumstances shall the Oil-Backout Cost Recovery Factor be utilized for the recovery of the costs of a project the primary purpose of which is to serve increased megawatt demand nor to recover the costs of a new generating unit.

(2) QUALIFICATION PROCEDURES.

(a) Upon receipt of a petition from a utility, or on the

Commission's own motion, public hearings shall be held to determine whether the Oil-Backout Cost Recovery Factor can be used to recover the costs of a proposed project. Such determination shall be based on a finding by the Commission that:

1. The primary purpose of the proposed project is the economic displacement of oil-fired generation in the State of Florida.
2. Unless waived by the Commission after a showing of good cause, construction of the proposed project or group of projects requires a capital expenditure in excess of fifty (50) million dollars, excluding allowance for funds used during construction;
3. There is competent and substantial evidence that there will be a Cumulative Present Value of Expected Net Savings to retail customers in Florida within the first ten (10) years of commercial operation of the proposed project; and
4. There is competent and substantial evidence that the proposed project is the most economical alternative available.

(b) For the purpose of subparagraph (2)(a)3., Cumulative Present Value of Expected Net Savings means: The cumulative present value of the annual oil/non-oil fuel expense differential less the projected annual straight line depreciation expense over the "used and useful" life of the proposed project, less the annual incremental cost of capital expense, less the annual oil/non-oil other operating and maintenance expense differential of the proposed project, less the cost associated with the early retirement of existing plant and the derated capacity. The annual oil/non-oil fuel expense differential and other operating and maintenance expense differential used to calculate Cumulative

Present Value of Expected Net Savings shall be derived by computer simulations of the utility's dispatch with and without the proposed project. To the extent practicable, a banded forecast of oil and non-oil fuel prices and incremental cost of capital shall be employed to calculate an expected case estimate and worst case estimate of Cumulative Present Value of Expected Net Savings.

(c) The determination of whether the Oil-Backout Cost Recovery Factor can be used to recover the costs of a proposed project shall normally be made by the Commission prior to the commencement of licensing and construction of the proposed project, unless waived by the Commission.

(3) COSTS TO BE RECOVERED AND COST RECOVER PROCEDURES.

(a) Upon a detetmination by the Commission that a proposed oil-backout project has met the conditions of subsection (2), a utility may be granted the authority by the Commission to recover the cost of such qualifying oil-backout project through an Oil-Backout Cost Recovery Factor calculated and applied in conjunction with the Fuel and Purchased Power Cost Recovery Clause. The revenues to be collected through the Oil-Backout Cost Recovery Factor for a qualified oil-backout project shall be the greater of:

1. Two-thirds of the oil/non-oil fuel expense differential associated with the qualified oil-backout project; or
2. The sum of the straight line depreciation expense over the "used and useful" life of the qualified oil-backout project, plus the actual cost of capital for the qualified oil-backout project plus the oil/non-oil other operating and maintenance expense differential of the qualified oil-backout project which would normally be included in base rates.

(b) No costs of a qualified oil-backout project that are reflected in the base rates of utility shall be recovered through the Oil-Backout Cost Recovery Factor.

(c) The Oil-Backout Cost Recovery Factor applicable to a qualified oil-backout project shall be estimated every six months in conjunction with the Fuel and Purchased Power Cost Recovery Clause, commencing with the first six-month period in which the qualified oil-backout project is placed into commercial service. The estimate shall be based on the most current projections of oil and non-oil fuel prices, other operation and maintenance expenses, and kilowatt-hour sales and on the actual cost of capital for the qualified oil-backout project. A true-up adjustment, with interest, shall be made at the end of each six-month period to reconcile differences between estimated and actual data.

(4) ACCOUNTING.

(a) All revenues derived through the Oil-Backout Cost Recovery Factor shall be applied solely to the cost of the qualified oil-backout project. Separate subaccounts shall be established for each qualified oil-backout project for:

1. Account number 107, construction work in progress;
2. Account number 108, reserve for depreciation;
3. Account number 101, electric plant in-service;
4. Account number 201, common stock;
5. Account number 204, preferred stock;
6. Account number 207, other paid in capital;
7. Account number 215, appropriated retained earnings;
8. Account number 216, unappropriated retained earnings;
9. Account number 221, long-term debt;
10. Account number 231, notes payable; and
11. Account number 232, accounts payable.

(b) Each qualified oil-backout project shall be separately identified to permit application of appropriate capital recovery schedules. Associated plant and reserve activity, balances, and the capital recovery schedule expenses shall be maintained as side records. The recovery schedule shall be designed to recover the investment of each qualified oil-backout project by the date of retirement of existing plant. Allowance for funds used during construction for a qualified oil-backout project shall be computed using the actual cost of capital incurred to construct the project.

(5) Once the costs of a qualified oil-backout project have been recovered, the applicability of the Oil-backout Cost Recovery Factor shall terminate.

(6) EXTRAORDINARY RETIREMENTS.

Ratemaking treatment of the costs of extraordinary retirement of plant equipment associated with the construction of a qualified oil-backout project other than those specified in subsection (3) shall be considered by the Commission on a case-by-case basis along with the calculation of the Oil-Backout Cost Recovery Factor. Such extraordinary retirements shall be identified at the time the utility petitions the Commission for approval of a qualifying oil-backout project.

Specific Authority: §366.05(1)

Law Implemented: §366.82(5)

History: New

CODING: Words underlined are additions; words in struck-through type are deletions from existing law.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Adoption of Rule 25-17.16, F.A.C., Oil-Backout Cost Recovery Factor	)	DOCKET NO: 810241-EU
	)	ORDER NO. 10554
	)	ISSUED: 1-29-82

The following Commissioners participated in the disposition of this matter:

Joseph P. Cresse, Chairman

John R. Marks, III
Katie Nichols
Susan W. Leisner

ORDER ADOPTING RULE

By the Commission:

This proceeding was initiated on the Commission's own motion pursuant to the provisions of Section 120.54, Florida Statutes, and under the authority of Sections 350.127(3) and 366.82(5), Florida Statutes. In Order 10363, issued October 30, 1981, the Commission proposed the adoption of Rule 25-17.16, Florida Administrative Code.

A public hearing on the proposed rule was requested and held November 30, 1981, before a staff member of the General Counsel's Office. Written and oral suggestions regarding the rule were incorporated into the record of the proceeding. Changes made to the rule as proposed are supported in the record and reflected in the rule attached to this order as Appendix "A".

Rule 25-17.16 is intended to be used by investor-owned electric utilities for the recovery of costs of implementing certain specified supply-side conservation measures which will economically displace oil generated electricity. The measures would be funded by the cost savings resulting from the displacement. Recovery is to be accomplished pursuant to Section 366.82(5), Florida Statutes, in conjunction with the Fuel and Purchased Power Cost Recovery Clause.

It is therefore

ORDERED by the Florida Public Service Commission that Rule 25-17.16, Florida Administrative Code as reflected in attached Appendix "A", is hereby adopted. It is further

ORDERED that Rule 25-17.16, as thus adopted, be filed with the Department of State to become effective as provided by law and, upon completion of such filing, that this docket be closed. It is further

ORDERED that a statement of changes be published in the Florida Administrative Weekly as required by Section 120.54(12)(b), Florida Statutes, giving notice of the substantive changes made to the rule as proposed.

By Order of the Florida Public Service Commission, this 29th day of January, 1982.

Steve Tribble

Steve Tribble, Commission Clerk

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Adoption of Rule 25-17.16, F.A.C., Oil-Backout Cost Recovery Factor	)	DOCKET NO: 810241-EU
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By Order of the Florida Public Service Commission, this 29th day of January, 1982.

Steve Tribble

Steve Tribble, Commission Clerk

25-17.16 OIL-BACKOUT COST RECOVERY FACTOR

(1) DEFINITIONS.-- For the purpose of this rule, the following words and phrases shall have the following meanings:

(a) "Non-oil fuel" means coal, natural gas, wood, combustible refuse, biomass, or any derivatives of such non-oil fuels.

(b) "Conversion Cost" means costs as determined by the Commission to be reasonable and necessary for the conversion of an existing oil-fired, steam cycle, generating unit to also burn a non-oil fuel, a combination of non-oil fuels, or a non-oil/oil fuel mixture. Such costs shall include, but not be limited to, engineering, administrative and legal costs; the cost of environmental studies and pollution control or abatement equipment; non-oil fuel transportation equipment, unloading, processing, storage, preparation, or mixing facilities; refuse removal or disposal equipment, equipment and facilities necessary to permit the combustion of non-oil fuels, the cost of retro-fitting or refurbishing boilers to permit the combustion of non-oil fuels; and the cost of all other facilities reasonable and necessary to allow the conversion of an existing oil-fired, steam cycle, generating unit to also burn a non-oil fuel, a combination of non-oil fuels, or a non-oil/oil fuel mixture, whether such costs are incurred before or after the date of initial conversion of such facility. Such costs shall also include the reasonable costs of capital, taxes, and operating and maintenance costs associated with such conversion, until such costs are recovered as provided in subsequent sections.

(c) "Cumulative Present Value of Expected Net Savings" means cumulative present value of the annual non-oil/oil fuel expense differential associated with the proposed oil-backout project less the projected annual straight line depreciation expense over the

"used and useful" life of the proposed project; less the annual incremental cost of capital expense associated with the proposed project; less the annual oil/non-oil tax expense associated with the proposed project; less the annual oil/non-oil operating and maintenance expense differential, exclusive of fuel expense, of the proposed project; less the differential cost associated with the early retirement of existing plant and the derated capacity, if any; less any other costs incurred specifically as a result of the proposed oil-backout project, whether such costs are incurred before or after the commercial in-service date of the proposed project.

(2) PURPOSE.

(a) The Oil-Backout Cost Recovery Factor is to be utilized for the recovery of costs of implementing any of the following supply-side, oil conservation measures the primary purpose of which is the economic displacement of oil generated electricity in Florida and which are to be funded by the cost savings resulting from the displacement of oil-fired generation in the near future.

1. CONVERSION COST.-- Conversion of an existing oil-fired, steam cycle, generating unit to also burn a non-oil fuel, a combination of non-oil fuels, or a non-oil/oil fuel mixture. To the extent technologically practicable and cost-effective, provisions for future economic fuel switching and multi-fuel firing capability shall be made in order for such a conversion project to qualify for cost recovery through the Oil-Backout Cost Recovery Factor.

2. TRANSMISSION LINE CONSTRUCTION COST.-- Construction of transmission lines including any related land and land rights, substations, and

support electrical equipment, within Florida when the primary purpose of the construction of the lines is to increase the importation or transfer of non-oil derived electrical energy on either a firm or a non-firm basis.

3. At the discretion of the Commission, other major supply-side oil conservation measures whose primary purpose is the economic displacement of oil-fired generation in the State of Florida.

(b) The Oil-Backout Cost Recovery Factor shall not be used for either the recovery of the costs of a project the primary purpose of which is to serve increased megawatt demand or for the recovery of the costs of a new generating unit.

3. QUALIFICATION PROCEDURES.

(a) Upon receipt of a petition from a utility, or on the Commission's own motion, public hearings shall be held to determine whether to authorize a proposed project and whether the Oil-Backout Cost Recovery Factor may be used to recover the costs of the project. Such determination shall be based on a finding by the Commission that:

1. The primary purpose of the proposed project is the economic displacement of oil-fired generation in the State of Florida;

2. It has been shown by a preponderance of the evidence that there will be a Cumulative Present Value of Expected Net Savings to retail customers in Florida within the first ten (10) years of commercial operation of the proposed project; and

3. It has been shown by a preponderance of the evidence that a proposed project is the most economical alternative available.

(b) The annual oil/non-oil fuel expense differential used to calculate Cumulative Present Value of Expected Net Savings should, if practicable, be derived by computer simulations of the utility's dispatch with and without the proposed project. To the extent practicable, a banded forecast of oil and non-oil fuel prices and incremental cost of capital shall be employed to calculate an expected case estimate and worst case estimate of Cumulative Present Value of Expected Net Savings. The present value discount rate shall be based on the utility's projected incremental after-tax cost of capital for the proposed oil-backout project.

(c) The determination of whether the Oil-Backout Cost Recovery Factor is to be used to recover the costs of a proposed project shall normally be made by the Commission prior to or in conjunction with licensing and prior to construction of the proposed project, unless waived by the Commission.

(4) COSTS TO BE RECOVERED AND COST RECOVERY PROCEDURES.

(a) Upon a determination by the Commission that a proposed oil-backout project has met the conditions of subsections (2) and (3), a utility may be granted the authority by the Commission to recover the cost of such qualifying oil-backout project through an Oil-Backout Cost Recovery Factor calculated and applied in conjunction with the Fuel and Purchased Power Cost Recovery Clause. The Revenues to be collected through the Oil-Backout Cost Recovery Factor for a qualified oil-backout project shall be the greater of:

1. Two-thirds of the oil/non-oil fuel expense differential associated with the qualified oil-backout project; or
2. The sum of the straight line depreciation expense over the "used and useful" life of the qualified oil-backout project, plus the cost of capital for

the qualified oil-backout project, plus the actual tax expense of the qualified oil-backout project, plus the oil/non-oil operating and maintenance expense differential of the qualified oil-backout project which would normally be included in base rates.

(b) No costs of a qualified oil-backout project that are reflected in the base rates of utility shall be recovered through the Oil-Backout Cost Recovery Factor.

(c) Upon full depreciation of the qualified oil-backout project, cost recovery pursuant to 25-17.15(4)(a)1. shall terminate and only the actual oil/non-oil operating and maintenance expense differential, exclusive of fuel expense, of the qualified oil-backout project which would normally be included in base rates shall be recovered through the Oil-Backout Cost Recovery Factor until such time as these costs are included in the base rates of the utility.

(d) Once approved by the Commission, the costs of a qualified oil-backout project shall continue to be recovered through the Oil-Backout Cost Recovery Factor until such time as they are included in the base rates of the utility. Normally, the remaining unrecovered costs of the qualified oil-backout project shall be rolled into the utility's base rates without altering the depreciation period at the utility's next rate base filing and cost recovery for the qualified oil-backout project through the Oil-Backout Cost Recovery Factor shall terminate at the time the new rates are placed into effect. To the extent, however, that two-thirds of the oil/non-oil fuel expense differential associated with the qualified oil-backout project in any six month period exceeds those costs rolled into base rates, these additional revenues shall continue to be collected through the Oil-Backout

Cost Recovery Factor and applied toward the accelerated recovery of the investment cost of the qualified oil-backout project until such time as the investment is fully repaid.

(e) The Oil-Backout Cost Recovery Factor applicable to a qualified oil-backout project shall be estimated every six months in conjunction with the Fuel and Purchased Power Cost Recovery Clause, commencing with the first six-month period in which the qualified oil-backout project is placed into commercial service. The estimate shall be based on the most current projections of oil and non-oil fuel prices, other operation and maintenance expenses, taxes, and kilowatt-hour sales and on the actual cost of capital for the qualified oil-backout project. A true-up adjustment, with interest, shall be made at the end of each six-month period to reconcile differences between estimated and actual data.

(f) Upon a showing by a preponderance of the evidence, the Commission, in order to preserve the financial integrity of a utility, may authorize the commencement of recovery through the Oil-Backout Cost Recovery Factor prior to the placement into commercial service of an approved project.

(3) ACCOUNTING.

(a) All revenues derived through the Oil-Backout Cost Recovery Factor shall be applied solely to the cost of the qualified oil-backout project. Separate subaccounts shall be established to specifically identify amounts applicable to each qualified oil-backout project to record:

1. The cost of construction;
2. The plant in-service cost;
3. The depreciation of the plant when it is placed into service;
4. The capital used to fund the construction of the project;

5. The operation and maintenance expenses pertaining to each project; and

6. The tax expense pertaining to each project.

(b) Each qualified oil-backout project shall be separately identified to permit application of appropriate capital recovery schedules. Associated plant and reserve activity, balances, and the capital recovery schedule expenses shall be maintained as side records. The recovery schedule shall be designed to recover the investment of each qualified oil-backout project by the date of retirement of existing plant.

(c) In capitalizing any cost of capital on a project, the allowance for funds used during construction rate shall be computed using the cost of capital used to fund the project.

(6) Once the costs of a qualified oil-backout project have been recovered, the applicability of the Oil-Backout Cost Recovery Factor shall terminate.

(7) EXTRAORDINARY RETIREMENTS. Ratemaking treatment of the costs of extraordinary retirement of plant equipment associated with the construction of a qualified oil-backout project shall be considered by the Commission on a case-by-case basis along with the calculation of the Oil-Backout Cost Recovery Factor. Such extraordinary retirements shall be identified at the time the utility petitions the Commission for approval of a qualifying oil-backout project.

Specific Authority: 366.05(1)

Law Implemented: 366.82(5)

History: New

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Amendment of Rule 25-17.16, F.A.C., Oil-Backout Cost Recovery Factor.	DOCKET NO. 820257-EU (RP)
	ORDER NO. 10932
	ISSUED: 6-24-82

The following Commissioners participated in the disposition of this matter:

JOSEPH P. CRESSE, CHAIRMAN
GERALD L. GUNTER
JOHN R. MARKS, III
KATIE NICHOLS
SUSAN W. LEISNER

ORDER PROPOSING RULE AMENDMENT

BY THE COMMISSION:

Pursuant to the provisions of Section 120.54, Florida Statutes, and under the authority of Sections 350.127(2), 366.05(1), and 366.82(5), this Commission, on its own motion, proposes the adoption of amendments to Rule 25-17.16, F.A.C., as reflected in attached Appendix "A".

Rule 25-17.16 was originally ordered adopted by the Commission in Order No. 10554, issued January 29, 1982. As stated in that order, the rule "is intended to be used by investor-owned electric utilities for the recovery of costs of implementing certain specified supply-side conservation measures which will economically displace oil generated electricity." Recovery is to be accomplished pursuant to Section 366.82(5), Florida Statutes, in conjunction with the Fuel and Purchased Power Cost Recovery Clause.

The Commission proposes to amend paragraph (1)(c) of the rule to more clearly state that once the primary purpose of a project has been determined to be oil-backout, all benefits and all costs associated with the project should be considered for qualification for cost recovery pursuant to the rule. The proposed amendment to paragraph (4)(a) implements the Commission's desire to allow additional depreciation to be calculated as two-thirds of the net savings. While the revenue requirements to be recovered by the utilities pursuant to this methodology is greater than is allowed currently by the rule, the ultimate cost to the consumer should be reduced because the project would be paid off faster. Paragraph (4)(d) would be amended to conform to the latter change.

It is therefore

ORDERED by the Florida Public Service Commission that the amendments to Rule 25-17.16, F.A.C., as reflected in attached Appendix "A" are hereby proposed. It is further

ORDERED that notice hereof be given in accordance with Section 120.54, Florida Statutes. It is further

ORDERED that, if requested by any affected person, within 14 days after publication of notice hereof in the Florida Administrative Weekly, a public hearing on the proposed amendments of Rule 25-17.16 shall be held at 9:30 A.M., on July 21, 1982, in Room 106, 101 East Gaines Street, Tallahassee, Florida. If no hearing is requested, the proposed amendments may be adopted by the Commission without further notice.

By Order of the Florida Public Service Commission this 24th day of June, 1982.

Steve Tribble, Commission Clerk

(S E A L)

CLS

ATTACHMENT A

25-17.16 OIL-BACKOUT COST RECOVERY FACTOR.--

(1) DEFINITIONS.-- For the purpose of this rule, the following words and phrases shall have the following meaning:

(a) "Non-oil fuel" means coal, natural gas, wood, combustible refuse, biomass, or any derivatives of such non-oil fuels.

(b) "Conversion Cost" means costs as determined by the Commission to be reasonable and necessary for the conversion of an existing oil-fired, steam cycle, generating unit to also burn a non-oil fuel, a combination of non-oil fuels, or a non-oil/oil fuel mixture. Such costs shall include, but not be limited to, engineering, administrative and legal costs; the cost of environmental studies and pollution control or abatement equipment; non-oil fuel transportation equipment, unloading, processing, storage, preparation, or mixing facilities; refuse removal or disposal equipment, equipment and facilities necessary to permit the combustion of non-oil fuels, the cost of retro-fitting or refurbishing boilers to permit the combustion of non-oil fuels; and the cost of all other facilities reasonable and necessary to allow the conversion of an existing oil-fired, steam cycle, generating unit to also burn a non-oil fuel, a combination of non-oil fuels, or a non-oil/oil fuel mixture, whether such costs are incurred before or after the date of initial conversion of such facility. Such costs shall also include the reasonable costs of capital, taxes, and operating and maintenance costs associated with such conversion, until such costs are recovered as provided in subsequent sections.

(c) "Cumulative Present Value of Expected Net Savings" means cumulative present value of the <u>total net savings</u> ~~annual oil/non-oil fuel expense differential~~ associated with the proposed oil-backout project<u>, including but not limited to</u>

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annual oil/non-oil fuel expense differential less the projected annual straight line depreciation expense over the "used and useful" life of the proposed project; less the annual incremental cost of capital expense associated with the proposed project; less the annual oil/non-oil tax expense associated with the proposed project; less the annual oil/non-oil operating and maintenance expense differential, exclusive of fuel expense, of the proposed project; less the differential cost associated with the early retirement of existing plant and the derated capacity, if any; less any other costs incurred specifically as a result of the proposed oil-backout project, plus any other benefits specifically conferred as a result of the proposed oil backout project whether such costs or benefits are incurred before or after the commercial in-service date of the proposed project.

(2) PURPOSE.

(a) The Oil-Backout Cost Recovery Factor is to be utilized for the recovery of costs of implementing any of the following supply-side, oil conservation measures the primary purpose of which is the economic displacement of oil generated electricity in Florida and which are to be funded by the cost savings resulting from the displacement of oil-fired generation in the near future.

1. CONVERSION COST.-- Conversion of an existing oil-fired, steam cycle, generating unit to also burn a non-oil fuel, a combination of non-oil fuels, or a non-oil/oil fuel mixture. To the extent technologically practicable and cost-effective, provisions for future economic fuel switching and multi-fuel firing capability shall be made in order for such a conversion project to qualify for cost recovery through the Oil-Backout Cost Recovery Factor.

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2. TRANSMISSION LINE CONSTRUCTION COST.-- Construction of transmission lines including any related land and land rights, substations, and support electrical equipment, within Florida when the primary purpose of the construction of the lines is to increase the importation or transfer of non-oil derived electrical energy on either a firm or a non-firm basis.

3. At the discretion of the Commission, other major supply-side oil conservation measures whose primary purpose is the economic displacement of oil-fired generation in the State of Florida.

(b) The Oil-Backout Cost Recovery Factor shall not be used for either the recovery of the costs of a project the primary purpose of which is to serve increased megawatt demand or for the recovery of the costs of a new generating unit.

(3) QUALIFICATION PROCEDURES.

(a) Upon receipt of a petition from a utility, or on the Commission's own motion, public hearing shall be held to determine whether to authorize a proposed project and whether the Oil-Backout Cost Recovery Factor may be used to recover the costs of the project. Such determination shall be based on a finding by the Commission that:

1. The primary purpose of the proposed project is the economic displacement of oil-fired generation in the State of Florida;

2. It has been shown by a preponderance of the evidence that there will be a Cumulative Present Value of Expected Net Savings to retail customers in Florida within the first ten (10) years of commercial operation of the proposed project; and

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3. It has been shown by a preponderance of the evidence that a proposed project is the most economical alternative available.

(b) The annual oil/non-oil fuel expense differential used to calculate Cumulative Present Value of Expected Net Savings should, if practicable, be derived by computer simulations of the utility's dispatch with and without the proposed project. To the extent practicable, a banded forecast of oil and non-oil fuel prices and incremental cost of capital shall be employed to calculate an expected case estimate and worst case estimate of Cumulative Present Value of Expected Net Savings. The present value discount rate shall be based on the utility's projected incremental after-tax cost of capital for the proposed oil-backout project.

(c) The determination of whether the Oil-Backout Cost Recovery Factor is to be used to recover the costs of a proposed project shall normally be made by the Commission prior to or in conjunction with licensing and prior to construction of the proposed project, unless waived by the Commission.

(4) COSTS TO BE RECOVERED AND COST RECOVERY PROCEDURES.

(a) Upon a determination by the Commission that a proposed oil-backout project has met the conditions of subsections (2) and (3), a utility may be granted the authority by the Commission to recover the cost of such qualifying oil-backout project through an Oil-Backout Cost Recovery Factor calculated and applied in conjunction with the Fuel and Purchased Power Cost Recovery Clause. The revenues to be collected through the Oil-Backout Cost Recovery Factor for a qualified oil-backout project shall be the ~~greater of:~~

~~1. Two-thirds of the oil/non-oil fuel expense differential associated with the qualified-~~

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~~oil-backout project, or~~

3. The sum of the straight line depreciation expense over the "used and useful" life of the qualified oil-backout project, plus the cost of capital for the qualified oil-backout project, plus the actual tax expense of the qualified oil-backout project, plus the oil/non-oil operating and maintenance expense differential of the qualified oil-backout project which would normally be included in base rates plus two-thirds of the actual net savings associated with the project (if positive) to be applied as additional depreciation.

(b) No costs of a qualified oil-backout project that are reflected in the base rates of utility shall be recovered through the Oil-Backout Cost Recovery Factor.

(c) Upon full depreciation of the qualified oil-backout project, cost recovery pursuant to 25-17.15(4)(a)1. shall terminate and only the actual oil/non-oil operating and maintenance expense differential, exclusive of fuel expense, of the qualified oil-backout project which would normally be included in base rates shall be recovered through the Oil-Backout Cost Recovery Factor until such time as these costs are included in the base rates of the utility.

(d) Once approved by the Commission, the costs of a qualified oil-backout project shall continue to be recovered through the Oil-Backout Cost Recovery Factor until such time as they are included in the base rates of the utility. Normally, the remaining unrecovered costs of the qualified oil-backout project shall be rolled into the utility's base rates without altering the depreciation period at the utility's next rate base filing and

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cost recovery for the qualified oil-backout project through the Oil-Backout Cost Recovery Factor shall terminate at the time the new rates are placed into effect. To the extent, however, that two-thirds of the actual net savings ~~oil/non-oil fuel expense differential~~ associated with the qualified oil-backout project in any six-month period exceeds those costs rolled into base rates, these additional revenues shall continue to be collected through the Oil-Backout Cost Recovery Factor and applied toward the accelerated recovery of the investment cost of the qualified oil-backout project until such time as the investment is fully repaid.

(e) The Oil-Backout Cost Recovery Factor applicable to a qualified oil-backout project shall be estimated every six months in conjunction with the Fuel and Purchased Power Cost Recovery Clause, commencing with the first six-month period in which the qualified oil-backout project is placed into commercial service. The estimate shall be based on the most current projections of oil and non-oil fuel prices, other operation and maintenance expenses, taxes, and kilowatt-hour sales and on the actual cost of capital for the qualified oil-backout project. A true-up adjustment, with interest, shall be made at the end of each six-month period to reconcile differences between estimated and actual data.

(f) Upon a showing by a preponderance of the evidence, the Commission, in order to preserve the financial integrity of a utility, may authorize the commencement of recovery through the Oil-Backout Cost Recovery Factor prior to the placement into commercial service of an approved project.

(5) ACCOUNTING.

(a) All revenues derived through the Oil-Backout Cost Recovery Factor shall be applied solely to the cost of the qualified oil-backout project. Separate subaccounts shall be

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established to specifically identify amounts applicable to each qualified oil-backout project to record:

1. The cost of construction;
2. The plant in-service cost;
3. The depreciation of the plant when it is placed into service;
4. The capital used to fund the construction of the project;
5. The operation and maintenance expenses pertaining to each project; and
6. The tax expense pertaining to each project.

(b) Each qualified oil-backout project shall be separately identified to permit application of appropriate capital recovery schedules. Associated plant and reserve activity, balances, and the capital recovery schedule expenses shall be maintained as side records. The recovery schedule shall be designed to recover the investment of each qualified oil-backout project by the date of retirement of existing plant.

(c) In capitalizing any cost of capital on a project, the allowance for funds used during construction rate shall be computed using the cost of capital used to fund the project.

(6) Once the costs of a qualified oil-backout project have been recovered, the applicability of the Oil-Backout Cost Recovery Factor shall terminate.

(7) EXTRAORDINARY RETIREMENTS. Ratemaking treatment of the costs of extraordinary retirement of plant equipment associated with the construction of a qualified oil-backout project shall be considered by the Commission on a case-by-case basis along with the calculation of the Oil-Backout Cost Recovery Factor. Such extraordinary retirements shall be identified at the time the utility petitions the Commission for approval of a

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qualifying oil-backout project.

Specific Authority: 366.05(1)

Law Implemented: 366.82(5)

History: New 2-25-82; amended

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Amendment of Rule 25-17.16, F.A.C., Oil Backout Cost Recovery Factor

DOCKET NO. 820257-EU
ORDER NO. 11188
ISSUED: 9-23-82

The following Commissioners participated in the disposition of this matter:

Joseph P. Cresse, Chairman
Gerald L. Gunter
Susan W. Leisner
John R. Marks, III
Katie Nichols

ORDER ADOPTING RULE AMENDMENT

BY THE COMMISSION:

This proceeding was initiated on the Commission's own motion pursuant to the provisions of Section 120.54, Florida Statutes, and under the authority of Sections 350.127(2), 366.05(1), and 366.82(5), Florida Statutes. In Order No. 10932, issued June 24, 1982, the Commission proposed the adoption of amendments to Rule 25-17.16, Florida Administrative Code.

Rule 25-17.16 was originally ordered adopted by the Commission in Order No. 10554, issued January 29, 1982. As stated in that Order, the rule "is intended to be used by investor-owned electric utilities for the recovery of costs of implementing certain specified supply-side conservation measures which will economically displace oil generated electricity." Recovery is to be accomplished pursuant to Section 366.82(5), Florida Statutes, in conjunction with the Fuel and Purchased Power Cost Recovery Clause.

In Order No. 10932, the Commission proposed to amend paragraph (1)(c) of the rule to more clearly state that once the primary purpose of a project has been determined to be oil-backout, all benefits and all costs associated with the project should be considered for qualification for cost recovery pursuant to the rule. The proposed amendment to paragraph (4)(a) implements the Commission's desire to allow additional depreciation to be calculated as two-thirds of the net savings. While the revenue requirements to be recovered by the utilities pursuant to this methodology is greater than is allowed currently by the rule, the ultimate cost to the consumer should be reduced because the project would be paid off faster. Paragraph (4)(d) would be amended to conform to the latter change.

A public hearing was held on the proposed rule amendments on July 21, 1982, before the full Commission. Rule 25-17.16, as reflected in Appendix "A", contains minor changes resulting from suggestions made at the public hearing.

It is therefore,

ORDERED by the Florida Public Service Commission that the amendments to Rule 25-17.16, Florida Administrative Code, as reflected in Appendix "A" attached hereto, are hereby adopted. It is further

ORDERED that Rule 25-17.16, as thus amended, be filed with the Department of State to become effective as provided by law, and upon completion of such filing, that this docket be closed. It is further

ORDERED that a statement of changes be published in the Florida Administrative Weekly as required by Section 120.54(12)(b), Florida Statutes, giving notice of the changes made to the rule as proposed.

By Order of the Florida Public Service Commission this 23rd day of September, 1982.

Steve Tribble
Commission Clerk

(S E A L)
CLS

COMMISSIONER MARKS dissents.

DISSENT BY COMMISSIONER LEISNER:

This rule has been reworded, clarified, modified, amended or simply changed, with the result that the qualification of an oil backout project will no longer be determined solely on the basis of estimated fuel savings (and thus cost savings) for the ratepayer. I believe that this substantial change is unnecessary in terms of enhancing incentives to decrease Florida's dependence on oil fired generation, and unfair in its treatment of passing on increased accelerated cost recovery to the ratepayer.

During the preagenda discussion of this new direction, several commissioners raised issues that appeared to argue for a rewording of the Rule. For the most part, the majority of the commissioners alleged that the existing Rule did not say what they wanted it to say in the first place. What did these commissioners really mean to say? Apparently, the actions of the majority indicate that what was unanimously approved at one time was not the essence of what these commissioners wanted to convey. The real source of their confusion was that the majority of the commissioners felt that the previous rule's complete reliance on unadjusted fuel savings was simply not what the commissioners meant when they decided on qualification and recovery criteria. Other stated reasons for change were that the existing Rule did not provide enough incentives to the electric utility company and that it is inappropriate to qualify a project on one basis and allow recovery on another basis. Several of the approved changes support this conclusion.

Before its modification, the Oil Backout Cost Recovery Factor was structured so that estimated fuel savings would determine the fate of an oil backout project. Since the purpose of such a project is to save fuel and dollars and not to defer capacity, this reasoning was appropriate and proper. In its new mode, the Oil Backout Cost Recovery Factor is only loosely tied to fuel savings. Instead, the Rule has been modified so that the commission will give equal weight to defered capacity and fuel savings when deciding whether or not a project is appropriately termed "oil backout." The practical result is that supply side conservation measures currently disallowed in the Conservation Cost Recovery Factor may be allowed in the Oil Backout Cost Recovery Factor. This reversal of policy is not in the public interest. That oil backout becomes supply side conservation is undeniable when deferred capacity is part of the qualification criteria.

To some extent, there is a legitimate concern that Florida's utilities are too heavily mortgaged into the future. However, the answer to this dilemma is not the accelerated recovery of questionable projects, rather it is the proper recovery of legitimate projects through the rate making process. Thus, all benefits (which include deferred capacity savings) should not be used to calculate net savings for oil backout treatment, since this type of data obscures the primary purpose of the project and the original rule.

However, the majority of the commissioners have agreed to do precisely this — that is, include all benefits in the recovery and the qualifications stages. The result is that the ratepayers of Florida may pay for an oil backout project whose primary purpose is not really the backout of oil. In addition, the impact of the construction savings overconsideration allows the situation to arise where the utility is granted an accelerated recovery on one project because it did not engage in another construction project. For example, a transmission line will defer capacity as well as displace oil. Now suppose for the moment that all of the fuel savings were to disappear. Under the majority's plan as embodied in the Rule changes, the affected utility would continue to be eligible for accelerated recovery.

At present it is not possible to determine whether changes in the oil/substitute fuel differential will occur over the life of a project. However, one thing is certain. The price of oil does not always increase and the prices of substitutes do not remain the same or decrease. Thus, accelerating the capital repayment at the expense of the ratepayers places a disproportionate burden on these ratepayers and forces them to assume additional risks, a tremendous price to pay for additional incentives that are clearly not needed. These new incentives are obviously unnecessary because immediately after the old rule was adopted two utility companies filed for capital recovery under that rule. Thus, it appears that the utilities themselves considered the old rule sufficiently generous to encourage oil backout efforts.

While it may be appropriate for the commission to allow some subjectivity in their deliberations as to qualification and recovery of oil backout projects, I believe that the majority of the commission has overstepped the reasonable precautions that are necessary to protect the proper level of commission flexibility. Thus, the injustice done to the ratepayers by enacting the new rule is twofold. First, they may be forced into paying for the accelerated cost of an oil backout project when no fuel savings benefits are actually realized. And secondly, ratepayers will most certainly be paying more incentive dollars to the utility companies than even they themselves asked for.

25-17.16 OIL-BACKOUT COST RECOVERY FACTOR.--

(1) DEFINITIONS.-- For the purpose of this rule, the following words and phrases shall have the following meaning:

(a) "Non-oil fuel" means coal, natural gas, wood, combustible refuse, biomass, or any derivatives of such non-oil fuels.

(b) "Conversion Cost" means costs as determined by the Commission to be reasonable and necessary for the conversion of an existing oil-fired, steam cycle, generating unit to also burn a non-oil fuel, a combination of non-oil fuels, or a non-oil/oil fuel mixture. Such costs shall include, but not be limited to, engineering, administrative and legal costs; the cost of environmental studies and pollution control or abatement equipment; non-oil fuel transportation equipment, unloading, processing, storage, preparation, or mixing facilities; refuse removal or disposal equipment, equipment and facilities necessary to permit the combustion of non-oil fuels, the cost of retro-fitting or refurbishing boilers to permit the combustion of non-oil fuels; and the cost of all other facilities reasonable and necessary to allow the conversion of an existing oil-fired, steam cycle, generating unit to also burn a non-oil fuel, a combination of non-oil fuels, or a non-oil/oil fuel mixture, whether such costs are incurred before or after the date of initial conversion of such facility. Such costs shall also include the reasonable costs of capital, taxes, and operating and maintenance costs associated with such conversion, until such costs are recovered as provided in subsequent sections.

(c) "Cumulative Present Value of Expected Net Savings" means cumulative present value of the <u>total net savings</u> ~~annual-oil/non-oil-fuel-expense-differential~~ associated with the proposed oil-backout project, <u>including but not limited to annual oil/non-oil fuel expense differential</u> less the projected annual

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straight line depreciation expense over the "used and useful" life of the proposed project; less the annual incremental cost of capital expense associated with the proposed project; less the annual oil/non-oil tax expense differential associated with the proposed project; less the annual oil/non-oil operating and maintenance expense differential, exclusive of fuel expense, of the proposed project; less the differential cost associated with the early retirement of existing plant and the derated capacity, if any; less any other costs incurred specifically as a result of the proposed oil-backout project, plus any other benefits specifically conferred as a result of the proposed oil backout project whether such costs or benefits are incurred before or after the commercial in-service date of the proposed project.

(2) PURPOSE.

(a) The Oil-Backout Cost Recovery Factor is to be utilized for the recovery of costs of implementing any of the following supply-side, oil conservation measures the primary purpose of which is the economic displacement of oil generated electricity in Florida and which are to be funded in the manner set forth in subsection (4) below ~~by the cost savings resulting from the displacement of oil fired generation in the near future~~.

1. CONVERSION COST.-- Conversion of an existing oil-fired, steam cycle, generating unit to also burn a non-oil fuel, a combination of non-oil fuels, or a non-oil/oil fuel mixture. To the extent technologically practicable and cost-effective, provisions for future economic fuel switching and multi-fuel firing capability shall be made in order for such a conversion project to qualify for cost recovery through the Oil-Backout Cost Recovery Factor.

2. TRANSMISSION LINE CONSTRUCTION COST.-- Construction

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of transmission lines including any related land and land rights, substations, and support electrical equipment, within Florida when the primary purpose of the construction of the lines is to increase the importation or transfer of non-oil derived electrical energy on either a firm or a non-firm basis.

3. At the discretion of the Commission, other major supply-side oil conservation measures whose primary purpose is the economic displacement of oil-fired generation in the State of Florida.

(b) The Oil-Backout Cost Recovery Factor shall not be used for either the recovery of the costs of a project the primary purpose of which is to serve increased megawatt demand or for the recovery of the costs of a new generating unit.

(3) QUALIFICATION PROCEDURES.

(a) Upon receipt of a petition from a utility, or on the Commission's own motion, public hearing shall be held to determine whether to authorize a proposed project and whether the Oil-Backout Cost Recovery Factor may be used to recover the costs of the project. Such determination shall be based on a finding by the Commission that:

1. The primary purpose of the proposed project is the economic displacement of oil-fired generation in the State of Florida;
2. It has been shown by a preponderance of the evidence that there will be a positive Cumulative Present Value of Expected Net Savings to retail customers in Florida within the first ten (10) years of commercial operation of the proposed project; and
3. It has been shown by a preponderance of the evidence

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that a proposed project is the most economical alternative available.

(b) The annual oil/non-oil fuel expense differential used to calculate Cumulative Present Value of Expected Net Savings should, if practicable, be derived by computer simulations of the utility's dispatch with and without the proposed project. To the extent practicable, a banded forecast of oil and non-oil fuel prices and incremental cost of capital shall be employed to calculate an expected case estimate and worst case estimate of Cumulative Present Value of Expected Net Savings. The present value discount rate shall be based on the utility's projected incremental after-tax cost of capital for the proposed oil-backout project.

(c) The determination of whether the Oil-Backout Cost Recovery Factor is to be used to recover the costs of a proposed project shall normally be made by the Commission prior to or in conjunction with licensing and prior to construction of the proposed project, unless waived by the Commission.

(4) COSTS TO BE RECOVERED AND COST RECOVERY PROCEDURES.

(a) Upon a determination by the Commission that a proposed oil-backout project has met the conditions of subsections (2) and (3), a utility may be granted the authority by the Commission to recover the cost of such qualifying oil-backout project through an Oil-Backout Cost Recovery Factor calculated and applied in conjunction with the Fuel and Purchased Power Cost Recovery Clause. The revenues to be collected through the Oil-Backout Cost Recovery Factor for a qualified oil-backout project shall be the greater-of:

1. ~~Two-thirds-of-the-oil/non-oil-fuel-expense differential-associated-with-the-qualified oil-backout-project;-or~~

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3. The sum of the straight line depreciation expense over the "used and useful" life of the qualified oil-backout project, plus the cost of capital for the qualified oil-backout project, plus the actual tax expense of the qualified oil-backout project, plus the oil/non-oil operating and maintenance expense differential of the qualified oil-backout project which would normally be included in base rates plus two-thirds of the actual net savings associated with the project (if positive) to be applied as additional depreciation.

(b) No costs of a qualified oil-backout project that are reflected in the base rates of utility shall be recovered through the Oil-Backout Cost Recovery Factor.

(c) Upon full depreciation of the qualified oil-backout project, cost recovery pursuant to 25-17.15(4)(a)1. shall terminate and only the actual oil/non-oil operating and maintenance expense differential, exclusive of fuel expense, of the qualified oil-backout project which would normally be included in base rates shall be recovered through the Oil-Backout Cost Recovery Factor until such time as these costs are included in the base rates of the utility.

(d) Once approved by the Commission, the costs of a qualified oil-backout project shall continue to be recovered through the Oil-Backout Cost Recovery Factor until such time as they are included in the base rates of the utility. Normally, the remaining unrecovered costs of the qualified oil-backout project shall be rolled into the utility's base rates without altering the depreciation period at the utility's next rate base filing and cost recovery for the qualified oil-backout project through the Oil-Backout Cost Recovery Factor shall terminate at the time the

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new rates are placed into effect. To the extent, however, that two-thirds of the actual net savings oil/non-oil-fuel-expense differential associated with the qualified oil-backout project in any six-month period exceeds those costs rolled into base rates, these additional revenues shall continue to be collected through the Oil-Backout Cost Recovery Factor and applied toward the accelerated recovery of the investment cost of the qualified oil-backout project until such time as the investment is fully repaid.

(e) The Oil-Backout Cost Recovery Factor applicable to a qualified oil-backout project shall be estimated every six months in conjunction with the Fuel and Purchased Power Cost Recovery Clause, commencing with the first six-month period in which the qualified oil-backout project is placed into commercial service. The estimate shall be based on the most current projections of oil and non-oil fuel prices, other operation and maintenance expenses, taxes, and kilowatt-hour sales and on the actual cost of capital for the qualified oil-backout project. A true-up adjustment, with interest, shall be made at the end of each six-month period to reconcile differences between estimated and actual data.

(f) Upon a showing by a preponderance of the evidence, the Commission, in order to preserve the financial integrity of a utility, may authorize the commencement of recovery through the Oil-Backout Cost Recovery Factor prior to the placement into commercial service of an approved project.

(5) ACCOUNTING.

(a) All revenues derived through the Oil-Backout Cost Recovery Factor shall be applied solely to the cost of the qualified oil-backout project. Separate subaccounts shall be established to specifically identify amounts applicable to each qualified oil-backout project to record:

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1. The cost of construction;
2. The plant in-service cost;
3. The depreciation of the plant when it is placed into service;
4. The capital used to fund the construction of the project;
5. The operation and maintenance expenses pertaining to each project; and
6. The tax expense pertaining to each project.

(b) Each qualified oil-backout project shall be separately identified to permit application of appropriate capital recovery schedules. Associated plant and reserve activity, balances, and the capital recovery schedule expenses shall be maintained as side records. The recovery schedule shall be designed to recover the investment of each qualified oil-backout project by the date of retirement of existing plant.

(c) In capitalizing any cost of capital on a project, the allowance for funds used during construction rate shall be computed using the cost of capital used to fund the project.

(6) Once the costs of a qualified oil-backout project have been recovered, the applicability of the Oil-Backout Cost Recovery Factor shall terminate.

(7) EXTRAORDINARY RETIREMENTS. Ratemaking treatment of the costs of extraordinary retirement of plant equipment associated with the construction of a qualified oil-backout project shall be considered by the Commission on a case-by-case basis along with the calculation of the Oil-Backout Cost Recovery Factor. Such extraordinary retirements shall be identified at the time the utility petitions the Commission for approval of a qualifying oil-backout project.

Specific Authority: 366.05(1)

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Law Implemented: 366.82(5)

History: New 2-25-82; amended

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Power & Light Company for approval of an Oil Backout Recovery Factor.	DOCKET NO. 820155-EU(IN) ORDER NO. 10901 ISSUED: 6/17/82

ORDER AUTHORIZING INTERVENTION

BY THE COMMISSION:

By Petition dated June 14, 1982, Florida Industrial Power Users Group (FIPUG) requested permission to intervene in this proceeding. Having reviewed the petition, we find that it should be granted. Therefore, it is

ORDERED by the Florida Public Service Commission that the Petition to Intervene filed by Florida Industrial Power Users Group be and the same is hereby granted. It is further

ORDERED that all parties to this proceeding shall furnish copies of all testimony, exhibits, pleadings and other documents that are filed in this proceeding, to John W. McWhirter, Jr., Esq., P. O. Box 3350, Tampa, FL 33601.

By Order of the Florida Public Service Commission, this 17th day of June, 1982.

(S E A L)

STEVE TRIBBLE
Commission Clerk

BED

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Power & Light Company for approval to recover the cost of its 500 KV transmission project through an oil backout recovery factor.	DOCKET NO. 820155-EU ORDER NO. 11217 ISSUED: 10-1-82

The following Commissioners participated in the disposition of this matter:

JOSEPH P. CRESSE, Chairman
KATIE NICHOLS

APPEARANCES: Matthew M. Childs and John Butler, of the firm Steel, Hector and Davis, 1400 S.E. First National Bank Bldg., Miami, FL 33131, on behalf of Florida Power & Light Company.

Joseph A. McGlothlin, of the firm Lawson, McWhirter and Grandoff, P. O. Box 3350, Tampa, FL 33601, on behalf of Florida Industrial Power Users Group.

Stephen Fogel, Benjamin Dickens and Michael Wilson, Office of Public Counsel, Rm. 4, 624 Holland Bldg., Tallahassee, FL 32301, on behalf of the Citizens of the State of Florida.

Bonnie E. Davis, Esq., 101 E. Gaines St., Tallahassee, FL 32301, on behalf of the Commission Staff.

William S. Bilenky, General Counsel and Kathleen Villacorta, 101 E. Gaines Street, Tallahassee, FL 32301, as advisers to the Commissioners.

FINAL ORDER

BY THE COMMISSION

By a petition filed on March 30, 1982, Florida Power & Light Company (hereinafter FPL) sought approval of an Oil Backout Cost Recovery Factor to recover the cost of its proposed 500 KV transmission line project.

The Oil Backout Cost Recovery Factor Rule, Rule 25-17.16, Fla. Admin. Code, (hereinafter referred to as the Rule) was adopted by the Commission on January 29, 1982. The Rule is intended to allow the timely recovery of the cost of implementing supply side conservation projects whose primary purpose is the economic displacement of oil generated electricity.

To qualify for recovery under the Rule, a project must meet three tests:

1) The primary purpose of the project must be the economic displacement of oil [Rule 25-17.16(3)(a)(1), Fla. Admin. Code];

2) There must be a cumulative present value of expected net savings to ratepayers within the first ten years of commercial operation of the project [Rule 25-17.16(3)(a)(2), Fla. Admin. Code];

3) The project must be the most economical alternative available [Rule 25-17.16(3)(a)(3), Fla. Admin. Code].

The Rule also provides that unless waived by the Commission, a project must be qualified under the Rule before construction begins [Rule 25-17.16(3)(c), Fla. Admin. Code]. As FPL began construction before the Rule was adopted, the issue of whether a waiver should be granted is present in this case.

Finally, the Rule allows the Commission to authorize commencement of cost recovery through an Oil Backout Recovery Factor before a project is placed in commercial service if necessary to preserve the financial integrity of a utility [Rule 25-17.16(4)(f), Fla. Admin. Code]. In its petition, FPL sought this authorization. However, in Order No. 10819, the Commission limited the scope of this docket to the issue of qualification of the project under the Rule and transferred the issue of whether to allow FPL to commence cost recovery through the Clause before commercial operation of the project, to the Company's pending rate case, Docket No. 820097-EU.

The parties in this docket include the Company, the Commission Staff, Public Counsel and the Florida Industrial Power Users Group (FIPUG). Duly noticed hearings were held on June 17, June 18, July 30, and August 3, 1982.

As proposed by the Company, the transmission line project consists of two 500 KV lines and associated substation facilities, extending down the Florida east coast from the Georgia-Florida state line to Martin and St. Lucie Counties where they will tie in with the existing 500 KV system. The project is necessary to increase the transfer capability between the Southern Company (hereinafter Southern) electric system and the FPL system, and thus allow the purchase of up to 2000 MW of firm unit power by FPL from Southern. Southern expects to have power produced from coal fired generation available for sale on a firm basis in varying amounts through the mid 1990's. This is sometimes referred to as the coal bubble. Because of the projected price differential between coal and oil, FPL, who relies heavily on oil fired generation, has purchased up to 2,000 MW of Southern's coal by wire. Thus, completion of the proposed high voltage transmission lines will remove the major impediment to the importation of the 2,000 MW of coal by wire that have been purchased by FPL. The project will also improve the electric system reliability for all peninsular Florida utilities.

The Company presented the testimony of three witnesses. Mr. Michael Cook presented the Company's fuel forecasts, Mr. James Scalf described the project in detail and presented the fuel savings calculations, while Mr. Joseph Howard presented the deferred capacity calculations and the qualification analysis.

Mr. James Dittmer testified in opposition to the project's qualification under the Rule on behalf of Public Counsel. While FIPUG presented no witnesses, it actively participated in the hearings, also contending that the project does not qualify under the Rule.

Interpretations of the Rule

In addition to fuel savings, the Company identified other costs savings made possible by the project. The Company presented evidence that completion of the project would allow the deferral of the in service dates of the Company's planned coal fired units, Martin Units 3 and 4 and Unsited Units 1 and 2 from 1987, 1988, 1990 and 1992, respectively, to 1992 and beyond. The Company also presented evidence that completion of the project would allow a reduction in the spinning reserve requirements the Company must maintain.

The question arose as to whether benefits, other than fuel savings, conferred by an oil backout project could be included in the qualification analysis. FIPUG and Public Counsel took the position that subsections 1(c) and (3)(a)(2) of the Rule required the Commission to consider only fuel savings in determining whether the project qualified under the rule. The Staff took the position that when the costs and benefits of a project cannot be separated, as in this case, the present rule allows the Commission to consider all of the costs and all of the benefits associated with the project. The Company contended that the present Rule authorized the Commission to consider all of the costs and all of the benefits associated with the project in determining qualification.

Because the Commission was dissatisfied with that portion of the Rule dealing with the calculation of the amount of savings allowed the Company as additional depreciation, we opened a rulemaking docket to consider amendments to the Rule. One of the suggested changes we adopted amends Subsecton (1)(c) to make clear that the Commission may consider all of the costs and all of the benefits associated with a project in determining whether it qualifies for cost recovery under the Rule. However, we did not vote on the proposed amendments until August 3, 1982, and the amendments to the Rule did not become effective until August 31, 1982, while the vote in this case was taken on August 3, 1982. Therefore, if it qualifies at all, the project must qualify for cost recovery under the Rule as it existed on August 3, 1982, and therefore, we must interpret the language of the Rule as it then existed. The language in question is as follows:

> "Cumulative Present Value of Expected Net Savings" means the cumulative present value of the annual oil/non-oil fuel expense differential associated with the proposed oil backout project less the projected annual straight line depreciation expense over the 'used and useful' life of the proposed project; less the annual incremental cost of capital expense associated with the proposed project; less the annual oil/non-oil tax expense associated with the proposed project; less the annual oil/non-oil operating and maintenance expense differential, exclusive of fuel expense, of the proposed project; less the differential cost associated with the early retirement of existing plant and the derated capacity, if any; less any other costs incurred specifically as a result of the proposed oil-backout project, whether such costs are incurred before or after the commercial in service date of the proposed project. Rule 25-17.16(1)(c), Fla. Admin. Code

We find this language sufficiently broad to allow us to consider all of the costs and all of the benefits associated with a project in determining whether a project qualifies for cost recovery under the Rule. While the presence and magnitude of benefits other than fuel does have significant bearing on the issue of whether the primary purpose of the project is oil displacement, we do not believe the Rule as it then existed required us to blind ourselves to some of the beneficial consequences of implementing the project while compelling inclusion of all of the costs of the project in the qualification analysis. Costs, as used in this section of the Rule, mean both positive and negative consequences, or costs, of implementing a proposed oil backout project. Thus, we hold that once the primary purpose of a project is determined to be oil displacement, both the original and amended language of subsection (1)(c) permits us to consider all of the costs and all of the benefits associated with a project in determining whether it qualifies for cost recovery under the Rule.

The Primary Purpose Test

One of the pivotal issues in this case is whether the primary purpose of the proposed project is the displacement of oil. The Staff took the position, in which they were joined by the Company, that if the gross fuel savings expected from the project outweighed all other gross savings, as they did in this case, that fact alone conclusively established oil displacement as the primary purpose of the project. On the other hand, Public Counsel and FIPUG took the position that rather than oil displacement, the primary purpose of this project was to meet increased load and improve system reliability.

Mr. Scalf testified on this issue on behalf of the Company. He stated that while portions of the project had been included in the Company's long range transmission expansion plan for reliability purposes, the decision to accelerate construction of the project and complete it by 1986 was made solely on the basis that completion of the project by that date was necessary to take full advantage of the coal by wire available for sale by Southern. Mr. Scalf emphasized that the gross fuel savings expected from the project are $4.3 billion in 1982 dollars while the capacity deferral benefits are $1.2 billion in 1982 dollars.

Mr. Dittmer testified in support of Public Counsel's position. He testified that four factors led him to conclude that the unit power purchases were made by FPL to facilitate load growth rather than to displace oil. First, Mr. Dittmer testified that FPL had planned to add four coal fired generating units between 1987 and 1992. These units were planned to facilitate load growth and since the coal by wire unit power purchases have deferred construction of the units, the purchased capacity must also be necessary for load growth. Second, FPL's projected reserve margin at the time of winter peak with and without the capacity purchases demonstrates that they are necessary to serve to meet expected load growth. On cross examination, Mr. Dittmer admitted that the Company sets its reserve margin based on LOLP studies, and the relevant comparison is the Company's reserve margin with and without the capacity purchases at the time of its summer peak. Third, a transmission line network of which the proposed project is a part has been planned for over a decade for reliability purposes. Fourth, the amount of oil projected to be consumed by FPL increases from 1982-1992 and therefore, no oil will actually be displaced, but rather load growth will exceed the growth in non-oil fired generation.

Viewing the evidence as a whole, we find the position of no party entirely persuasive. We reject the Staff's position of simply comparing gross savings as wholly determinative. Whether the primary purpose of the project is oil displacement requires a keener analysis. However, we also reject the contentions of Public Counsel. In our mind, the issue is best resolved by allocating the fuel costs of the project against the fuel savings and the capacity costs of the project against the capacity savings. We think it proper to allocate costs and benefits in this case because the Company could have purchased the coal by wire power on a non-firm basis, thereby avoiding the capacity costs due Southern but also foregoing the deferred capacity benefits. If the net fuel savings exceed the cost of the project, the Company has met its burden of proof on this issue and demonstrated that the primary purpose of the project is oil displacement. The Company has done this in Exhibit 18(j). Direct fuel savings from the project are $3,785,430,000 and the fuel savings attributable to reduced spinning reserve requirements are $169,684,000. From this is subtracted the foregone benefit of lower system fuel costs if the Martin Units had been built as originally planned of $2,138,125,000. Also subtracted are the Schedule E purchased power charges. Thus, the net fuel savings expected from the project are $1,396,455,000. This well exceeds the projected cost of the project of $850,584,000.

The Fuel Price Forecasts

Whether this project will ultimately prove to be cost effective to FPL's ratepayers depends on the price differential between oil that would have been burned by FPL to generate electricity and coal that will be burned by Southern to produce the power purchased by FPL. Mr. Michael Cook testified on behalf of FPL concerning the projected oil/coal price differential through 1992. Mr. Cook presented a banded oil price forecast. The high band forecast was published by the U.S. Department of Energy in February 1982. Mr. Cook testified that he through the DOE forecast was overly pessimistic and that he would not use it for planning purposes, but that it did portray the likely course of oil prices in the event of a sustained period of restricted oil supplies and continued growth in demand. The mid band forecast presented by Mr. Cook was the fuel price forecast prepared by the Florida Coordinating Group (FCG). This forecast was assembled by the FCG and is the consensus forecast of all of the Florida utilities. Mr. Cook stated that the FCG forecast was the most appropriate for use in this proceeding as he considered the results to be middle of the road estimates of the future oil prices of FPL and other Florida utilities. This forecast was made by taking the actual fuel prices paid by the utilities at the time the forecast was made and escalating them by the rates of escalation for oil forecasted by Data Resources Incorporated. The low band forecast was prepared by FPL and Mr. Cook characterized it as a conservative forecast. It assumes strong user conservation, no supply disruptions and a continued need for producing nations to maintain relatively high production levels.

The relevant coal price forecast was provided by Southern and is their estimate of the price of coal that will be burned in the units from which FPL will purchase power. Mr. Cook testified that this forecast begins with current contract coal prices and escalates them over the next five years on the basis of specific information developed by Southern and beyond that by DRI's coal escalators. To this is added a projected rail transportation rate.

Based on the evidence before us, we find that the fuel price forecasts are reasonable and are of sufficient reliability to warrant their use as the starting point for our determination that the project qualifies under the rule.

Calculation of the Fuel Savings

As required by the Rule, the Company calculated the fuel savings expected from the project using a production cost simulation model, commonly referred to as PROMOD. The PROMOD run indicated the amount of coal by wire that could be economically dispatched on FPL's system. The number of barrels of oil needed to produce an equivalent amount of power were then determined. The resultant difference between the cost of the barrels of oil and the cost of coal by wire is the expected amount of net fuel savings due to the project, which, along with other benefits of the project, can be compared to the cost of the project to determine if it is cost beneficial to the ratepayers.

Calculation of Deferred Capacity Benefits

Mr. Scalf testified that during 1979 and 1980, before the coal by wire purchases were consummated, Martin Units 3 and 4, 700 MW coal fired units, were scheduled for in service dates of 1987 and 1988 to maintain adequate reserve margins. Another 700 MW coal fired unit, referred to as Unsited Unit 1 was scheduled for completion in 1990 also to maintain adequate reserve margins. The Company's commitment to purchase 1,000 MW of coal by wire from Southern in February 1981, permitted FPL to defer the Martin Units to 1989 and 1990. The purchase of an additional 1,000 MW of firm power in February 1982 allowed further deferral of the Martin and Unsited Units to 1992, 1993 and 1994.

To determine the benefit, if any, flowing to the ratepayers from deferral of these units, the Company calculated the annual carrying charges for the units for the years in which they would have gone in service absent the coal by wire purchases. To this was added the O&M and fuel costs that would have been incurred had the units not been deferred. Subtracted from this total were the oil displacement benefits that would have been realized by the addition of the Martin and Unsited Units according to the original time table. The resulting net avoided cost, as shown in line (Z) of Document 3 of Exhibit 11, achieved in the years 1987 through 1992 totals $3,394,891.

Testimony was presented both on the method of calculating these benefits, as outlined above, and on the underlying assumptions concerning the cost of the avoided units. Based on the record before us, we conclude that the assumptions made by the Company and the method of calculating the benefits resulting from the deferral of the units is reasonable, and, as previously indicated, were properly included in the calculation of the total expected net savings of the project.

Reliability Benefits

Completion of the transmission line project will significantly improve FPL's system reliability, principally by preventing electrical separation from the Southern electrical system for single generation contingencies. Improvement in reliability allowed FPL to reduce its shaft spinning reserve requirement from approximately 320 MW to 120 MW, resulting in annual savings of $15,000,000 to $30,000,000 per year for FPL, as shown on line (F) of Document No. 3, Exhibit 11. These savings were properly included in the calculation of the total expected net savings of the project.

The Cumulative Present Value Test

Having calculated the expected savings, the Rule next requires a determination of the expected net savings from the project in the first ten years of commercial operations, that is, a netting of the costs of the project against the expected savings. The relevant period of examination in this case is 1982-1992; to qualify under the Rule, the project must show a cumulative present value of expected net savings within that time.

Document No. 3 of Exhibit 11, jointly sponsored by Mr. Howard and Mr. Scalf, shows that the project will produce net savings within the requested time period. In calculating the net savings shown on Document No. 3, Mr. Howard used the most probable case oil and coal price forecasts and assumed a weighted average incremental cost of capital of 13.00%, including a return on equity of 19%. He also included both net fuel savings and capacity deferral savings in his analysis. With these assumptions the project is expected to yield a cumulative present value of expected net savings of $851,194,000 through 1992.

We find that these exhibits demonstrate that there is a cumulative present value of expected net savings within the first ten years of commercial operation of the project. Two observations are in order concerning the qualification analysis shown in this exhibit. First, the fuel savings are conservative since they ignore the possibility of additional fuel savings that are likely to be achieved through the alternate and supplemental energy provision of FPL's contract with Southern. In a nutshell, the alternate energy provision entitles FPL to receive energy from less expensive coal units in the Southern system whenever it is available and more economical than the energy from the units specified in the contract. The supplemental energy provision entitles FPL to energy from other units to maintain FPL's capacity entitlements during periods when power from the units specified in the contract is unavailable. The savings from the alternate and supplemental savings would increase the cumulative present value of expected net savings from $851 million to $1.09 billion.

Second, we emphasize that while it is appropriate to assume incremental costs of capital, the issue of the appropriate cost of capital for the project is expressly reserved for decision at such time as the Company seeks actual recovery under the Rule. Nonetheless, since the effect of the Company's assumptions is to perhaps understate expected savings and perhaps overstate expected costs, the analysis, for qualification purposes, is valid, and we find that the Company has met its burden of proof on this issue.

The Most Economical Alternative Test

The next issue that must be considered is whether the proposed 500 KV line project is the most economical alternative available. Two distinct questions were raised concerning this point. The first is whether, looking beyond the 10 year horizon imposed by the Rule, deferral of the Martin and Onsited Units is cost beneficial to the ratepayers.

Mr. Scalf presented an analysis of the long term cost consequences of deferring the units in question. As shown in Exhibit 15, if the units are deferred until 1992 and beyond, the

breakeven point (the point at which cost increases due to deferral exceed cost savings from deferral) is reached in the year 2002. Mr. Scalf testified that he limited the analysis to the twenty year period, 1987-2007, because of the increasing uncertainties associated with forecasting much beyond 20 years. From this analysis, he concluded that deferral of the units was a prudent decision since ratepayers are expected to receive savings as a result of deferral for at least 15 years and advances in technology, or reductions in the cost or availability of capital may occur in intervening years which would push the breakeven point further toward the horizon.

We do not find Mr. Scalf's analysis persuasive because it does not cover the entire economic life of the plant. However, no witness disagreed with the truism that as long as the increased cost of construction does not exceed the increased cost of capital, deferral of the construction of a generation facility, until the capacity is needed, is a prudent economic decision, and in the best interest of the ratepayer.

The second question is whether it is more economical for FPL and their ratepayers, to purchase firm capacity from Southern or build new coal fired capacity itself. If FPL is paying Southern more than it would cost to build the Martin Units as originally planned and generate the electricity itself, the 500 KV line project might not be the most economical oil backout alternative available. However, Document 3 of Exhibit 11 shows that on a $ per KW basis, the capacity charges paid by FPL to Southern for coal by wire are less than the projected capacity carrying charges of the Martin and Onsited Units.

Finally, Mr. Scalf testified that there are no other oil backout projects that could be implemented within the next ten years that would produce the same level of savings to the ratepayers as the 500 KV line project, and that this project does not preclude other oil backout projects that prove technically and economically feasible. Public Counsel contended that FPL had not presented sufficient evidence as to other oil backout projects it may have considered in lieu of or in addition to the 500 KV line project. However, as stated by Mr. Scalf, the 500 KV line project was initiated to take advantage of what at this time appears to be a unique and short lived coal bubble and no other oil backout project during the same time period has surfaced which could be implemented during this time period and achieve an equivalent amount of savings. Therefore, we find the Company has shown by a preponderance of the evidence that the 500 KV line project is the most economical alternative available.

Waiver of Project Qualification Before Construction

Finally, to qualify the project under the Rule, the Commission must determine whether to waive the requirement that the Company obtain approval of cost recovery under the Rule before construction of the project begins. The evidence is clear that the Company made construction expenditure commitments and actually began construction well before the Rule was adopted. Both Public Counsel and FIPUG contended that since construction began before the Rule was adopted and since the Company has not absolutely conditioned continuation of the project on qualification for cost recovery under the Rule, there is no justification for waiving the requirement of prior approval.

Yet, we find persuasive justification for waiving this requirement of the Rule. Had the Company deferred construction of the lines until our Rule was adopted, it would not have possessed the ability to import coal by wire during the years it will be available for sale. Refusing to waive the prior approval requirement would amount to penalizing the Company for exercising diligence on behalf of its ratepayers, and this we decline to do. We find that waiver of the prior approval requirement, as permitted by subsection (3)(c) of the Rule is justified and the same is hereby granted.

Wholesale Rate Issues

Issues were raised at the prehearing conference as to whether FPL's wholesale customers will bear their proportionate share of the project's cost, how wheeling charges will be treated in cost recovery, and whether the cost of this project will be incorporated in FPL's wheeling rate. While Mr. Scalf testified on all three of these issues we find the record sufficient to support a finding only that FPL's wholesale customers will bear their proportionate share of the project's cost; we reserve decision on the latter issues.

Panel Size

This docket was originally assigned to a panel of five commissioners. Between the June and July hearings, the Chairman reassigned the case from five commissioners to two. Public Counsel questioned the legality of this. However, Section 350.01(5), Florida Statutes (1981), empowers the chairman to ". . . assign the various proceedings pending before the commission requiring hearings to two or more commissioners" in order to "distribute the workload and expedite the commission's calendar...." At the July hearing, the Chairman indicated that the case had been reassigned precisely to distribute the workload and to expedite the calendar, the other three commissioners not being available for the July hearing and all five not being available for several months. Therefore, we find the reduction of the size of the panel proper.

Conclusion

Having found that the primary purpose of the proposed 500 KV line project is the displacement of oil fired generation, that there is a cumulative present value of expected net savings within the first ten years of commercial operation of the project, and that the project is the most economical alternative available, we conclude, as a matter of law that the project qualifies for cost recovery under the provisions of the Oil Backout Cost Recovery Factor Rule, Rule 25-17.16, Fla. Admin. Code.

As previously noted, we reserve the issue of the appropriate cost of capital for the project to use in calculating the revenue requirements to be recovered through the Clause until such time as the Company seeks actual recovery through the Clause. And the issue of whether the Company should be authorized to commence cost recovery before the project is placed in commercial operation will be determined in the Company's pending rate case, Docket No. 820007-EU.

WHEREFORE, it is

ORDERED by the Florida Public Service Commission that the proposed 500 KV transmission line project qualifies for recovery under the provisions of the Oil Backout Cost Recovery Factor, Rule 25-17.16, Florida Administrative Code. It is further

ORDERED that Docket No. 820155-EU be and the same is hereby closed.

By Order of the Florida Public Service Commission, this 1st day of October 1982.

(S E A L)

Steve Tribble

STEVE TRIBBLE
COMMISSION CLERK

RED

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Power and Light Company for approval to recover the costs of its 500 kv transmission project through an oil backout recovery factor.	DOCKET NO. 820155-EU ORDER NO. 11537 ISSUED: 1-24-83

The following Commissioners participated in the disposition of this matter:

JOSEPH P. CRESSE
KATIE NICHOLS

ORDER DENYING PETITIONS FOR RECONSIDERATION

BY THE COMMISSION:

On October 15, 1982, Public Counsel and the Florida Industrial Power Users Group filed petitions for reconsideration of Order No. 11217, the final order issued in Docket No. 820155-EU. In that order, we found that Florida Power and Light Company's (FPL) 500 KV line project qualifies for cost recovery under the oil backout cost recovery rule. In its Petition for Reconsideration, Public Counsel urges us to reverse our decision for either of two reasons. First, Public Counsel asserts that the Commission's decision to waive the prior approval requirement is contradicted by the record, since the record shows that the oil backout rule played no part in FPL's decision to undertake the project. While Public Counsel's citation of the record is correct, it does not negate the reasons given in Order No. 11217 for granting the waiver. Those reasons are, one, had FPL deferred construction of the line until the oil backout rule was adopted, it would not have possessed the ability to import coal by wire during the years it will be available for sale; and two, refusing to waive the prior approval requirement would amount to penalizing FPL for exercising diligence on behalf of its ratepayers.

Second, Public Counsel questions whether the Commission overlooked Exhibit 14-B, which shows FPL's reserve margin at the time of summer peak without coal by wire and without Martin Units 3 and 4 to be unacceptably low. Public Counsel points out that this exhibit supports Mr. Dittmer's conclusion that the transmission line project is necessary to satisfy expected load growth, and, by implication, does not meet the primary purpose test. Given the correctness of Public Counsel's exhibit, it does not negate the conclusion reached by the Commission that the primary purpose of the project is oil displacement. Displacing oil and providing capacity to meet load growth are not mutually exclusive purposes. The oil backout rule merely requires a determination that the primary purpose of a project is oil displacement to qualify a project under it; the rule does not require a determination that a project will not also provide capacity to meet load growth. Therefore, a second review of all Mr. Dittmer's Exhibits, including Exhibit 14-B, does not alter our original conclusion that the primary purpose of this project is the economic displacement of oil.

FIPUG urges us to reconsider our decision on the ground that the Company did not properly quantify for inclusion in its analysis the savings associated with the deferral of generating units from 1987 to 1992. FIPUG believes that the Company failed to produce persuasive evidence that deferral of the Martin Units will result in savings beyond the ten-year analysis period required by the rule. However, FIPUG's petition does not dispute the Commission's finding that as long as the increased cost of construction does not exceed the increased cost of capital,

deferral of the construction of a generation facility, until the capacity is needed, is a prudent economic decision, and in the best interest of the ratepayer. Rather, FIPUG contends that the savings associated with deferral were not properly quantified. We continue to believe that for qualification purposes the capacity deferral savings were properly quantified. The Company used the proper measure of capacity deferral savings in the positive benefit within ten-year test, the avoided annual revenue requirements for the deferred units for the years 1987-1992. While, in Order No. 11217, we found comparison of two time differentiated streams of revenue requirements for the deferred units unpersuasive as evidence of whether the 500 KV project was the most economical alternative available, this does not mean that avoided revenue requirements for the ten-year analysis period required by the rule should not be included as savings in the positive benefit within ten-year test.

As we indicated in Order No. 11210, issued in the fuel adjustment docket (Docket No. 820001-EU), the proper measure of savings associated with deferred capacity, 2/3 of which may be recovered through an Oil Backout Cost Recovery Factor, and applied as accelerated depreciation to project costs, will be determined at such time as the deferred units would have come on line, absent the oil backout project, i.e., 1987. Therefore, the concern expressed by FIPUG in its petition for reconsideration that an improper amount of savings associated with capacity deferral will be collected through an Oil Backout Cost Recovery Factor is premature at best.

In addition to raising substantive matters in its Petition for Reconsideration, Public Counsel moved that FPL's Response to Public Counsel's Motion for Reconsideration be stricken on the ground that it was not timely filed. Public Counsel filed its Motion for Reconsideration on October 15, 1982. The certificate of service attached to Public Counsel's Motion indicates that it was hand delivered to FPL and to Staff, but that it was mailed to FIPUG. FPL's response to the motion was filed on Monday, October 25, 1982. Florida Administrative Code Rule 25-22.60, requires a response to a motion for reconsideration to be served within seven days of service of the motion for reconsideration. On this authority, Public Counsel seeks to strike FPL's response as untimely.

However, Florida Administrative Code Rule 25-22.28(5), provides that whenever a party is required to respond within so many days after service of a document and the document is served by mail, five days is added to the allowed time to respond. Since two of the parties were served by hand and one by mail, it is not clear whether the five day rule applies; if it does, FPL's response was timely filed. As Public Counsel has neither alleged nor shown any prejudice by the Monday morning as opposed to Friday afternoon filing, we will give FPL the benefit of the doubt on this occasion and allow its response to remain in the record. Therefore, Public Counsel's motion to strike is denied.

It is, therefore,

ORDERED by the Florida Public Service Commission that, for the reasons set forth above, the Petitions for Reconsideration filed in this docket, by Public Counsel and the Florida Industrial Power Users Group be and the same are hereby denied.

By Order of the Florida Public Service Commission, this 24th day of January, 1983.

(S E A L)

STEVE TRIBBLE
COMMISSION CLERK

BED

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation of fuel cost recovery clauses of electric utilities.	)	DOCKET NO. 820001-EU
	)	ORDER NO. 11210
	)	ISSUED: 9-29-82

The following Commissioners participated in the disposition of this matter:

GERALD L. GUNTER
SUSAN W. LEISNER
JOHN R. MARKS, III

Pursuant to notice, the Florida Public Service Commission held public hearings in the above docket in Tallahassee, Florida, on August 18-20, 1982.

APPEARANCES: Ansley Watson, Jr., Esquire, Macfarlane, Ferguson, Allison & Kelly, Post Office Box 2531, Tampa, Florida 33601, for Peoples Gas System, Inc.

Roger Vinson, Esquire, Beggs & Lane, Post Office Box 12950, Pensacola, Florida 32576, for Gulf Power Company.

James A. McGee, Esquire, and James P. Stanfield, Esquire, Post Office Box 14042, St. Petersburg, Florida 33733, for Florida Power Corporation.

Matthew M. Childs, Esquire, and John T. Butler, Esquire, 1400 Southeast First National Bank Building, 100 South Biscayne Boulevard, Miami, Florida 33131, for Florida Power and Light Company.

James D. Beasley, Esquire, Ausley, McMullen, McGehee, Carothers & Proctor, Post Office Box 391, Tallahassee, Florida 32301, for City Gas Company and Tampa Electric Company.

Robert S. Goldman, Esquire, Messer, Rhodes & Vicker, Post Office Box 1976, Tallahassee, Florida 32302, for Florida Public Utilities Company.

Stephen Fogel, Associate Public Counsel, Room 4, Holland Building, Tallahassee, Florida 32301, for Citizens of the State of Florida.

Joseph A. McGlothlin, Esquire, Lawson, McWhirter, & Grandoff, Post Office Box 3350, Tampa, Florida 33601, for Florida Industrial Power Users Group.

Paul Sexton, Esquire, Arthur R. Shell, Jr., Esquire, and Bonnie E. Davis, Esquire, 101 East Gaines Street, Tallahassee, Florida 32301, for the Florida Public Service Commission staff.

Prentice P. Pruitt, Esquire, 101 East Gaines Street, Tallahassee, Florida, for the Commissioners.

ORDER APPROVING FUEL ADJUSTMENT, GPIF AND OIL BACKOUT COST RECOVERY FACTORS

BY THE COMMISSION:

In accordance with the procedure established by earlier orders in this docket, a public hearing was held for the purpose of considering proposed charges for the projection period beginning October 1, 1982 and continuing through March 31, 1983. The following subjects were noticed for the hearing:

1. Determination of the projected fuel adjustment factors for all investor-owned electric utilities for the period October 1, 1982 through March 31, 1983.

2. Determination of the estimated fuel adjustment true-up factors for all investor-owned electric utilities for the period April 1, 1982 through September 30, 1982, which are to be based upon actual data for the period April 1, 1982 through June 30, 1982, and revised estimates for the period July 1, 1982 through September 30, 1982.

3. Determination of the Generating Performance Incentive Factor (GPIF) targets and ranges for the period October 1, 1982 through March 31, 1983, for all investor-owned electric utilities.

An amended notice was published on July 27, 1982 to provide further that a determination of any projected oil backout cost recovery factors for the period October 1, 1982 through March 31, 1983 of the cost of approved oil backout projects subject to recovery under the provisions of Rule 25-17.16, F.A.C., would also be considered, concurrently, with the fuel adjustment presentation.

PROJECTED FUEL ADJUSTMENT FACTORS

Estimated True-up

We have adopted the mechanism of estimating the true-up for a period during the projection hearing. This proposal involves a revision of the projected charges for the current period by taking into account the true-up that will be established in the May, 1982 hearing. By reviewing historic costs for the current period and revising the projection for the remainder of the period, an estimate of the true-up can be made and incorporated in the projected period, thereby minimizing fluctuations in the fuel adjustment charge.

Florida Power and Light Company

Mr. Homer P. Williams, Jr. testified concerning FPL's derivation and calculation of its proposed fuel adjustment estimated/actual true-up for the period April, 1982 through September, 1982 which will be applied to jurisdictional of sales for the period October, 1982 through March, 1983. He stated that the total estimated/actual true-up for the period April, 1982 through September, 1982 is an overrecovery of $53,530,835. This overrecovery includes $14,323,015 of true-up carried over from the period October, 1981 through March, 1982, and $39,207,820 of estimated true-up (with interest) for the current period April, 1982 through September, 1982. The true-up amount was calculated following the procedures established by this Commission in its earlier proceedings.

FPL's system average unit cost of nuclear generation will increase during this fuel adjustment period due to the Turkey Point Unit No. 4's shutdown for steam generator repairs. St. Lucie Unit No. 1 currently has a higher unit cost of generation than the Turkey Point Unit Nos. 3 and 4. Due to this shutdown, the St. Lucie Unit No. 1 generation will account for a larger portion of total nuclear generation, thus causing the average nuclear unit cost to increase.

Mr. Lloyd Williams testified concerning the development of the proposed levelized fuel adjustment factor of .270¢ per KWH for FPL's rate schedules, including the time-of-use rate schedules, and the projected purchases from small power producers and cogenerators.

FPL has entered into an agreement with the Florida Gas Transmission Company (FGT) to construct a 12-inch diameter lateral pipeline which will connect the Putnam Plant with FGT's main gas transmission line 19 miles northwest of the plant. The pipeline is scheduled for completion in September, 1982 and is estimated to cost FPL $7.0 million. The use of natural gas at Putnam will allow FPL to displace 0.7% sulfur oil at Putnam, the most expensive No. 6 fuel oil in its system.

FPL proposes that the Commission allow recovery of the cost of the FGT pipeline through amortization of the project over a sixty month period. Using this method, a total of $700,000 will be amortized during this fuel adjustment period. FPL chose to seek cost recovery through the fuel adjustment procedure, since the project was undertaken to reduce fuel costs. Alternatively, FPL requested recovery through base rates in its currently filed rate case in Docket No. 820097-EU.

The pipeline was not considered as an oil backout project because it does not materially reduce the quantity of oil burned. The pipeline places FPL in a position to substitute a cheaper grade of fuel (gas) which permits the Putnam plant to be dispatched higher in the dispatch order and run a greater number of hours, thus enabling another plant to be run on oil. We do not believe that the costs associated with the pipeline should be recovered through the fuel adjustment mechanism, but instead they should be considered in the Company's rate case. We have eliminated the $700,000 amortization of the Putnam Pipeline from the approved FPL fuel adjustment factors.

We have also removed from consideration in determining the Fuel Adjustment Factor, FPL's wheeling and capacity charges from Southern Company for unit power purchases. They will be considered in the Oil Backout Cost Recovery Factor, instead.

Florida Power Corporation

Mr. Henry I. Southwick, III, Manager of the Economic Research Department, described the calculation of FPC's levelized fuel adjustment factor for the October, 1982 through March, 1983 period, including the optional time-of-use fuel adjustment factors, and the factors by rate groupings. The Company's regular levelized factor was shown to be 0.870¢ per KWH. Mr. Southwick explained that FPC's projected total fuel and net power transactions of $299,473,000 and total system sales of 9,447,144,000 KWH result in a cost of 3.1700¢ per KWH sold or 0.6922¢ per KWH after adjustment for jurisdictional losses and base rate recovery. This cost was further adjusted to reflect a

GPIF penalty of $467,204; an estimated true-up underrecovery of $4,315,357; and, a transition adjustment recovery of $8,785,751.

FPC calculated that it would incur costs of $3,466,630 in disposing of spent nuclear fuel consumed during the October, 1982 through March, 1983 projection period. The total amount sought for recovery was $6,969,530 after disposal costs in the amount of $3,502,900 for nuclear fuel consumed from March, 1977 through March, 1982, subject to five-year amortization, were taken into account.

Tampa Electric Company

Mr. Roy Smith presented testimony in support of TECO's proposed fuel adjustment factor of .337¢ per KWH before application of the appropriate line loss factors. The factor was adjusted to take into account the previously approved GPIF amount of $136,190; a true-up amount of $20,681,000 overrecovery due to a lower KWH usage, mostly in the phosphate industrial sector; and the transition amount of $6,062,000.

TECO's proposed true-up factor of .337¢ per KWH is 0.544¢ lower than its currently approved 0.881¢ per KWH factor. The major cause of this decline rests upon the fact that coal generation was estimated at 75.7% for the April through September, 1982 period. However, the revised estimated figure is 82.9%, which resulted from the previously discussed reduction in KWH usage. The resulting overrecovery amounts to .390¢ per KWH in the October, 1982 through March, 1983 period.

Gulf Power Company

Mr. Jack Haskins presented the basis for Gulf's proposed levelized projected fuel factors of .351¢ per KWH for the period October, 1982 through March, 1983. The factor includes projected fuel and purchased power expenses for the period, as well as projected KWH sales. Gulf's levelized factor was based upon projected fuel and net interchange costs for the October, 1982 through March, 1983 period, an actual overrecovery for April through September, 1982, a revised estimated overrecovery for July through September, 1982, a GPIF penalty for October, 1981 through March, 1983, and a transition adjustment.

Reedy Creek Utilities Company

Mr. John Jahries, Financial Manager, testified that Reedy Creek's true-up for this period should be a credit of .025¢ per kilowatt hour, including a refund from Florida Power Corporation for the period October, 1981 through March, 1982 of $11,394, and the projected unrefunded portion of the transition adjustment for the period April through September, 1982 of $6,773.

Reedy Creek's proposed levelized projected fuel factor for the period October, 1982 through March, 1983 is 1.444¢ per KWH. The 1.444¢ factor represents an increase of .44¢ per KWH which resulted from a 9.2% increase in fuel costs due to cooler weather.

Florida Public Utilities Company

Mr. Edward T. Neun, Vice-President, described the basis for the computations in support of FPUC's October, 1982 through March, 1983 projected fuel cost recovery adjustments for its Marianna and Fernandina Beach Divisions. He also testified concerning the differences between the revenues collected under

the levelized fuel adjustment and the purchased power costs allowed in developing the adjustment for the April, 1982 through September, 1982 period and established the true-up amount to be collected or refunded during October, 1982 through March, 1983 period. He stated that FPUC had determined that at the end of September, 1982, based on three months actual and three months estimated, the Company had overrecovered $979 in purchased power costs in its Marianna Division. Based on its estimated jurisdiction of sales for the period October, 1982 through March, 1983, it will be necessary for the Company to refund .0012¢ per KWH in order to return this overrecovery. In Fernandina Beach, FPUC has overrecovered an estimated $23,956. This amount will be refunded at .0380¢ per KWH during the October, 1982 through March, 1983 period.

The Company also made a change in the transition adjustment being used to refund the over-collection of purchase power costs incurred in the initial transition period, which was applicable to its Marianna Division. During the April, 1982 through September, 1982 period, FPUC estimated that it will have refunded $14,524 of the total transition adjustment amount of $31,107 previously approved by the Commission. The balance of the transition adjustment, or $16,583, will be refunded during the October, 1982 through March, 1983 period at a rate of .0198¢ per KWH based on estimated sales for that period.

Mr. Neun testified that the total fuel adjustment factor, including true-up, transition adjustment (where applicable) and revenue tax (where applicable) for both the Marianna and Fernandina Beach Divisions for the period October, 1982 through March, 1983, would be 1.899¢ per KWH for Marianna and 5.501¢ per KWH in Fernandina Beach.

FUNDING OF SPENT NUCLEAR FUEL DISPOSAL COSTS RESERVE

FPC and FPL have not begun funding a reserve for spent nuclear fuel disposal costs because of uncertainty concerning whether or not they should use net or gross of tax methodology to fund the reserve account. The best procedure would be to have the original panel which addressed the funding issue clarify their decision as to whether it should be net or gross of tax. Because we believe that it is of the utmost importance that funding begin immediately, we have decided to impose the net of tax methodology on an interim basis. The prior panel will decide whether to retain the net of tax or utilize the gross of tax methodology, and whether to prospectively impose the methodology from the date of the panel's decision.

GENERATING PERFORMANCE INCENTIVE FACTOR

The Generating Performance Incentive Factor has been incorporated into the fuel cost recovery format as a means of providing an incentive to utilities to utilize their generating units more efficiently. Targets for heat rate and availability are set for selected units of the four large generating utilities, and the companies are awarded or penalized monetarily following the projection period, when their performance is compared to the prescribed parameters.

Florida Power and Light Company

Mr. R. L. Meador testified as to the development of FPL's proposed generating performance incentive factors for the period

October, 1982 through March, 1983. Mr. Meador described the development of the target unit average net operating heat rates and the target unit equivalent availabilities for the period. The improvement/degradation range for each performance indicator was also presented. FPL projected a weighted system equivalent availability of 83.5% and a weighted system average net operating heat rate of 10,327 BTU/KWH.

FPL used 19 of its generating units to develop its heat rate and availability targets. These units represent 85.98% of FPL forecast generation for the period. FPL proposed to exclude Turkey Point Unit No. 4 from the group because it will be shut down the entire period.

We find that all of FPL's proposed targets and ranges are reasonable, except the availability target and range for St. Lucie Unit No. 1. The unplanned outage factor proposed by FPL should be lowered in light of its recent performance and in light of its performance over the past three years. The equivalent availability target and the maximum and minimum range for the unit should be raised by one-half of one percent (.5%).

Gulf Power Company

Mr. Thomas F. Talty presented Gulf's proposed heat rate and availability targets for its proposed GPIF units. Gulf proposed inclusion of Crist Units 6 and 7, Smith Units 1 and 2 and Daniel Units 1 and 2 in the GPIF. Gulf proposed heat rate targets of 11,131 BTU/KWH for Crist 6; 10,638 BTU/KWH for Crist 7; 10,413 BTU/KWH for Smith 1; 10,480 BTU/KWH for Smith 2; 10,612 BTU/KWH for Daniel 1; and 10,609 BTU/KWH for Daniel 2. Proposed ranges were proposed as set forth on Schedule 2, Page 5, of Exhibit 11. Gulf proposed equivalent availability targets of 81.7% for Crist 6; 39.2% for Crist 7; 71.1% for Smith 1; 92.4% for Smith 2; 63.1% for Daniel 1; and 75.8% for Daniel 2. Ranges for availability were also proposed as set forth on Schedule 2, Page 5 of Exhibit 11.

The proposed target for Smith Unit 2 differs from historical data due to an adjustment made to reflect the intermittent operation of two feedwater heaters in the unit. Unavailability of these feedwater heaters caused a degradation of heat rate from that historically experienced for the unit. Gulf has taken the two feedwater heaters out of service to avoid damage to the turbine due to ruptured feedwater tubes and requested the adjustment to bring the targets in line with operations. We find the proposed adjustment to be reasonable. Gulf proposed to rely upon national average availability data to develop the availability target and range for Daniel Unit No. 2, due to a lack of historic data. Daniel Unit Nos. 1 and 2 are quite similar and we find it more reasonable to utilize the Daniel Unit 1 availability target and range for Unit No. 2. This establishes an availability target for Daniel Unit No. 2 at 76.4% and a range of 68.0% to 82.0%. We find that all other proposed heat rate and availability targets and ranges are reasonable.

Florida Power Corporation

Mr. Gary L. Petersen presented FPC's proposed heat rate and availability targets and ranges. FPC included its six largest generating units in its projections. These are: Anclote 1, Anclote 2, Bartow 3, Crystal River 2, and Crystal River 3. FPC projected equivalent availability targets of 74.23% for Anclote Unit No. 1, 92.03% for Anclote Unit No. 2, 88.19% for Bartow Unit

No. 3, 66.31% for Crystal River Unit No. 1, 64.69% for Crystal River Unit No. 2 and 74.29% for Crystal River No. 3. Projected target heat rates were 9; 610.3 BTU/KWH for Anclote Unit No. 1, 9,535.6 BTU/KWH for Anclote Unit No. 2, 9,861.7 BTU/KWH for Bartow Unit No. 3, 10,143 BTU/KWH for Crystal River Unit No. 1; 10,082.4 for Crystal River Unit No. 2; and 10,576.5 for Crystal River Unit No. 3.

Adjustments were made to the final heat rate equations for Anclote 1, Crystal River 2 and Crystal River 3 to reflect recent changes which result in a heat rate expectation different from historic information. Anclote 1 is expected to have a better thermal efficiency, as is Crystal River 2. Crystal River 3 is expected to have a degradation of heat rate due to tube leaks in two moisture separator-heater bundles, which will necessitate their removal from service. Cooling tower operations for the Anclote plant were not included in either the heat rate or availability calculations because of limited expected use during the projection period. We find that the proposed targets and ranges for availability and heat rate are reasonable.

Tampa Electric Company

Mr. Robert F. Tomczak presented TECO's proposed GPIF targets and ranges, and its proposed generating performance incentive factors. All of TECO's coal fired units were included. These are: Gannon Station Units 5 and 6, and Big Bend Station Units 1, 2 and 3. These units are projected to provide 81.48% of TECO's generation output for the period. TECO projected target equivalent availabilities of 80.0% for Gannon Unit No. 5, 80.0% for Gannon United No. 6, 80.0% for Big Bend Unit No. 1, 55.9% for Big Bend Unit No. 2, and 64.4% for Big Bend Unit No. 3. TECO projected target heat rates of 10,035 BTU/KWH for Gannon Station and 10,017 BTU/KWH for Big Bend Station.

TECO proposed an adjustment to the heat rate target for Gannon Station due to the failure of the first point feedwater heater on Unit No. 6. The failure has caused a one percent increase in heat rate. The heater failed in August, 1981 and investigation indicated that replacement was required. A replacement heater should be installed prior to the projection period. Since this change in operating conditions has caused a deviation from historic heat rate and is not expected to recur in the future, TECO proposed to adjust the heat rate for Gannon Station to reflect the operation of the replacement feedwater heater. We find that the proposed adjustments should be approved. We conclude that the availability and heat rate targets proposed by TECO are reasonable and should be approved.

OIL BACKOUT COST RECOVERY FACTOR

Rule 25-17.26, Florida Administrative Code, was adopted to allow the timely recovery of the cost of implementing supply-side conservation projects whose primary purpose is the economic displacement of oil. Once a project is qualified under the Rule, the utility may recover an appropriate revenue requirement for the project through an Oil Backout Cost Recovery Factor.

The Factor is to include the revenue requirements of the project that would normally be recovered through base rates, plus two-thirds of the net savings associated with the project. The two-thirds savings is applied to the project in the form of accelerated depreciation, thereby accelerating payment for the

project. One-third of the net savings is retained by the ratepayers, through operation of the fuel adjustment clause, thereby reducing the overall cost of electricity.

Florida Power and Light Company has recently obtained Commission approval of its 500 kv transmission line project under Rule 25-17.26. FPL has requested that it be allowed to recover, through an Oil Backout Cost Recovery Factor, the annual revenue requirement of the project, two-thirds of the net savings projected for the project, and the capacity and wheeling charges FPL will pay to Southern for the coal by wire. Testimony was presented by FPL in support of its request. In calculating the projected net savings associated with the project, FPL included both the fuel savings and savings due to the deferral of Martin Units 3 and 4 made possible by the project. Deferred capacity savings would only be realized in the period October, 1982 through March, 1983 if it is assumed that CWIP associated with those Martin Units was included in rate base. Absent inclusion of a return on CWIP, deferred capacity would have no effect on any current Oil Backout Cost Recovery Factor.

The Florida Industrial Power Users Group opposed approval of the Factor on the basis that the Commission inappropriately approved the project and that FPL had inappropriately calculated the net savings associated with the project. The Commission's decision on approval of the project does appear ambiguous and any decision made herein is subject to clarification and/or reconsideration by the Commission of its decision to approve the project. Therefore, we consider it appropriate to approve the Oil Backout Cost Recovery Factor with part of the revenues associated with it subject to refund, secured by a Corporate undertaking on the part of FPL. Specifically, the revenues attributable to the two-thirds net savings and the annual revenue requirements of the project are subject to refund. Should the Commission's decision to qualify the project for Oil Backout Cost Recovery Factor treatment be reversed, the two-thirds net savings revenues must be refunded and the issue of whether to include the normal revenue requirements of the project in base rates will be dealt with in the Company's pending rate case, Docket No. 820097-EU. The refund provision does not, however, extend to the capacity and wheeling charges approved for recovery through the clause, since those have been included in the Factor as a matter of convenience.

We do not agree with FIPUG that FPL's calculation of net benefits is improper. FPL's methodology and assumptions are reasonable, except for inclusion of benefits related to deferred capacity with 100% CWIP treatment (discussed later herein). With that exception, we approve FPL's calculation of the revenue requirements for the Factor.

We must deal with several issues that have been raised during this hearing in order to establish the appropriate Oil Backout Cost Recovery Factor for FPL.

FPL has requested that it be allowed to recover through the Oil Backout Cost Recovery Factor the capacity and wheeling charges paid to Southern Company for the purchase of coal by wire. We find that such recovery is appropriate.

The primary purpose of the 500 kv transmission project, as determined in the qualification hearings, is economic oil backout. Savings associated with the importation of coal by wire over the 500 kv transmission project could not be obtained

without paying capacity and wheeling charges to Southern Company. Hence, capacity and wheeling charges should be collected through either the Fuel Adjustment Factor or the Oil Backout Cost Recovery Factor. Regardless of whether capacity and wheeling charges are collected through the Fuel Adjustment Factor or the Oil Backout Cost Recovery Factor, total revenues collected by the Company will be the same. We find that the capacity and wheeling charges should be collected through the Oil Backout Cost Recovery Factor to reduce confusion and to facilitate the review of costs being recovered by the Company.

FPL proposed the inclusion of 100% of Construction Work In Progress (CWIP) associated with deferred capacity in the calculation of the net savings to be recovered through the clause. This is based on an assumption that had the deferred units been built on schedule, 100% of CWIP on the deferred units would have been allowed in rate base during a rate case. We find that inclusion of any CWIP related to deferred capacity is inappropriate. Whether there is a deferred capacity benefit properly included in the calculation of net savings will be determined in the year in which the deferred unit would have come on line absent completion of the 500 kv project.

Based on the above findings, as well as the testimony presented, we find that the revenue requirements associated with FPL's 500 kv transmission line project for the period October, 1982 through March, 1983 are $1,080,611, as shown on Exhibit 7(1).

FPL has requested that the assumptions associated with the calculation of deferred capacity benefits be fixed at this time. We do not agree with that proposal. None of the assumptions are such that we cannot fix them more accurately through retrospection than through projection. We do not consider it appropriate to lock ourselves into assumptions prior to the time we will be applying them.

The Oil Backout Cost Recovery Factor need not be shown as a separate line item on each customer's bill, but should be treated similarly to conservation cost recovery.

FPL has proposed that the Oil Backout Cost Recovery Factor be allocated among customer classes as a function of KWH sales. The Florida Industrial Power Users Group contends that the factor should be allocated on the basis of demand.

The purpose of the Oil Backout Cost Recovery Rule is to encourage implementation of supply-side oil conservation projects. We have determined that the primary purpose of the transmission project is the displacement of oil fired generation. We have previously determined that conservation measures benefit all customers, and therefore should be collected in like manner from all customers. We find, likewise, that the Oil Backout Cost Recovery revenue be allocated among the customer classes on the basis of KWH sales and should be collected on a ¢ per KWH basis.

We find the testimony of Mr. Pollock, who testified on behalf of FIPUG, unpersuasive. Mr. Pollock contended that Oil Backout Cost Recovery revenue responsibility should be allocated on the basis of demand because the primary purposes of the project are to fulfill a demand function and to improve reliability. Mr. Pollock's assertion that the project is primarily demand related directly conflicts with our findings. Additionally, implementation of Mr. Pollock's proposal would create a heavy

administrative burden as separate Oil Backout Cost Recovery Factors would have to be calculated and trued-up every six months for each rate schedule.

ADDITIONAL FINDINGS OF FACT

The projected fuel adjustment factors for the October 1, 1982 through March 31, 1983 period proposed by the affected utilities, except as hereinbefore noted, are based upon reasonable projections and adjustments.

The estimated fuel adjustment true-up factors for the April, 1982 through September, 1982 period, except as adjusted hereinbefore, are reasonable and properly computed.

We find that the levelized fuel adjustment factors shown on Sechedule A are based upon reasonable projections and assumptions. The levelized fuel adjustment factors shown on Schedule A are hereby authorized for the period October 1, 1982 through March 31, 1983.

Florida Power and Light, TECO, Gulf and FPC provided time of use rates based upon the proposed levelized fuel adjustment factors. When adjusted for the decisions made herein, the time of use rates are shown on Schedule A.

We find that the GPIF targets and ranges shown on Schedule B are reasonable and that they should be approved for the projected period.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the findings of fact recited herein are approved. It is further

ORDERED that the investor-owned electric utilities subject to our jurisdiction are hereby authorized to apply the fuel cost recovery charges set forth herein on Schedule A during the period October 1, 1982 through March 31, 1983, and until such charges are modified by subsequent Order. It is further

ORDERED that the estimated true-ups contained in the above fuel cost recovery charges are hereby authorized subject to final true-up, and further subject to analysis as to the reasonableness and prudency of such expenditures. It is further

ORDERED that the targets and ranges for the Generating Performance Incentive Factor set forth herein on Schedule B are hereby adopted for the period October 1, 1982 through March 31, 1983. It is further

ORDERED that Florida Power and Light Company and Florida Power Corporation begin funding nuclear fuel disposal costs, as previously required by the Commission, utilizing the net of tax approach on an interim basis until otherwise directed by the Commission. It is further

ORDERED that Florida Power and Light Company is authorized to apply an Oil Backout Cost Recovery Factor of .143¢ per KWH, pursuant to Rule 25-17.26, Florida Administrative Code. It is further

ORDERED that all revenues collected by Florida Power and Light Company through the Oil Backout Cost Recovery Factor,

except those related to wheeling and capacity charges, shall be collected subject to refund pursuant to a corporate undertaking pending disposition by the Commission of any reconsideration or clarification of the qualification of Florida Power and Light Company's 500 kv transmission line project.

By ORDER of the Florida Public Service Commission, this 29th day of September 1982.

Steve Tribble
COMMISSION CLERK

(S E A L)

ARS/PS

ORDER NO. 11210
DOCKET NO. 820001-
PAGE 12
SCHEDULE A

FUEL ADJUSTMENT ¢ PER KWH BASED ON LINE LOSSES BY RATE GROUP
FOR THE PERIOD APRIL-SEPTEMBER 1982

COMPANY	GROUP	RATE SCHEDULES	WITHOUT LINE LOSS MULTIPLIER LEVELIZED	ON/PEAK	OFF/PEAK	WITH LINE LOSS MULTIPLIER LINE LOSS MULTIPLIER	LEVELIZED	ON/PEAK	OFF/PEAK
FPL	A	RS,GS,SL-2,OS-1	.193	.327	.141	1.00173	.193	.328	.141
	A-1	SL,OL	.171	—	—	1.00173	.171	—	—
	B	GSD	.193	.327	.141	1.00153	.193	.328	.141
	C	GSLD-1,CS-1	.193	.327	.141	1.00005	.193	.327	.141
	D	GSLD-2,CS-2	.193	.327	.141	.99056	.191	.324	.140
	E	GSLD-3,CS-3	.193	.327	.141	.96071	.185	.314	.135
FPC	A	RS-1,RST-1,GS-1,GST-1,							
Cont.	A	MS-1,MST-1,TS-1,OL-1,SL-1	.870	1.113	.772	1.0093	.878	1.123	.779
	B	GSD-1,GSDT-1	.870	1.113	.772	1.0031	.873	1.102	.774
	C	GSLD-1,GSLDT-1	.870	1.113	.772	.9901	.861	1.102	.764
	D	IS-1,IST-1,IS-2,CS-1,							
Cont.	D	GSLD-2,GSLDT-2	.870	1.113	.772	.9628	.838	1.072	.743
TECO	A	RS,GS,GSD,SL-1,2,3							
Cont.	A	TS,OL-1,?	.337	1.051	.044	1.02150	.344	1.074	.045
	B	GSLD	.337	1.051	.044	.97720	.329	1.027	.043
	C	IS-1,IS-2	.337	1.051	.044	.96630	.326	1.016	.043
GULF	A	RS,GS,GSD,OSIII	.351	.482	.309	1.01429	.356	.489	.313
	B	LP	.351	.482	.309	.97945	.344	.472	.303
	C	PX	.351	.482	.309	.96528	.339	.465	.298
	D	OSI,OSII(1)	.345	—	—	1.01429	.350	—	—
FPUC									
FERNANDINA	A	RST,RS,OL	5.501	—	—	1.02210	5.623	—	—
	B	GS,GSD	5.501	—	—	1.01087	5.561	—	—
	C	GSLD	5.501	—	—	.96928	5.332	—	—
	D	SL,MS	5.501	—	—	1.01088	5.561	—	—
MARIANNA	A	RST,RS,OL	1.899	—	—	1.0153	1.928	—	—
	B	GS,GSD	1.899	—	—	1.0050	1.909	—	—
	C	GSLD	1.899	—	—	.9514	1.807	—	—
	D	SL	1.899	—	—	1.0684	2.029	—	—
REEDY CREEK		ALL SCHEDULES	1.444	—	—	—	—	—	—

GPIF TARGETS AND RANGES

FLORIDA POWER CORPORATION

	EAF Target (%)	EAF Range Max. (%)	EAF Range Min. (%)	ANOHR Target BTU/KWH	ANOHR Range Min. BTU/KWH	ANOHR Range Max. BTU/KWH
Anclote 1	74.23	75.65	72.06	9,610.3	9,483.0	9,737.6
Anclote 2	92.03	94.43	88.47	9,535.6	9,392.3	9,678.9
Bartow 3	88.19	93.61	84.80	9,861.7	9,681.5	10,041.9
Crystal River 1	66.31	69.31	62.41	10,143.4	9,942.2	10,344.6
Crystal River 2	64.69	69.05	60.50	10,082.4	9,850.3	10,314.5
Crystal River 3	74.29	78.58	70.13	10,576.5	10,456.6	10,696.4

FLORIDA POWER AND LIGHT COMPANY

Canaveral 1	91.0	93.0	88.0	9,685	9,545	9,825
Canaveral 2	65.1	68.1	62.1	9,605	9,485	9,725
Fort Myers 2	82.1	85.1	79.1	9,322	9,212	9,432
Manatee 1	52.0	56.0	48.0	9,937	9,827	10,047
Manatee 2	89.0	92.0	85.5	9,794	9,704	9,884
Martin 1	84.8	87.8	81.3	9,916	9,726	10,106
Martin 2	82.5	85.5	79.0	10,077	9,907	10,247
Port Everglades 1	92.0	94.5	89.0	9,706	9,146	10,266
Port Everglades 2	92.5	94.5	90.5	9,862	9,562	10,162
Port Everglades 3	88.0	90.0	85.5	9,616	9,486	9,746
Port Everglades 4	52.0	56.0	47.0	9,417	9,207	9,627
Riviera 3	68.4	71.4	64.9	10,174	9,874	10,474
Riviera 4	90.5	92.5	88.5	10,334	10,144	10,524
Sanford 4	61.2	64.2	58.2	9,827	9,677	9,977
Sanford 5	93.0	95.0	90.5	9,683	9,503	9,863
Turkey Point 1	77.1	80.1	73.6	9,678	9,518	9,838
Turkey Point 2	91.0	93.5	88.5	9,700	9,500	9,900
Turkey Point 3	92.0	94.0	90.0	11,223	11,023	11,423
St. Lucie 1	79.2	82.2	75.2	10,952	10,842	11,062

GULF POWER COMPANY

Crist 6	81.7	85.5	75.9	11,131	10,797	11,465
Crist 7	39.2	42.1	34.8	10,638	10,319	10,957
Smith 1	71.1	71.8	69.9	10,413	10,101	10,725
Smith 2	92.4	93.2	91.2	10,480	10,166	10,794
Daniel 1	63.1	67.8	56.2	10,612	10,294	10,930
Daniel 2	76.4	82.0	68.0	10,609	10,291	10,927

TAMPA ELECTRIC COMPANY

Gannon 5	80.0	84.0	72.0			
Gannon 6	80.0	84.0	72.0			
Big Bend 1	80.0	84.0	72.0			
Big Bend 2	55.9	59.5	48.7			
Big Bend 3	64.4	68.3	56.4			
Gannon Station				10,035	9,785	10,285
Big Bend Station				10,017	9,802	10,232

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of FLORIDA POWER AND LIGHT COMPANY for an increase in its rates and charges.	) DOCKET NO. 830465-EI) ORDER NO. 13537) ISSUED: 7-24-84

The following Commissioners participated in the disposition of this matter:

GERALD L. GUNTER, Chairman
JOSEPH P. CRESSE
JOHN R. MARKS, III
KATIE NICHOLS
SUSAN W. LEISNER

Pursuant to duly given Notice, the Florida Public Service Commission held public hearings in this docket on January 30, 1984, in Miami, Florida; February 3, 1984 in Fort Lauderdale, Florida; February 13, 1984, in Sarasota, Florida; February 16, 1984, in Daytona Beach, Florida; February 20, 1984, in Fort Myers, Florida; March 30, 1984, in Palm Beach Gardens, Florida, and in Tallahassee, Florida, on April 9-13, 16, and 18-20, 1984. Having considered the record herein, the Commission now enters its final order.

APPEARANCES: MATTHEW M. CHILDS, Esquire, JOHN T. BUTLER, Esquire, and CHARLES GUYTON, Esquire, Steel, Hector and Davis, Suite 320, Barnett Bank Building, 315 South Calhoun Street, Tallahassee, Florida 32301, and MORRIS SHELKOFSKY, Esquire, 9250 West Flagler Street, Miami, Florida 33152, for Florida Power and Light Company

JACK SHREVE, Esquire, Public Counsel, STEVE BURGESS, Esquire, CAROLYN OLIVE, Esquire, and STEPHEN FOGEL, Esquire, Office of Public Counsel, Room 4, Holland Building, Tallahassee, Florida 32301, for the Citizens of the State of Florida

THOMAS F. WOODS, Esquire, Woods & Carlson, 1030 East Lafayette Street, Suite 112, Tallahassee, Florida 32301, for Florida Hotel & Motel Association

GEORGE B. STALLINGS, JR., Esquire, P. O. Box 13, Ortega Station, 5411 Ortega Boulevard, Jacksonville, Florida 32210, for Florida Retail Federation

MILDRED E. V. PITTS, Esquire, Office of General Counsel - LR, Room 4002, 18th & F Streets, N.W., Washington, D.C. 20405, for General Services Administration

MARK H. RICHARD, Esquire, Law Offices of Neil Chonin, P.A., 304 Palermo Avenue, Coral Gables, Florida 33134, for Floridians United for Safe Energy, Inc.

IRA DANIEL TOKAYER, Esquire, 1626 Dade County Courthouse, 73 West Flagler Street, Miami, Florida 33130, for Metropolitan Dade County

JOHN W. MCWHIRTER, JR., Esquire, and JOSEPH A. MCGLOTHLIN, Esquire, Lawson, McWhirter, Grandoff & Reeves, 201 East Kennedy Boulevard, Suite 821, P. O. Box 3350, Tampa, Florida 33601, for Florida Industrial Power Users Group

recognize the inconsistency in failing to treat all of the Company's nuclear generating plants in the same fashion as St. Lucie 2. Additionally, we note that in the future we shall consider the relationship of off-peak to peak rates and shall attempt to treat the inconsistency between the 12 CP methods and peak/off peak allocation.

FIPUG proposed that fuel costs should be allocated among customer classes with all costs and that fuel revenues received through the fuel adjustment clause should be subtracted to determine the revenues to be received through base rates. Fuel costs and revenues were excluded from the cost of service studies by the Company. Staff agreed with the Company's treatment of these dollars. We find that fuel costs and revenues are properly handled in the fuel adjustment docket, which provides for a true-up every six months, and that they should continue to be excluded from base rates (with the exception of fuel in working capital). FIPUG's argument that it should receive lower than average fuel costs has already been partially considered by imputing different line losses by rate class and by making available rates with different energy charges for on-peak and off-peak use.

The question of the treatment of purchased power capacity costs was also raised by FIPUG. Specifically at issue is the treatment of FPL's capacity costs under its Unit Power Sales Agreement (UPS) with the Southern Company. FIPUG contends that purchased power costs should be allocated among customer classes with all other costs and that revenues received should be subtracted with fuel revenues to determine the revenues to be received through base rates. Where the price paid for purchased power includes a capacity charge and is higher than what it would cost the utility to generate the power, FIPUG argues that the costs should be allocated partially to demand. However, where purchased power costs are being rolled into base rates, FIPUG contends that any capacity charges should be allocated on the basis of demand. FIPUG did not present any evidence delineating the impact or amount of UPS costs that are capacity related. Our decision on this issue is based on Order No. 11217, holding that the primary purpose of the project was fuel savings and approving FPL's transmission line as an Oil-Backout Project pursuant to Rule 25-17.16, Florida Administrative Code. In that Order, we determined that all of the costs of the project are to be recovered in the Oil-Backout Clause. We find that these costs have not been included and should not be included in the cost of service study because they will be treated in the separate clause.

A separate issue raised in this case is whether the cost of the 500kv transmission line Oil-Backout project and the related capacity charges should be rolled into base rates for all customer classes. The Company proposed to include .302¢ per KWH in base rates. Public Counsel objected to this treatment. Staff recommended that the cost of the project, less related capacity charges, should be included in base rates. The Commission has removed from base rates items such as fuel and conservation. Rule 25-17.16(4)(d), Florida Administrative Code, provides for oil-backout project costs to be included in base rates at the Company's next rate case filing, but does not mandate such treatment in all cases. Consequently, we favor keeping base rates as "pure" as possible, within the constraints of the Commission's rules and decline to accept FPL's proposal to roll the oil-backout project costs into base rates at this time.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Power and Light Company to increase its rates and charges.	DOCKET NO. 820097-EU (CR) ORDER NO. 11437 ISSUED: 12-22-82

The following Commissioners participated in the disposition of this matter:

JOSEPH P. CRESSE, Chairman
JOHN R. MARKS, III
KATIE NICHOLS

Pursuant to duly given Notice, the Florida Public Service Commission held public hearings in Miami, Florida, on July 7, 1982; West Palm Beach, July 8, 1982; Ft. Lauderdale, Florida, July 9, 1982; Sarasota, Florida, July 15, 1982; Fort Myers, Florida, July 16, 1982; Daytona Beach, Florida, July 19, 1982, and in Tallahassee, Florida, on September 13-17 and 21-24, 1982. Having considered the record herein, the Commission now enters its final order.

APPEARANCES: Matthew M. Childs, Esq., and John T. Butler, Esq., Steel, Hector & Davis, 1400 SE First National Bank Bldg., Miami, Fla. 33131, and Curtis McIntyre, Esq., P. O. Box 529100, Miami, Fla. 33152, for Florida Power & Light Company.

Neil Chonin, Esq., and Mark Richard, Esq., 304 Palermo Avenue, Coral Gables, Fla. 33134, for Floridians United for Safe Energy.

Joseph A. McGlothlin, Esq., and John W. McWhirter, Jr., Esq., Lawson, McWhirter & Grandoff, P. O. Box 3350, Tampa, Fla. 33601, for Florida Industrial Power Users Group.

Jack Shreve, Esq., Kenneth Hoffman, Esq., Suzanne Brownless, Esq., Michael Wilson, Esq., and Steve Burgess, Esq., Office of Public Counsel, Rm. 4, Holland Bldg., Tallahassee, Fla. 32301, for the Citizens of the State of Florida.

George B. Stallings, Jr., Esq., P. O. Box 13, Ortega Station, Jacksonville, Fla. 32210, for Florida Retail Federation, Inc.

Rod Tennyson, 927 Belvedere Road, West Palm Beach, Fla. 33405, for Florida Consumer Federation, Inc.

Michael B. Twomey, Esq., Bonnie Davis, Esq., and Paul Sexton, Esq., 101 E. Gaines St., Tallahassee, Fla. 32301, for the Commission staff.

Prentice P. Pruitt, Esq., Bruce Renard, Esq., Charles Shelfer, Esq., and Greg Krasovsky, Esq., 101 E. Gaines St., Tallahassee, Fla. 32301, Counsel to the Commission.

ORDER AUTHORIZING CERTAIN INCREASES

BY THE COMMISSION:

I. SUMMARY OF DECISION

In this Order, we have determined that Florida Power and Light Company (FPL, the utility or the Company) should be

During special oral arguments on the litigation items, FPL's representative cautioned that the Commission's action in this case of not placing in rate base certain costs associated with pending litigation could send utility managements the wrong message. Specifically, the utility said that managements might be more cautious about suing vendors if they thought the Commission's response would be to exclude associated costs from rate base.

We reject this notion. We believe that our decisions in this case, and in the Company's previous rate case, have protected the ratepayers by not placing in rate base costs that have not been determined prudent, while, at the same time, protecting the Company and its stockholders by allowing the accrual of AFUDC on the excluded costs. We do not believe that our actions here will deter conscientious management from pursuing legitimate legal claims in the interest of its ratepayers and stockholders.

2. Excessive Buffer Zones

In reviewing the property surrounding each of FPL's generating plant sites, the Company agreed that a certain parcel of 3,070 acres adjacent to its Manatee plant site was no longer necessary for the operation of the plant. Accordingly, FPL suggested that the appropriate adjustment was to deduct from its plant in service account the $1,254,291 jurisdictional book cost of the land. We agree and reduce plant in service by $1,254,291 for the Manatee buffer zone.

Also during the course of this proceeding, we became aware that FPL was growing, for sale, citrus fruit on portions of its Manatee and Martin plant sites. FPL has lost money on its citrus operations since their inception in 1979 and has charged the losses and operating expenses to utility operations on the theory that the eventual profits from the operation would accrue to the benefit of the ratepayers. As explained in greater detail in the Net Operating Income (NOI) section of this order, FPL has agreed to treat all revenues and expenses associated with operating the groves on a below-the-line basis. Consistent with this adjustment, we have reduced plant in service by an additional $144,922; made a corresponding reduction to accumulated depreciation of $12,117; and reduced CWIP by $221,857. While the Manatee Groves which have now been removed from rate base are thus operated on non-utility property, the Martin groves are located on property still recognized as necessary buffer zones. If FPL rented this land to a grove operator, it would receive rents to offset some of the revenues necessary to support the investment. Based upon a calculation recognizing the value of the land concerned and FPL's requested overall rate of return, we shall impute rental income of $100,000 per year for these groves.

3. Unrecovered 500 KV Line Oil Backout Costs

In Order No. 11210, FPL was authorized to recover, through the oil backout clause, the costs associated with that portion of its 500 KV line project that is in commercial service. In this case, the Company proposes, pursuant to Florida Administrative Code Rule 25-17.16(4)(d), to include in its base rates the remaining unrecovered costs of the project. We believe the request is consistent with the rule and approve the inclusion in base rates of the remaining unrecovered costs of $706,000.

B. Accumulated Depreciation and Amortization

The amount of accumulated depreciation and amortization originally proposed by the Company is $1,332,851,000. The net

which the newly established rate of return is used to gauge whether any portion of the amount collected on an interim basis should be refunded. Applying the test to the interim award in this case, we find that the interim increase of $45,344,000 on an annual basis did not result in a return greater than that authorized here, and that, therefore, no refund of the amounts collected pursuant to the authority of Order No. 10931 is required.

XIII. RATE STRUCTURE AND RATE DESIGN

Having ascertained the Company's revenue requirement and the amount of revenue increase necessary, we now turn our attention to rate design. We must determine the rate of return currently earned by each rate class, the increase in revenue requirement allocated to each class, and how each class' revenue responsibility will be spread between the customer, energy and demand charges. In this rate proceeding, we have also reviewed the continued appropriateness of several aspects of the Company's present rate structure. We begin first with the cost of service studies presented in this case.

Cost of Service Methodology

In this rate case, three cost of service studies based on five different demand allocation methodologies were presented to us for consideration: the 12 coincident peak method (12 CP), the 12 coincident peak and one-thirteenth weighted average method (12 CP and Avg.), the summer/winter peak method, and a new method whereby the 12 CP and Avg. demand allocators were weighted to reflect the utilization of facilities by time period (WTCPAV). A fifth method, the 12 CP and average, weighting the average demand at 50%, was also presented. However, this method was not supported by anyone.

We continue to believe that the 12 CP and one-thirteenth weighted average method is the best demand allocation methodology to use in Florida. This is so because each monthly peak is important in FPL's system planning perspective when periods of peak demands and the necessary periods of planned outages are considered. Thus, the majority of production costs should be allocated on the basis of each class' contribution to all of the monthly peaks. Additionally, one-thirteenth of production costs should be allocated on the basis of each class' average demand so that each class will pay for some portion of the production plant it uses, even if the usage is not coincident with the system peak. This is consistent with our view that some of the production plant costs, such as coal handling equipment, while allocated on the basis of demand, vary more with the amount of KWH produced than with the demand placed on the system.

While the 12 CP and one-thirteenth weighted average cost study submitted by the Company at Staff's request conforms to the allocation policies we approved in TECO's recent rate case, Docket No. 820007-EU, some adjustments to the class rates of return are necessary. First, in removing fuel-related revenues from the base revenues of each class the effect of line losses and associated taxes was not considered. Second, $232,648 was inadvertently omitted from the calculation of the revenues at present rates of the OL-1 class. These two adjustments did not spark any controversy.

The third adjustment to class rates of return arose from the Company's treatment of the discount given to curtailable customers. In the cost of service study the cost of the discount was allocated entirely to the curtailable classes. However, the

curtailable customer class was allocated all other costs as though they were firm customers. Thus, the rates of return of the curtailable classes are understated, if, in fact there is a benefit in having curtailable load. Staff proposed an adjustment that has the effect of allocating the cost of the curtailment discount to all customer classes. The curtailment discounts should, as Staff proposed, be allocated on the basis of demand because the benefit derived by all customers from the presence of curtailable load is demand related.

FIPUG contended that the concept of the minimum distribution system should be recognized in a cost of service study. However, in recent rate cases we have not approved use of the minimum distribution system in classifying costs and no evidence was presented in this case to persuade us to depart from this policy.

FIPUG also contended that if the unrecovered investment in Plant in Service of the 500 KV line oil backout project is included in rate base, it should be allocated among the customer classes on the basis of demand. This investment was allocated partly on the basis of demand and partly on the basis of energy in the cost of service study used in this proceeding. We have included the unrecovered portion of the line investment in rate base but we reject FIPUG's proposed allocation method. Because the primary purpose of the project is the economic displacement of oil, its costs should have been allocated solely on the basis of energy, and the Company should make this correction in the cost of service study submitted in its next rate case.

Mr. Tammy, testifying for FPL, advocated use of the weighted 12 CP and Avg. cost study he developed. He testified that the WTCPAV method considers as a part of its demand allocation process the type of facility and how the facility is used to provide service to the customers. The result of incorporating this consideration into the cost of service study is that the costs related to supplying energy are allocated on the basis of average demand and the costs related to supplying peak loads are allocated on the basis of peak demand. Mr. Tammy argued that this allows a much more equitable sharing of costs among the rate classes. The Company's attempt to recognize differences in plant costs is a laudable goal. However, sufficient questions were raised concerning Mr. Tammy's cost of service study that further review is necessary before a cost of service study of this type can be used to design rates. The Company did not satisfactorily show why the allocation of fuel costs should not track the allocation of plant costs in this kind of study. Also, the Company failed to show why, if plant necessary to serve the continuous demand of a class is allocated on the basis of KWH consumption, plant necessary to service noncontinuous demand should not be allocated on the extent to which the coincident peak of a class exceeded its noncoincident peak, rather than the entire coincident peak of the class.

Allocation of the Revenue Increase

The results of the Staff Requested 12 CP and one-thirteenth weighted average demand cost of service study show the following rates of return, with the adjustments described above, earned by the various customer classes:

[T]he corruption of the system he originally swore to uphold and defend looms too large to allow him to remain on the rolls of a profession whose hallmark is supposed to be integrity. The stark truth is that even in the hearing before the referee, one brief step away from Supreme Court review, he lied in an attempt to save his license. . .

[T]he principles eloquently expressed in *Dodd v. The Florida Bar*, 118 So.2d 17 (Fla.1960), should and do have a timeless ring. That ringing can still be heard today through *The Florida Bar v. Agar*, 394 So.2d 405 (Fla.1980). It rings a clear message: "if you subvert the judicial system by intentionally tampering with the pursuit of truth, you will likely forfeit your license to practice law."

I would adopt the referee's recommendation that Lancaster be disbarred.

OVERTON, J., concurs.

EHRLICH, Judge, concurring in part and dissenting in part.

I am disturbed by the majority's inexplicable leniency toward one who has been found guilty of undermining the very foundation of our profession and of the system of the administration of justice.

Lancaster, an officer of the court, lied to a constitutional officer performing his legal duty to investigate criminal activity. Lancaster knowingly and willfully violated the oath he had taken before giving testimony to the state attorney; moreover, he violated the oath he took to become a member of The Florida Bar.

It is axiomatic that an applicant for admission to The Florida Bar who lies or omits the truth on the bar application is presumed unfit for admission to the legal profession in this state. *See, e.g.*, Fla.Sup. Ct.Bar Admiss.Rule, art. VII, § 2; Fla.Bar, Exam.Rule I, § 6, *Florida Board of Bar Examiners v. Lerner*, 250 So.2d 852 (Fla. 1971). This is justified because our profession can operate properly only if its individual members conform to the highest standard of integrity in all dealings within the legal system. How much more is this true of one already reaping the benefits of the profession, with firsthand knowledge of the inner workings of the system. An attorney who endeavors to secure the absence of a material witness from a criminal proceeding and who lies under oath to the state attorney during the course of an investigation of criminal activity, has made a mockery of all that The Florida Bar represents to both the public at large and to all of its members. He should no longer be a part of it.

I would disbar the respondent.

OVERTON, J., concurs.

CITIZENS OF the STATE of Florida, Appellants,

v.

PUBLIC SERVICE COMMISSION, et al., Appellees.

Nos. 63306, 63401.

Supreme Court of Florida.

April 12, 1984.

Electric company filed petition with Public Service Commission seeking qualification of transmission line project under oil-backout cost recovery factor rule. Following suspension of hearing, during which portion of rule dealing with calculation of amount of additional depreciation allowed utilities was amended, the Public Service Commission waived prior approval requirement and qualified electric company's project for recovery under initial rule. After project was completed, the Commission approved electric company's computation of its recovery factor under amended rule. On appeal, the Supreme Court, Overton, J., held that: (1) provision of oil-backout rule

which allows for approval of projects begun before the rule was adopted or before the Commission is able to act on petition for approval has adequate guidelines and standards to safeguard against arbitrary action by the Commission; (2) decision to waive prior approval requirement was supported by competent, substantial evidence; and (3) Commission's application of amended cost recovery factor rule was not retroactive ratemaking.

Affirmed.

1. Public Utilities ⇐194, 195

Standard of review as to decision by Public Service Commission is whether competent, substantial evidence supports a Commission order; orders of the Commission come before the Supreme Court clothed with the presumption of validity.

2. Public Utilities ⇐127

Section of oil-backout rule which allows for waiver of prior approval for certain projects if projects were begun before rule was adopted or before the Public Service Commission is able to act on petition for approval and if the utility must begin the project to obtain its full benefits, has adequate guidelines and standards to safeguard against arbitrary action by the Commission. West's F.S.A. §§ 366.82, 366.82(2).

3. Electricity ⇐11.3(3)

Public Service Commission's decision to waive prior approval requirement in approving project of electric company under the oil-backout cost recovery factor rule was supported by competent, substantial evidence, including evidence that it was necessary for company to begin its project prior to approval to take advantage of the availability of coal-fired electricity from another electric company. West's F.S.A. §§ 366.82, 366.82(2).

4. Electricity ⇐11.3(3)

Public Service Commission, which approved electric company's project under the oil-backout cost recovery factor rule when initial cost recovery factor was in effect, and then determined cost recovery under amended cost recovery factor rule, did not engage in "retroactive ratemaking," since retroactive ratemaking only occurs when new rates are applied to prior consumption. West's F.S.A. §§ 366.82, 366.82(2).

See publication Words and Phrases for other judicial constructions and definitions.

Jack Shreve, Public Counsel, and Stephen Fogel, Associate Public Counsel, Tallahassee, for appellants.

William S. Bilenky, Gen. Counsel, and Carrie J. Hightman, Associate Gen. Counsel, Tallahassee, for Fla. Public Service Com'n.

Matthew M. Childs of Steel, Hector & Davis, Tallahassee, for Fla. Power & Light Co.

OVERTON, Justice.

This is a direct appeal by the Citizens of the State of Florida (Citizens) from two orders of the Florida Public Service Commission. The first order approved a project of the Florida Power & Light Company (FPL) under the Commission's Oil-Backout Cost Recovery Factor Rule (Oil-Backout Rule). The second order approved FPL's initial oil-backout cost recovery factor pursuant to an amended version of the rule. We have jurisdiction, article V, section 3(b)(2), Florida Constitution, and we affirm the orders of the Public Service Commission.

This case involves the Commission's implementation of section 366.82, Florida Statutes (1981), which was enacted to reduce the dependency of Florida utilities on oil. Subsection (2) directs the Commission to "adopt appropriate goals for increasing the efficiency of energy consumption ... including goals designed to increase the conservation of expensive resources, such as petroleum fuels." To carry out this legislative mandate, the Commission adopted the Oil-Backout Rule, Florida Administrative Code Rule 25-17.16. The purpose of the rule, which became effective on

February 25, 1982, is to encourage utilities to undertake oil-backout projects. The Oil-Backout Rule encourages utilities to use fuels other than petroleum fuels by allowing utilities (1) recovery of the revenue requirements of the project through a cost recovery factor, and (2) accelerated depreciation in the amount of two-thirds of the net fuel savings associated with the project.

Under the rule as adopted, the Commission must first determine if a project qualifies for cost recovery. Although the rule requires a utility to obtain Commission approval before the construction of a proposed project, under section (3)(c) of Rule 25-17.16 the Commission may waive this prior-approval requirement. Once a project has been approved and it goes into operation, the utility may begin to recover its costs. Recovery is based on projected fuel adjustment charges for all investor-owned electric utilities on a six-month basis. Projected fuel adjustment charges are set at a hearing held two months prior to the six-month recovery period. After the six-month period, the actual costs are determined and any over-recovery is refunded to ratepayers with interest.

In 1981, before the effective date of the Oil-Backout Rule, FPL began an oil-backout project consisting of the construction of two transmission lines starting at the Florida-Georgia border and running down the east coast of Florida. The purpose of the project was to allow FPL to receive coal-fired power from the Southern Company. On March 30, 1982, FPL filed a petition with the Commission seeking qualification of this transmission line project under the Oil-Backout Rule. Both Citizens and the Florida Industrial Power Users Group (FIPUG) intervened. Hearings on the qualification of the project, which began on June 17, 1982, were suspended after two days pending the disposition of a rule-making hearing in which amendments to the Oil-Backout Rule were being considered. On August 3, 1982, the Commission completed the rule-making hearings and voted to amend that portion of the rule dealing with the calculation of the amount of additional depreciation allowed utilities. The qualification proceedings for FPL's project reconvened on July 30, 1982, and on August 3, 1982, the Commission voted to waive the prior-approval requirement and to qualify FPL's project for recovery under the initial Oil-Backout Rule. Citizens and FIPUG opposed this action, contending that the waiver of the prior-approval requirement was not supported by the evidence in the record. The order granting the waiver of the prior-approval requirement for FPL's project is the subject of the first issue on appeal.

The second issue on appeal concerns the computation of FPL's cost-recovery factor. After its project was qualified under the Oil-Backout Rule, FPL filed a petition for approval of its computation of its oil-backout factor. The Commission approved FPL's computation of its oil-backout cost recovery factor, finding that it was in accordance with the Oil-Backout Rule as amended on August 3, 1982. Citizens appealed the Commission's order on this issue, contending that it was error for the Commission to have used the amended version of the Oil-Backout Rule in calculating FPL's oil-backout cost recovery factor.

[1-3] With regard to the first issue, Citizens contend that Rule 25-17.16, and particularly section (3)(c) of the rule, is devoid of any guidelines and standards to direct the Commission's action and that the decision to waive the prior-approval requirement in this case was arbitrary and capricious because the Commission failed to develop guidelines and standards in the record. We disagree. As we have stated before, "[t]he standard on review is whether competent, substantial evidence supports a Commission order." *Citizens v. Public Service Commission*, 425 So.2d 534, 538 (Fla.1982) (citing *Citizens v. Hawkins*, 356 So.2d 254, 259 (Fla.1978); *De Groot v. Sheffield*, 95 So.2d 912 (Fla.1957)). Further, "[o]rders of the Commission come before this Court clothed with the presumption of validity." *Citizens*, 425 So.2d at 538 (citing *General Telephone Co. v. Carter*, 115 So.2d 554, 556-57 (Fla.1959)). We

find that the Oil-Backout Rule itself provides specific qualifications requirements pursuant to which the Commission determines whether a project qualifies under the rule. The waiver provision of section (3)(c) merely allows for the approval of projects under the rule where such projects were begun before the rule was adopted or before the Commission is able to act on a petition for approval, and the utility must begin the project to obtain its full benefits. Section (3)(c) has adequate guidelines and standards to safeguard against arbitrary action by the Commission. We also find that in this case the Commission's decision to waive the prior-approval requirement was supported by competent, substantial evidence. The Commission expressly found that it was necessary for FPL to begin its project prior to approval under the rule to take advantage of the availability of coal-fired electricity from the Southern Company.

[4] Citizens' second contention, that the Commission departed from the essential requirements of the law when it allegedly retroactively applied the amended version of Rule 25-17.16(4)(a) to calculate the costs to be recovered by FPL from its ratepayers, is also not supported by the record. FPL's project was qualified under the Oil-Backout Rule when the initial cost recovery formula set out in section (4)(a) of Rule 25-17-16 was in effect. Between the time that FPL's project was qualified and FPL's initial six-month cost recovery factor was determined, the Commission amended section (4)(a). Citizens contend that the Commission's use of amended section (4)(a) in determining FPL's cost recovery factor was, in effect, retroactive ratemaking. According to Citizens, the Oil-Backout Rule is self-contained and because the initial cost recovery factor was in effect at the time that FPL's project qualified under the rule it had to be applied in this case. The Commission rejected this interpretation of its rule. It determined that under the Oil-Backout Rule two distinct processes occur. First, a project qualifies under the rule and, second, the cost recovery factor is determined. Substantial time may elapse between these first and second steps, and the cost recovery factor is subject to change. The Commission also rejected Citizens' contention that its application of the rule in this case constituted retroactive ratemaking, concluding that retroactive ratemaking only occurs when new rates are applied to prior consumption. *See Gulf Power Co. v. Cresse*, 410 So.2d 492 (Fla. 1982). We agree with the Commission that its application of the cost recovery factor rule in this case was not retroactive ratemaking.

The Commission's construction and application of the Oil-Backout Rule in this case was reasonable and the Commission did not depart from the essential requirements of the law in its action. Accordingly, we affirm the orders of the Public Service Commission.

It is so ordered.

ALDERMAN, C.J., and ADKINS, BOYD, McDONALD, EHRLICH and SHAW, JJ., concur.

CHAPTER 25-14
LIMITATION ON RATES, CHARGES AND TARIFFS

25-14.001 In General. The Commission is responsible for the setting of reasonable rates and charges of numerous utility companies. In determining reasonable charges to be paid by the customers of these companies the Commission promulgates policy determinations affecting all the companies subject to its jurisdiction. This chapter has been established to identify policy determinations affecting the rates, charges and tariffs of all companies subject to our rate-setting jurisdiction. Except as provided in Part V, Chapter 25-24, Florida Administrative Code, the provisions of this Chapter shall not apply to Interexchange Companies or Pay Telephone Service Companies. *Specific Authority 350.127(2) Ved 05(1) Ved 121 FS. Law Implemented Ved 03 Ved 05 Ved 117 Ved 04 Ved 05 Ved 121 FS. History—New 7-25-73, Amended 9-11-74, Repealed 12-16-80, Formerly 25-14.01, Amended 2-23-87.*

ANNOTATIONS

Burden of proof

Requirement that utilities demonstrate reasonableness of their fuel costs was neither improper nor unusual, and Commission did not err in placing burden on nuclear power company to show that excess costs incurred were reasonable and were not fault of management, where data provided showed that company's fuel costs were significantly higher due to incident, responsibility for which was in dispute; simple production of cost records and documentation could not satisfy requirements imposed on utility in true-up proceeding. Florida Power Corporation v. Cresse, 413 So. 2d 1187 (1982).

Evidence

Where Public Service Commission had granted telephone company's requested rate increase on basis of "value of service" rather than "cost of service" principle supported by corporation which intervened in review proceeding, order which increase failed to meet burden of showing order was invalid, arbitrary or unsupported by evidence. Florida Retail Federation, Inc. v. Mayo, 331 So. 2d 308 (1976).

Fuel adjustment charges

Fuel adjustment charges of Florida Power Corporation and Gulf Power Company imposed pursuant to Dockets Nos. 6011-EU and 6014-EU should not have been allowed without public hearing procedures provided by statute. However such automatic fuel adjustment clauses, imposed for more than fourteen years without challenge, may only be rescinded by subsequent modification order promulgated after duly noticed public hearing. There is no statutory authority for prepromulgate refund of fuel adjustment charges imposed under such orders, nor is there any such authority for establishment by utilities of escrow fund for restitution of that portion of approved rate which may be allocated to automatic fuel adjustment clause. Proper procedure for Commission to follow in event that it determines that present fuel adjustment clauses give rise to excessive profits would be modification, after notice and hearing, of its earlier order establishing subject fuel adjustment clauses. Op. Atty. Gen., 074-288, September 1974.

Retroactive application

Commission's full consideration of retroactive application of new depreciation representation for telephone company did not constitute retroactive rate making, new depreciation allowance did have effect on prior Commission order, but this was factor that all parties knew or should have known would affect 1980 refund. Citizens of the State of Florida v. Florida Public Service Commission, 415 So. 2d 1268 (1982).

Telephone company's proposed depreciation representation was not precluded by prior stipulation whereby company was to refund to its customers specific amounts for year 1979 and whatever amount, if any, that intrastate earnings exceeded 9.02 percent on average net investment for year 1980. Id.

25-14.002 Florida Corporate Income Tax. *Specific Authority 323.07, 323.55, 330.48, 350.12, 364.20, 364.41, 366.05, 367.121 FS. Law Implemented 323.07, 323.55, 330.48, 350.12, 364.20, 364.41, 366.05, 367.121 FS. History—New 7-25-73, Amended 9-11-74, Repealed 12-16-80, Formerly 25-14.02.*

25-14.003 Corporate Income Tax Expense Adjustments.

(1) Definitions. For the purpose of this Rule, the following definitions shall apply:

(a) "Tax Savings." The difference between the tax expenses for a utility calculated under the previously effective corporate income tax rates and those calculated under newly effective, reduced corporate income tax rates.

(b) "Tax Deficiency." The difference between the tax expenses for a utility calculated under newly effective, higher corporate income tax rates and those calculated under the previously effective corporate income tax rates.

(c) "Associated Revenues." Those revenues resulting from the application of a utility's revenue expansion factor to a tax savings or tax deficiency.

(d) "Previously Effective." Refers to the corporate income tax rate used in a utility's last rate case or show cause proceeding, or used in the last tax expense adjustment by the Commission, whichever occurred most recently.

(e) "Tax Rate." The statutory tax rates, both federal and state, applicable to utility income, including any surcharges, minimum taxes, and other adjustments to the basic percentage tax rates.

(f) "Midpoint." The midpoint of the range of return approved by the Commission in the utility's last rate case, adjusted for the cost of any debt issued subsequent to that rate case and prior to the commencement of a tax savings refund or tax deficiency collection.

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Where Public Service Commission had granted telephone company's requested rate increase on basis of "value of service" rather than "cost of service" principle, nonprofit corporation which intervened in review proceedings to protest such increase failed to meet burden of showing order was invalid, arbitrary or unsupported by evidence. Florida Retail Federation, Inc. v. Mayo, 331 So. 2d 308 (1976).

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25-14.002 Florida Corporate Income Tax. *Specific Authority 323.07, 323.55, 330.48, 350.12, 364.20, 364.41, 366.05, 367.121 FS. Law Implemented 323.07, 323.55, 330.48, 350.12, 364.20, 364.41, 366.05, 367.121 FS. History—New 7-25-73, Amended 9-11-74, Repealed 12-16-80. Formerly 25-14.02.*

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(f) "Midpoint." The midpoint of the range of return approved by the Commission in the utility's last rate case, adjusted for the cost of any debt issued subsequent to that rate case and prior to the commencement of a tax savings refund or tax deficiency collection.

(2) Tax Savings Refunds. In accordance with subsection (5) of this rule and using a calendar year as the basis of the calculation:

(a) When, during the reporting period described in paragraph 5(a) below, a utility is earning a rate of return which is at or above the midpoint of its authorized range computed without consideration of a tax rate reduction, the utility shall refund all associated revenues as described in paragraph 5(c).

(b) When, during the reporting period described in paragraph 5(a) below, a utility is earning a rate of return which is below the midpoint of its authorized range computed without consideration of a tax rate reduction, the utility shall refund only those associated revenues which cause the utility to earn in excess of that midpoint, as described in paragraph 5(c).

(3) Tax Deficiency Collections. In accordance with subsection (5) of this rule and using a calendar year as the basis of the calculation:

(a) When, during the reporting period described in 5(a) below, a utility is earning a rate of return which is at or below the midpoint of its authorized range computed without consideration of a tax rate increase, the utility shall collect all associated revenues, as described in paragraph 5(c).

(b) When, during the reporting period described in 5(a) below, a utility is earning a rate of return which is above the midpoint of its authorized range computed without consideration of a tax rate increase, the utility shall collect only those revenues which cause the utility to earn below that midpoint, as described in paragraph 5(c).

(4) Reporting Requirements. On or before March 1st of every year following a tax rate change, each utility shall furnish a final report, in the form prescribed by the Commission. The report shall cover only the prior calendar year during which the tax rate change was effective.

(5) Procedure.

(a) Refunds or collections shall be calculated from the effective date of any tax rate change through the end of the calendar year. If the tax rate change is in effect for only part of a tax year, the refund or collection shall be calculated in accordance with the utility's customary accounting treatment as authorized by the federal or state taxing authority for tax rate changes which occur during a tax year.

(b) A further change in the tax rate shall end one period of compliance and initiate a new period but shall not affect any refund or collection already in progress pursuant to this rule.

(c) Together with the final report described in subsection (4) of this rule, each utility shall file a petition containing a calculation of and the method for refunding or collecting any tax savings or deficiency for the tax year of the report. The Commission will review the petition and either approve it, approve it with modifications, or deny it; an opportunity for a hearing on the Commission's decision will then be provided, if requested. Thereafter, the utility shall either make the refund to or collect the deficiency from its existing customers in accordance with paragraphs (e) and (f) of this subsection.

(d) Upon its own or other motion, the Commission may determine that a refund or collection for a particular year is impractical because its amount will not warrant the expense of making the refund or collecting the deficiency. In such an event, no refund or collection will be made for that year.

(e) The utility may make any refund or collection either as a lump sum payment or billing or in monthly installments not to exceed twelve (12) months. Such refunds or collections shall be made to or from current customers of the utility at the time that such refunds or collections are to be effected. In either event, the utility shall refund or collect the amount with interest accruing on any outstanding balance from the date of overcollection or underpayment. Interest shall be set by the Commission.

(f) An electric utility shall determine each customer's share of refund or collection on a kilowatt hour basis. A telephone company shall determine each customer's share of refund or collection based on existing general residence and business local rate relationships. Other utilities shall determine each customer's share of refund or collection based on consumption or any other reasonable basis specified in the utility's petition and approved by the Commission.

(6) Effect of Rate Case or Show Cause Proceeding. A tax savings refund or tax deficiency collection shall be consistent with this rule except that:

(a) The issue of a tax savings refund or tax deficiency collection shall be decided in the course of rate cases and show cause proceedings that are pending when a tax rate change becomes law, or that commence prior to the close of the tax year in which a tax rate change becomes effective.

(b) Nothing in this subsection shall be construed as limiting the operation of the tax expense adjustment process under this Rule either in completing a tax savings refund or tax deficiency collection for any tax years prior to the year in which a rate case or show cause proceeding is initiated. It shall also not prohibit a tax savings refund or tax deficiency collection for any tax year or portion thereof ending prior to the final order in a rate case or show cause proceeding.

Specific Authority 364.01, 366.05, 367.121 FS. Law Implemented 364.01, 366.05, 367.121 FS. History—New 6-22-82. Formerly 25-14.01.

25-14.004 Effect of Parent Debt on Federal Corporate Income Tax. In Commission proceedings to establish revenue requirements or address over-earnings, other than those entered into under Rule 25-14.003, F. A. C., the income tax expense of a regulated company shall be adjusted to reflect the income tax expense of the parent debt that may be invested in the equity of the subsidiary where a parent-subsidiary relationship exists and the parties to the relationship join in the filing of a consolidated income tax return.

State of Florida

TIMOTHY J. DEVLIN, Director
Auditing & Financial Analysis Division
(904) 488-8147

Public Service Commission

MEMORANDUM

JANUARY 27, 1988

TO : ALL UTILITIES UNDER THE JURISDICTION OF THE FLORIDA PUBLIC SERVICE COMMISSION AND SUBJECT TO THE PROVISIONS OF SECTION 25-14.003, FLORIDA ADMINISTRATIVE CODE

FROM: TIM DEVLIN, DIRECTOR OF AUDITING & FINANCIAL ANALYSIS TJD

RE : REPORT REQUIRED BY SECTION 25-14.003, F.A.C.

Enclosed are the forms to be used to report the effect of the changes in the federal income tax rates on your operations for 1987. They are to be completed and returned by March 1, 1988, to the:

Florida Public Service Commission
Auditing & Financial Analysis Division
c/o Ann Causseaux
101 E. Gaines Street
Tallahassee, Florida 32399-0865

If you receive a form and are not subject to section 25-14.003, F.A.C., for 1987 because of a stipulation or other action, please complete the forms and note on them why section 25-14.003 does not apply to you. These completed forms will be used as a check of the reasonableness of estimates for 1988 and years thereafter. Also, provide a statement from the appropriate company official that attests to the accuracy of the information contained in the forms.

If you have any questions, please call Jane Brand, Beth Salak, Ann Causseaux or Susan Howard at (904) 488-8147.

TJD/ss
cc: Cheryl Bulecza-Banks
Bill Lowe
Dale Mailhot
John Slemkewicz
Marshall Willis

(6571F/je)

RULE 25-14.003 CORPORATE INCOME
TAX EXPENSE ADJUSTMENTS
12 MONTHS ENDED DECEMBER 31, 19____

	(A) At Old Tax Rate(a)	(B) At New Tax Rate	(C) Saving or (Deficiency) (A) - (B)
I. TAX SAVING (DEFICIENCY)			
1. Taxable Income, Operations	$	$	
2. Tax Rate (Federal & State)	X	X	
3. Taxes Accrued	$	$	$
4. Book-Tax Timing Differences, Operations	$	$	
5. Tax Rate (Federal & State)	X	X	
6. Deferred Taxes, Operations, Net	$	$	$
7. Deferred & Current Tax Expense, Operations (I.3. ± I.6.)	$	$	$
8. Investment Tax Credits, Net of 46(f)(2) & 3% Amortization	$	$	$
9. Total Tax Expense, Operations (I.7. - I.8.)	$	$	$
10. Jurisdictional Tax Expense, Operations	$	$	$

	Total Company (A)	Total Florida Jurisdictional at Old Tax Rate(a) (B)	Total Florida Jurisdictional at New Tax Rate (C)
II. NET OPERATING INCOME			
Booked Operating Revenues			
1. Service Revenues	$	$	$
2. Other Revenues (specify)			
3. Total Operating Revenues	$	$	$
Operating Expenses			
4. Operations & Maintenance	$	$	$
5. Depreciation & Amortization			
6. Other (specify)			
Operating Taxes			
7. Federal Income Taxes	$	$	$
8. State Income Taxes			
9. Other Taxes			
10. ITC			
11. ITC Amortization (46(f)(2) & 3%)	( )	( )	( )
12. Total Operating Expense and Taxes	$	$	$
13. Net Operating Income (II 3 - II 12)	$	$	$

RULE 25-14.003 CORPORATE INCOME
TAX EXPENSE ADJUSTMENTS
12 MONTHS ENDED DECEMBER 31, 19____

	Total Company (A)	Total Florida Jurisdictional at Old Tax Rate (a) (B)	Total Florida Jurisdictional at New Tax Rate (C)
III. NOI ADJUSTMENTS (Note b)	$	$	$
Total of NOI Adjustments	$	$	$
IV. ADJUSTED NOI (II.13 - III.)	$	$	$
V. AVERAGE RATE BASE			
1. Plant in Service	$	$	$
2. Leased to Others/Other Inv.			
3. Held for Future Use			
4. CWIP			
5. Acquisition Adjustments			
6. Accumulated Depreciation			
7. Working Capital			
8. CIAC (Water and Sewer)			
9. Accumulated Amortization of CIAC (Water and Sewer)			
10. Other (specify)			
11. Total Rate Base	$	$	$
VI. RATE BASE ADJUSTMENTS (Note b)	$	$	$
Total of Rate Base Adjustments	$	$	$
VII. ADJUSTED RATE BASE (V.11. - VI.)	$	$	$
VIII. USED & USEFUL ADJUSTED RATE BASE (Water and Sewer)	$	$	$
IX. ADJUSTED RATE OF RETURN (IV / VIII for Water and Sewer or IV / VII for Others)		%	%

RULE 25-14.003 CORPORATE INCOME
TAX EXPENSE ADJUSTMENTS
12 MONTHS ENDED DECEMBER 31, 19____

	(A) Amount ($)	(B) Ratio (%)	(C) Cost Rate (%)	(D) Weighted Cost Rate (%)
X. COST OF CAPITAL (Note c)				
1. Long Term Debt				
2. Short Term Debt				
3. Cost Free Capital			0.00%	
4. Customer Deposits				
5. Unamortized ITC				
6. Preferred Stock				
7. Common Equity				
8. 3% ITC				
9. Other (specify)				
10. Total Capital		100.00		

XI. REVENUE REQUIREMENT EFFECT OF TAX SAVING (OR DEFICIENCY)

1. Change in NOI due to rate change (IV.(C) - IV.(B)) _____

2. Difference between NOI at New Tax Rate and NOI at the authorized or stipulated rate of return (IV.(C) - X.10.) _____

3. The lesser of XI.1. and XI.2. _____

4. Revenue Requirement of XI.3. (Note d) $_____

NOTES:

a The tax rate embedded in current tariffed rates.

b Include and describe adjustments necessary to reflect current Commission policy, excluding going-forward and annualized adjustments. Going-forward adjustments should be excluded because the purpose of this form is to display earnings for a specific past period unlike a rate case which looks to future earnings.

c Cost rates and capital structure should be the average for the period covered by this report and reflect current Commission policy. Provide detail of adjustments used to reconcile rate base to capital structure. For return on common equity use last authorized mid-point or stipulated rate per an agreement that addresses this rule.

d Provide detail of expansion factor using New Federal Income Tax rate.

5679F

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Power & Light Company for Approval of Tax Savings Refund for 1987.	) DOCKET NO. 880355-EI) ORDER NO. 20659) ISSUED: 1-25-89	

The following Commissioners participated in the disposition of this matter:

KATIE NICHOLS, Chairman
THOMAS M. BEARD
GERALD L. GUNTER
JOHN T. HERNDON
MICHAEL McK. WILSON

APPEARANCES:

MATTHEW CHILDS, Esquire, Steel, Hector & Davis, 310 W. College Avenue, Tallahassee, FL 32301-1406
On behalf of Florida Power & Light Company.

ROBERT MORROW, Esquire, Sutherland, Asbill & Brennan, 1275 Pennsylvania Avenue, N. W., Washington, D. C. 20004
On behalf of the Coalition of Local Governments.

JOSEPH McGLOTHLIN, Esquire, Lawson, McWhirter, Grandoff, & Reeves, 522 E. Park Avenue, Tallahassee, FL 32301
On behalf of the Florida Industrial Power Users' Group.

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On behalf of the Citizens of the State of Florida.

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ORDER ON 1987 TAX SAVINGS REFUND

BY THE COMMISSION:

The Federal Tax Reform Act of 1986 reduced the maximum federal corporate income tax rate from 46 to 34%, effective July 1, 1987, resulting in an effective federal income tax rate for 1987 of 39.95%. While we determined that we would utilize our existing rule, Rule 25-14.003, Florida Administrative Code,

FIPUG witness Lane Kollen testified that interest should be calculated beginning January 1, 1987, with the assumption that one-twelfth of the tax savings dollars were earned each month, and with interest earned at the utility's weighted cost of capital.

Public Counsel witness Hugh Larkin testified that the accrued refund should be included as a reduction to working capital for 1987, which would effectively provide the ratepayers with an interest rate equivalent to the utility's overall cost of capital.

We agree with Staff witness Ann Causseaux that interest should begin being accrued on January 1, 1987, assuming one-twelfth of the 1987 tax savings was earned each month and with interest paid at the 30-day commercial paper rate as provided by Rule 25-6.109(4)(a), Florida Administrative Code.

We find that interest should begin being accrued at January 1, 1987, because it is obvious that the tax savings of $53 million were not earned between December 31, 1987 and January 1, 1988, and that the time value of this amount of money is substantial. Absent evidence from the utility or another party that the tax savings was earned in specific months, we find that it is reasonable to assume that one-twelfth of the annual total tax savings were earned in each month of 1987. Lastly, we reaffirm our decision in Order No. 19185 that the 30-day commercial paper rate as required by Rule 25-6.109(4)(a), Florida Administrative Code, shall be used in calculating the interest owed. The 30-day commercial paper rate is commonly used to calculate interest in fuel cost recovery proceedings, refunds for interim rate awards and other proceedings. It provides for an indisputable rate upon which to peg interest and simplifies the tax savings refund process.

O&M Adjustments

The issue of the proper amount of operating and maintenance (O&M) expenses to be included in FPL's 1987 tax savings is primarily a function of whether any adjustment should be made for a so-called "O&M benchmark," which would effectively hold FPL's allowable O&M expenses to a growth rate approximating increases in customers and inflation.

Public Counsel, FIPUG and CLG take the position that the O&M benchmark calculation is, in effect, a cap or ceiling on FPL's O&M expenses. They state that an O&M benchmark adjustment was made in FPL's last rate case and, therefore, argue that a similar adjustment is appropriate here. The Intervenors note that in FPL's last rate case, the Commission disallowed some $82 million in O&M expenses for the 1984 test year by applying the O&M benchmark or approximately 64% of FPL's benchmark variance for that year. They say use of the benchmark was, thus, an essential part of FPL's last rate case. Intervenors submit that ignoring the benchmark and merely excluding O&M expenses "specifically identified" in FPL's last rate case results in the utility's taxable income and the associated tax savings resulting from the reduction in the federal income tax rate being substantially understated. Furthermore, they say such an approach effectively permits FPL to pass through cost increases

It should be noted, however, that our present refusal to apply the O&M benchmark in this docket does not leave the Intervenors, or any other substantially affected party, without a remedy with which to address their perceived grievances. If the Intervenors believe that a complete examination of FPL's revenues and expenses would disclose that its rates are "unjust, unreasonable, unjustly discriminatory, or in violation of law" they may request a public hearing for the purpose of determining just and reasonable rates.

Pension Expense

In FPL's most recent general rate case, we included for ratemaking purposes all of the utility's projected pension expenses to be funded. In 1987, in recognition of the fact that its employee pension fund was substantially overfunded, FPL did not make any contributions. FPL had, however, implemented the Financial Accounting Standards Board's (FASB) Statement of Financial Accounting Standards No. 87 (SFAS 87) Employer's Accounting for Pensions in 1986. This standard recognizes, among other things, that the economic cost of a pension plan may vary from the amount contributed to the pension trust fund for any given period. That is the case here where SFAS 87 yields a negative $22.5 million pension cost when no contributions were made to the fund. The result of utilizing this standard in 1987 without adjustment was a book pension cost of a negative $22.5 million, which would have increased FPL's "excess" tax savings and, hence, its customer refund. Reasoning from its experience in its own last rate case where its contributions and funded amounts were equal, FPL made a "regulatory" adjustment reversing its negative $22.5 million pension cost, so that its pension expense for ratemaking purposes was zero. FPL believes they made this adjustment pursuant to Section 210 of SFAS which recognizes pension cost differences "created by the actions of the regulator."

For the purposes of this case only, we will accept FPL's adjustment zeroing out its negative pension expense. With respect to on-going pension issues, we will address all such issues in Docket No. 881170, Review of Utility Pension Accounting to Determine the Need for Formal Commission Policy later in this year. Accordingly, we find that FPL's 1987 pension expenses should not be restated to reflect negative pension expense.

Accelerated Amortization of Unprotected Excess Deferred Taxes

FIPUG took the position that of the total amount of excess deferred taxes, some $96.3 million were "unprotected", meaning that we have the ability and the discretion to require that they be disposed of without violating federal tax policies and thus jeopardizing FPL's ability to utilize accelerated depreciation for tax purposes. FIPUG stated that, as a matter of policy, we should require FPL to return the unprotected excess deferred taxes to customers as expeditiously as practicable. Noting that a shorter period would be appropriate, FIPUG recommended that the unprotected excess deferred taxes be amortized over five years to comport with the Commission's prior rule relating to excess deferred taxes. FIPUG submitted that, taking into account the rate base effect of accelerated amortization,

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

P. **Transcript passages from prior Oil Backout proceedings reflecting the extent to which the parties and the Commission acknowledged the uncertainty in predicting oil prices.**

FPL QUALIFICATION PROCEEDING

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kind of lays it all out for us.

Now, why don't we take just a minute before we start the testimony and see if we can reach some agreement on just what schedules we ought to be looking at here. There are four or five estimates of fuel oil prices and none of which comes to me from a reliable source. We have been using Chase and DCF, all of those other folks, in our prior decisions. I haven't seen any of those in anybody's testimony and I want to inquire as to why. Whether or not we have any agreement on whose fuel oil forecast we ought to be using now, whether it ought to be different from the fuel forecasts that we have been using in the power plant siting approvals, and just kind of get that issue honed in on first before we start reviewing what everybody has filed.

Now, I consider that to be a critical issue as to which fuel oil forecast, or cost of coal, differential between coal and oil, we ought to be looking at. Florida Power and Light has got one here, and I didn't know that they had become expert in forecasting that. FCG has got one in here, and I didn't know that they had become expert in doing that, either. We have been looking at the national economists' forecasts to guide the Commission in their decision-making process. It seems to me what we are going to have to do, if we use the forecasts that

use. Our position is that because there is so much uncertainty in this forecast, as is conceded by FP&L's own witness, and because we believe that the assumptions underlying the company's most recent forecast, which is the most conservative, are reasonable for the purpose of qualifying the project in this case; that the 1982 FP&L forecast should be the one that is used to measure fuel savings.

CHAIRMAN CRESSE: All right. Then just for purposes of maybe being able to get on with it, Schedule 4, Page 4 of 9, is residual fuel oil price projections and that is the staff forecast, is that correct?

MS. DAVIS: That's correct.

CHAIRMAN CRESSE: And that is different than any of the forecasts submitted by Mr. Cook, is that correct?

MS. DAVIS: Yes, sir, and what the staff concluded was that the FCG forecast is the closest to and is somewhat lower than the staff forecast. Therefore, it is the most, or it is reasonable to use that as the most likely forecast in determining whether or not the project qualifies. That would be the mid-band. Then the FP&L 1982 forecast, which is the forecast for the least differential between coal and oil, should be the bottom band and the DOE national projection would be the high band.

oil will approach equivalence with the price of crude oil as its usefulness as a substitute for crude oil increases.

Crude oil price forecasts are based on possible outcomes of recent events in the world and the oil industry. The actions of non-OPEC producers, anticipated demand, the world economy, OPEC actions and interpretation by industry experts of recent events have been taken into consideration in our estimates of future crude oil prices.

Q How do you take into consideration the effect of inflation?

A Our forecasts are produced in both real and nominal terms, so that evaluations may be made on a constant dollar or dollar-of-the-year basis. The inflation rates which are applied to our forecasts are those which are predicted by our System Planning Department.

Q Which of these forecasts represents your most current thinking?

A Because there are so many factors which can affect the price of fuel oil, it is not reasonable to make a single guess as to what fuel oil prices are likely to be in the future. I have prepared my Document No. 6, which is a graph showing various

forecasts which we have been able to obtain. As you can see, there is a substantial range between the highest and the lowest of these forecasts.

Q **Why are you showing us all these forecasts?**

A These forecasts illustrate how the outcome of an evaluation of this Project depends on which forecast one uses. The price of oil at any future time is extremely uncertain. Any number of events could occur which could affect future oil prices, coal prices, and the economic results of any oil-backout project.

Q **What are some of these events?**

A The economic situation of the United States or the world could swing into or out of recession. This would affect any assumptions made with regard to demand levels. The rate of inflation could soar or fall, depending on economic situations. The prime source of crude supply, the Middle East, is extremely unstable politically. War, civil strife, or change in political persuasion or policy, of any magnitude, could reduce, or even cut off, petroleum supplies coming from this area.

Any of these events, individually or in combination, could significantly affect the economics of any project.

net savings to the customer in the first ten years of commercial operation of the Project. If the Commission believes that the fuel oil price forecasts which are shown above the break-even line are more reasonable, then it would presumably conclude, as we do, that this Project would benefit our customers by providing savings in excess of the Project costs. If, on the other hand, the Commission feels that the forecasts shown below the "break-even" line are more probable, then this Project would not qualify for cost recovery through the Factor.

Q Have you prepared a forecast of coal prices?

A Yes. It is shown in my Document 7.

Q Please describe this Document.

A Document 7 shows the Florida Electric Power Coordinating Group ("FCG") coal forecast used in this Project evaluation.

Q How was the FCG forecast developed?

A FCG's coal forecast represents the views of Florida's utilities. The forecasts of delivered coal prices to Florida's utilities were examined, and growth rates isolated. These growth rates

forecast for 1982 is below current price levels. Although we must confess that we cannot, with any degree of certainty, forecast fuel oil prices due to the myriad of political and economic events which could have an impact on petroleum product markets, we believe that this Project will result in a Cumulative Present Value of Expected Net Savings to customers in the first ten years of commercial operation. If you agree with us that future prices will most likely be above the "break-even" line shown on Document No. 6, then this Project should qualify for cost recovery through the Oil-Backout Cost Recovery Factor.

Q Does this conclude your testimony?

A Yes, it does.

(End of prefiled direct testimony.)

those shown in the various exhibits in the back. But for purposes of completeness and because of the great uncertainty in determining just what future oil prices are, we took a look at oil prices that had been considered by this Commission in other dockets. These are displayed in my Document No. 6 graphically. And then we selected as the high band forecast the Department of Energy forecast which we felt was the most pessimistic with respect to future oil prices.

We felt the most appropriate mid-band forecast was the one prepared by the FCG which is based on actual prices being paid by the utilities today as a starting point. When I say "today," at the time the forecast was prepared. And then picks up future escalations based on the consensus among the utilities but also ties very closely to the forecasts prepared by DRI, which was one of the national forecasting services.

The low band forecast was one we developed ourselves because we felt that the existing published forecasts, none of them were perhaps as conservative as the scenario we could envision ourselves, which is one of great stability in the Middle East, and economic need for the producing countries to produce and sell a lot of oil, significant reduction in consumption by users with the result that on a real price basis after taking out the effect of inflation, there could actually be periods of price decline. And that's the basis

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there for us to look at.

Q And the '82 forecast then is premised on the assumption that the current oil market situation, which you perceive as a glut, will continue?

A In effect, yes. And as a practical matter, the current price of oil that we are paying is a couple of dollars a barrel above the forecast that was developed in 1982. In other words, the glut has already eroded to a sufficient degree that prices have started to move up. In fact, they're slightly above the FCG forecast.

Q Well, you said a minute ago that you didn't think that your '82 forecast was necessarily the most likely thing that was going to happen; that it was, instead, an attempt to forecast the lowest differential between oil and coal, is that correct?

A That's correct. May we infer from the statement that FPL would not use this price forecast, the '82 forecast, for planning purposes?

A It's hard to say what we would use for planning purposes because we don't, in fact, we can't base our plans on any one forecast because the one thing we do know about the forecast is the future is going to be different than what we forecast. What we would, what I would recommend to our top management in making actual management decisions is that the earliest projects, the first few projects we do be based on

rely on any one forecast.

Q And this is one of them?

A That's correct.

Q And it would be your low band throughout this planning process?

A That's correct.

Q Have you had an opportunity to review the fuel forecasts prepared by the Public Service Commission staff?

A Briefly, yes.

Q Do you find it to be a reasonable forecast?

A The coal prices are slightly lower, as I recall, than the FCG forecast. The oil prices are slightly higher. But given our ability to forecast accurately, I would say that they're certainly essentially the same. They're close enough to not even worry about the difference.

Q Is it your position then that the Florida Coordinating Group forecast and the staff forecast are essentially the same?

A That's right.

MS. DAVIS: Thank you. We have no further questions.

CHAIRMAN CRESSE: Mr. McGlothlin?

BY MR. McGLOTHLIN:

Q Mr. Cook, of the several forecasts that you have described and used in your testimony, the DOE forecast is by

it doesn't make any difference.

I have no further questions of Mr. Cook.

COMMISSIONER MARKS: I have one, and I don't know if it has been asked or not, but it is more of a question in the nature of understanding, Mr. Cook, more than anything else.

I am not even so sure how just mechanically, the mechanics, or the determination of the fuel forecasts and how it is actually done. Does DRI do it a different way? I understand, I have got an understanding of how FCG did it. They just got a composite of information. Did you all do it a different way? Exactly what are the mechanics in determining or forecasting fuel oil prices up until 1992?

WITNESS COOK: I guess the best answer would be that it is highly subjective and it depends upon the forecaster as how he does it. Most forecasts that I am aware of are done on the basis of so-called real dollar terms. In other words, the forecaster will by varying mechanisms decide that if there were no inflation what the price of oil would be each year and that determination may be based on his analysis of supply and demand, assumptions as to what is going to happen in the refineries, what is going to happen in the producing companies, and so on. Then once that basic price forecast is developed,

and again each forecaster might use different factors in deciding what he thinks the future price will be in real terms, then an inflation rate is added to that and the inflation rate may be the same among several forecasts or it may be again different for each forecast depending upon who the forecaster is.

CHAIRMAN MARKS: Is any kind of sampling technique used, or anything of that nature, to ask folks what they think, or something?

WITNESS COOK: We do that. That is in effect what we have done, and that's why we have so many forecasts that we look at. We subscribe directly to a number of services and find out what other people are doing and saying and then try to go into the reasons behind that forecast and make our own value judgments as to how valid their reasons are. That is in fact something that we do and then our judgment that I have expressed today that the FCG forecast is a good forecast to use for this purpose is based on the fact that we have sampled all of these others and looked at the reasons and rationales. I feel that it is the most appropriate middle-of-the-road forecast to use as the best estimate.

COMMISSIONER MARKS: All right.

CHAIRMAN CRESSE: Commissioner?

COMMISSIONER NICHOLS: Could I get you to look at

very viable and legitimate assumption that should be incorporated in any projection used for the purpose of testing the qualifications of this project.

I think those lend support to our position that the conservative 1982 approach is the one to use.

COMMISSIONER MARKS: I take it, Mr. McGlothlin, you answered my question, that it is possible if you use some reasonable assumptions to come up with a forecast.

MR. McGLOTHLIN: I didn't say it was possible to do it with precision and ten years later find out that you hit it right on the nail, but I think it is possible to adopt an appropriate approach and frame your assumptions accordingly.

COMMISSIONER MARKS: Mr. Childs, I will give you an opportunity to respond to that, too, if you want to. I take it from what you have presented that you think it can be done to a certain extent.

MR. CHILDS: Well, I will ask the witness to go back on that point. I think this Commission certainly has familiarity with the forecasts that are made for much shorter periods of time on oil and the accuracy of those forecasts. Although the forecasts here, I started to say, are not only in dollars and cents per barrel, I believe our evidence shows, and the reason we presented four forecasts, is to show you the general

trend of what prices were going to be in the future. I don't think that the purpose of the forecast is to show you or to predict that in 1987 a barrel will cost you $45.22. So with the understanding that the precision that you are asking for is really related more to the trend than the reasonableness of the projection, that is the purpose of our use of more than one forecast.

WITNESS COOK: If I might summarize.

COMMISSIONER MARKS: Sure.

WITNESS COOK: The purpose of these forecasts, as I see them, is to determine if it is likely that the project will produce a net savings to the customers. Our view, as evidenced by all of the things that we have presented here, is that it is very likely that that will happen, extremely likely. As I understand the rule, it does provide that the actual costs in the future will determine the precise ratemaking treatment and so there is a self-correcting factor, as there is in the fuel adjustment, that compensates for the inaccuracies in the forecast. So it is from that standpoint a self-adjusting forecast and we just want to make sure that we are in the right ball park.

CHAIRMAN CRESSE: I think that latter statement Mr. Cook made is very important; that the fact is basically the forecasts that are used here are not

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Do you know whether it is possible to obtain certainty or an extremely high degree of precision in making oil price forecasts over the long term?

A I know it is impossible to obtain certainty or precision.

Q Should that then in your view, based upon your familiarity with the planning process, indicate to a utility that it should not make decisions or plan because it did not have that precision or certainty?

A Well, one must make decisions based on the best available information. What one then needs to do is make the decisions hopefully in such a way that one can over time accommodate changes in the facts as they arise irrespective of the future founding accuracy of prior predictions. This is the most difficult task of management, to do that.

MR. CHILDS: Mr. Chairman, that concludes my redirect of Mr. Cook. I would suggest that we will attempt to develop for you a comparable calculation of the coal prices used in developing the energy costs of the Southern purchases.

CHAIRMAN CRESSE: Thank you, sir. Mr. Cook is temporarily excused.

(Witness Cook temporarily excused.)

MR. CHILDS: And I would move into evidence Exhibit No. 1.

Q **What discount rate was used to calculate the Cumulative Present Value of the Expected Net Savings in each case?**

A As required by the Rule, the present value discount rate is based on the Company's projected incremental after-tax cost of capital for this Project. A detailed derivation of the discount rate used is provided in Document No. 6.

Q **What oil price forecasts did the Company use to perform its economic analysis of the 500 kV Transmission Project?**

A We have used each of the four oil price forecasts presented by Mr. Cook. The FPL 1981 oil price forecast was the "base" forecast originally used by FPL to evaluate the second block of Coal-By-Wire purchases. This forecast was presented by the Company in Docket No. 810346-EU regarding the Commission investigation into additional 500 kV interconnections with the Southern Companies. The other forecasts are the FCG oil price forecast (a mid-range forecast), the DOE oil price forecast (a high-range forecast), and the FPL 1982 oil price forecast (a low-range forecast).

As Mr. Cook explained in greater detail in his testimony, the future of oil prices is highly uncertain. As the results of our analyses will show, the economic benefits of the Transmission

Project will vary significantly under differing oil price scenarios; the greater the increase in oil prices, the greater the benefits of the Project. However, under all oil price scenarios which were analyzed, our customers were provided with a clear and substantial economic benefit.

Q What is the Cumulative Present Value of the Expected Net Savings under each of the four oil price forecasts considering total system savings?

A The Cumulative Present Value of the Expected Net Savings in the first ten years of commercial operation of the Project under each oil price forecast are as follows (in $ millions):

FCG Oil Price Forecast	DOE Oil Price Forecast	FPL 1982 Oil Price Forecast	FPL 1981 Oil Price Forecast
$1,201	$2,155	$ 842	$1,850

The calculations of savings assuming the FCG, DOE, 1982 FPL and 1981 FPL oil price forecasts are detailed in Document No. 7 on pages 1, 2, 3, and 4, respectively.

The table shows that the net savings are sensitive to oil price assumptions. The net savings difference between the high-range and low-range oil price scenarios is over $1.3 billion. That is almost three times greater than the total cost of the Project. In spite of the sensitivity of the savings to changes in oil prices, even when the low-range forecast is used there are savings for the system through 1992 of over $800 million due to construction of the Transmission Project.

Q What are the principal present value net savings components of the previous calculation?

A The two components are: 1) the differential in fuel cost between total system fuel cost in the Base Case and the Coal-By-Wire Case, and 2) the differential in capital carrying costs between the two Cases. These are detailed in Document No. 8 for each oil price forecast.

This Document shows that the major portion of the net savings is produced by the fuel savings which ranges from about $660 million under the low-range forecast to about $2.0 billion under the high-range forecast. The savings in capital carrying charges are, of course, unaffected by changes in oil prices; therefore, the present value of net savings in carrying charges is approximately $180 million for all fuel price forecasts.

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cost recovery. So I think underlying in this whole scenario is very strong incentive for off-balance sheet financing, creative means of reducing the cost to the consumer.

But the bottom line of all of this is just an incentive for the company to free up resources so that they can better provide service to the consumers at the lowest possible cost.

COMMISSIONER MARKS: Is it your understanding that there is a difference between this terminology, that is, the conservation of oil and the economic displacement of oil? Can you define me the difference in that terminology?

WITNESS TRAPP: Yes. I find a very distinct difference between that. Conservation of oil implies that it's done economically, but not necessarily so. Conservation for the purpose of conservation, in my opinion, from an engineering standpoint, does not make sense.

Conservation from an economic standpoint does make sense. And to the extent that all the definable costs and benefits show that it is economical to displace oil, then oil should be displaced.

I would also argue that any resource that is the cheapest resource should be used. If coal is more

expensive than oil, then we should have a coal-backout clause. But the realities of the situation are that that doesn't appear to be the case in this decade and probably a large part of the next decade unless we find a lot of dead dinosaurs somewhere. And the realities of today are that oil is what we need to back out.

COMMISSIONER MARKS: All right. With that in mind, what is the intent of this rule? Conservation or displacement?

WITNESS TRAPP: Economic displacement of higher cost resources.

COMMISSIONER MARKS: Okay. It's the economic displacement concept that --

WITNESS TRAPP: That's correct.

COMMISSIONER MARKS: -- we're dealing with here rather than the conservation of oil concept.

WITNESS TRAPP: Just conservation for conservation's sake, that's correct.

COMMISSIONER MARKS: I asked that question because in response to some other questions you tended to indicate that what we were concerned about here is the conservation of oil. But I think you probably clarified it with that statement.

WITNESS TRAPP: Yes, sir. We're concerned with economic conservation.

WITNESS TRAPP: I think so.

CHAIRMAN CRESSE: All right, sir. Now, do you view this oil-backout rule, which is the economic displacement of oil, any different than you do the conservation goals and programs? Should they be economically based? Has this Commission approved any conservation programs for the sake of conservation alone?

WITNESS TRAPP: Everything that a utility does and the Commission approves should be based on economics.

CHAIRMAN CRESSE: And has that been true as far as you knowledge of our conservation programs, that they have to be cost-effective?

WITNESS TRAPP: That's correct.

CHAIRMAN CRESSE: So, essentially, do you see any difference then between the economic displacement of oil through this rule as opposed to the conservation programs that we have approved? If it's not cost-effective, it wouldn't be approved; is that correct?

WITNESS TRAPP: That's correct.

CHAIRMAN CRESSE: All right, sir. Based upon your -- how long have you worked for the Public Service Commission?

WITNESS TRAPP: January 6, 1975.

CHAIRMAN CRESSE: 1975. Do you know of any ten-year period, or have you had an opportunity to review

any ten-year period of forecasts for the prices of coal or the prices of oil that those forecasts have ever come out to be reasonably accurate?

WITNESS TRAPP: Boy, that's a tough one. There have always been inaccuracies associated with fuel forecasts, to my knowledge.

CHAIRMAN CRESSE As a matter of fact, if we had been forecasting ten-year prices in 1982, and we had been doing that in 1970 or 1972, we would not have had any oil-fired plants built in the State of Florida, would we?

WITNESS TRAPP: Not in this decade of forecasting, no.

CHAIRMAN CRESSE: If we had just forecast what the price was going to be in 1982, we would have probably built coal, wouldn't we?

WITNESS TRAPP: Most likely.

CHAIRMAN CRESSE: Is there anything essentially wrong then with recovering an ecnomic displacement of oil project over its forecast useful life economically?

WITNESS TRAPP: Not in my opinion.

CHAIRMAN CRESSE: Do you think that anybody can reasonably forecast fuel prices for ten years or in excess of ten years?

WITNESS TRAPP: I think you can reasonably distinguish trends in fuel prices, but I don't think that

it's realistic to think that you can forecast exact fuel prices.

CHAIRMAN CRESSE: All right, sir. What do you think would have happened if in 1970 somebody had decided to import coal from Georgia and build a transmission line to do so? Do you think that would have been forecast to be economic?

WITNESS TRAPP: Probably not, under those circumstances, not --

CHAIRMAN CRESSE: Is there any reason then -- we've been talking about an incentive. Do you see any justification for recovering the costs of these type projects during a reasonable forecast period so that you don't burden future ratepayers with our poor estimates that we make in 1982?

WITNESS TRAPP: I believe that decisions based on forecasts are more accurately made when you're dealing with shorter term forecasts than longer term forecasts.

CHAIRMAN CRESSE: Am I correct in understanding that this rule provides that there has to be a net benefit forecast over a ten-year period, or else the project will not be approved?

WITNESS TRAPP: That's correct. And that ten-year period, by the way, is within our nominal planning horizon in the State. We currently do planning on a

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WITNESS HOWARD: No, sir, it would not, not based on the, what was called the FCG forecast that was used in the qualitifcation hearings.

COMMISSIONER GUNTER: Huh!

MR. McGLOTHLIN: You have anticipated the petition for reconsideration.

COMMISSIONER GUNTER: Now thickens the plot. I understand why the pudding was beginning to thicken. I didn't understand the heat was on the study.

WITNESS HOWARD: I would think we should point out it may, that was just on one forecast. Once it's qualified and you go to comparing actually, what actually happened as opposed to what is forecast to happen it very well may pay out in ten years. I think you can come up and envision a scenario, even if the deferred capacity benefits flowed through, as the rule says, you can come up with scenarios where it would not pay off in ten years.

The best belief is that it will.

COMMISSIONER GUNTER: All right. Go ahead, counselor.

MS. DAVIS: Commissioner Gunter, if I could just follow up on your comments.

As we understand the rule, the rule requires that for qualification purposes that within the first ten years of commercial operation, the project result in a net cumulative present value benefit to the customers,

Q. **Transcript passages reflecting the extent to which the parties and the Commissioners indicated that oil backout project qualification is based on uncertain fuel forecasts and, that forecasts should be conservative, but once it is determined that the primary purpose of a project is economic oil displacement and the project is qualified, project qualification is not to be revisited and recovery of the project through an Oil Backout Cost Recovery Factor is to continue even if projections prove to be incorrect.**

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are, many good reasons why the lines should be constructed but there is only one justification under the rule which will permit its qualification for the rapid recovery of capital costs through the oil backout recovery mechanisms.

In one sense one of our positions stems from the company, because it is in the testimony of Florida Power and Light Company that describes the vagaries and uncertainties associated with projecting oil costs. We believe that in an exceptional mechanism like this that it is only reasonable to require that the more conservative of those projections be used in determining the fuel savings associated with the project.

We have asked that the company be required to adhere to the very specific standards and criterion adopted by the Commission in the oil backout rule which would require, among other things, that it take into account all of the costs associated with securing coal by wire in its analysis of any net savings. We believe that when you take into account only those benefits which are permitted by the rule, and when you recognize all of the costs associated with it, that when you look at those numbers the project does not meet the test of the rule, which is positive present net value within ten years of construction.

is that I think we have four forecasts, is that right, Mr. Cook, that we have four forecasts that give different scenarios?

WITNESS COOK: Four that were quantatively analyzed and others which were shown to be within the range.

CHAIRMAN CRESSE: I am just trying to, if we could, and I don't know if it is possible, reach some agreement on what forecast ought to be used for this evaluation. Then the question comes up that since forecasts change from time to time, and it will be different next year than it is now, how that plays a role in this, or does it play a role?

For example, if we looked at the forecast for 1979 and 1980 when this project was started there would be a much wider disparity between the price of oil and the price of coal than is presently forecast. That seems to me to put a question that, all right, you go ahead and start something and then there are points in time when projects can be terminated, deviated or continued based upon the latest economic analysis. That doesn't make the first decision wrong or right because the prices have changed to be prudent when you started out.

MS. DAVIS: Mr. Chairman, I don't know if this completely addresses your concerns, but the staff took the position that the rule requires the analysis of

projections, but it seems to me that with all the data that we submit, and we have a tendency to overcomplicate these things. The point is that I am convinced, and maybe we could get a stipulation to this effect, that the economic benefits of this oil backout proposition is fairly dependent upon the differences between the price of coal and the price of oil, as forecast over the ten-year period. Is there any disagreement with that?

Mr. Cook, do you disagree with that?

WITNESS COOK: No, I don't disagree.

CHAIRMAN CRESSE: All right. So it seems to me then that one of the things you do is you start with the fuel prices, if you generate yourself, and fuel prices of which that replacement power will in fact cost. There has to be forecasts of those, in terms of dollars per ton, which is then converted, you know, to kilowatt hours and you can look at it in dollars per ton and then you could convert it to kilowatt hours.

Then you have got the other revenue requirements, which is over time as this plant is constructed, and you have already built some of it and some of it is all ready producing power and bringing about great savings. That is if I can believe what JEA is saying, and I believe what they are saying. They are already producing great savings and over time you are going to

than the FCG forecast, which does not show that kind of thing?

WITNESS COOK: Well, it is just reflective of an explicit scenario which may or may not happen. Certainly the circumstances that are taking place right now in the Middle East could cause a price run-up today or tomorrow. We have already seen a price run-up of about 5% in the last five weeks, which is not forecasted in our scenario. Right today the FCG forecast is more accurate than the FPL low band forecast and even the FCG forecast is a little low. So it is a forecast,which I don't think one should have very high reliance on any one forecast. Whereas the FCG is more representative of a trend line which over a period of time you would anticipate would average out.

COMMISSIONER NICHOLS: Thank you.

COMMISSIONER MARKS: Let me ask a question, and just a general question not necessarily of Mr. Cook but of counsel for FIPUG and Public Counsel.

I am looking at all of these scenarios and forecasts on prices of oil, and I asked Mr. Cook earlier how it was done and apparently there are various techniques on how to determine what oil is going to cost up into the future, such as sampling, and they may do a lot of things, as a matter of fact.

Now, is there any agreement to the extent that a reasonable forecast can be found as to the price of oil to the future; whether you believe what we have here is correct or incorrect? Do you believe that it can be done?

Anyone, either one, don't everybody rush to answer.

MR. FOGEL: My understanding is that it can't be done.

COMMISSIONER MARKS: That it what?

MR. FOGEL: That it can't be done.

COMMISSIONER MARKS: Can't be done?

MR. FOGEL: Correct, that you can go to ten different experts and you can get ten different projections because they use widely different assumptions. Basically, I would base my understanding on what I have read from Wall Street analysts and market analysts about the future of fuel prices.

MR. McGLOTHLIN: Mr. Marks, I would say this: Having in mind the uncertainties associated with the supply factors, and also the time frame that is involved in this kind of projection, ten years and more, of course it cannot be done with precision by anybody.

COMMISSIONER MARKS: I understand.

MR. McGLOTHLIN: I think what you have to do is

adopt an approach that is designed to be compatible with your purpose in the proceeding. Where the purpose of the proceeding is to determine whether the project qualifies for a novel and exceptional kind of rate treatment, and where you are confronted with the uncertainties associated with the projections, we take the position that your approach to ensure that it does qualify and that the ratepayers should be required to accept this diversion of fuel savings to recover capital costs, you should take the conservative approach.

When you take any approach you begin with some assumptions and we would like to point out that the 1982 Florida Power and Light forecast does more in the way of making assumptions about supply and demand arrangements than the others that have been presented in the case. One of the assumptions underlying the 1982 FP&L forecast is the assumption that there will be continued user conservation of oil products. We think that should be incorporated in any projection that is used for that purpose in this case.

Another assumption underlying the 1982 Florida Power and Light forecast is the assumption that producing nations in the Mid East will be motivated to maintain high production levels for the purpose of funding their own economic expansion needs. Again, that seems like a

very viable and legitimate assumption that should be incorporated in any projection used for the purpose of testing the qualifications of this project.

I think those lend support to our position that the conservative 1982 approach is the one to use.

COMMISSIONER MARKS: I take it, Mr. McGlothlin, you answered my question, that it is possible if you use some reasonable assumptions to come up with a forecast.

MR. McGLOTHLIN: I didn't say it was possible to do it with precision and ten years later find out that you hit it right on the nail, but I think it is possible to adopt an appropriate approach and frame your assumptions accordingly.

COMMISSIONER MARKS: Mr. Childs, I will give you an opportunity to respond to that, too, if you want to. I take it from what you have presented that you think it can be done to a certain extent.

MR. CHILDS: Well, I will ask the witness to go back on that point. I think this Commission certainly has familiarity with the forecasts that are made for much shorter periods of time on oil and the accuracy of those forecasts. Although the forecasts here, I started to say, are not only in dollars and cents per barrel, I believe our evidence shows, and the reason we presented four forecasts, is to show you the general

trend of what prices were going to be in the future. I don't think that the purpose of the forecast is to show you or to predict that in 1987 a barrel will cost you $45.22. So with the understanding that the precision that you are asking for is really related more to the trend than the reasonableness of the projection, that is the purpose of our use of more than one forecast.

WITNESS COOK: If I might summarize.

COMMISSIONER MARKS: Sure.

WITNESS COOK: The purpose of these forecasts, as I see them, is to determine if it is likely that the project will produce a net savings to the customers. Our view, as evidenced by all of the things that we have presented here, is that it is very likely that that will happen, extremely likely. As I understand the rule, it does provide that the actual costs in the future will determine the precise ratemaking treatment and so there is a self-correcting factor, as there is in the fuel adjustment, that compensates for the inaccuracies in the forecast. So it is from that standpoint a self-adjusting forecast and we just want to make sure that we are in the right ball park.

CHAIRMAN CRESSE: I think that latter statement Mr. Cook made is very important; that the fact is basically the forecasts that are used here are not

determinate of the repetity with which this project may be paid for because if in fact, as I understand the rule, that you would look at it and make the forecast and say yes, that qualifies. As the costs are incurred it is a question of how much would go into regular rates and how much would be accelerated back, that would be done a six months forecast basis in the true-up. So the real benefits would be determined on every six-month period, if it actually cost the ratepayers more or if it cost them less. The maximum amount it would cost, assuming that something happened next week and coal got higher than oil, would be then the regular treatment of those KV lines over their estimated useful life for purposes of strengthening the grid system and the network.

The ratepayers would still pay for it but there would be no accelerated pay for it, and I think that's one of the things that we tend to forget. My frustration is not with whether or not the project ought to go forward and how it ought to be treated, but just be able to get your hands on some information that is consistent from one page to the next.

We will make it, though. We have scheduled two days for this hearing, and we could probably get through in one if we hurry on. But, as I view it, if this project was approved, and let me just be sure that I

understand that correctly. If this project was approved and in fact there was no difference in the price of the contract and we are charging a cost that is as much as if they were generating it themselves, the added cost of the project would be incorporated into the base rates and then the question of whether it was prudent to have buil- it at all could become an issue in rate case. But if no savings are demonstrated on a six-month-by-six-month basis nothing would be passed through in the oil conservation backout, is that right?

MS. DAVIS: I think there are two questions. The second one is if every six months the fuel savings were less than the revenue requirements you would recovery only the revenue requirements through the clause. Now, if you had no clause then the revenue requirements of plant would either be dealt with in base rates through CWIP or AFUDC, but there is some difference. The clause would eliminate any regulatory lag, as far as the cost of the project was concerned.

Now, if your other question was assuming that you approved the use of the clause today and on a six-month basis it was demonstrated that no savings were realized and then whether you would later want to bring up in a rate case whether it was prudent for them to have entered into the project at all, I think the answer to

that is probably no. I think a finding today that the primary purpose of the project is to displace oil, that it will be cost effective to do so in ten years, and allowing the company to use the clause would preclude you from in a later rate case determining that in fact it was not prudent at all.

CHAIRMAN CRESSE: Well, I think it is prudent but my problem is that I don't know that that is an issue.

MS. DAVIS: I didn't think it was. As I understood the question --

CHAIRMAN CRESSE: But I don't think it would preclude anybody from bringing that up as an issue after-the-fact.

MS. DAVIS: Bringing what up as an issue?

CHAIRMAN CRESSE: Whether they should have built the line or not if coal suddenly gets twice the price of oil. As best I have been able to tell anybody can bring up an issue anytime they want to.

MS. DAVIS: Well, that would always be an issue but I think the staff would take the position, and hope that the Commission would, too, that you judge the prudency at the time that the decision to enter the project was made and at that time --

CHAIRMAN CRESSE: Don't misunderstand me. I think that once we have said that this would be incorporated

into the oil backout clause that's that decision, just like whenever we say you ought to build a plant, but if we say it should not be incorporated in the backout clause does not preclude somebody later on from raising it as an issue as to whether it was prudent to build it at all or not.

MS. DAVIS: That's true.

CHAIRMAN CRESSE: The only decision we are going to make today is whether to include it in the oil backout clause.

MS. DAVIS: And if you concluded that it should not be included in the oil backout clause I think it leaves the issue open as to whether or not it was prudent to have entered into the project at all.

CHAIRMAN CRESSE: Okay. Are there any further questions of Mr. Cook? Any redirect?

MR. CHILDS: Yes, sir.

REDIRECT EXAMINATION

BY MR. CHILDS:

Q Mr. Cook, you were asked a question about the 1981 forecast of Florida Power and Light Company and you said that arbitrary adders were used to develop that. Would you tell me what you meant by the term "arbitrary"?

A Maybe that was the wrong term. Judgmental and subjective, like any other forecasts the numbers were made up in somebody's head and applied. It was our judgment that that was the appropriate adder at the time to reflect the premium

if you got rid of the oil, fuel adjustment clause just as easy as adding another oil-backout project.

CHAIRMAN CRESSE: Is that your recommendation?

WITNESS DITTMER: No, sir.

CHAIRMAN CRESSE: But the math will work out that way, wouldn't it?

WITNESS DITTMER: The results would be --

BY MR. BUTLER:

Q Looking at Pages 7 and 8 of your testimony where you first discuss the primary purpose test, is it your position that the primary purpose of a project should be determined by looking at the utility's justification for the project at the time it determined to undertake the project, as opposed to at the present time?

A At the time they are actually making the decision to go forward. As things change, you know, whatever you're at at that point in time, you're going to look at it.

Q So, you want to look at it at both points in time? It would be your testimony that it has to be their primary purpose, both at the time they undertook it and then at the time that a qualification hearing would be held with respect to this?

A The company is always going to be evaluating the economics of a project. You see utilities across the nation enter into new generating units at one point in time and

say they were justified, and then later say they will defer them, and then sometimes start on them and cancel them. You are always going to be looking at it and trying to determine whether to go forward with it at that point in time.

You are saying at this point in time the project can't be justified. Looking at the economics of displacing oil, it has to be justified on displacing or deferring capacity.

Q Well, at the time that FP&L initially made its decision to undertake the project, are you aware that the oil price forecasts at the time indicated that the project would be justified solely on the basis of the oil displacement that it would generate?

A I heard that testimony, yes.

Q In your mind would that indicate that the primary purpose of the project at the time that FP&L was determining to undertake it was oil displacement?

A That's a judgment. You know, it's hard to go through and say what went through management's mind at that time. Certainly that would appear to make the project look more lucrative than say it does today. But, you know, they could have applied the probability analysis and said that even if the price of oil doesn't go up to this level, we are not going to miss on a net present value savings when we consider the capacity savings -- the capacity -- savings

from deferring capacity.

Q Well, do you have any knowledge that the decision was made on the basis of the time that the project was undertaken, the decision was made on the basis of deferring capacity rather than looking at the projected economics of oil displacement for the project?

A The only thing I've heard is the testimony that said the project was initially justified from an oil displacement standpoint. I don't know if that was the only thing that entered into their minds or not.

Q You have indicated that to really make this analysis would require looking into their minds or making a subjective analysis. Isn't that essentially the test that Public Counsel has proposed for the primary purpose analysis under this rule? That you look at the company's intent at the time it undertook the project?

A Would you repeat that. I'm not sure I understand that.

Q You are indicating that to determine whether FP&L actually intended to undertake its project for oil displacement or oil-backout would require looking at the company's subjective intent. I'm asking you, if that isn't in fact, the test for the primary purpose analysis?

A You said that. I don't know that I said that was necessarily the test.

Q I'm asking you whether that is the test, whether you understand the Office of Public Counsel to be taking that position in this proceeding as to the primary purpose test.

A I would say at this point the determination of whether to continue the project is going to be either based on the contract obligations or the total economic feasibility of continuing the project at this point in time.

Q Mr. Dittmer, are you familiar with Order No. 11035, the prehearing order for this proceeding?

A I have read it.

Q Would you turn to Page 2 of that order. Under Issue 1-A, is it correct that Public Counsel's position as stated here is that: "As to the issue of if the gross fuel savings are greater than other savings, does that establish conclusively that the primary purpose of the project is oil displacement? Public Counsel's position is no. The rule calls for a different approach. Whether the primary purpose of the project is oil displacement should be determined from a review of the reasons for undertaking the project."

Do you agree with that position?

A I would say I agree, but I would modify it to say undertaking and continuing with the project.

Q But that's not the position that Public Counsel

took at the time of the prehearing conference and reflected in this prehearing order; is it?

A No.

Q You have indicated that FPL probably considered, in addition to oil displacement, other benefits associated with the project at the time it made its decision to undertake it; is that correct?

A It very well may have, yes. I would say it should have.

Q Would you agree that when a utility analyzes a project, it would be imprudent if it did not look at all the potential benefits which it might be able to gain as a result of whatever project it was considering undertaking?

A It would certainly do a good job to look at all the costs and all the benefits.

Q Would you agree that the fact that studies might indicate that there were reliability benefits to a project or capacity deferral benefits to a project would not necessarily indicate that those other benefits were primary in the utility's mind, but instead simply indicated that they had covered all the bases?

A I would agree with that. Who knows what all the thoughts were at the time the decision was made.

Q Turning to Pages 10 and 11 of your testimony, I want to ask you specifically about your analysis of the

or of deferred capacity?

WITNESS DITTMER: The company isn't claiming any capacity savings in those years. They weren't planning any. I'm saying all those costs would be allocated to the oil savings.

CHAIRMAN CRESSE: Now, if you are going to allocate them all to the oil savings in those years, what would you do in the year that they start saving capacity? Where will you allocate them?

WITNESS DITTMER: Well, one methodology I've used in this 14-A was to look at how much of those coal-by-wire purchases were displacing oil and how much was being used in lieu of the 700 megawatts that was planned for 1987. And I just got a factor to allocate that. There may be other ways to do it. You might want to do it on demand. I haven't thought about it, but the numbers come out overwhelmingly showing that there is a loss from fuel oil displacement.

CHAIRMAN CRESSE: Well, let me ask you this. Do you think this project as proposed is a better deal for the ratepayers than going ahead and building those units? If you were faced with this alternative, which would you recommend that the company do?

WITNESS DITTMER: The numbers that I have seen so far -- looks like the best economic alternative is to

proceed with the project.

CHAIRMAN CRESSE: All right, sir.

WITNESS DITTMER: The one adjustment, as we just discussed, I don't think we got a real base case scenario versus the coal-by-wire case because we haven't done that display, displacing other oil savings.

CHAIRMAN CRESSE: Well, based on this, don't you think that it would be better for them to go ahead and enter into that contract with Georgia than to go ahead and start constructing those units?

WITNESS DITTMER: Everything that I have seen so far indicates that, yes.

CHAIRMAN CRESSE: Now, that being a prudent thing, shouldn't we then somehow assure that the capacity charges which they incur, which are beneficial to the ratepayers, actually will be reflected in the rates they are charging the customers?

WITNESS DITTMER: If we determined that the project is prudent, then I think they ought to collect their costs. The question today is just when.

CHAIRMAN CRESSE: All right. So, if we took the capacity thing and said yeah, this project will stand on its own bottom for capacity, obviously they save about 2 billion, 3 just for going the capacity route, don't they? Just by going to Georgia rather than building

the alternative that results in the least total cost of the two projects over the life of the --

CHAIRMAN CRESSE: You would latch on to it; wouldn't you?

WITNESS DITTMER: Yes.

CHAIRMAN CRESSE: As a matter of fact, if one looks at your 14-B, and said that their construction is based upon summer peak, and they need between 20 and 25%, they really don't need any capacity prior to 19 -- somewhere between '85 and '86?

WITNESS DITTMER: That's right.

CHAIRMAN CRESSE: You took 20 on the low end. But they actually are going to get some capacity prior to 1986 from the Southern Company as a result of the information on Document No. 1; is that correct?

WITNESS DITTMER: That's correct.

CHAIRMAN CRESSE: Now, do you think that's prudent for them to go ahead and do that?

WITNESS DITTMER: It appears the project is prudent to be entered into. It would appear that it would be prudent not to buy the capacity until 1986, if it could be purchased in that manner, because it's not --

CHAIRMAN CRESSE: Are you familiar with the terms and conditions of the arrangement that Florida Power

I would assume that you can't sell it but to one utility and meet the rules of the road of the utilities.

WITNESS DITTMER: No, my question is can they get it back at some point in time? In other words, can they refuse it in 1984 and then it back?

CHAIRMAN CRESSE: And say, "Well, I don't want it in '84; you can sell it for a year; but you're going to have to hold it for me in '85"? No, they can't do that.

Assume for a moment that you get the right of first refusal, on taking it, and once you exercise that right, that's it. That's usually what the right of first refusals are.

WITNESS DITTMER: Then you would have to look at the big picture again, the total economics of buying now, buying a little bit more than you need to enjoy some savings later on.

CHAIRMAN CRESSE: Have you seen the company's 12-A?

WITNESS DITTMER: I believe so. That's the one where --

CHAIRMAN CRESSE: Now, let's look at Line U on 12-A. Then look right below that to Line B, which is the one I wanted you to look at all the time, but I was on the wrong line.

The deferred capacity carrying charges are the

anticipated construction. Now regardless of whether they go to the ratepayers or they are capitalized, would you agree that those are real costs that are either capitalized or included in CWIP?

WITNESS DITTMER: They are costs that are going to be incurred by somebody somewhere along the line.

CHAIRMAN CRESSE: Under the normal accounting procedures of utilities, given the CWIP, the ratepayers would pay for them in '84 or whatever year is listed there. Or if it's capitalized, it then would only be recovered when the unit would come on line in 1987; is that correct?

WITNESS DITTMER: That's correct.

CHAIRMAN CRESSE: In an economic analysis on deferred capacity, would you agree that in 1984 the deferred capacity carrying charges exceed the capacity costs and the wheeling costs on the Southern contract?

WITNESS DITTMER: The deferred capacity charges would be -- looks like slightly less than the capacity of wheeling charges, assuming a hundred percent CWIP and rate base.

CHAIRMAN CRESSE: Well, now are we looking at 208,019? Is that the figure you have reference to?

WITNESS DITTMER: Yes.

CHAIRMAN CRESSE: In 1984, what is the amount they

would pay Georgia for the 650 megawatts that's coming down?

WITNESS DITTMER: To Georgia, it would be, I guess, 109,278,000 plus the 8,970,000.

CHAIRMAN CRESSE: So, we are looking at 117 cost to the ratepayers or 208 million cost; is that correct?

WITNESS DITTMER: I rounded it up to 217.

CHAIRMAN CRESSE: Yes. Would you say that that's the deal they ought to take? That's a pretty good figure for boarding capacity costs?

WITNESS DITTMER: Well, now we are getting into whether a hundred percent of CWIP should be --

CHAIRMAN CRESSE: No, sir, I'm not even into that issue because I think those costs are real, whether they are capitalized to the project or whether they are recovered currently. And I think you agree with that, don't you?

WITNESS DITTMER: Yes.

CHAIRMAN CRESSE: You don't have to get into the question of when you are going to recover those costs to recognize that the carrying costs on a construction project are real, and that the issue of CWIP is primarily when are those costs and who is going to pay those costs, when they are going to be recovered, and who is going to pay them.

hear their recommendation and then --

COMMISSIONER NICHOLS: You are the Chairman, you decide.

CHAIRMAN CRESSE: Whatever you all would like to do. If you want to digest, give us the written recommendations, that s fine. If you want to give it to us here, that is fine.

Any objection to them proceeding with oral recommendations at the present time? There's always the option. Okay. Go ahead.

MS. DAVIS: The staff recommends that you grant Florida Power and Light's petition because we feel that the preponderance of the evidence in the project has been shown to be qualified under the rule.

Turning first to the primary purpose test, we feel that by a preponderance of the evidence the company has shown the primary purpose of the project is oil displacement from both an examination of the historical reasons for entering into the project and on a current basis.

The staff relies on Exhibit 15-I and J, and on Mr. Scalf's Documents 1 and 2 as evidence of the fact that on a current basis the primary purpose of the project is displacement of oil.

As to the present net value of the expected savings

I think that the methodology the Commission has chosen assures that there will be no mistake made on expected useful economic lives because whether or not there are any benefits, unaccelerated depreciation taken on the project will, in fact, depend upon the results that are obtained, rather than forecasts.

And if there's one thing we have learned, it's that the -- if there's anybody that's ever testified before the Commission, that's making his living on forecasting fuel prices, they are in serious, serious trouble. As an expert, they would not be able to make much of a living anywhere except they are in the business of doing that. And their record is one of being wrong, and in some cases, horribly wrong. That may happen in the future.

The anticipated savings, which are calculated in this document, may not take place. Unfortunately, if they don't take place, this will be treated as an ordinary construction project with a life of 35 years.

Mr. McGlothlin addresses the question of how to recover it. And I believe that obviously it ought to be recovered on a cents per kilowatthour basis because the primary purpose is reduction in energy costs. And if you are going to start spending money to reduce energy costs, then you are going to take those dollars

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jeopardize the qualification of that project, that may ultimately reduce the customer's bills would be a serious error on the part of the Commission.

CHAIRMAN CRESSE: Well, let's not get too confused about what the primary purpose of this thing was all about and so forth. It seems to me that the primary purpose, as I recall when I suggested that we adopt this rule, was to provide an incentive to the electric power companies that we regulate to provide more economic electricity to their ratepayers than would business as usual provide their ratepayers.

And one outstanding way in which that can be done in the state of Florida is to provide mechanisms where within a reasonable projection of cost differential between oil and coal that we have a mechanism whereby we could replace some of our present oil-fired electricity with coal-fired electricity.

Now, that was the broad objective that I think everybody was talking about, at least I was talking about when I proposed the rule.

We said, I think, first, that we want to provide that incentive for the utilities to get involved in it with today's type of financial difficulties and problems. And second, since we're not very good at projecting what the prices are of these differentials--

because, you know, less than fifteen years ago if you had projected what would be the cheapest today, everybody would have come down on the side of oil.

We want a reasonable time frame whenever these projects will pay out, very simply pay out. And in the event we are wrong, we won't be placing the burden on the ratepayers in the future. And we chose ten years. Why ten? Ten is better than 12? We have a ten-year forecast. Twelve might not be a bad idea; eight might not be a bad idea; but we chose ten, and that was somewhat arbitrarily chosen to show that the project would be cost beneficial to the ratepayers over a ten-year period. Am I right?

MR. TRAPP: Yes.

CHAIRMAN CRESSE: Now, we said, so that we won't be adding that burden to the -- if it will be cost beneficial, and you can pay for that project in ten years, what we do is split the savings, pay for the project, use the decelerated depreciation, get it off the books. Then if your forecast is wrong on prices, and ten years from now it turns out to be a bad deal, we will at least in the next four or five years have recovered some of the costs of that investment, and not be burdened on future ratepayers.

That was the concept. It was very simple. It's

accelerated depreciation. I don't think that's a good amendment.

COMMISSIONER LEISNER: No. What we are saying is you could always recover you costs. And then the idea of this rule was you recover your costs always, then if there is a fuel differential that benefits the ratepayers, benefits everybody, you split the savings.

CHAIRMAN CRESSE: I understand that. Commissioners, I think there -- don't have any misunderstanding. If we approve one of these projects, the utility will recover the costs anyway, prudently incurred.

COMMISSIONER LEISNER: Yes. That's always been.

CHAIRMAN CRESSE: Now, if those costs equal 75 proposed amendments, and the fuel savings is 100, then what is the impact? How is that $25 split under the proposed amendment?

COMMISSIONER LEISNER: Two-thirds to the utility, one-third to the ratepayer.

CHAIRMAN CRESSE: Two-thirds of what?

COMMISSIONER LEISNER: $25.

MS. DAVIS: I think the problem would arise in how you arrived at the $25. For example, in the FP&L case, if you limited it to net fuel savings, then you would have to decide whether or not you were going to help capacity charges against net fuel savings; whether

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MR. McGEE: I plan to avoid much controversy on that by passing on cross examination.

CHAIRMAN CRESSE: Don't worry about that.

Mr. Butler?

CROSS EXAMINATION

BY MR. BUTLER:

Q Mr. Trapp, just for clarification, you were talking about your understanding of how the calculation of recovery under the factor would work and whether customers would receive any fuel benefits associated with it.

Is it your understanding that when the recovery mechanism was in place and whatever estimate you might have had as to generating capacity deferral cost and schedule has been determined, that otherwise the actual fuel cost and actual whatever other costs and benefits involved in the project that would result would be used on the calculation of the factor from one period to the next?

A Yes. Once recovery starts, actual numbers will be used to the extent possible.

Q Could you explain briefly then what you meant in responding to Ms. Davis's questions that a customer may or may not receive the one-third fuel savings benefit under the recovery on the clause?

A Well, basically, qualification is done prior to any of those actual numbers being known, so qualification is done

on the basis of forecasts, forecasted fuel prices.

The forecasted differential may not materialize, and hence -- let's take an extreme case and say that oil when recovery starts is cheaper than coal. In that instance, there would be no fuel savings association with an oil-backout project once it came on line. At that time, the rule essentially assures that prudent capital expenditures will be recovered. But essentially, they may not result in any savings to the customers if that extreme example were to hold true.

Q And also would not result in any accelerated recovery by the utility.

A The accelerated recovery would not take place; only the recovery of prudently incurred capital expenditures.

MR. BUTLER: That's all I have.

CHAIRMAN CRESSE: Mr. Willis?

CROSS EXAMINATION

BY MR. WILLIS:

Q Mr. Trapp, I take it that the purpose of your testimony is to support the changes that are proposed by the staff in Rule 25-17.16; is that correct?

A That's correct.

Q Is it also the purpose of your testimony to support the basic concept upon which the oil-backout rule was adopted in the first place?

A Yes, it is.

yes.

Q Mr. Trapp, I want to ask you a couple of questions about the qualification procedures and the basic philosphy of those qualification procedures.

In order for a project to be qualified, is it true that the utility must first show that the primary purpose of the proposed project is the economic displacement of oil-fired generation in the State of Florida?

A Yes.

Q And must the utility next show that there will be a cumulative present value of expected net savings to retail customers in Florida within the first ten years of commercial operation of the proposed project?

A Yes, that's correct.

Q And I take it your testimony is that that determination is based on the facts and circumstances that are existing at the time the Commission makes the determination; is that correct?

A Yes.

Q And then, finally, a ucility must show that the proposed project is the most economical alternative available; is that true?

A Yes, they must.

Q And so at the time of the qualification of a project, based on the best information available to the Commission and

based on the record of the proceedings, the Commission would determine that there is a substantial probability that there will be a net benefit to the ratepayers within the first ten years of commercial operation of the project; is that correct?

A Yes.

Q By definition, in order to qualify for inclusion in the Oil-Backout Cost Recovery Factor, there has to be a projected savings to be passed on to the customers, does there not?

A There has to be a believable projected savings passed on to the consumers; that's correct.

Q And in the cost recovery aspect of the rule, there is a sharing concept of the net benefits of that project; is that not true?

A During the period of capital cost recovery, there is a sharing concept, yes. After costs have been recovered, then the consumers would benefit for the remaining life of the project on a 100 percent basis.

Q Mr. Trapp, if the oil-backout cost recovery procedures were not used, what would be the alternative procedures for cost recovery?

A Well, absent any other form of incentive ratemaking, the normal recovery procedures would be that fuel costs would be recovered through the Fuel Adjustment Clause on an estimated six-months basis, trued up at the end; and all other

questions, I believe you stated that the purpose of the oil-backout rule is the lowest cost to the consumers, or something to that effect. But the primary purpose of the rule, nevertheless, remains the backout of oil-fired generation plants; is that correct?

A That is the primary purpose of the rule.

Q So if, hypothetically, a company tried to qualify under this rule under a proposed scenario by which they would be able to avoid construction of a coal-fired plant, is it your opinion that this rule would be inapplicable?

A Not necessarily. It's my opinion that the qualification criteria are quite clear. First you must determine that the primary purpose of the project is economic oil displacement. Once that has been determined, then you are allowed to include and all benefits associated with the project in order to qualify the project for cost recovery under this factor.

So as long as you prove that the primary purpose of the project is economic oil displacement, then you are afforded the opportunity to treat all other costs and benefits in a true economic picture.

Q Okay. So if the primary purpose of a project hypothetically were coal displacement or coal deferral, that company wouldn't qualify under this rule if that were the primary purpose.

written off. I'm not so sure I share that view, because I think it's that very view that keeps people sometimes from doing the most cost-effective thing -- that was one of the reasons behind this rule -- and writing them off during their projected economic life, that somebody like you would come in and say, "Look, these transmission lines aren't hauling anything; therefore you ought to take them out of the rate base. They've got $200 million invested in them, and they're not hauling anything," you know, 25 years from now.

WITNESS COOK: Well, I think you have to consider that you may not look at all the costs if this is going to happen.

CHAIRMAN CRESSE: Well, the trouble is that we're looking at -- all decisions are based on projections, are they not? Is there any law you know of that requires estimators or projectors to be right?

WITNESS COOK: No.

CHAIRMAN CRESSE: There's no law that even requires consultants to be right, is there, or lawyers or Commissioners? We just use the best judgment we can. And yet if that turns out to be wrong because of estimates beyond really the foreseeable future, there's always somebody saying, you know, that today it's not used and useful. Now, no matter how prudent that decision

was at the time you made it, it's not serving today. Take it out of the rate base.

Now, that doesn't seem to me to be abundantly fair. Does that seem to you to be abundantly fair?

WITNESS COOK: Well, if the cost advantage is such that there is a true savings and it would offset that return that we're paying, then we may build two plants and have them sit side by side.

CHAIRMAN CRESSE: All right, sir. That's what I'm trying to get to. And if that's true, then what is wrong in considering capacity payments in order to avoid the building of a new plant, as an offset for the construction of a new plant, as long as the purpose of it is for the displacement of oil, not the purpose to meet increased demand?

You see, I think throughout this whole hearing there has been a thread running that said that somehow we'll get projects involved that are designed to meet increased demand and pass them through the oil-backout recovery clause, when in fact I don't know of a project that was designed -- if its primary purpose was to meet increased demand, it would not qualify, would it?

WITNESS COOK: Well, I assume if the primary purpose of a project is to increase demand, it would not qualify under this procedure, under this oil-backout rule.

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excess of over the "used and useful" time period if the fuel savings were large enough to warrant that accelerated depreciation.

Q If, for instance, during a particular six-month period for some reason the project was not expected to generate positive fuel savings, that would mean that you would go to the straight line depreciation over the useful life of the project for that period; is that correct?

A (By Mr. Trapp) That's correct.

Q And since the project as a whole was qualified for recovery under the oil backout clause on the showing by substantial and competent evidence that it would generate positive fuel savings over a ten-year period, I was interested in knowing why that period might not be used as a proxy for the overall useful life, since that's a longer period of time, which from a financing standpoint may cause problems?

A (By Mr. Trapp) We're not totally convinced that utilities' projections are 100 percent accurate. In the qualification process, what we want to do is be relatively assured that there is a high probability that true net savings will be accomplished within a relatively narrow time frame, ten years. In the cost recovery aspect of the factor, we do not want to rely on estimate at all. We want to use actual data. And if in fact the company has been accurate in the long term forecast when they come before the Commission

some two, maybe six years in advance of a project coming on line, then you will be able to recover two-thirds of the actual fuel savings as an accelerated depreciation method during the recovery of -- or for the recovery of the project cost.

So there are two separate distinct concepts, one based on projections over a very narrow time frame, and one based on actual data.

MR. McGEE: I understand. Thank you.

HEARING OFFICER: If there are no other utility company questions, Mr. Shreve, I believe it's your turn. If you would come up to a microphone, I would surely appreciate it.

CROSS EXAMINATION

BY MR. SHREVE:

Q I believe you said that you wanted the cost recovery to be based on actual data rather than estimated data?

A (By Mr. Trapp) Yes, sir.

Q After you get into the cost recovery, and initially it appears that there will be the required savings to justify the cost recovery under the clause, and that goes on for some period of time, and then there were to be a shift, would you change back to the normal straight line depreciation, or what would be the situation there?

the actual monthly utility bill? Is he saving, or is he losing, or is it going to stay the same?

We're talking about saving on fuel, and we're talking about reimbursing a certain amount of capital investment. How does this rule show that the saving is indeed a saving to the consumer? Or is it a saving that doesn't get passed on to the consumer?

A (By Mr. Trapp) First of all, by definition, in order for a project to qualify for inclusion in this recovery factor, there has to be a savings that is passed on to the consumer. In the cost recovery aspect of the rule, there is a sharing of the fuel savings between the company and the customer on a one-third to the customer, two-thirds to the company to recover costs basis. Once the plant is paid for, then 100 percent of fuel savings is passed on to the consumer.

So there are mechanisms through this, both through our current fuel adjustment clause where fuel savings are passed through, and through the cost recovery factor where the costs are passed through, to make sure that there is a net savings to the consumer.

Q But you do actually envision a situation where at least in that initial phase until the plant is paid for that the cost on the power bill to the consumer could be higher?

A (By Mr. Trapp) If in fact the projections of oil and coal prices -- excuse me, the oil/non-oil prices that

lead to a decision to go into the project upon which the Commission bases a decision to qualify a project for cost recovery, if those materialize and the differences between fuel costs are great enough, then we envision that happening.

Now, certainly circumstances could prove that in spite of the best decision making made at the time, based on the best estimates of fuel costs, that this project would produce rate savings to the consumers once it came on line, the oil prices may have drastically reduced or held their own through some political intervention over which we have no power, the bottom line of which is that maybe those fuel savings don't materialize. The posture taken in this rule is essentially to say that we made the decision to qualify it based on our best information at the time, so at minimum we're going to allow those prudently incurred costs associated with the project that would normally be included in rates under the policies of this Commission to be included in this factor so that the company would recover the cost of the project. If the fuel savings did not materialize, then perhaps there would be no true, quote, unquote, net savings to the customer should those circumstances occur.

But we have attempted in the qualification process to very strictly confine those projects which would most likely produce a savings to the customer before they even get to the cost recovery part of the factor. So we've tried

our best to make sure that there will be a savings passed on to the customer.

Because projections are necessarily involved in the qualification process and in the decisions to convert or build transmission lines, or some other oil backout project, because of the lead time associated between when the decision is made and when that facility actually comes into service, that may result in us not achieving our goal.

Q I can well appreciate, of course, the projection and the time involved.

However, is not this rule really driven as much by conservation methods, conservation of fossil fuel, as it is the economics to be gained by it? You made the statement in your opening statement to the effect that you wanted to realize a savings of 58-plus million barrels. Regardless of the cost of the oil, are you not really driving for that as well?

In other words, again by the process of conservation, are we not getting to a point where maybe we can't afford the conservation?

A (By Mr. Trapp) Well, I think all of the goals that this Commission has established with regard to conservation had the very key word in them, "cost effective" or "economical," "most economical." So surely this Commission, I don't believe, would adopt programs, approve supply-side

A (By Mr. Trapp) Yes.

Q So if you projected that a unit would not go into operation, say, for four years due to lead time and what have you, you would have a projection in effect that really covers a 14-year period; is that right?

A (By Mr. Trapp) That's right.

Q In your testimony today you referred to -- I think it's on page 5 that you say, "Once qualified, the prudently incurred cost associated with the construction and operation of the oil backout project may be recovered through the clause." Do you mean to say, or are you inferring that there is a cost different than the cost which you use in the cost-benefit analysis? Would they not be one and the same?

A (By Mr. Trapp) They would be to the extent that one is a projection and one would be an actual number. The intent here is to provide the same type of procedure that the Commission currently uses in power plant certifications, where before a power plant in power plant certifications is built, the Commission must determine the need for that power plant. Once that need is determined, then that power plant is necessarily included in base rates once it comes into service.

However, the Commission's determination of need for a power plant does not necessarily guarantee to a company that the total cost associated with construction of that power

plant will be included in the base rates. It only more or less assures them that your decision to build this power plant was a correct decision. That's what we're saying here, that your decision to build this oil backout project is a proper decision.

Now, when it comes time for cost recovery, the Commission then goes in and looks at the prudency of expenditures. If, for instance, an oil backout project incurred a 50 percent cost overrun than that that was projected and the Commission found that that cost overrun was due in total or in part to negligence on the part of management, then that cost would not be included for cost recovery, either in the Oil Backout Cost Recovery Factor or in base rates. It's the same type of decision making and fact finding that the Commission currently goes through, the same type of process that the Commission goes through in power plant certification and evaluation of power plant costs once they hit rate base.

Q Okay. If it was determined that a cost overrun, using your example of 50 percent, was not due to negligence or improper management on the part of the utility, would this clause still operate on that additional expense, even though applying the actual cost you would not have met the cost-benefit criteria?

A (By Mr. Trapp) That's correct. It would operate

of the cost of derated capacity. Is the derating of capacity the fact that you would simply lose some capacity by conversion?

A That's what we had in mind. That's kind of an indirect form of retirement.

Q Wouldn't the cost of the loss of that capacity be one of the factors that weighed in the decision as to whether you're going to utilize the clause at all, or even make a conversion?

A I think it should be.

Q On page 9, (d), you've got an addition to the rule here which would preclude the Commission from altering, amending or terminating, or in any way modifying, I suppose, the factor as applied to a particular project. What's the intent behind this? Is this so the lenders are assured of that stream of revenues?

A Yes.

Q Can you envision -- well, I suppose if your projections were wrong as to whether the project was going to be cost beneficial or not, that would give the Commission some cause to perhaps desire to change the clause, would it not?

A I would hope not. I think your question strikes at the heart of this rule. That rule is that if a project is proposed and reviewed by the Commission and approved as being prudent at a point in time, it's done on projections,

and no one will know until it's history as to whether or not those projections were correct. The heart of this rule is that if you embark on an oil backout project, even if it doesn't result in savings, you're entitled to recover your investment. That's basic ratemaking philosophy that's being applied here.

So I don't see that that flow of dollars should change. It just wouldn't be an accelerated recovery of the dollars if the savings didn't materialize.

Q Well, it basically seems to me that most of the factors -- and this is a comment, but I'll put a question mark on it and let you respond. But it seems to me that many of the provisions you added in here pretty much insulate the company from risk, or else pass those risks on to the ratepayers. Is it your philosophy that the ratepayers should completely be burdened with the risk of shifting to non-oil sources of generation?

A If the ratepayers want the benefit of project financing, 100 percent debt financing, with no one else taking the risk in the form of equity, then they have to take it. If they don't want to have the benefit of the lower cost project financing, then they're going to have to pay a fair return for someone to put some equity in there to absorb the risk. You can't have it both ways.

What we're saying is, let's write the rule broad

require greater financial incentive than others.

For example, an A utility may need a lot of economic incentive, and therefore you would want to allow accelerated depreciation. A AAA utility, however, would -- I'm not saying there are any AAA's in Florida, but as an example, a AAA wouldn't really need an incentive, in my estimation.

Q Did I understand you correctly that the fixed costs, depreciation, and capital costs would be assigned on the basis of peak responsibility? Is that what you --

A Well, that would be my preference, because in most instances the utilities in Florida the proper production demand allocator would be the coincident peak. However, I stated that to be consistent with ratemaking, it should be the demand allocator used in the cost of service study that the Commission has approved in the most recent rate case. I think that would be very consistent. That number would be known, and you would not have to attempt to try to calculate demands by class or estimate those demands.

Q I also believe you stated that it is your reccommendation that if the cost differential ceased, that the factor would also cease.

A That the operation of the factor would cease, but those costs, since they had been prudently incurred by the utility, would be recovered through the normal mechanism of

base rates. So any unrecovered remaining investment would be included in the rate base and recovered under the remaining life principle. You simply would not get the advantage of the cut-down in regulatory lag if the project is clearly not cost-effective.

Q You would put it in suspense for a period of time? Is that what your suggestion is?

A Well, I think you would essentially cease the collection of revenue in the oil backout factor. At that point you will know how much you have recovered through the operation of the oil backout factor, and then whatever investment is left, you would immediately put that into the rate base and essentially determine a depreciation charge that could be collected by the utility.

Q Would you perceive any difficulty with that recommendation, say, for example, where it was projected that the cost differential might -- based on projections of fuel costs, that there would be a savings in years 1 and 2 and 3, and maybe a negative factor for two or three years, and then a positive factor after that, but overall it was positive, but there was a period of time where it was negative?

A I think I would be willing to modify my proposal by saying it should be a determination by the Commission that it's a good probability that the oil/non-oil differential has closed to the point that it's clear the project is not

going to be viable and actually reduce total costs.

Q Then if your recommendation is accepted, it would be based on not just a short-term view of whether there's a cost differential, but based upon an estimate of what over the life of the project would occur?

A Well, I think -- yes, that's correct. But I think as the cost recovery factor operates, you would know what the oil/non-oil differential would be. And if you get into a period where that gap is closed, and all proper estimates are that that differential is going to remain there for an extended period, then if the Commission thinks there's enough evidence to determine that it's sure that that project is not going to work out as originally projected, then I think they should take the step to cease the operation and simply put those unrecovered costs into the rate base.

Q Right at that time?

A At that time, once they feel they can make a determination.

Q Well, would you be agreeable that there could be -- if we accepted your recommendation, that it would be not necessary to initiate another rate filing in order to pick up that cost change, but that there simply could be under your proposal some sort of an automatic change to reflect that difference in the cost recovery methods?

A Well, I think if the Commission did make a

determination that this was going to happen, it probably would be at the point in time the backout recovery is being reviewed every six months. So at that point it could be relfected in an order.

MR. CHILDS: That's all I have.

HEARING OFFICER: Mr. Willis?

CROSS EXAMINATION

BY MR. WILLIS:

Q Mr. Cook, I take it from your testimony that you don't oppose an oil backout cost recovery procedure; is that correct?

A No. If conversion to coal or coal-oil mixture is a cost-effective method, then we do not oppose that.

Q So your concern, then, is that how the costs involved in that conversion from oil to coal or some other combination of fuels is borne by particular classes of customers; is that correct?

A Yes, I think that's the primary concern. Also I feel a major concern is that the rule not contain this arbitrary concept of allowing a portion of the savings, because there's no use to disguise it. The rule is in effect trying to be an accelerated depreciation mechanism, so I think the Commission should make a determination at the time the project is approved as to what that acceleration level should be for the utility, and then the cost would be known

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the recovery of the other demand and energy charges in that rate schedule.

MR. BUTLER: That's all I have.

COMMISSIONER GUNTER: Mr. Fogel?

BY MR. FOGEL:

Q You explained that you thought this 500 KV line was a proxy for Florida Power and Light building its own coal-fired generation?

A Essentially the characteristics of the cost that FPL is incurring as a result of this project and the associated coal-by-wire purchases is a proxy for FPL owning temporarily up to 2000 megawatts of generating capactiy and the associated transmission network to deliver that capacity to the FPL system and the associated energy.

Q Are you aware that the Public Counsel raised that argument in the qualification proceedings, and that Commissioner Nichols said she didn't buy it, and that implicit in the Commission decision was a rejection of that argument?

A I have no knowledge of that.

Q Are you aware that the rule says that once a, the oil backout rule says that once a project has been qualified by the Commission, that the oil backout recovery factor shall be calculated and applied in conjunction with the fuel and purchased power recovery clause?

A Yes, I am aware of that.

R. **Transcript passages from prior Commission proceedings reflecting FIPUG's and Public Counsel's prior attempt to establish that the primary purpose of FPL's Oil Backout Project is economic oil displacement and that FPL was recognizing improper Project benefits in its economic analysis of the Project.**

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all of the forecasts.

COMMISSIONER MARKS: That is all the forecasts that were submitted with the testimony?

MS. DAVIS: Yes.

CHAIRMAN CRESSE: All right.

MR. McGLOTHLIN: Just so you're clear on the point, FIPUG agrees with Public Counsel that there are two scenarios under which the project would not qualify.

CHAIRMAN CRESSE: Okay.

MR. CHILDS: Mr. Chairman, if it would help, on the documents that show the analysis. Mr. Howard's Documents 7 and 9 are the present value calculations of the company, and they are based upon Mr. Scalf's Documents 12 and 13 as to the fuel savings. And then what the calculation does is to run it through under each of the oil forecasts to show the present value calculation.

CHAIRMAN CRESSE: Let me get those figures down again. Which of Mr. Howard's relates to which of Mr. Scalf's and which of Mr. Scalf's relates to which of Mr. Howard's?

MR. CHILDS: Document No. 7 of Mr. Howard is based upon Mr. Scalf's Document 12, fuel savings. Document No. 9 of Mr. Howard is based upon Mr. Scalf's Document 13.

CHAIRMAN CRESSE: Which of Mr. Scalf's documents are based upon which of Mr. Cook's documents?

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There are other curves that one could develop that would also result in a break-even.

Q Did the information which you used to plot the break-even point come from Mr. Howard's analyses?

A The analysis was done by individuals in the Finance Department. I'm not sure which individuals.

Q Specifically is it based on what has been described as the base case coal-by-wire case in which Mr. Howard takes into account not only fuel savings but also savings gained from deferred construction?

A That's my understanding.

MR. McGLOTHLIN: Commissioners, at this point I want to object to the admission of Document 6, and let me simply summarize our position because this ties in more directly with Mr. Howard's testimony and perhaps you'll want to hold this in abeyance until we reach that point. But it's our position that the standard to be used in qualifying projects for the oil backout recovery factor has been defined by the Commission in its rule-making docket.

It's our position further that the rule clearly contains precise and also an exclusive definition of the cost or, rather, the savings that may be considered in qualifying a project and that they are defined within the definition of present value of net cumulative

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benefits to be limited to fuel savings. As Mr. Cook has answered in response to my questions, Document 6 shows a break-even point which includes not only fuel savings but also benefits which may be a good reason to build a plant which are irrelevant under the exclusive criterion of the rule.

And that summarizes our position, and we'll address that in greater detail if you wish during Mr. Howard's testimony.

CHAIRMAN CRESSE: All right, sir.

MR. McGLOTHLIN: I have more questions.

CHAIRMAN CRESSE: Mr. Cook just went to get a little help.

WITNESS COOK: I was just checking on the status of the escalation rate calculations. Those have been completed, and we're making copies now.

CHAIRMAN CRESSE: Mr. Cook, just as a matter of curiosity, couldn't one take a chart like you have on your Schedule No. 6 just referred to by Mr. McGlothlin, and take each of the years and just as you have across the bottom of the line, instead of putting 20, 40, 60, 80, 100, and so forth, change that line going up and call it cents per kilowatt hour?

WITNESS COOK: I don't believe so. I don't believe that could be done.

fluctuates based on the price they have to pay for coal?

WITNESS COOK: Yes, it does, but I could not give you the explicit manner in which it does that.

CHAIRMAN CRESSE: Okay.

Q (By Mr. McGlothlin.) Mr. Cook, a couple of questions about the relationship of the project break-even point shown on your Document No. 6 to the shown oil forecasts. Holding all other things equal, if it were ascertained that the information used to plot the break-even point included benefits not allowed by the provisions of the rule and the information were corrected for that reason, the break-even point would then be plotted higher on the scale, would it not?

A Yes.

Q And, similarly, holding all other things equal, if it were ascertained that the information used to plot the break-even point failed to recognize certain costs incurred by the company to secure coal-by-wire and the information were corrected for that reason, the line also would be plotted higher on the scale, would it not?

A Yes.

MR. McGLOTHLIN: No further questions.

CHAIRMAN CRESSE: Mr. Wilson, do you have any questions?

MR. FOGEL: I have some.

CHAIRMAN CRESSE: All right, sir.

A Yes. This is an approximation of those savings.

Q Now, if it were determined by the Commission in the course of this application that savings associated with the deferral of units on your own system cannot be included in the calculation of net benefits for purposes of qualifying the project under the backout recovery mechanism, we could subtract the impact of the deferred units by taking the value shown in B-Prime, your calculation of net benefits, and subtracting from that the value for Column Z, is that right, which constitutes the savings associated with the deferral of units?

A Yes. If you were making that calculation that would have the effect of removing the deferral of capacity.

Q And because no such savings occurred until 1987, it would be necessary only to do some subtractions of those values for the years 1987 through 1992 to get that result, is that right?

A Using this schedule, yes. As I said earlier, we were very conservative in this and I think there is a good probability had we built those units there would be some CWIP in the earlier years that would have been involved. They are not shown here.

Q Do you have a calculator before you? I would like for you to check my arithmetic and let's do that exercise.

COMMISSIONER MARKS: Mr. McGlothlin, where are you

to do that, Mr. McGlothlin?

MR. McGLOTHLIN: Yes, sir, and I will be pleased to give those to you now.

CHAIRMAN CRESSE: All right, sir.

MR. McGLOTHLIN: With regard to Issue No. 1, is the primary purpose of the project oil displacement, we believe that it is clear that the primary purpose of accelerating the construction schedule is displacement of oil but from an overall view FIPUG believes reliability may be as important as any other consideration. I do point out that the company has described but has not measured for purposes of comparison the benefits of reliability.

With regard to Issue 1 A, whether the gross savings measurement proves that the primary purpose is oil displacement, we believe that is not conclusive and gross savings is only one measurement and may not be the most relevant in this case. The only comparison presented is between fuel and deferred capacity, again no comparison with benefits of increased reliability.

Issue No. 2, whether the cumulative present value of expected net savings has been demonstrated, our position is that under the current rule under which we believe you must exclude the deferred capacity from consideration, that expected net savings is not demon-

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(Hearing reconvened after lunch recess at 1:10 p.m.)

CHAIRMAN CRESSE: I apologize to everybody for being late, but the meeting I had at 12:00 was supposed to have been over at 12:30. It was not, and I apologize very deeply to you for being late. Please proceed.

MS. DAVIS: We had just completed our cross examination of Mr. Scalf.

CHAIRMAN CRESSE: Mr. McGlothlin?

MR. McGLOTHLIN: Yes, sir.

BY MR. McGLOTHLIN:

Q Mr. Scalf, I understand there have probably been some changes in your prefiled testimony from that originally filed for our first hearing. Do you recall making the statement in that testimony that the 500 KV line was considered by the company as early as 1973?

A I probably made that statement. The 500 KV project or future project had been contemplated in that time frame, yes.

Q As a matter of fact, the Florida Power and Light Company had a problem with the stability of its system in that time frame, didn't it?

A The Florida Power and Light system at that time, particularly the southeast portion of the system, was not connected solidly with the rest of the state from a stability standpoint.

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Q Was that because load growth, rapid load growth had outstripped the company's ability to keep up in terms of a stable transmission system?

A Rapid load growth was one factor. Another was the cost effectiveness of spending the dollars that would be required to solve that problem. In other words, to try to solve the problems that you saw in the system at that time would require a very, very significant 500 KV expansion, which would have been of questionable justification in terms of completion.

Q As a consequence, every time a nuclear unit went out, you had stability problems on the system, is that right?

A By "stability problems," I'm not sure what you mean.

Q Well, didn't you have a number of blackouts in that time frame?

A Usually the blackouts were associated with multiple contingencies, not just one contingency loss. But there were a number of blackouts during that time period, yes.

Q And I believe the testimony has described the manner in which it is now necessary for the State of Florida to sever from Georgia during such a contingency. Has that also happened from time to time?

A The transmission system was not adequate to allow Florida to remain interconnected with Georgia for the loss of the largest unit, that's correct.

4-11

Q So there have been such separations from Georgia?

A Yes.

Q You described how the building of the transmission line will enable your company and others to reduce spinning reserve requirements. When were spinning reserve requirements first established in Florida?

A I'm not sure I can give you an exact date. I think it would have been during the time frame when the utilities in Florida were forming the operating committee that was set up in the state and adopting cooperative measures to try to share in that type of system. As I recall, that would have probably been in the '60s.

Q And weren't spinning reserve requirements established -- I started to say imposed, but let's say established -- for the utilities because the transmission network was not sufficient to provide stable transmission to handle the load of the Florida consumers?

A Spinning reserve is required on any electrical system to some degree. Even Southern and the utilities to the north of us require some spinning reserve.

Q Aren't spinning reserve requirements in lieu of, to some extent, the ability of the system to provide a stable transmission network to handle the load?

A Not necessarily. The spinning reserve allows the utility from an operating standpoint to make up a deficit in

4-12

generation load balance which results when a particular generating unit trips off line.

Q I think you said in your answer "not necessarily." Is it the case in Florida?

A Even with the 500 KV system as we are now building it, there will still be a requirement for spinning reserve. It will be a different form of a requirement and not as much need for immediacy as far as the spinning reserve is required.

Q Spinning reserve requirements are higher now than they would be with the construction of the project because that amount of spinning reserve is necessary to provide for contingencies, correct?

A Yes.

Q And the more stable, reliable transmission network will enable reduction of those spinning reserves, correct?

A Let me see if I can clarify that point. Prior to the 500 KV project, the state carried spinning reserves in an amount equal to the largest generating unit in the state. We're required to back up that largest generating unit either with what we refer to as shaft spinning reserve or with some amount of underfrequency load shedding, which we refer to as Step Zero.

In other words, the objective is upon loss of a unit you want to bring the generation and the load back into balance. So we're now carrying either on Step Zero or

4-13

spinning shaft spinning reserve the equivalent of the largest unit.

After the 500 KV lines go into service, all of that requirement will no longer be required. In fact, at last week's meeting of the technical advisory group of the Florida Electric Power Coordinating Group, we decided to change the official spinning reserve requirement to 25% of the value it had been otherwise.

Q And that results from the increased reliability and the strenghtening of the transmission network with the addition of the 500 KV line?

A Yes, it does.

Q Since you have testified that utilities will be able to reduce spinning reserves as a consequence of the construction of the project, why would it be necessary to implement the reduction of spinning reserves with an increase in Step Zero load shedding?

A I'm not sure what you mean by an increase in Step Zero load shedding.

Q Don't you state in your prefiled testimony that the amount of Step Zero load shedding will be increased at the same time spinning reserves are decreased?

A Yes. My testimony was prepared prior to last week's decision to officially change the spinning reserve requirement And Florida Power and Light was able to make that decision

based on the fact that with the 500 KV line installed, we do not expect frequent separations, and we will elect to arm Step Zero load shedding because we do not expect to trip that load on as frequent a basis as we had before.

So under the old agreement, you could carry a percentage of your spinning reserve requirement on Step Zero. The installation of the 500 KV line allowed us to do that, reducing the amount of shaft spinning from 320 megawatts to 120 megawatts. The requirement for the increased Step Zero as of last week's decision is no longer required. There will be no more Step Zero load shedding.

Q To make sure I understood your earlier response correctly, the spinning reserve requirements are as high as they are now in part because of the inability of the existing system to handle the load on it?

A No, I would not make that statement.

Q What's wrong with the statement?

A Well, it insinuates that spinning reserve is directly associated with the reliability of the system. And spinning reserve, as I pointed out earlier, in some amounts are required in any electric system. Southern, for instance, which, to my knowledge, has never been in an underfrequency situation, still carries spinning reserve.

Q Yes, sir, and I attempted to modify my statement to conform to your earlier testimony. And I said, they are

4-15

as high as they are, granted they would be at some level under any situation, but they are as high as they are in part because of the inability of the existing transmission system to handle the load adequately?

A They're as high as they are because of the inability of the existing transmission system before the 500 KV to be able to handle the response that you see from the rest of the interconnected southeastern utilities.

Q All right, sir. I don't know if you used it in the testimony that's been prefiled today, but in an earlier statement, you described the phenomenon of the availability of coal-by-wire in significant quantities between '85 and '92 as the coal bubble, is that correct?

A Yes, that's correct.

Q The construction of this transmission line project will increase the transfer capability between Southern and Florida Power and Light Company, won't it?

A Yes, it will.

Q And it will do that for the life of the project?

A Yes, it will.

Q Some 30 to 35 years, would that be a fair guess as to the estimated life of the project?

A Yes. The actual transfer interconnection, I mean, the interchange capability may change in later years, but it will represent an increase over the life of the project.

4-16

Q And I believe you make the statement in your prefiled testimony that the project will substantially improve electric system reliability?

A Yes.

Q And it will do that for the life of the project, 30 to 35 years?

A Yes.

Q The project will also have the effect of serving as a source of firm generating capacity for Florida, won't it?

A Yes, it will.

Q And I believe you state in your testimony that the project will deliver, is expected to deliver the output of new generating stations in the northeast part of your system?

A Yes.

Q At Page 15 of your prefiled testimony, you make reference to $122 million in additional capital charges which you discovered after you prefiled your testimony for the first hearing. Does that amount operate to offset the additional benefits which you associate with supplemental energy and alternate energy for purposes of the analysis of the rule, required by the rule?

A This represents the net savings being approximately $122 million less. As I recall, the supplemental and alternate represented approximately $240 million more. So it does not totally offset, no.

4-17

Q I didn't mean to imply it was a total offset, but it counters the effect of the additional benefits you described?

A It would partially offset, yes.

Q Yes. One result of building this transmission line would be as we have stated, to increase reliability that will result in a lower loss of load probability for the system, won't it?

A Yes, it will.

Q Is it fair to say that increased reliability and lower LLOP have economic signficance to the ratepayers and to the state?

A I think you would have to qualify that. The significance would be in the probability of losing or in interrupted service to the customer. The probability of interruption would be less with the lower LLOP, so that is some benefit, yes.

Q You have not attempted to quantify or measure the benefits associated with increased reliability so that you could compare those with the benefits of oil savings in this case, have you?

A Only the savings that I included which was the spinning reserve. The others I have not tried to quantify. It would be very difficult to do that.

Q The only attempt at a comparison which you made was

4-18

between the fuel savings and the advantages of deferring capacity?

A Yes.

Q If you would, look at your exhibit to your deposition -- and may I ask what number has been assigned to that, please?

CHAIRMAN CRESSE: The exhibit to his deposition?

MR. McGLOTHLIN: Yes, sir.

CHAIRMAN CRESSE: The last one we numbered was 15.

MS. DAVIS: That is the deposition exhibit.

CHAIRMAN CRESSE: 15.

Q (By Mr. McGlothlin) Looking at Exhibit 15, Mr. Scalf, as I understand it, and I'll have to go slowly because I'm likely to get lost, as I understand it, in arriving at the analysis of the impact of deferring the construction of units, it is necessary to take into account the effect of inflation and resulting higher construction costs resulting from the delay in attempting to measure any benefits, is that correct?

A Yes.

Q And you have attempted to do that in this exhibit?

A Yes.

Q And that's necessary because if units are built five years later, inflation and higher construction costs would mean that the plant balances are higher, that means that

going with or without it?

WITNESS SCALF: It is strictly a timing analysis and what the economics would look like of the units on early timing versus late timing, and then the fuel savings that you would get by putting them in early offsetting those costs so that you would come down with the total revenue requirements with and without that project on an annual basis, one schedule versus the other.

CHAIRMAN CRESSE: All right, sir, go ahead.

Mr. McGlothlin, did you have any further questions?

MR. McGLOTHLIN: No, sir.

CHAIRMAN CRESSE: Mr. Fogel?

BY MR. FOGEL:

Q Mr. Scalf, do you have a copy of the rule, the backout rule, with you?

A No, I do not.

Q Let me get you one. Would you please refer to Section 2B?

A All right.

Q And I believe it's on Page 3 of the attachment.

A Okay, I have it.

Q Okay. Would you say that a fair paraphrase of that section would be that the recovery factor is not to be used to recover the cost of a project that has a primary purpose to serve increased megawatt demand, or that is a new generating

unit?

A That's about what it says. I would not try to interpret it but that's what it says.

Q All right. If someone were to tell you that new pole generating capacity can be an oil backout project, would you agree that that person's statement conflicts with Section 2B of the rule?

MR. CHILDS: Mr. Chairman, with all due respect, I object. I don't think it is the function of this witness to interpret the rule for Public Counsel. I think it states what it states but this really is not cross examination of his testimony.

CHAIRMAN CRESSE: Do you want to respond?

MR. FOGEL: Yes, sir. Mr. Scalf in his testimony at various places offered the opinion that this project is an oil backout project. I am just trying to determine his understanding of the rule to see whether it would go towards his opinion.

CHAIRMAN CRESSE: Well, sir, without him trying to interpret the rule, because I know that you would not want to have to report him to the Florida Bar for practicing law, why don't you go ahead and just ask him the question based on his understanding of the rule? I think that would be a perfectly proper question.

Do you agree with that, counsel? He does claim

knowledge of understanding the rule. It just takes some slightly different wording, Mr. Fogel, and it will all work out. Go ahead and rephrase the question. If he understands it, fine.

MR. FOGEL: I understand this on-the-job training here.

CHAIRMAN CRESSE: All right, sir.

Q (By Mr. Fogel.) Is it your understanding hat new coal generating capacity can be an oil backout project?

A Here again I would not interpret the rule but it is my understanding that it would not be.

Q Would you turn now to Page 22 of your testimony, please? On Line 11 you are asked the question: "Has FPL considered any alternatives to the 500 KV project and the coal-by-wire purchases?" You were asked that question?

A Yes.

Q Okay, and then in your answer don't you say, and I am somewhat paraphrasing, that new coal generating capacity would normally be considered viable oil backout alternatives?

A A new coal unit is certainly an oil backout alternative, but whether or not --

Q Well, how would an oil backout alternative --

CHAIRMAN CRESSE: Just a minute, counsel, and let him answer the question. Don't interrupt him in the process of his answer.

MR. FOGEL: Excuse me.

A Any new coal unit will displace oil on our system. Whether or not that coal unit would be recognized as being an oil backout project under the rule, that is not my interpretation.

Q Now, I believe you just told me that Section 2B tells you that new coal generating capacity cannot be recovered through the recovery factor, yet in your testimony here you say that new coal generating capacity can be a viable oil backout alternative.

A I see no conflict in that.

Q If the rule says that new generating capacity cannot be recovered through the clause and you say it can be recovered through the clause, how is that not a conflict?

A Whether or not the Commission would recognize it for cost recovery through the clause does not really say that it does or does not displace oil. A new coal unit will displace oil.

Q In order to displace oil wouldn't it have to displace generation that otherwise would have come from oil?

A Yes.

Q So you can't necessarily make that blanket statement. You would have to know where you would have gotten the energy from otherwise, isn't that true?

A A new coal plant would displace oil on our system.

It may not displace all oil, it may displace some other fuels which were more costly, but it certainly would displace a significant amount of oil.

Q On your system?

A Yes.

Q Well, what do you make of the words "would normally be considered"? What do you mean by that on Lines 14 and 15 on Page 22?

A If I was doing an economic analysis to try to determine what alternatives were available to me for oil backout, a new coal plant is certainly one of the alternatives that is available. Conversion of an oil plant is another alternative. Purchases are another alternative. I would not bias my analysis of that based on whether or not any one would or would not be considered by the Commission for cost recovery under the clause.

CHAIRMAN CRESSE: Excuse me, let me just ask you, and I am trying to find what you just asked him to read. What page is that? I probably have a different page here.

MR. FOGEL: The rule or his testimony?

CHAIRMAN CRESSE: The rule.

MR. FOGEL: It's Page 3 of the attachment to the amendments to the rule.

COMMISSIONER NICHOLS: Could you give us a section?

MR. FOGEL: It's Section 2B.

CHAIRMAN CRESSE: All right, and in my own mind, and I am trying to get square in my own mind, if one built a coal plant for the purposes of meeting increased megawatt demand that would not be a oil backout proposition, right?

MR. FOGEL: Under the rule, right.

CHAIRMAN CRESSE: However, if one could show economically that the construction of the plant was not needed for capacity, an oil-fired plant was not needed to meet capacity but on its own bottom was cheaper than to continue to burn oil, would it not come within the rule?

MR. FOGEL: I don't think so. I think that even if it would be cheaper that the rule does say that if the kilowatts are necessary, if generation output is necessary to serve increased megawatt demand --

CHAIRMAN CRESSE: What I am saying is assume you don't have any increased megawatt demand but you have got a 500 megawatt unit that is burning oil and, rather than continue to burn oil for the next 25 years in a brand new unit, if you can say, "Look, that thing is going to -- we can build a new plant to burn coal, pay for it in 10 years and let that sucker sit idle," wouldn't that qualify? You are not constructing it for the purpose of

meeting increased megawatt demand but you are constructing it for the purpose of just shutting down an oil plant. Economics won't permit you to do that but I am just trying to find out if I am misunderstanding what that says.

MR. FOGEL: I think the difference there would be that you have to account for the retirement of that plant. But assuming that accounting for the retirement of the plant would still make the project economical, then I would say yes.

CHAIRMAN CRESSE: All right, sir, go ahead.

Q (By Mr. Fogel.) Mr. Scalf, in your testimony you state that you had previously mistakenly understated the Southern Company capacity changes and that this mistake would be $122 million in present value terms, is that right?

A That's correct.

Q And this underestimate in cost resulted in an overestimate in savings, is that true?

A Yes.

Q Would you consider this amount a fairly significant error?

A I would not classify it as an error. I would classify it as miscommunications between Southern and Florida Power and Light on whether or not those transmission costs were already included in the numbers they quoted us, or not

testimony?

A What is your question on Document 1?

Q In the years prior to 1987, '82 to '86, if we were to allocate all the costs of the unit power purchases and the transmission project against the fuel savings, that would lower the avoided cost of displaced oil, is that true?

A I think that Document No. 3 addresses that, and it does charge the capacity of the Southern and also transmission revenue requirements, and it's offset only by the benefits of oil displacement during those years.

Q At the time Florida Power and Light committed itself to constructing those transmission projects, the company expected it would be recovering its revenue requirement of the project through the normal rate making process, is this so?

A That's correct.

Q And the oil backout rule played no part in Florida Power and Light's decision making process to approve the construction of this transmission line project?

A That's correct.

Q And Florida Power and Light's decision to build this project in no way is dependent on the outcome of this proceeding; in other words, Florida Power and Light is committed to this project regardless of the decision in this proceeding?

A Yes.

Q Would you please turn to page 20 of your testimony? On page 20, you list three types of reliability benefits. The first is preventing electrical separations for generation contingencies, for providing an additional source of external power during conditions of short emergencies, and by establishing additional independent transmission corridors. Will not each of these above mentioned reliability benefits exist beyond the year 1992 and 1995?

A Yes.

Q Right. And as you, I believe, told Mr. McGlothlin, they will exist over the life of the transmission project?

A Yes.

Q And did you also tell Mr. McGlothlin that the spinning reserve benefits cited on this page will accrue over the lifetime of the asset?

A Yes.

Q I assume it's your opinion that the economic benefits of oil displacement accrue to the ratepayers?

A I'm not sure I understand your question.

Q I would believe that your opinion would be that the economic benefits from oil displacement are benefits to the ratepayers?

A Yes.

Q You would also be of the opinion, I assume, that

the oil savings are a direct result of Florida Power and Light's involvement in the transmission line project?

A Yes.

Q Would you agree that under the recovery clause, the fuel oil savings would be applied toward the revenue requirement?

A I don't understand that question.

Q Would you agree that under the revenue clause, the fuel oil savings --

A Revenue clause?

Q -- would be applied to accelerated cost recovery?

A I still didn't understand the question.

Q Okay. Let me see if I can get it right this time. Would you agree that under the recovery clause, the fuel oil savings would be applied towards the transmission line revenue requirements?

A I think Mr. Howard will testify to the recovery aspects of the project.

Q Don't you know that under your own -- don't you know through your own knowledge that the oil displacement benefits would result in accelerated cost recovery through the clause?

A The oil displacement benefits, as I understand it, will only result in accelerated depreciation if, in fact, they do materialize.

A Okay.

MR. FOGEL: I would like to have this marked for identification, please.

CHAIRMAN CRESSE: All right, sir, Exhibit 15-D.

(Exhibit No. 15-D marked for identification.)

Q Isn't it true that in August 1977 Florida Power and Light saw the need to complete the Lake Poinsett-Putnam segment of the 500 KV line to coincide with the completion of the JEA/FPL joint power plant?

A This letter from the Transmission Design Section addresses only the timing of how the project must be constructed in order to meet an in-service date, and I believe it's stated in here January 1987. Here again, this does not constitute a commitment to build the facility and it also contemplates the fact that the 500 KV would be needed to bring those facilities on line. We have since made some 240 KV transmission improvements which would not require the construction of the 500 KV line just to bring the JEA units on line.

Q So your answer to my question is no?

A Would you please repeat your question?

Q Isn't true that in August of 1977 Florida Power and Light saw the need to complete the Lake Poinsett-Putnam segment of the 500 KV line to coincide with the completion

of the JEA/FPL joint power plant?

A In 1977 -- the answer to your question is "not necessarily" and I would like to qualify that.

Q Fine.

A In 1977 when we were developing the needs statement for licensing on that line we were looking ten years out in time on what the proposed need would be in that time frame. At that time it was anticipated that it would be built in 1987 but we should not lose sight of the fact that our load forecast has changed considerably since 1977 and the projections that we saw for load growth in 1977 would not be applicable today.

Q My question was that in 1977, though, Florida Power and Light saw the need to complete the project, transmission line project, to coincide with the completion of the JEA/FPL joint power plant?

A In 1977 FPL was projecting a need. It had not made a commitment to those projects.

Q This document that I have just handed you, would you look at the third paragraph, the second sentence of that paragraph, which reads, or would you agree that it reads: "The first section, Lake Poinsett-Putnam, should be completed by January 1987 to coincide with the completion of the joint power plant in North Florida"? Is that what it says there?

A That's what it says, yes.

MR. FOGEL: Could I get this identified as an exhibit, please?

CHAIRMAN CRESSE: Yes, sir. Do you have only one?

MR. FOGEL: No, I have more.

CHAIRMAN CRESSE: All right, 15-E.

(Exhibit No. 15-E marked for identification.)

Q Mr. Scalf, would you please identify Exhibit 15-E?

A This appears to be a transmission study of the Brevard-Midway area completed in August of 1977.

Q Would you take a minute and look at this for us, please?

A Yes, okay.

Q Mr. Scalf, the first sentence on Page "i" says, and correct me if I am wrong, "This study is to determine the need and timing of additional transmission capacity in the Brevard-Midway area in order to maintain adequate and reliable transfer of power through the area." Is that what that sentence says?

A Yes, it is.

Q Now, turning to the conclusion on Page "iv," do you have that?

A Yes.

Q Correct me if I am wrong but doesn't the conclusion say: "The addition of a 500 KV line by 1983 between Midway

and the Brevard area, Lake Poinsett, would practically eliminate the serious exposure during heavy imports to South Florida resulting from loss of a large unit. This exposure will become more prevalent with the addition of more large units in the South Florida area. Also, the addition of a Midway-Lake Poinsett 500 KV line will facilitate the following: (a) generation and transmission maintenance programs; (b) scheduling of generation and spinning reserve; (c) the purchase of steam power from neighboring systems for both economy and emergency reasons; (d) retirement and/or mothballing of older units in South Florida; (e) meeting variations in the load forecast; (f) reacting to delays in future generation/transmission projects; (g) reduce system losses and (h) provide a long-term solution to power transfers through the Brevard-Midway area consistent with the long-range strategy of extending 500 KV to Georgia." Would you agree that that is what this says in this document?

A Yes, that is the conclusions of the study.

Q Thank you, Mr. Scalf.

Now, Mr. Scalf, do you know Mr. E. A. Adomat?

A Yes.

Q Is he Florida Power and Light's Executive Vice-President?

A Yes.

MR. FOGEL: Could we have this marked for

8-35

1970s for the construction of that segment?

A No, it was not in the '70s.

Q Has it been budgeted?

A Yes.

Q When was that?

A In November of 1980 for the first line. March of 1981 for the second line.

Q And when was the construction of that segment under that budget contemplated to commence?

A When was the construction contemplated to commence or be in service?

Q Commence.

A As soon as the project could be licensed and the right of way acquired. I think that would have been in the '83 time frame.

Q Do you know whether the decision or consideration of that line segment was associated with the intention to purchase coal-by-wire from the Southern Company?

A Yes, it was.

Q Now as to the Poinsett-Midway segment, you were asked a number of questions relating to the company's consideration of that segment for reliability purposes. Did the company, in fact, commence construction of that segment, Poinsett to Midway, for reliability purposes?

A No, it did not.

Q Did it commence construction at all?

A No, it did not.

Q You were asked a question as to whether you recall making these statements that the 500 KV line was considered as early as 1973. And your answer was, yes, you recalled making that statement. Would you clarify for me which line, or did you mean the entire line?

A I was talking about the Midway to Poinsett segment.

Q All right. You were asked a question about spinning reserves and whether it was as high as it is due to inadequacies of the transmission system. Do you know what portion of the project which outlined on your page A-1 would be required to correct that inadequacy if any?

A To correct only that inadequacy associated with spinning reserve, only the Duval Hatch 500 KV line would be required.

Q To your knowledge, is there any standard method or accepted method of measuring benefits of reliability?

A There are none to my knowledge.

MR. CHILDS: Mr. Chairman, I'm not sure whether this document that Public Counsel offered, which is entitled, "FPL Generation Expansion Plan" was identified separately.

CHAIRMAN CRESSE: The one with Mr. E. A. Adomat, Document No. 6? That was identified as Exhibit 15-H.

Q (By Mr. Childs) Mr. Scalf, do you have that in

Q. PLEASE EXPLAIN.

A. There is very little doubt that as the transmission project is completed and FP&L begins to purchase coal-fired generation from the Southern Company, such coal-fired generation will initially displace energy that otherwise would have been provided from oil-fired generation. However, under current price projections supplied by FP&L and the Florida Electric Coordinating Group (FCG), the completion of the transmission project and the consummation of the Southern Company capacity purchase cannot be justified by looking at the economics of displacing oil-fired generation. If one were to compare the fuel savings being derived from the purchase to all the costs incurred to obtain such fuel savings one would have to conclude that it is cheaper to simply burn oil. That is to say, if one were to look at the transmission line project from an oil displacement standpoint only, it should not be completed.

Q. WHAT COSTS MUST FP&L INCUR IN ORDER TO OBTAIN THE SOUTHERN COMPANY OUTPUT?

A. In addition to the normal revenue requirements of the transmission line project, FP&L must pay a capacity charge to the Southern Company. This capacity charge compensates the Southern Company for its investment in coal fired generating units, plus the normal operating expenses such as depreciation, property taxes, and non-fuel operation and maintenance expenses. In effect, FP&L is paying for a coal-fired generation unit off its own system. Instead of seeing additional depreciation expense, O&M expenses, and property taxes appearing on FP&L's books, one will see one charge to the

Purchased Power Account. FP&L must pay this capacity charge every month in order to obtain the lower cost energy generated by coal. Additionally, FP&L must pay a transmission wheeling charge to get the power down to its own transmission system.

Q. HAVE YOU PREPARED AN EXHIBIT THAT COMPARES THE EXPECTED FUEL SAVINGS TO THE COST OF OBTAINING THAT FUEL SAVINGS?

A. Yes. On Exhibit ____(JD-3), page 1 of 4, I have shown the estimated fuel savings using the FCG's fuel price projections. I have compared the fuel savings to all the costs of obtaining that fuel savings for the first ten years of the project. Those costs include the revenue requirements of the project, the capacity charge for generating the energy, and the charge for wheeling that energy. As can be seen in Column C, except for the year 1982, it is expected that there will be no net savings when looking at the economics of displacing oil for the first ten years. Likewise, on page 2 of Exhibit ____(JD-3), it can be seen that under FP&L's 1982 fuel price projections, there are no savings past 1982 when looking at the economics of displacing oil. On page 3 of Exhibit ____(JD-3), one can see that under FP&L's 1981 fuel price projections, the Project is justified from an oil displacement standpoint. On page 4 of Exhibit ____(JD-3), it is shown that the Project would economically displace oil if one were to assume the much higher projected price of oil taken from the 1982 Department of Energy study. It should be kept in mind, however, that, at the June 17th hearing, FP&L's fuel forecast witness, Mr. Michael C. Cook, stated that "I'm not aware of anyone who uses their [DOE's] forecasts as a basis of corporate planning..." and "I'm

MR. FOGEL: Not yet.

CHAIRMAN CRESSE: Not yet.

BY MR. FOGEL:

Q And then also, Mr. Dittmer, have you caused to be distributed at the beginning of this proceeding a four-page document, the first page of which is the FPL oil-backout qualification hearing, calculation of savings and deferring capacity?

A Yes, a handwritten document.

MR. FOGEL: Mr. Chairman, I move that this be --

CHAIRMAN CRESSE: Identified as 13-A?

MR. FOGEL: I think it would be 14.

CHAIRMAN CRESSE: Is this 14? 14-A. That's a document handwritten that says FP&L oil-backout qualification hearing, Page 1 of 4.

MR. FOGEL: Yes, sir.

CHAIRMAN CRESSE: All right. All numbered. Good.

(Exhibit No. 14-A identified)

BY MR. FOGEL:

Q By way of summary, Mr. Dittmer, on what did you base your conclusion that the 500KV line is not qualified as an oil-backout project?

A I followed the criteria set forth in the current rule, first relying on Section 3 (a)1 of the rule. I investigated whether the project would result in the

economic displacement of oil-fired generation. In that regard, I was able to see that over the ten-year measurement period, no displacement of oil was actually occurring. This can be seen by referring to my Exhibit 14-JD-2 in parentheses, wherein is shown the anticipated oil consumption for the ten-year period.

As can be seen on the document, barrels of oil consumed goes from 35,530,000 in 1982 to 61,914,000 in 1992.

In my opinion, the reason oil consumption is increasing over the period is because growth in megawatt hour sales is growing faster than FP&L is adding on oil-fired generation.

Also, with regard to the first test of economic displacement of oil, if one were to assume that the project is displacing oil, it would not be economic displacement of oil. This can easily be seen by referring to my Exhibit 14-JD-3, in parentheses, Pages 1 through 4.

On those pages I have compared the oil savings to all the costs of obtaining such savings. On those pages one can see that under the most current FCG in 1982, FP&L price projections, that except for the year 1982, the cost of obtaining such savings will exceed the fuel savings. Thus, if there is displacement of oil in given years, it is not economic displacement of oil.

S. **Transcript passages from prior Commission proceedings reflecting FIPUG's position that recovery of Oil Backout Project Costs and Coal By Wire Costs on an energy basis (¢/kWh basis) is unfair and inappropriate.**

FPL QUALIFICATION PROCEEDING

DOCKET NO. 820155-EU

TRANSCRIPT EXCERPTS

In the event recovery is provided, we believe that the myriad of advantages and benefits associated with the project that were described in full in the testimony of the witnesses, suggest that the cents per kilowatt hour basis advocated by the company is not the most equitable way to allocate revenues to be recovered through the recovery mechanism.

I might sum up this way: This is the first appearance that I have made since I began working for Mr. McWhirter's law firm and he has chosen for me a case in which the merits are heavily weighted in our favor.

CHAIRMAN CRESSE: I didn't hear much explanation about the cents per kilowatt hour. Do you intend to put some witness on? I know the fellow that you work with and the clients that he has previously represented have been kind of negative on the deal of cents per kilowatt hour because they don't pay much sense to this cents per kilowatt hour and they are more interested in high demand charges and zero energy charges. But are you going to put a witness on as to why there are any benefits that reduce energy costs that should be passed on in cents per kilowatt hour?

MR. McGLOTHLIN: We have no witness on that subject but I think we can demonstrate that.

CHAIRMAN CRESSE: You are going to handle that

proof presented by the Florida Power and Light Company demonstrates in accordance with the requirements of this Commission's rule on oil-backout that the transmission line at projects proposed by Florida Power and Light Company will result in economic displacement of oil, and that it shows a present value of expected net savings within the the-year period established by that rule to qualify as an oil-backout project, which would mean that it is subject to quantification of an oil-backout cost recovery factor.

We further submit that the proof established is that although construction has commenced on one segment, that a waiver should be granted from the rule to permit this Commission to consider whether it meets the other two tests, which we submit it has met.

CHAIRMAN CRESSE: Mr. McGlothlin?

MR. McGLOTHLIN: Commissioners, with regard to the issue of the primary purpose and also -- and I mention this without knowing whether you intend to take action on it now or later -- but I believe the prehearing issue did mention the question of how any approved recovery should be collected, whether it should be on a cents per kilowatt hour basis or whether, as we suggest, through the use of demand allocators from the last case.

I think that the methodology the Commission has chosen assures that there will be no mistake made on expected useful economic lives because whether or not there are any benefits, unaccelerated depreciation taken on the project will, in fact, depend upon the results that are obtained, rather than forecasts.

And if there's one thing we have learned, it's that the -- if there's anybody that's ever testified before the Commission, that's making his living on forecasting fuel prices, they are in serious, serious trouble. As an expert, they would not be able to make much of a living anywhere except they are in the business of doing that. And their record is one of being wrong, and in some cases, horribly wrong. That may happen in the future.

The anticipated savings, which are calculated in this document, may not take place. Unfortunately, if they don't take place, this will be treated as an ordinary construction project with a life of 35 years.

Mr. McGlothlin addresses the question of how to recover it. And I believe that obviously it ought to be recovered on a cents per kilowatthour basis because the primary purpose is reduction in energy costs. And if you are going to start spending money to reduce energy costs, then you are going to take those dollars

and somehow allocate them on a demand basis. It seems to me that the benefits are misappropriated.

And understanding, Mr. McGlothlin, that they are misappropriated to the high-load factor customers, and I just have never bought that rationale, and I don't want to start buying it now, yet I understand Mr. McGlothlin's position on it.

I believe, Commissioner, I would move that in view of that, that the motion is I believe the waiver would be grantedand we would find the project qualified. Is that the proper motion, Counselor?

MS. DAVIS: Yes.

MR. McGLOTHLIN: I have a question of whether you are deciding as part of that the implementation that you just touched on, Mr. Cresse.

CHAIRMAN CRESSE: No, sir.

MR. McGLOTHLIN: Thank you.

CHAIRMAN CRESSE: I'm not deciding that. I may not even sit on that panel. But I think it's always fair to let everybody know that they've got a very large burden in the event I am sitting on that panel. You know, you and I have discussed it from time to time back when you were lead counsel for electric and gas, and we will discuss it from time to time in the future.

OIL BACKOUT RULE ADOPTION PROCEEDING

DOCKET NO. 810241-EU

TRANSCRIPT EXCERPTS

to the point that the project will not reduce overall costs, then the operation of the Oil Backout Cost Recovery Factor should cease, and the remaining unrecovered investment included in the rate base and the costs recovered through base rates, and specifically through the KW charges for the demand metered rates.

Q Under the proposed rule how would the revenues be collected from the ratepayers?

A On a per kilowatt hour basis.

Q Is this appropriate?

A No. This is a major departure from the fixed cost/variable cost distinction of cost based rates, and completely contrary to the cost of service principles which dictate that fixed capital costs should be recovered through demand charges, not kilowatt hour charges.

Recovery of all conversion costs on a kilowatt hour basis cannot be considered cost based. Depreciation expenses and capital carrying charges are fixed capital costs, and must be recovered by the utility, irregardless of the number of kilowatt hours sold. These costs should be recovered in proportion to the peak demands customers place on the utility's system. O&M costs are properly recovered through kilowatt hour charges.

The reason an oil-fired plant is converted to burn coal is that the conversion reflects the lowest total cost

option to the utility. It does not make the fixed costs of conversion variable.

Q Is the recovery of the cost of conversion on a kilowatt hour basis equitable?

A No. This method of recovery will shift the burden of costs to off-peak users and away from on-peak users. High load factor customer who are energy intensive will pay a disproportionate higher share of the cost.

Q How will customers likely react to increased kilowatt hour charges designed to recover the fixed costs of conversion?

A When faced with increased KWH charges, economic rationality dictates that customers will search for ways to reduce energy consumption at the expense of a deteriorating load factor. In the short run, production processes will probably be reoptimized and production rescheduled. Over the long run, industrial customers will probably adjust their capital mix, employment, and technology in an effort to reduce energy consumption, to the detriment of load factor. Residential customers will modify their usage patterns in response to higher rates, also to the detriment of load factor.

Q What would be the likely effect on the utility when the customers react to the higher kilowatt hour charges?

A Over times, energy usage during on-peak periods

determination that this was going to happen, it probably would be at the point in time the backout recovery is being reviewed every six months. So at that point it could be relfected in an order.

MR. CHILDS: That's all I have.

HEARING OFFICER: Mr. Willis?

CROSS EXAMINATION

BY MR. WILLIS:

Q Mr. Cook, I take it from your testimony that you don't oppose an oil backout cost recovery procedure; is that correct?

A No. If conversion to coal or coal-oil mixture is a cost-effective method, then we do not oppose that.

Q So your concern, then, is that how the costs involved in that conversion from oil to coal or some other combination of fuels is borne by particular classes of customers; is that correct?

A Yes, I think that's the primary concern. Also I feel a major concern is that the rule not contain this arbitrary concept of allowing a portion of the savings, because there's no use to disguise it. The rule is in effect trying to be an accelerated depreciation mechanism, so I think the Commission should make a determination at the time the project is approved as to what that acceleration level should be for the utility, and then the cost would be known

FPL INITIAL OIL BACKOUT COST RECOVERY PROCEEDING

DOCKET NO. 820001-EU

TRANSCRIPTS EXCERPTS

testimony of Jeff Pollock, who I believe will demonstrate to the Commission that the proposal by the company to allocate these revenues on the basis of consumption is not the simple and equitable remedy or solution that it appears to be on the surface.

Thank you for your attention.

COMMISSIONER MARKS: Let me make sure I understand your position and what we voted on at that agenda conference as a part of this oil backout cost recovery clause and what, how we are proceeding.

And as I understand it, the Commission by a three to two vote on that day voted to include capacity charges, capacity payments, however you want to characterize it, in determining whether a facility qualified.

Do you have some misunderstanding of that?

MR. McGLOTHLIN: No, no, sir. I don't think there is any misunderstanding on that. I believe the modified rule enables the company to use the approach of total savings, rather than fuel savings alone for purpose of qualification. Of course, I don't -- I resisted that, but I don't dispute that took place.

It remains for the company to demonstrate and to carry its burden of proof in showing that these truly are savings which will benefit customers. And our contention here is not that it is not included by the

Group (FIPUG) who are customers of Florida Power & Light Company (FP&L). These companies are large, high load factor electrical consumers and take service primarily under Rate Schedules GSLD-2, CS-2, GSLD-3 and CS-3.

Q What is the subject of your testimony?

A My testimony addresses the allocation of the costs which FP&L is proposing to recover through an Oil-Backout Cost Recovery Factor to the various customer classes.

Q Have you prepared any exhibits for submission?

A Yes. I have prepared Exhibit JP-1 ( ) consisting of one schedule.

Q What is the nature of the costs which FP&L is proposing to recover through the Levelized Oil-Backout Cost Recovery Factor?

A FP&L is proposing to recover the cost of the Florida portion of the Hatch-Duval 500 kV Transmission Lines which comprise Phase I of FP&L's 500 kV Transmission Project. According to Mr. Scalf's testimony in Docket 820155-EU, the first segment was completed and energized last April, while the second segment is scheduled to be completed in September.

Q How should the costs associated with the Project be recovered from the various customer classes?

A The costs of the Project should be treated in the same way as the costs of FP&L's other transmission lines for rate-making purposes. That is, the costs should be considered demand-related and thus, allocated (and recovered) relative to the demand responsibility of

each customer class. The amount allocated to the demand-metered rates should be recovered through their respective demand charges.

Q How should the demand responsibility of the customer classes be determined?

A In general, the demand responsibility should be based on the same demand cost allocation method approved by the Commission in the utility's most recently completed rate case proceeding. If at all possible, the class allocation factors should be based on current data to provide a more accurate recovery of these costs. (My recommendation is not an endorsement of the Commission-approved allocation methods per se but is intended to provide consistency in the cost-recovery process.)

Since FP&L is seeking recovery of transmission-related costs through the Oil-Backout Cost Recovery Factor, then these costs should be recovered relative to a twelve coincident peak and average demand allocation factor, as shown in Exhibit JP-1 ( ), Schedule 1. This is the method which the Commission adopted in FP&L's last rate case (Docket 810002-EG). The data in Schedule 1 is based on current information provided in FP&L's pending rate case application, with which I am familiar given my involvement in that Docket.

Q What is the justification for classifying and allocating the costs of the 500 kV Transmission Project relative to demand?

A The Project will better enable FP&L to stand ready to meet customer demands when they occur over the life of the Project.

According to Mr. Scalf, of FP&L:

> "The primary purpose of the Project is to increase the transfer capability between the Southern Electric system and the FP&L system and thus enable the importation and delivery of up to 2,000 MW of coal-by-wire from the Southern Company through the FP&L system.
>
> The Project will also contribute in delivering the output of new generating stations planned for Northeast Florida and will subsequently approve electric system reliability for all Peninsular Florida utilities . . . by (1) preventing electrical separation from the Southern Electric system for single generation contingencies, (2) providing an additional source of external power during conditions of short-term emergencies, such as extreme weather conditions, or long-term emergencies, such as disruptions in the fuel supply system, and (3) establishing an additional independent transmission corridor throughout the FP&L East Coast network." (Docket 820155-EU, Emphasis added)

In many respects, FP&L's existing transmission system also provides the same benefits. That is, it interconnects FP&L's generating plants and provides a source of delivering and importing power between FP&L and other utilities--including the Southern Company. Therefore, there is no basis for treating the 500 kV Transmission Project costs differently from the rate-making treatment of FP&L's other transmission costs.

Second, these costs are fixed in that the necessity of earning a return on the investment, recovering the capital cost (depreciation) and operating the property are a function of the existence of the property and are not a function of the number of kilowatthours sold. As sales volumes change, these fixed costs

are not affected, but continue to be incurred, making them fixed or demand-related in nature. The investment in all transmission plant (including the Project) falls into this fixed cost category and should not be allocated as a function of energy consumption or of average demand. The allocation of fixed costs relative to energy consumption could lead to rate instability and reduce the incentive given to customers to operate during the off-peak hours under the time-of-day rates.

With respect to stability, if fixed costs are being recovered relative to energy and the level of kilowatthour sales decreases, as often happens during an economic downturn, a utility's revenues will drop more than its costs.

With respect to off-peak pricing, the recovery of fixed costs relative to energy would reduce the relative cost advantage of increasing consumption during the off-peak period and make it less attractive to reduce consumption during the more costly on-peak period.

Q Are you aware that FP&L is proposing to recover the Project costs on a kilowatthour basis because it will enable the Company to displace oil and thereby provide fuel cost savings to FP&L's customers?

A Yes, I am. This argument focuses primarily on the period of time when the so-called "coal bubble" would exist and ignores the other demand-related enhancements that the Project would provide throughout its useful life.

A kilowatthour recovery assumes that fuel cost savings are the sole cause of building the Project which, as mentioned previously, is not the case. According to Mr. Scalf, the primary purpose of the coal-by-wire purchases is the economic displacement of oil-fired generation. The Project will, of course, facilitate these transactions enabling FP&L to take full advantage of the significant, but short-lived, coal bubble and will result in lower fuel costs. However, such fuel cost savings are made possible by FP&L's strong dependence on oil for base load. The rapid rise in oil costs has resulted in FP&L being in a temporary nonoptimum situation with respect to its fuel mix. By displacing oil generation with coal-by-wire purchases, FP&L will achieve a more optimal fuel mix, the effect of which would be a lower cost to the ratepayers. A utility would be remiss if it did not continually seek alternative investments that would enable it to provide continuous and reliable service at the lowest overall cost to the ratepayer.

Finally, a kilowatthour allocation of the Project costs would not be equitable to high load factor customers without a commensurate reduction in their fuel cost responsibility. FP&L has proposed a kilowatthour allocation on the theory that high load factor customer classes would receive the most benefit from the fuel cost savings that would result from the coal-by-wire purchases. As I previously testified, the fuel savings are but one of the benefits made possible by the Transmission Project. By this logic,

it would also be consistent (and equitable) to allocate the lower fuel costs associated with these purchases explicitly to the high load factor customer classes in determining fuel cost responsibility. However, to my knowledge, FP&L has not made such a proposal either in the currently pending rate case or in its proposed Fuel Cost Recovery Clause Docket.

By the same token, the same customers who would presumably benefit more from the lower fuel costs are the ones who are currently bearing a disproportionate share of today's higher fuel costs.

The point is that an equitable recovery of both capital costs and fuel costs cannot be considered in isolation. FP&L's proposal, which focuses only on the recovery of the capital cost component, precludes an equitable recovery of these costs, particularly from the high load factor customer classes.

Q Does this conclude your direct testimony?

A Yes, it does.

(End of prefiled direct testimony.)

If the company had built these plants and was asking for a rate increase to recover the investment costs and other capital costs and operating costs of these plants, based upon the allocation methodology adopted by the Commission, these costs would be allocated essentially on a demand basis, not on a kilowatt hour basis.

Therefore, there are two inconsistencies essentially between the way in which the costs have been treated in rate-making in the past and the way in which FP&L is proposing to recover these costs through the oil backout clause.

Now, with respect to the logical inconsistency, the result of allocating capital costs on a kilowatt hour basis essentially results in an assignment of above-average investment per kilowatt of demand to high load factor customers.

In part, the logic of this is that high load factor customers use more energy on a consistent basis, and therefore should be allocated to capital costs of the more capital intensive base load units. However, by that logic, it also follows that if the high load factor customers are more responsible, and therefore benefit from the higher capital costs of the base load units, so, too, would they benefit from the lower running costs of those units.

So consequently, if they are going to be assigned a higher than average cost per KW of capacity, then

consistency and equity, in my opinion, dictate that they also be assigned a below average cost per kilowatt hour of fuel.

However, since FP&L is proposing to maintain its equal cents per kilowatt hour recovery for line losses to all customer classes, the high load factor customers are in effect bearing the freight on the capital costs of the units, but not getting the benefits of the lower running costs, which they are supposedly more responsible for.

Finally, allocation of capital costs, as I said before, in my opinion, is not good rate-making procedure. It causes, it could cause instability in the event that kilowatt hour sales decline, and that revenues decline faster than would the decline in costs.

What we are essentially recovering is the fixed costs. And the recovery of that fixed cost, as well as the recovery of the fixed cost of the unit power purchases, will continue irrespective of the number of kilowatt hours generated and sold.

Finally, if the kilowatt hour allocation is approved, this would tend to lessen the incentive for customers to use power during the off-peak period when it costs less to generate, which I think would be a misleading price signal.

Q Mr. Pollock, I want to ask you if you have any comments on a couple of other items that have arisen today.

Steel Hector & Davis
Tallahassee, Florida

Charles A. Guyton
(904) 222-3423

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August 18, 1989

Mr. Steve Tribble
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, FL 32301

RE: Docket No. 890148-EI

Dear Mr. Tribble:

Enclosed for filing are the original and fifteen copies of Florida Power & Light Company's Motion to Take Official Recognition and Memorandum in Support of Motion to Take Official Recognition in the above docket. Also enclosed are sixteen copies of the Notebook containing the documents which FPL seeks to have the Commission officially recognize.

Very truly yours,

Charles A. Guyton

Charles A. Guyton

ACK ✓
AFA 1
APP
CAF
CMU ~~CAG:do~~
CTR Enclosures
EAG ~~cc:~~ Counsel for all parties of record
LEG 1 w/ltr
LIN 6
OPC
RCH
SEC 1
WAS
OTH

Motion - 08390-89
Legal Memo - 08391-89
Documents - 08392-89

RECEIVED & FILED

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BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition of the Florida Industrial Power Users Group to Discontinue Florida Power and Light Company's Oil Backout Cost Recovery Factor	)	Docket No. 890148-EU Filed: August 18, 1989

ORIGINAL FILE COPY

FLORIDA POWER & LIGHT COMPANY'S MOTION TO TAKE OFFICIAL RECOGNITION

Florida Power & Light Company ("FPL"), pursuant to § 120.61, Florida Statutes (1987), moves the Florida Public Service Commission ("Commission") to take official recognition in Docket No. 890148-EU of the documents submitted with this Motion in a separate Notebook. In support of this Motion, FPL states:

INTRODUCTION

1. Throughout the prefiled testimony on Docket No. 890148-EU, there are direct as well as implicit references to Commission rules, Commission orders, prior positions of parties, prior statements by witnesses and commissioners, and general discussions of Commission intent. These references are to numerous prior Commission proceedings that relate to the Commission's adoption, amendment and implementation of the Commission's Oil Backout Rule, Florida Administrative Code Rule 25-17.016. In addition, there is testimony which relates to, and FIPUG's Petition refers to, other Commission rules, orders

and proceedings regarding tax savings due to changes in federal corporate income tax rates and Commission surveillance reports.

2. Because there are references to these Commission records throughout the record in this proceeding, FPL has endeavored to pull together the documents referred to or primarily relied upon, particularly by Mr. Waters, FPL's witness. FPL believes that this compilation of Commission records will provide reasonably easy Commission access during the hearing and facilitate the trial of this case. Because of the mammoth size of the entire record for the other relevant Commission proceedings, FPL has compiled excerpts of Commission transcripts upon which FPL relies in this proceeding rather than asking the Commission to take official notice of the entire records of those proceedings.

3. FPL respectfully submits that taking official notice of the materials requested by FPL will facilitate the hearing scheduled for August 22, 1989. It will shorten cross examination by avoiding FPL having to use Mr. Pollock to get these documents into the record. It will also facilitate the Commission hearing of the case by providing an easy reference to documents that will be referred to during testimony.

4. No party can reasonably claim it is adversely affected by this motion. First, it is an effort to focus issues, reduce the volume of the record and facilitate the conduct of the hearing. Second, as can be established if

necessary, FIPUG's witness, Mr. Pollock, has reviewed all or most of the documents being offered by FPL. Third, FPL provided notice of its intent to file such a motion in its Prehearing Statement filed on July 27, 1989, and no party objected or inquired as to the documents to be identified. Fourth, all parties, with the exception of Metropolitan Dade County which has not actively participated to date, received a hand delivered copy of the supporting Notebook on Thursday, August 17, 1989, 5 days prior to hearing. Fifth, providing advance notice of documents to be officially noticed by the Commission is a significant procedural advantage not normally afforded parties before the Commission.

Commission's Records Requested To Be Officially Noticed

5. Enclosed with this Motion is a Notebook containing the documents FPL is requesting the Commission to officially notice. The Notebook is organized by subject matter. It has an index, See Attachment A to this Motion, which demonstrates its internal organization in detail; however, it is summarized below.

6. Tabs A through E of the Notebook contain the Oil Backout Rule and Commission Orders relating to its adoption and amendment.

7. Tabs F through H of the Notebook contain Commission orders regarding the qualification of FPL's Oil Backout Project.

8. Tab I of the Notebook contains Commission orders regarding oil backout cost recovery for FPL's Oil Backout Project.

9. Tab J contains the decision of the Supreme Court of Florida affirming the Commission's orders approving FPL's Oil Backout Project for qualification and cost recovery through the Oil Backout Cost Recovery Factor.

10. Tabs K and L of the Notebook contain excerpts from two FPL base rate orders addressing whether costs associated with the Oil Backout Project should be recovered through FPL's base rates.

11. Tabs M and O of the Notebook contain the Commission's Tax Savings Rule, the instructions for FPL's 1987 Tax Savings Report and the final order in Docket No. 880355-EI ordering FPL ordering FPL to make a 1987 tax savings refund.

12. Tab P of the Notebook contains transcript passages from FPL's Oil Backout Qualification Proceeding, Docket No. 820155-EU ("Qualification Proceeding"), FPL's Initial Oil Backout Cost Recovery Proceeding, Docket No. 820001-EU ("Initial Cost Recovery Proceeding"), and the Oil Backout Rule Amendment Proceeding, Docket No. 820257 ("Rule Amendment Proceeding"). These transcript references reflect the extent to which FPL, intervenors and the Commission acknowledged the uncertainty in predicting oil prices well into the future.

13. Tab Q of the Notebook contains transcript passages from the Qualification proceeding, the Rule Amendment Proceeding, the Agenda Conference for the Rule Amendment Proceeding, the proceeding adopting the Oil Backout Rule ("Rule Adoption Proceeding") and the Initial Cost Recovery Proceeding. These passages reflect the extent to which the parties and the Commission acknowledged that project qualification is based on uncertain fuel forecasts, that the forecasts should be conservative because of their import in project qualification, and that once it is established that the project's primary purpose is economic oil displacement and the project is qualified, then it should not affect project qualification or continued cost recovery of the Project through the Oil Backout Cost Recovery Factor whether projections prove to be incorrect based on actual experience.

14. Tab R of the Notebook is comprised of transcript passages from FPL's Qualification Proceeding. It includes cross examination of FPL witnesses by FIPUG and Public Counsel attempting to show that FPL's Project does not meet the primary purpose of economic oil displacement and that FPL recognized improper Project benefits in its economic analysis of the Project. It also contains Public Counsel testimony as to why coal by wire capacity costs should be included in determining the Project's primary purpose. It also contains redirect examination of an FPL witness establishing that the primary

purpose of the Project was not increased reliability. The transcript references are offered to show that FIPUG's arguments in this proceeding regarding the Project's primary purpose are not new and have been heard by the Commission previously.

15. Tab S of the Notebook is comprised of transcript passages from FPL's Qualification Proceeding, the Rule Adoption Proceeding, and the Initial Cost Recovery Proceeding. The passages reflect statements by FIPUG's witnesses or counsel that the costs associated with an oil backout project or coal by wire purchases are demand related rather than energy related and should not be recovered on an energy or cents per kilowatt hour basis. These passages are offered to demonstrate that FIPUG's unfairness argument regarding the energy based oil backout cost recovery charges are not new.

BASIS FOR COMMISSION OFFICIALLY RECOGNIZING DOCUMENTS COMPRISING THE NOTEBOOK

16. The Commission's rules specifically provide that "any relevant evidence shall be admitted if it is the sort of evidence which is normally admissible in civil trials in Florida or which reasonably prudent persons are accustomed to relying upon in the conduct of their affairs." See Florida Administrative Code Rule 25-22.048(3). As a result, evidence that is admissible in Florida court proceedings is clearly admissible in Commission proceedings. Moreover, the Florida Administrative Procedure Act ("APA") provides that evidence may

be admissible in an administrative proceeding even though it would be inadmissible in a Florida court proceeding. See § 120.58(1)(a), Florida Statutes (1987).

17. Florida's Evidence Code provides that a court may take judicial notice of a number of matters or documents, including but not limited to the records of any Florida court including its own records. See § 90.202, Florida Statutes (1987). In fact, a court must take judicial notice of the record of a particular matter or proceeding if a party requests it and (1) gives each opposing party timely written notice of the request so that each opposing party can prepare to meet the request, and (2) furnishes the court with sufficient information to enable it to take judicial notice of the matter or documents. See § 90.203, Florida Statutes (1987).

18. Since a court can take judicial notice of its own records from prior matters and of administrative agency records, the Commission can similarly take official notice of prior proceedings before it. See Florida Administrative Code Rule 25-22.048(3); see also § 120.54(6), Florida Statutes (1987) (in rulemaking proceeding, administrative agency may recognize any material which may be judicially noticed); Florida Administrative Code Rule 221-6.020 (DOAH rule that hearing officer may take official recognition of any matters which may be judicially noticed). In this regard, the Florida APA specifically outlines the procedure a party is to follow in

requesting an administrative agency to officially recognize certain documents: a party can request that an administrative agency officially recognize certain documents, provided that the other parties receive notice of the request and have an opportunity to examine and contest the material. See § 120.61, Florida Statutes (1987). Moreover, the APA expressly provides that documents or materials officially recognized are part of the record and can be the bases of findings of fact. See § 120.57(1)(b)6, 8, Florida Statutes (1987).

19. Here, all the documents comprising the enclosed Notebook are part of the record of a prior Commission proceeding. As a result, the Commission can officially recognize the documents comprising the enclosed Notebook.

WHEREFORE, FPL respectfully requests the Commission to officially recognize the documents comprising the Notebook enclosed with this Motion, and that documents in the Notebook, an index of which is attached as Attachment A to this Motion, be incorporated into the record in this matter.

Respectfully submitted,

STEEL HECTOR & DAVIS
215 South Monroe
Suite 601
Tallahassee, Florida 32301-1804

Attorneys for Florida Power
& Light Company

By: Charles A. Guyton
Charles A. Guyton

ATTACHMENT A

NOTEBOOK INDEX

Tab	Document
	Oil Backout Rule Adoption and Amendment
A.	Oil Backout Rule: 25-17.016 F.A.C.
B.	Order Proposing Oil Backout Rule: Order No. 10363, Docket No. 810241, Issued November 30, 1981
C.	Order Adopting Oil Backout Rule: Order No. 10554, Docket No. 810241, Issued January 29, 1982
D.	Order Proposing Oil Backout Rule Amendment: Order No. 10932, Docket No. 820257-EU(RP), Issued June 24, 1982
E.	Order Adopting Oil Backout Rule Amendment: Order No. 11188, Docket No. 820257-EU, Issued September 23, 1982
	FPL's Oil Backout Qualification
F.	Order Granting FIPUG Intervention: Order No. 10901, Docket No. 820155-EU(IN), Issued June 17, 1982
G.	Order Granting Qualification: Order No. 11217, Docket No. 820155-EU, Issued October 1, 1982
H.	Order Denying FIPUG and Public Counsel Reconsideration, Order No. 11537, Docket No. 820155-EU, Issued January 24, 1983
	FPL's Initial Oil Backout Cost Recovery
I.	Order Authorizing Initial FPL Oil Backout Cost Recovery: Order No. 11210 (pp.7-11), Docket No. 820001-EU, September 29, 1982
	Florida Supreme Court Decision Affirming Commission Orders Approving FPL Oil Backout Project Qualification And Cost Recovery
J.	Citizens v. Public Service Commission, 448 So.2d 1024 (Fla. 1984)

FPL Rate Case Orders Addressing Base Rate Recovery For Oil Backout Project Costs

K. FPL's 1982 Rate Order: Order No. 11437 (pp. 1,10,42,43), Docket No. 820097-EU(CR), Issued December 22, 1982

L. FPL's 1984 Rate Order: Order No. 13537 (pp. 1,60), Docket No. 830465-EI, Issued July 24, 1984

Tax Savings Rule, Tax Savings Report Form And FPL's 1987 Tax Savings Refund Final Order

M. Commission's Tax Savings Rule: 25-14.003 F.A.C.

N. Commission's 1987 Tax Savings Report Form and Instructions

O. FPL's 1987 Tax Savings Refund Final Order: Order No. 20659, Docket No. 880355-EI, Issues January 25, 1989

Commission Records Relating To Various FIPUG Allegations and Arguments

P. Transcript passages from prior Oil Backout proceedings reflecting the extent to which the parties and the Commission acknowledged the uncertainty in predicting oil prices.

Q. Transcript passages reflecting the extent to which the parties and the Commissioners indicated that oil backout project qualification is based on uncertain fuel forecasts and, that forecasts should be conservative, but once it is determined that the primary purpose of a project is economic oil displacement and the project is qualified, project qualification is not to be revisited and recovery of the project through an Oil Backout Cost Recovery Factor is to continue even if projections prove to be incorrect.

R. Transcript passages from prior Commission proceedings reflecting FIPUG's and Public Counsel's prior attempt to establish that the primary purpose of FPl's Oil Backout Project is economic oil displacement and that FPL was recognizing improper Project benefits in its economic analysis of the Project.

S. Transcript passages from prior Commission proceedings reflecting FIPUG's position that recovery of Oil Backout Project Costs and Coal By Wire Costs on an energy basis (¢/kWh basis) is unfair and inappropriate.

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BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition of the Florida Industrial Power Users Group to Discontinue Florida Power and Light Company's Oil Backout Cost Recovery Factor	)	Docket No. 890148-EU Filed: August 18, 1989

LEGAL MEMORANDUM SUPPORTING FLORIDA POWER & LIGHT COMPANY'S MOTION TO TAKE OFFICIAL NOTICE

ISSUE

Whether the Florida Public Service Commission ("Commission") may officially recognize the records, including evidence, orders, proceeding transcripts and agenda conference transcripts, of prior Commission dockets.

SHORT ANSWER

The Commission may officially recognize the records of prior Commission dockets. All the documents which FPL is requesting the PSC to officially recognize are part of the record of prior PSC dockets or are Commission rules, forms or records. As a result, the PSC should officially recognize the documents requested and these documents should be incorporated into the record of this matter as evidence which can be the bases of findings of fact.

LEGAL ANALYSIS

A. The Commission May Officially Recognize Documents in Proceedings Under §120.57, Florida Statutes

Unlike rulemaking proceedings, the Florida Administrative Procedure Act ("APA") does not explicitly state what material an administrative agency can officially recognize in proceedings which affect substantial interests. Compare §120.54(6), Florida Statutes (1987) with §120.57, Florida Statutes (1987). Rather, the provisions of §120.57, Florida Statutes simply provide that materials officially recognized are part of the record, see §120.57(1)(b)6, Florida Statutes, and that materials officially recognized can be the bases of findings of fact, see §120.57(1)(b)8.

B. At a Minimum, The Commission May Officially Recognize all Material or Matters That a Florida Court Can Judicially Notice

The APA explicitly states that, in a rulemaking proceeding, an administrative agency can officially recognize all matters that may be judicially noticed. See §120.54(6). Although §120.57, Florida Statutes has no such provision, in light of §120.54(6) it should be recognized that an administrative agency in a §120.57 proceeding should similarly be able to officially recognize matters that may be judicially noticed.

There is, however, more express authority for arguing that an administrative agency in a §120.57 proceeding can officially recognize all matters that a Florida Court can

judicially notice. The authority is a combination of the Commission's rules of procedure and the Florida Evidence Code.

The Commission's rules specifically provide that "any relevant evidence shall be admitted if it is the sort of evidence which is normally admissible in civil trials in Florida or which reasonably prudent persons are accustomed to relying upon in the conduct of their affairs." See Florida Administrative Code Rule 25-22.048(3). In fact, the Florida Administrative Procedure Act ("APA") provides that evidence may be admissible in an administrative proceeding even though it would be inadmissible in a Florida court proceeding. See § 120.58(1)(a), Florida Statutes (1987). As a result, evidence that is admissible in Florida court proceedings is clearly admissible in Commission proceedings.

Florida's Evidence Code provides that a court may take judicial notice of a number of matters or documents, including but not limited to the records of any Florida court, including its own records, and the official actions of any legislative departments of any state. See § 90.202, Florida Statutes (1987). In fact, a court must take judicial notice of the record of a particular matter if a party requests it and (1) gives each opposing party timely written notice of the request so that each opposing party can prepare to meet the request, and (2) furnishes the court with sufficient information to enable it

to take judicial notice of the matter or documents. See § 90.203, Florida Statutes (1987).

Since matters judicially noticed are admissible as evidence in Florida courts, the same matters are therefore admissible as evidence in Commission proceedings. See Florida Administrative Code Rule 25-22.048(3). "Official recognition" is the procedural mechanism for getting these matters into evidence. See also Florida Administrative Code Rule 221-6.020 (DOAH rule that hearing officer may take official recognition of any matters which may be judicially noticed).

C. The Commission May Officially Recognize The Records of Prior Commission Dockets

FPL has not found any Florida appellate cases decided after December 20, 1981,[1] in which an administrative agency took official notice of records of administrative hearings conducted by the same agency. However, it is clear that the Commission can officially recognize matters which a Florida court can judicially notice. Since a Florida court can judicially notice its own records, records of other courts and official actions of any legislative departments, the Commission

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[1] The significance of this date is discussed in Section "E", infra.

should similarly be able to officially recognize its own records. Case law bears this out.

It is well settled in Florida that a court can judicially notice the record of a prior, different court proceeding. See, e.g., Southern California Funding Inc. v. Hutto, 438 So.2d 426, 430 (Fla. 1st DCA 1983) (court took judicial notice of portions of a certified copy of a deposition filed in another court proceeding). It is equally well settled in Florida that a court can judicially notice legislative records. See, e.g., Ellsworth v. Ins. Co. of N. Amer., 508 So.2d 395, 398 (Fla. 1st DCA 1987) (court recognized that trial court can judicially notice legislative staff summaries); Department of Health & Rehab. Serv. v. Shatto, 487 So.2d 1152, 1153 (Fla. 1st DCA 1986) (court stated that "Senate Staff Analysis and Economic Impact Statement" prepared by Senate staff members could be judicially noticed); Jacksonville Elec. Auth. v. Department of Revenue, 487 So.2d 1350, 1353-54 (Fla. 1st DCA) (taking judicial notice of legislative records), review denied, 492 So.2d 1331 (Fla. 1986).

In Jacksonville Elec. Auth., the First District was concerned with learning the legislative intent of a particular statute. To assist it, the First District actually listened to the cassette tape of the proceedings before the Senate Committee on Ways and Means and reviewed the testimony of a number of legislators. Jacksonville Elec. Auth., 486 So.2d at 1354, 1354

n.7. As authority for its independent review of these matters, the First District stated that it could take judicial notice of the matters but cautioned that "such notice should be consistent with the provisions of section 90.203" Id. at 1354.

In addition to taking judicial notice of the legislative documents and records described above, the Florida courts have also judicially noticed the records maintained by, and records of proceedings on file with, the Secretary of State. See Schriver v. Tucker, 42 So.2d 707, 709 (Fla. 1949); State v. Simpson, 166 So. 277, 231 (Fla. 1935). And finally, the Florida Supreme Court has previously taken judicial notice of a Commission order. See Blair Contracting Co. v. Mason, 211 So.2d 15, 18 (Fla. 1968).

FPL's position also finds express support in both federal and other state opinions. See, e.g., Paramount Ca Mfg. Co. v. National Labor Relations Bd., 260 F.2d 109, 113 (8th Cir. 1958) (administrative agencies may take judicial notice of its own records); Interstate Nat. Gas Co. v. Southern California Gas Co., 209 F.2d 380, 385 (9th Cir. 1953) ("We may take judicial notice of records and reports of administrative bodies."); Unruh v. Truck Ins. Exchange, 102 Cal. Rptr. 815, 827 n.13 (Cal. 1972) (en banc) (court took judicial notice of the record of the proceedings before administrative agency). Noticeably, in Paramount Cap Mfg. Co., supra, the Eight Circuit Court of Appeals found it significant that the parties to the proceeding

before it were the same parties to the proceeding of which the court was requested to take judicial notice. In addition, the court found significant the fact that the parties therefore had the opportunity to present witnesses and cross-examine opposing witnesses. Paramount Cap Mfg. Co., 2609 F.2d at 113. The reliability of hearings or proceedings "where the testimony has been made under oath and the parties have had the right of cross-examination" was also significant in the First District's opinion in General Development Corp. v. Florida Land and Water Adjudicatory Comm'n, 368 So.2d 1323, 1325-26 (Fla. 1st DCA 1979) (cited with approval in Transgulf Pipeline v. Bd. of County Commissioner's, 438 So.2d 876, 878-79 (Fla. 1st DCA 1983)). There, the First District stated that if those safeguards are present, the "testimony and exhibits presented at the [local] hearing should be admitted into evidence at the 120.57 hearing before the Commission." General Development, 368 So.2d at 1326. Since mutuality of parties, mutuality of issues and "sworn testimony subject to cross-examination" existed in the prior Commission hearings which FPL is requesting the Commission to officially recognize, the above cases lend support to our argument.

Based on the case law discussed above, an administrative agency may officially recognize its own records from prior hearings or proceedings before it. Applying the principle to this case, the Commission may officially recognize

the records of prior Commission dockets provided FPL follows the notice requirements of §120.61, Florida Statutes (1987).

D. The Documents FPL Wants The Commission To Officially Recognize Are All Part of The Records of Prior Commission Dockets

All the documents which FPL wants the Commission to officially recognize are part of the formal record of prior Commission dockets. Official transcripts of the various proceedings are part of the record. See, e.g., §120.57(1)(b)6 (official transcript is part of record of §120.57 proceeding). The various orders entered by the Commission, Commission rules and agenda conference transcripts similarly constitute part of the record of a particular Commission proceeding or docket.

As a result, these documents are materials or matters which the Commission may officially recognize, which should be incorporated into the record in this matter as evidence, and which can form the bases of findings of facts.

E. Contrary Case Law is Distinguishable

There is case law suggesting that the Commission can take "judicial notice" of its own decisions but cannot take judicial notice of the evidence upon which those decisions are based. See United Telephone Co. v. Mayo, 345 So.2d 648, 652-53 (Fla. 1977). However, the basis for the Supreme Court's statements was Florida Administrative Code Rule 25-2.111, a

Commission rule which was repealed on December 20, 1981. Consequently, all opinions issued prior to 1982 suggesting that the Commission cannot officially recognize its own records - other than orders - or evidence from prior dockets are distinguishable.[2]

It is also important to note that despite the existence of Florida Administrative Code Rule 25-2.111 the Florida Supreme Court in Mayo actually affirmed the Commission's decision to officially notice evidence from a prior Commission docket. Id. at 653. Specifically, the Court stated:

> It is true that this action of the Commission was irregular. However, this Court will not overturn the Commission's order merely because it failed to comply with its own evidentiary rule. In American Farm Lines v. Black Ball Freight, 397 U.S. 532, 539, 90 S.Ct. 1288, 1292, 25 L.Ed.2d 547 (1970), the United States Supreme Court articulated the general rule that:
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> > "[i]t is always within the discretion of a court or an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the ends of justice require it. The

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2 Florida Administrative Code Rule 25-2.111, which was repealed, actually conformed to Florida case law existing prior to the establishment of the Florida Evidence Code. See, e.g., Kelly v. Kelly, 75 So. 2d 191 (Fla. 1954). It makes sense, therefore, that this local Commission rule was repealed and that the new Commission procedural rules adopted conform to the more liberal and expansive judicial notice provisions of §90.202, Florida Statutes.

action of either in such a case is not reviewable except upon a showing of substantial prejudice to the complaining party." NLRB v. Monsanto Chemical Co., 205 F.2d 763, 764.

United has not shown that it has been substantially prejudiced by the Commission's failure to observe its own evidentiary rules. United was an intervenor in the Southern Bell Telephone docket and therefore had the opportunity to shape the record. Furthermore, the Commission's own rules show that it does not intend to be bound strictly by procedural rules. To illustrate, Florida Administrative Code Rule 25-113 states that "exclusionary rules of evidence shall not be used to prevent the receipt of evidence having substantial probative effect."

Because petitioner was a participating intervenor in the docket where the evidence relied upon was developed, we cannot say that it was substantially prejudiced by the Commission's action. Absent such a showing, this Court cannot overturn the decision of an administrative agency.

CONCLUSION

Based on a review of the applicable statutes and Florida case law, the Commission may officially recognize the documents which FPL has requested it to officially recognize pursuant to §120.61, Florida Statutes (1987).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of August, 1989, a true and correct copy of Florida Power & Light Company's Motion to Take Official Recognition and the Legal Memorandum in Support of Florida Power & Light Company's Motion to Take Official Notice were served by hand delivery* and by Federal Express delivery** on the persons listed below. The Notebook with the documents to be officially recognized was served on August 17, 1989 by hand delivery* and by Federal Express delivery** on the persons listed below.

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