

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of : DOCKET NO. 970001-EU
:
Fuel and purchased :
power cost recovery :
clause and generating :
performance incentive :
factor. :

VOLUME 2
Pages 201 through 367

PROCEEDINGS: HEARING

BEFORE: CHAIRMAN JULIA L. JOHNSON
COMMISSIONER TERRY DEASON
COMMISSIONER DIANE K. KIESLING

DATE: Wednesday, February 19, 1997

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: H. RUTHE POTAMI, CSR, RPR
Official Commission Reporter
ROWENA NASH
Official Commission Reporter

APPEARANCES:

(As heretofore noted.)

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FPSC-RECORDS/REPORTING

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P R O C E E D I N G S

(Transcript follows in sequence from Volume
1.)

MR. McGEE: And we would call Mr. Wieland.

- - - - -

KARL H. WIELAND

was called as a witness on behalf of Florida Power
Corporation and, having been duly sworn, testified as
follows:

D I R E C T E X A M I N A T I O N

BY MR. McGEE:

Q Sir, would you give us your name and
business address for the record, please?

A My name is Karl H. Wieland. My business
address is Post Office Box 14042, St. Pete, Florida
33733.

Q And what is your capacity with Florida
Power?

A I'm the director of business planning.

Q Mr. Wieland, do you have a document before
you entitled "Direct Testimony of Karl H. Wieland"
consisting of 14 pages and attached exhibits?

A Yes, I do.

Q Was this testimony prepared by you or under
your supervision as your direct testimony for this

1 proceeding today?

2 A Yes, it was.

3 Q Do you have any additions or corrections
4 that you'd like to make to your testimony or exhibits?

5 A Yes, I do. I have a correction to a
6 Schedule E-10 of my testimony, which I believe is
7 going to be handed out.

8 Q Yes; that's the handout that I just passed
9 around.

10 A If everybody has that, the changes to E-10
11 are in the next to the last column entitled "Prior
12 Residential Bill," and then also the very last column
13 on the right side, which is entitled "April '97 Versus
14 Prior." And the total change from the current bill,
15 which is 83.39, to the proposed or the projected
16 numbers beginning in April is still 5.26, but the
17 pieces changed somewhat.

18 Q Does that explain your revision?

19 A Yes.

20 Q With that correction, if you were asked the
21 questions contained in your prepared testimony, would
22 your answers be the same today?

23 A Yes, they would.

24 MR. MCGEE: Madam Chairman, we would ask
25 that Mr. Wieland's prepared testimony be inserted into

1 the record as though read.

2 CHAIRMAN JOHNSON: It will be so inserted.

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**FLORIDA POWER CORPORATION
DOCKET No. 970001-EI**

**Levelized Fuel and Capacity Cost Factors
April through September 1997**

**DIRECT TESTIMONY OF
KARL H. WIELAND**

1 **Q. Please state your name and business address.**

2 **A. My name is Karl H. Wieland. My business address is Post Office Box**
3 **14042, St. Petersburg, Florida 33733.**

4

5 **Q. By whom are you employed and in what capacity?**

6 **A. I am employed by Florida Power Corporation as Director of Business**
7 **Planning.**

8

9 **Q. Have the duties and responsibilities of your position with the Company**
10 **remained the same since you last testified in this proceeding?**

11 **A. Yes.**

12

13 **Q. What is the purpose of your testimony?**

14 **A. The purpose of my testimony is to present for Commission approval the**
15 **Company's levelized fuel and capacity cost factors for the period of**
16 **April through September 1997.**

17

18 **Q. Do you have an exhibit to your testimony?**

1 A. Yes. I have prepared an exhibit attached to my prepared testimony
2 consisting of Parts A through E and the Commission's minimum filing
3 requirements for these proceedings, Schedules E1 through E10 and H1,
4 which contain the Company's levelized fuel cost factors and the
5 supporting data. Parts A through C contain the assumptions which
6 support the Company's cost projections, Part D contains the
7 Company's capacity cost recovery factors and supporting data. Part
8 E contains a calculation of costs the Company proposes to recover
9 during the period for the conversion of four additional combustion
10 turbines to natural gas firing.

12 FUEL COST RECOVERY

13 Q. Please describe the levelized fuel cost factors calculated by the
14 Company for the upcoming projection period.

15 A. Schedule E1, page 1 of the "E" Schedules in my exhibit, shows the
16 calculation of the Company's basic fuel cost factor of 2.385 ¢/kWh
17 (before line loss adjustment). The basic factor consists of a fuel cost
18 for the projection period of 2.0584 ¢/kWh (adjusted for jurisdictional
19 losses), a GPIF reward of .00256 ¢/kWh, and an estimated true-up
20 charge of 0.3225 ¢/kWh.

21
22 Utilizing this basic factor, Schedule E1-D shows the calculation and
23 supporting data for the Company's levelized fuel cost factors for
24 secondary, primary, and transmission metering tariffs. To accomplish
25 this calculation, effective jurisdictional sales at the secondary level are

1 calculated by applying 1% and 2% metering reduction factors to
2 primary and transmission sales (forecasted at meter level). This is
3 consistent with the methodology being used in the development of the
4 capacity cost recovery factors.

5
6 Schedule E1-E develops the TOU factors 1.294 On-peak and 0.840
7 Off-peak. The levelized fuel cost factors (by metering voltage) are then
8 multiplied by the TOU factors, which results in the final fuel factors to
9 be applied to customer bills during the projection period. The final fuel
10 cost factor for residential service is 2.390 ¢/kWh.

11
12 **Q. What is included in Schedule E1, line 4, "Adjustments to Fuel Cost"?**

13 **A.** Line 4 shows the recovery of the costs associated with conversion of
14 four combustion turbine units to burn natural gas instead of distillate
15 oil. Recovery of the conversion of Intercession City units 7 through 10
16 has already been approved by this Commission. In this filing the
17 Company is requesting approval to add the conversion costs of four
18 additional units located at DeBary, Bartow, and Suwannee beginning in
19 May, 1997.

20
21 **Q. What is included in Schedule E1, line 6, "Energy Cost of Purchased
22 Power"?**

23 **A.** Line 6 includes energy costs for the purchase of 50 MWs from Tampa
24 Electric Company and the purchase of 405 MWs under a Unit Power
25 Sales (UPS) agreement with the Southern Company. Beginning January

1 1997, the SERC ratings of the units supporting this purchase will be
2 revised to 405 MW. The capacity payments associated with the UPS
3 contract are based on the original contract of 400 MW. The additional
4 5 MW are the result of revised SERC ratings for the five units involved
5 in the unit power purchase, providing a benefit to Florida Power
6 Corporation in the form of reduced costs per kW. Both of these
7 contracts have been in place and have been approved for cost recovery
8 by the Commission. Capacity costs for these purchases are included
9 in the capacity cost recovery factor.

10
11 **Q. What is included in Schedule E1, line 8, "Energy Cost of Economy**
12 **Purchases (Non-Broker)"?**

13 **A. Line 8 includes energy costs for purchases from Seminole Electric**
14 **Cooperative (SECI) for load following, off-peak hydroelectric purchases**
15 **from the Southeast Electric Power Agency (SEPA), and miscellaneous**
16 **economy purchases from within or outside the state which are not**
17 **made through the Florida Broker System. The SECI contract is an**
18 **ongoing contract under which the Company purchases energy from**
19 **SECI at 95% of its avoided fuel cost. Purchases from SEPA are on an**
20 **as-available basis. There are no capacity payments associated with**
21 **either of these purchases. Other purchases, such as a new 20 MW**
22 **economy purchase from the Orlando Utilities Commission (reported on**
23 **Schedule E9), may have non-fuel charges, but since such purchases are**
24 **made only if the total cost of the purchase is lower than the Company's**
25 **cost to generate the energy, it is appropriate to recover the associated**

1 non-fuel costs through the fuel adjustment clause rather than the
2 capacity cost recovery factor. Such non-fuel charges are reported on
3 line 10.

4
5 Q. Please explain the entry on Schedule E1, line 17, "Fuel Cost of
6 Stratified Sales."

7 A. The Company has a wholesale contract with Seminole for the sale of
8 supplemental energy to supply the portion of their load in excess of
9 703 MW. The fuel costs charged to Seminole for these supplemental
10 sales are calculated on a "stratified" basis, in a manner which recovers
11 the higher cost of intermediate/peaking generation used to provide the
12 energy. The Company also has wholesale contracts with the municipal
13 utilities of Kissimmee and St. Cloud and with Georgia Power Company
14 under which fuel costs are charged in a similar manner. The fuel costs
15 of wholesale sales are normally included in the total cost of fuel and net
16 power transactions used to calculate the average system cost per kWh
17 for fuel adjustment purposes. However, since the fuel costs of the
18 Stratified sales are not recovered on an average cost basis, an
19 adjustment has been made to remove these costs and the related kWh
20 sales from the fuel adjustment calculation in the same manner that
21 interchange sales are removed from the calculation. This adjustment
22 is necessary to avoid an over-recovery by the Company which would
23 result from the treatment of these fuel costs on an average cost basis
24 in this proceeding, while actually recovering the costs from these

1 customers on a higher, stratified cost basis. The development of this
2 adjustment is shown on Schedule E6.

3
4 **Q. How was the estimated true-up shown on line 28 of Schedule E1**
5 **developed?**

6 **A. The total true-up amount was determined in two parts. First, a period-**
7 **to-date actual under-recovery of \$85,560,424 through December 1996**
8 **was obtained from the Company's Operating Report. This balance was**
9 **projected to the end of March 1997, including interest estimated at the**
10 **December ending rate of 0.475% per month. Second, the total**
11 **estimated under-recovery of \$89,971,099 for the current period was**
12 **combined with the prior period (April through September 1996) under-**
13 **recovery of \$59,049,902 and \$46,846,686 being collected during the**
14 **current period for a total under-recovery of \$102,174,315 at the end**
15 **of March 1997. This under-recovery will be collected over a 12 month**
16 **period beginning in April 1997. A rate of .3225¢/kWh was calculated**
17 **by dividing the projected under-recovery (\$102,174,315) by projected**
18 **April 1997 - March 1998 jurisdictional sales (31,677,606 Mwh's). This**
19 **rate was then multiplied times the current period projected jurisdictional**
20 **sales (16,831,485 Mwh's) to determine the true-up amount to be**
21 **collected in the current period (\$54,288,997). This results in an**
22 **estimated true-up charge on line 28 of Schedule E1 of 0.3225 ¢/kWh**
23 **for application in the April through September 1997 projection period.**
24 **The development of the estimated true-up amount for the current April**
25 **through September 1997 period is shown on Schedule E1-B, Sheet 1.**

1 Q. What are the primary reasons for the projected March 1997 under-
2 recovery of \$102.2 million?

3 A. The \$12.2 million actual under-recovery for the period ending
4 September 1996 being rolled forward into the current period, the
5 outage of the Crystal River nuclear unit throughout the current period,
6 higher than expected oil prices, and settlement payments for Lake and
7 Pasco cogeneration facilities were the primary factors contributing to
8 the \$102.2 million under-recovery in March.
9

10 Q. Please explain the procedure for forecasting the unit cost of nuclear
11 fuel.

12 A. The cost per million BTU of the nuclear fuel which will be in the reactor
13 during the projection period (primarily Cycle 11, following the refueling
14 outage) was developed from the projected cost of fuel added during the
15 current period's refueling outage and the unamortized investment cost
16 of the fuel remaining in the reactor from the prior cycle (Cycle 10).
17 Cycle 11 consists of several "batches," of fuel assemblies which are
18 separately accounted for throughout their life in several fuel cycles.
19 The cost for each batch is determined from the actual cost incurred by
20 the Company, which is audited and reviewed by the Commission's field
21 auditors. The expected available energy from each batch over its life
22 is developed from an evaluation of various fuel management schemes
23 and estimated fuel cycle lengths. From this information, a cost per unit
24 of energy (cents per million BTU) is calculated for each batch.
25 However, since the rate of energy consumption is not uniform among

1 the individual fuel assemblies and batches within the reactor core, an
2 estimate of consumption within each batch must be made to properly
3 weigh the batch unit costs in calculating a composite unit cost for the
4 overall fuel cycle.

5
6 Q. How was the rate of energy consumption for each batch within Cycle
7 11 estimated for the upcoming projection period?

8 A. The consumption rate of each batch has been estimated by utilizing a
9 core physics computer program which simulates reactor operations over
10 the projection period. When this consumption pattern is applied to the
11 individual batch costs, the resultant composite Cycle 11 is \$0.327 per
12 million BTU.

13
14 Q. Would you give a brief overview of the procedure used in developing
15 the projected fuel cost data from which the Company's basic fuel cost
16 recovery factor was calculated?

17 A. Yes. The process begins with the fuel price forecast and the system
18 sales forecast. These forecasts are input into PROMOD, along with
19 purchased power information, generating unit operating characteristics,
20 maintenance schedules, and other pertinent data. PROMOD then
21 computes system fuel consumption, replacement fuel costs, and energy
22 purchases and costs. This data is input into a fuel inventory model,
23 which calculates average inventory fuel costs. This information is the
24 basis for the calculation of the Company's levelized fuel cost factors
25 and supporting schedules.

1 Q. What is the source of the system sales forecast?

2 A. The system sales forecast is made by the Forecasting section of the
3 Business Planning Department using the most recently available data.
4 The forecast used for this projection period was prepared in June 1996.
5

6 Q. Is the methodology used to produce the sales forecast for this
7 projection period the same as previously used by the Company in these
8 proceedings?

9 A. The methodology employed to produce the forecast for the projection
10 period is the same as used in the Company's most recent filings, and
11 was developed with an econometric forecasting model. The forecast
12 assumptions are shown in Part A of my exhibit.
13

14 Q. What is the source of the Company's fuel price forecast?

15 A. The fuel price forecast was made by the Fuel and Special Projects
16 Department based on forecast assumptions for residual oil, #2 fuel oil,
17 natural gas, and coal. The assumptions for the projection period are
18 shown in Part B of my exhibit. The forecasted prices for each fuel type
19 are shown in Part C.
20

21 Q. Please explain the basis for requesting recovery of the cost of
22 converting combustion turbine units at Debary, Bartow and Suwannee
23 to burn natural gas.

1 A. In Docket No. 850001-EI-B, Order No. 14546 issued on July, 1985,
2 the Commission addressed charges appropriate for recovery through
3 the fuel clause:

4 "Fossil fuel-related costs normally recovered through base
5 rates but which were not recognized or anticipated in the
6 cost levels used to determine current base rates and
7 which, if expended, will result in fuel savings to
8 customers. Recovery of such costs should be made on a
9 case by case basis after Commission approval."

10 Since August of 1995, the Company has converted Intercession City
11 units 7-10 to burn natural gas. The Commission authorized the
12 Company to recover the conversion cost, including a return on
13 investment, over a five-year period in Order No. PSC-95-1089-FOF-EI
14 dated September 5, 1995. The Company is asking the Commission
15 for the same treatment for four additional units. The conversion cost
16 for the four units is \$7.5 million. This cost was not part of the cost
17 of the units when they were included in rate base as part of the 1993
18 test year.

19
20 Q. How is FPC proposing to recover the conversion cost?

21 A. The Company proposes to amortize the \$7.5 million conversion cost
22 over a five year period beginning with the plant in-service date of
23 May, 1997. The projected cost during the April 1997 through
24 September 1997 period is \$875,968 which consists of an
25 amortization charge of \$562,500 and a return (including income

1 taxes) of \$313,468 based on the Company's current cost of capital
2 of 8.37%. The fuel savings for the same period are expected to be
3 \$1,791,000 resulting in a net benefit to customers of \$915,032. For
4 comparison purposes, actual fuel savings produced by the conversion
5 of Intercession City units 7 - 10 from August 1995 through
6 November 1996 are in excess of \$3.9 million.

7
8 A monthly schedule of amortization expenses and projected fuel
9 savings is attached as Part E of my testimony.

10
11 **Q. Why is the Company proposing a five-year amortization period rather**
12 **than expensing the conversion cost or depreciating it over the life of**
13 **the units?**

14 **A. The Company chose five years in order to align recovery of cost with**
15 **anticipated benefits. The Company is relying on the availability of**
16 **interruptible gas transportation for the delivery of gas to the site**
17 **because firm (take or pay) contracts are not economical for a low**
18 **capacity factor peaking site. Discussions with Florida Gas**
19 **Transmission (FGT) and a private consultant's report indicate that**
20 **they expect interruptible gas to be available in sufficient quantity to**
21 **power the two units at the site for the next five years. The Company**
22 **hopes that some gas will be available beyond that time which will**
23 **yield additional savings, but we believe it more appropriate to recover**
24 **costs during the time when the majority of benefits are expected to**
25 **occur. Amortizing the conversion over the life of the units could**

1 burden future customers with costs that do not have corresponding
2 benefits.

3
4 **Q. What is the Company proposing to do if expected fuel savings are not**
5 **achieved?**

6 **A. The Company is willing to assume the risk for achieving fuel savings.**
7 **If fuel savings during any annual period are less than the amortization**
8 **and return costs, we will limit cost recovery to fuel savings and defer**
9 **recovery of the difference to future periods. In no case will the**
10 **Company collect an amount greater than the fuel savings, making this**
11 **a no-lose proposition for customers.**

12 13 **CAPACITY COST RECOVERY**

14 **Q. How was the Capacity Cost Recovery factor developed?**

15 **A. The calculation of the capacity cost recovery factor (CCRF) is shown**
16 **in Part D of my exhibit. The factor allocates capacity costs to rate**
17 **classes in the same manner that they would be allocated if they were**
18 **recovered in base rates. A brief explanation of the schedules in the**
19 **exhibit follows.**

20
21 **Sheet 1: Projected Capacity Payments. This schedule contains**
22 **system capacity payments for UPS, TECO and QF purchases. The**
23 **retail portion of the capacity payments are calculated using separation**
24 **factors from the Company's most recent Jurisdictional Separation**
25 **Study.**

1 Sheet 2: Estimated/Actual True-Up. This schedule presents the actual
2 ending true-up balance after two months of the current period and re-
3 forecasts the over/(under) recovery balances for the next four months
4 to obtain an ending balance for the current period. This
5 estimated/actual balance of (\$4,776,510) is then carried forward to
6 Sheet 1, to be collected during the April through September 1997
7 period.

8
9 Sheet 3: Development of Jurisdictional Loss Multipliers: The same
10 delivery efficiencies and loss multipliers presented on Schedule E1-F.

11
12 Sheet 4: Calculation of 12 CP and Annual Average Demand. The
13 calculation of average 12 CP and annual average demand is based on
14 1995 load research data and the delivery efficiencies on Sheet 3.

15
16 Sheet 5: Calculation of Capacity Cost Recovery Factors. The total
17 demand allocators in column (7) are computed by adding 12/13 of
18 the 12 CP demand allocators to 1/13 of the annual average demand
19 allocators. The CCRF for each secondary delivery rate class in cents
20 per kWh is the product of total jurisdictional capacity costs (including
21 revenue taxes) from Sheet 1, times the class demand allocation
22 factor, divided by projected effective sales at the secondary level.
23 The CCRF for primary and transmission rate classes reflect the
24 application of metering reduction factors of 1% and 2% from the
25 secondary CCRF.

1 **Q. Please discuss the increase in capacity payments compared to the**
2 **prior six-month period.**

3 **A. The increase in capacity payments from \$145.3 million in the October**
4 **1996 through March 1997 period to \$156.5 million for the April**
5 **through September 1997 period is due to the contract buy-out for**
6 **Lake and Pasco Cogeneration facilities and the escalation to the 1997**
7 **payment schedule. The total cost of the Lake and Pasco cogeneration**
8 **settlements (including costs included in the calculation of the fuel**
9 **factor) which are still subject to approval by the Commission are**
10 **detailed on Sheet 6. No new contracts begin before September 1997.**
11 **The decrease in rates, exhibited on Sheet 5 on a cents per kWh**
12 **basis, is due to the greater amount of kWh sales projected for the**
13 **summer period as compared to the current period.**

14
15 **Q. Does this conclude your testimony?**

16 **A. Yes.**

1 Q (By Mr. McGee) Mr. Wieland, would you give
2 us a summary of your testimony, please?

3 A Yes. Commission, my testimony deals with a
4 number of issues that are still unresolved, issues
5 relating to the settlement with the Lake and Pasco
6 payments, which are 24A, B and 14B and C, also issues
7 14D and E that concern the recovery of fuel costs, and
8 also the proposed amortization of the current
9 underrecovery over a 12-month period; and I'll address
10 all of those briefly.

11 What I'd like to begin with, if I may, is to
12 just summarize what our overall proposed changes in
13 our rates are. I'll be referring back to the exhibit
14 that we just handed out.

15 As you know, we are proposing a total
16 increase in our bill of \$5.26. The main reasons for
17 that are shown on the right-hand column. The increase
18 associated with the fuel cost itself is only \$3.32,
19 which is a change from what was in the original
20 testimony.

21 The other changes are due primarily to
22 changes in ECCR costs which relate back to decoupling,
23 as well as changes in the capacity cost recovery
24 factor, some of which pertains to the Lake and Pasco
25 settlements. But what I wanted to point out is, first

1 of all, that the fuel piece is \$3.32, which
2 predominantly relates to the underrecovery that we
3 currently are experiencing.

4 CHAIRMAN JOHNSON: I'm sorry. I didn't hear
5 you.

6 WITNESS WIELAND: The \$3.32 out of the \$5.26
7 is fuel, and that is predominantly relating to the
8 underrecovery that is taking place in the current
9 period; and I'll elaborate on that a little bit. What
10 is pertinent, I believe, is that of that \$3.32
11 approximately \$2.00 is due to the nuclear outage
12 that's been discussed.

13 The balance is due to other factors,
14 including the Lake and Pasco settlement payments,
15 which we'll be discussing, as well some other
16 increases in oil prices, et cetera. That's really
17 just to put the size of the increase and some of the
18 various reasons for it in perspective.

19 What I'd like to do next, Commission, is
20 just briefly summarize our position on Issue 14E. 14E
21 deals with the recovery of the true-up amount for the
22 current period, that is the October through March
23 period.

24 CHAIRMAN JOHNSON: Before you do that -- and
25 I apologize for interrupting, but because we will have

1 to make a bench decision, I have to make sure my notes
2 flow.

3 You stated that of that \$3.32 currently --
4 or about \$2.00 of that was due to the nuclear outage,
5 or the plant being down?

6 WITNESS WIELAND: Yes, that's correct.

7 CHAIRMAN JOHNSON: And that would relate to
8 the underrecovery. What period are you looking at for
9 the underrecovery?

10 WITNESS WIELAND: The underrecovery strictly
11 deals with the current period, which is October
12 through March of this year, October '96 through March
13 '97.

14 CHAIRMAN JOHNSON: And September 2nd through
15 September 30 -- wait. What days? You said October
16 through -- I'm trying to figure out -- where is the
17 September shortage amounts?

18 WITNESS WIELAND: The ones that Mr. Scardino
19 referred to?

20 CHAIRMAN JOHNSON: That's not a part of this
21 analysis --

22 WITNESS WIELAND: No, they're really -- the
23 fuel is really in three pieces that we're dealing with
24 here today. The first piece goes back to April
25 through September 30th of 1996, and that's the issue

1 that Mr. Scardino dealt with. Now, some of that has
2 implications for the future. The next period that
3 we're dealing with is what I'll call the current
4 period, which began on October 1 of last year and will
5 go through March 31st of this year. That period
6 contains a combination of actual and estimated
7 numbers.

8 CHAIRMAN JOHNSON: Hold on one second.
9 (Brief pause in proceedings.)

10 CHAIRMAN JOHNSON: We'll go back on the
11 record. If you could continue, and you were going
12 through the October through --

13 WITNESS WIELAND: The October through March
14 period, which we're currently in, that's where the
15 underrecovery amount is; and I'd like to deal with
16 that period initially. Then the third period is the
17 so-called projection period which will begin April 1
18 of this year and run all the way through
19 September 30th of this year, and that is the period
20 for which ultimately rates are going to be determined,
21 and that's where the \$5.26 increase would take effect.
22 But that entire projection period really is affected
23 not only by the projection period costs, but also by
24 the cost in the current period and its underrecovery,
25 some of which originates in the prior period. It is

1 somewhat of a confusing process, but I'll try to keep
2 these periods somewhat distinct.

3 CHAIRMAN JOHNSON: I thought I generally
4 understood, but I want you to correct me before you
5 continue with your testimony. Why wouldn't the April
6 through September 30th be a part of the underrecovery
7 amount?

8 WITNESS WIELAND: It is.

9 CHAIRMAN JOHNSON: Oh, it is.

10 WITNESS WIELAND: It is, yes, ma'am.

11 CHAIRMAN JOHNSON: Somebody else just
12 testified to that.

13 WITNESS WIELAND: Yes. It is somewhat
14 automatically included in the entire true-up amount
15 for the current period.

16 CHAIRMAN JOHNSON: And the October through
17 March, you're dealing with both actuals, but then some
18 projections for the last two months?

19 WITNESS WIELAND: Yes. Typically two months
20 of actuals, pretty good actuals for the third -- it's
21 sort of borderline -- and then projections for
22 January, February and March.

23 CHAIRMAN JOHNSON: Okay. Thank you much.

24 WITNESS WIELAND: What I'd like to do is to
25 spend just a couple of minutes going over the current

1 period and review some of the factors that arose that
2 led to the \$102 million underrecovery that is in my
3 testimony, and then also explain our reasons as to why
4 we're proposing to amortize, or recover that over a
5 12-month period rather than the normal six months.

6 If you go back and look at when this
7 projection was originally filed, the one for the
8 current period, that was done in July of last year and
9 approved by this Commission during the August
10 hearings. At that time, of course, we had no
11 knowledge of any impending outages, so the current
12 period rates are based on the nuclear unit operating
13 fully for the entire October 1 through March 31
14 period.

15 As Mr. Scardino said, on September 2nd a
16 forced outage occurred, which was subsequently
17 extended, and so by early October -- I think he
18 mentioned a date of October 4th -- we recognized that
19 the unit would be -- in fact, was on an outage and
20 would be on an outage, which at the early days was
21 going to be the end of the year -- I mean the end of
22 1996 -- and then subsequently I think the Company
23 announced that the outage would actually extend until
24 the end of February.

25 Now, at that point in time, it became quite

1 clear that we were going to incur a significant
2 underrecovery, and we have an obligation by a
3 Commission rule to inform the Commission of such an
4 underrecovery and to propose some actions to deal with
5 it.

6 We had estimated in late November that if
7 the unit were to return by the end of February 28th,
8 which was the date, that we would underrecover
9 \$70 million by the end of March of 1997; and, in fact,
10 on November the 20th we filed a petition with this
11 Commission notifying to that fact, notifying them that
12 the nuclear unit is the primary cause of that.

13 It was at that point in time that we
14 proposed not to have a mid-course correction that
15 might begin as early as January or February, but
16 instead we proposed to take this -- the underrecovery
17 and recover it over a 12-month period simply to lessen
18 the rate impact on customers.

19 That was part of the petition that was
20 filed. Staff supported that approach, and that really
21 was the genesis for our proposal to deal with the
22 12-month amortization, which is somewhat unusual, and
23 I don't know that that's been done before.

24 Now, what happened subsequent to November
25 20th, the -- when I prepared the projection for the

1 upcoming period, to be conservative I added on another
2 month of the outage. The Company had not made any
3 official announcements at that time, but knowing the
4 uncertainties associated with nuclear plants, I added
5 another month of the outage, which added additional
6 cost.

7 In addition to that, the lake and Pasco
8 settlements were reached. That added some costs. And
9 those two, along with some other factors, essentially
10 brought us from the \$70 million that we had initially
11 estimated to the ultimate cost of \$102 million which
12 we are currently projecting and which is in my
13 testimony. Clearly, if we felt that \$70 million was a
14 large enough amount to be amortized over 12 months in
15 order to keep the rates down, then certainly
16 \$102 million would even reinforce that argument.

17 So what we are proposing, and we would
18 continue to, is that the -- we have included about
19 \$54 million out of the 102 in the upcoming period.
20 We're collecting it not exactly by dividing by 2, but
21 prorating it on a kilowatt-hour basis; and that leads
22 to a true-up factor of something over \$3.20 that is in
23 my filing. Absent that, the true-up would have been
24 essentially double, meaning the rates would have to go
25 up another \$3.00 to \$3.50, which we felt was

1 unacceptable. So I would continue to propose to the
2 Commission that we continue with deferral of that
3 102 million and recover it over the course of a year.

4 CHAIRMAN JOHNSON: Would you go over that
5 one more time, the 54 million, the basically splitting
6 it in half and recovering the first 54 million over
7 the first six-month period? You said that --

8 WITNESS WIELAND: Okay. The normal process
9 of the Commission is to recover any underrecoveries
10 over the following six-month period. Had we done
11 that, the entire \$102 million would have been
12 recovered, and that would have raised the amount --
13 that would have raised our rates by another \$3.00 or
14 so. So what we chose to do --

15 CHAIRMAN JOHNSON: That's what I wanted to
16 know, the exact number. Right now you're saying --
17 you mean the \$5.26 would have been -- you would have
18 had to add three more dollars to that?

19 WITNESS WIELAND: Yes, Commissioner. That's
20 correct, because if you look in our testimony, the
21 amount that we're actually proposing to include for
22 the upcoming period for which rates are being set is
23 \$54,289,000, which is just a little bit more than half
24 of the total 102.

25 The balance we expect to recover in the

1 following period, which would be October of this year
2 through March of 1998, and the sole purpose for that
3 was to keep the rate increase down.

4 To close on that, I'd like to perhaps build
5 on that and also talk about the projection period,
6 which is April through September of this year. As you
7 know, we projected that my filing projects the nuclear
8 unit to be operating during that period.

9 We clearly know today that it will not be,
10 and I'd like to take a few moments to tell you what
11 our thinking was, first of all, about why it was not
12 included in the filing to begin with, and then why we
13 did not choose to amend our filing.

14 The reasons for not including it were really
15 more of unfortunate timing. I mean, the timing of
16 events that lead to the fuel filing and the timing of
17 the Company's knowledge as to what was happening
18 somewhat were on a parallel track. In fact, we
19 typically prepare the filing, do all of the PROMOD
20 projections, all of that work in December, and then
21 early January we write testimony, we print it, we send
22 it up here so that it can make the January 13th filing
23 date.

24 It was on January the 9th that there was a
25 fairly momentous meeting with the Nuclear Regulatory

1 Commission --

2 MR. HOWE: Objection. This is getting
3 pretty far outside his prefiled testimony. Basically
4 he's explaining why he did not say things in his
5 prefiled testimony, and I would object on that basis.

6 MR. MCGEE: Madame Chairman, what
7 Mr. Wieland is doing is describing events that
8 occurred subsequent to the preparation and submittal
9 of his testimony to give the Commission a perspective.
10 I can understand that Mr. Howe doesn't want the
11 witness to get into the causes that relate to the
12 outage, and that was the subject matter of his motion;
13 and I assured him that we would not attempt to do
14 that.

15 Mr. Wieland is just trying to give a
16 perspective of how the filing came about, and
17 especially as it relates to events that took place
18 subsequent to the preparation of that. I think that's
19 appropriate.

20 MR. HOWE: Chairman Johnson, this is in the
21 nature of what we filed in our pleading on February
22 3rd, 1997, our motion to preclude the introduction of
23 such testimony; and as we said on Page 3, the stage is
24 now set for FPC to announce either at the prehearing
25 conference or at the hearing itself that an additional

1 upward revision of projected fuel expenditures is
2 necessary.

3 We're not hearing that, but we're hearing
4 the explanation of why they haven't asked for that.
5 But it's forming the framework for an argument by the
6 Company. We closed in that same Paragraph 6 on Page 3
7 by saying "Intervenors will not have had any
8 opportunity to review the reason CR-3 has been out of
9 service so far or why it cannot operate during the
10 next six months." That's exactly the evidence we are
11 hearing right now from Mr. Wieland, and we're about to
12 hear -- if I had not objected -- to some momentous
13 meeting with the NRC on January 9th.

14 They have had ample opportunity to address
15 all this. They chose not to do so, and intervenors
16 such as ourselves are being placed at an extreme
17 disadvantage in the sense that we're hearing evidence
18 that they could have offered, we could have had a
19 chance to confront, and we are not prepared and cannot
20 be prepared to do so at this time. It's extremely
21 prejudicial, and I don't believe he should be able to
22 testify to it.

23 CHAIRMAN JOHNSON: Mr. Howe, I would agree
24 with you that it's outside of the scope of his
25 prefiled direct. It may come out in this proceeding.

1 Candidly, I have a question as to why they didn't
2 include it in the projections. So it will probably
3 come out, if not through Staff, I'll probably ask that
4 kind of question, but I'll allow you some leeway to
5 follow up on that. But at this point in time it is
6 outside of the scope of his prefled, so your
7 objection is sustained.

8 MR. HOWE: Thank you.

9 WITNESS WIELAND: I guess, Commission, with
10 that -- well, I guess we can get into some of the
11 other reasons, but let's suffice it to say that for
12 numerous reasons we did not include the nuclear unit
13 in the projection. I just wanted to make sure that we
14 all understand that that's the case.

15 COMMISSIONER DEASON: When you said you did
16 not include the nuclear unit --

17 WITNESS WIELAND: We did not --

18 COMMISSIONER DEASON: That you assumed --

19 WITNESS WIELAND: I'm sorry. I misspoke.
20 We did not -- we assumed the nuclear unit to be
21 operating during the outage. We did not consider the
22 outage itself; that's correct.

23 With that, I guess I'll go ahead and turn to
24 the issues regards to the settlement costs for Lake
25 and Pasco. Now, I have no intentions of speaking to

1 the appropriateness of those costs. Those are to be
2 taken up at a hearing that's scheduled for this
3 Commission, I think, in March of this year. What I do
4 want to discuss is the reasons why we did choose to
5 include those costs in our filing, which is at issue
6 here.

7 First of all, I would say that the primary
8 reason for that is because inclusion of costs that the
9 companies propose has been standard practice by this
10 Commission, for two reasons. First of all, we have
11 actually incurred some of these costs.

12 MS. KAUFMAN: Chairman Johnson, I'm sorry to
13 interrupt, but I'm going to have to object on the same
14 basis we discussed earlier. When I review
15 Mr. Wieland's testimony, I just see a factual
16 statement in there that the costs have been included.
17 I don't see, unless I've missed it, the explanation
18 that he now appears prepared to go into; and so I
19 think that his discussion of this is outside the scope
20 of his testimony.

21 MR. MCGEE: I think Ms. Kaufman is applying
22 a fairly literal standard. It's never been -- the
23 assumption that I've gone on -- that a witness has to
24 verbatim repeat his testimony. If he's giving some
25 explanatory information that relates to the data and

1 the information that's contained in his testimony, I
2 think it's within the latitude that the Commission
3 could allow.

4 MR. HOWE: Chairman Johnson, if I might, I
5 believe this witness was asked to summarize his
6 prefiled testimony, and as such, he should not be
7 going -- it should be a shorter version of what he
8 actually filed, not an elaboration of what he did not
9 file.

10 CHAIRMAN JOHNSON: I'm going to again
11 sustain the objection. Mr. Wieland, you do need to
12 limit yourself to your prefiled testimony. To the
13 extent that there are gaps or questions within that
14 testimony, those will, I'm sure, come out through a
15 question.

16 WITNESS WIELAND: Okay. Well, suffice it to
17 say then, that those costs have been included in my
18 testimony. There is a detailed chart that's part of
19 the testimony that spells out exactly what they are,
20 which periods they're in, and in which parts are in
21 capacity versus the fuel; and I guess with that, I'll
22 conclude my summary.

23 MR. MCGEE: Tender the witness for cross
24 examination.

25 CHAIRMAN JOHNSON: Public Counsel?

CROSS EXAMINATION

BY MR. HOWE:

Q Mr. Wieland, would you agree that for purposes of the upcoming projection period, Florida Power Corporation has included contract buy-out costs for the Lake and Pasco cogeneration facilities which have not been yet approved by the Commission?

A That's correct.

MR. HOWE: No further questions.

MS. KAUFMAN: No questions.

CROSS EXAMINATION

BY MS. JOHNSON:

Q Mr. Wieland, can you tell us why Florida Power Corp included the costs for the Lake and Pasco settlement agreements?

A Yes, I can. As I was beginning to say earlier, we believed that that has been standard practice by the Commission to include costs that we either have occurred or expect to occur, and also to include costs that we are proposing to have; and it's simply a matter of convenience.

It is easier in some ways to have the costs identified and in front of the Commission and to remove them later on if the Commission decides to not allow those expenses than it is to have a filing that

1 doesn't have any of those numbers in it, in which
2 case, you know, it's somewhat awkward to go back and
3 say, well, you know, what should the filing be. I
4 mean that, to me, is the primary reason.

5 And when we prepared this filing I contacted
6 Staff and we had a discussion to that, and I really
7 looked for guidance to them as to what Staff's
8 preference would be in dealing with that matter. And
9 I think their guidance was that they would prefer to
10 have the numbers -- the costs included, as was our
11 preference; and I think that has been pretty standard
12 practice in everything we've done.

13 You know, as an example, perhaps, there was
14 an issue that's been stipulated to that regards
15 conversions of costs of some combustion turbines.
16 Those costs were included in our filing, subject to
17 approval by the Commission. They were subsequently
18 approved. So I see it more as a standard practice
19 issue that makes things less confusing than anything
20 else.

21 Q And isn't it correct that in your projected
22 period that you have included costs which reflect CR-3
23 being on line?

24 A Yes. We have -- the projection period,
25 April through September, has Crystal River 3 operating

1 normally throughout the entire period.

2 Q Why did Florida Power Corp include Crystal
3 River 3 on line for fuel purposes but excluded it for
4 GPIF?

5 MR. HOWE: I must object. It's not clear
6 yet that it has been excluded for GPIF purposes.

7 CHAIRMAN JOHNSON: Staff?

8 Q (By Ms. Johnson) Why did they include it
9 for fuel purposes?

10 A Well, to begin with, when the filing was
11 originally prepared, we simply did not know that the
12 outage would extend all the way until the fourth
13 quarter, and that's some of the history that I was
14 going through. Essentially, we were on a track to
15 where the filing was filed on the 13th of January, and
16 on the 14th of January, the day afterwards, the
17 Company announced that the outage would be extended
18 from the end of February until the fourth quarter of
19 the year.

20 So from a practical perspective, at that
21 time we couldn't include it because we didn't know.
22 We chose not to change it simply because of the rate
23 impact. I mean, we felt for much the same reasons
24 that we wanted to amortize or recover the current
25 period of outage over 12 months. We wanted to defer

1 collection of those costs, even though we recognized
2 that we would be incurring those until a subsequent
3 period simply to keep the rates from increasing any
4 further.

5 Q If you had not included Crystal River 3,
6 what would the rate impact have been?

7 A Our estimate was that the outage would
8 contribute an additional \$4.50 for the summer period,
9 which means our rates would have exceeded \$97.00 per
10 thousand -- no, I'm sorry I misspoke. It would be --
11 you would take the 88.65 and add another 4.50. I
12 think you would be in excess of \$93.00 per thousand
13 kilowatt hours.

14 MS. JOHNSON: That's all that we have.

15 CHAIRMAN JOHNSON: Commissioners? Could you
16 go over that? You said if you had included the -- if
17 you had assumed that the plant would be down and not
18 assumed that it would be operational, that the
19 replacement fuel costs would lead to your projections
20 increasing the residential rate by how much?

21 WITNESS WIELAND: By approximately \$4.50,
22 and when you add that to the 88.65 that we have
23 proposed, that would take you in excess of \$93.00 and,
24 quite frankly, we just thought that was too much.

25 CHAIRMAN JOHNSON: And it does get confusing

1 again. Would that -- the projection would just be for
2 a six-month period, it wouldn't be for a 12-month
3 period?

4 WITNESS WIELAND: The projection would be
5 simply through September 30th of this year.

6 CHAIRMAN JOHNSON: You said that you
7 couldn't have included it in the projections
8 originally because you weren't certain as to whether
9 the plant would be up or down, but that once you
10 became certain, there was a policy decision made not
11 to update -- did you have time, and you just decided
12 not to, or how did that process --

13 WITNESS WIELAND: No, I think -- the
14 original filing, I mean, that clock was basically
15 running, and there's no way to include those costs
16 because we just simply didn't know at the time; but
17 there was ample time for the Company to either at the
18 time of the prehearing or even at this hearing to
19 introduce new evidence. In fact, I think that's a
20 concern that Mr. Howe had in his original motion.

21 So there was ample time for the Company to
22 come to this Commission with a petition for higher
23 rates. We chose not to do that simply because we were
24 sensitive to the rates of our customers, and what we
25 hope to do is to manage through this process without

1 raising rates any further.

2 COMMISSIONER DEASON: Let me ask a question.
3 I appreciate the sensitivity to the rate level. We
4 share that sensitivity. But isn't it true that the
5 longer you delay these costs, and if it is ultimately
6 assumed or determined that the costs were prudently
7 incurred, there's going to be interest on those
8 unrecovered funds and, in essence, you're going to be
9 asking customers to pay more in the long run?

10 WITNESS WIELAND: Yes, Commissioner, that is
11 true; interest would be collected, although I guess I
12 would argue that from a customer's perspective, his
13 timing of payments has the same value as it does to
14 the Company. In other words, if he pays something
15 later rather than earlier, that has a value as well.
16 So he's -- you know, in that sense, it's not really
17 costing him anything extra, but we --

18 COMMISSIONER DEASON: But in the same sense,
19 you're really not giving up anything either. You're
20 going to expect interest on your unrecovered funds for
21 the period of time they remain unrecovered.

22 WITNESS WIELAND: Yes, Commissioner, that is
23 correct.

24 COMMISSIONER DEASON: So you're really not
25 being that -- never mind.

1 **COMMISSIONER KIESLING:** And I think I can
2 ask, since I am a customer and it is going to affect
3 me. If I understand correctly, you're going to -- or
4 what you're proposing to do by not including it in
5 this six-month adjustment is put the fuel costs for
6 the shutdown of Crystal River off until the next
7 adjustment, which is going to be in six months.

8 **WITNESS WIELAND:** Yes.

9 **COMMISSIONER KIESLING:** And you're going to
10 amortize this other adjustment over a year, so even
11 though for the next six months the customers aren't
12 going to be paying it, they're still going to get hit
13 with the same whammy six months from now when you add
14 on two periods of Crystal River on top of the other
15 half of the 102 million that you're going to recover
16 in the next six-month period?

17 **WITNESS WIELAND:** Well, what we are looking
18 at, Commissioner, we're in the process of studying
19 that and making projections in terms of what the rates
20 would actually look like, and how much -- you know,
21 how far these deferrals would extend into the future.
22 But what we hope to do -- and that's the intent of our
23 management -- is to the extent possible not raise
24 rates beyond the 88.65 if we possibly can in order not
25 to have a large increase, a further large increase

1 anytime down the road; because normally what you would
2 expect is that rates would not stay at 88.65, they
3 would come back down. So by stretching out the
4 recovery, in essence they would stay at that level
5 longer, but they would not -- hopefully not increase
6 any further.

7 COMMISSIONER KIESLING: Well, I guess the
8 math just escapes me on that because if you're going
9 to recover 102 million over 12 months and you're going
10 to recover in addition the cost of the outage over the
11 last six months of that 12 months, then something is
12 going to change in six months, and it's got to go up.

13 WITNESS WIELAND: No. Essentially,
14 Commissioner, what happens is that we're recovering
15 the 102 million over 12 months, so there's about a
16 \$3.00 and 20 some odd cents surcharge built in; if you
17 will, a true-up. That will be zero by the end of
18 March of 1998.

19 At that point in time there will be a new
20 underrecovery that will be building up because of the
21 outage that begins in April. That could be another
22 100 million or so. And so that will just take the
23 place of the original true-up, if that makes any
24 sense. And so, in essence, that true-up would be
25 rolling forward, but the amount does not necessarily

1 increase.

2 COMMISSIONER KIESLING: Sounds like smoking
3 mirrors to me.

4 WITNESS WIELAND: Commissioner, if it gives
5 you some comfort, what we hope to do, you know, is as
6 we have time to really assess all of the things that
7 are going on, and until some of the other issues that
8 are going to be coming before this Commission are
9 resolved is to really put a plan together, present it
10 to you and the Staff as well as Public Counsel, about
11 what that would look like and how it would work and
12 what would -- our intentions are; because, clearly, to
13 do what I am proposing and what we're thinking about
14 doing today requires the buy-in of the Commission,
15 because we would clearly remain outside that 10%
16 true-up guideline for an extended period of time; and
17 so we could not really proceed with that plan without
18 the approval of the Commission, and we intend to do
19 that.

20 COMMISSIONER KIESLING: Okay.

21 CHAIRMAN JOHNSON: You just threw me. This
22 plan, what do you intend to propose? And I know it
23 may be broadly stated at this point in time, but --
24 and to the extent it's something that requires a
25 buy-in, it's going to be difficult for us to make a

1 determination now in the abstract when we don't know
2 what your plans are for the future.

3 WITNESS WIELAND: Well, Commissioners, all
4 I'm really asking -- all we're really asking today is
5 that you at least put into place the rates that we're
6 proposing. We all agree that if things work normally,
7 the rates should be a lot higher.

8 CHAIRMAN JOHNSON: If what?

9 WITNESS WIELAND: If things work normally.
10 You know, in other words, if we -- you know, if we
11 recovered the current true-up over six months rather
12 than 12, and if we had included the outage, you know,
13 which is normally how the process works, we would have
14 asked for much higher rates than we're asking for.

15 So all we're really saying today is approve
16 the rates we're asking for, which we know is going to
17 defer moneys into the future, we know it's going to
18 violate the 10% guideline; and then let us come back
19 to you down the road and demonstrate to you how this
20 would potentially play out as we go forward in terms
21 of when the moneys would be recovered and how they
22 would be recovered and over what time period.

23 CHAIRMAN JOHNSON: Okay. Tell me a little
24 more about the 10% guideline and --

25 WITNESS WIELAND: That is a guideline that

1 was instituted by the Commission quite some time back,
2 and I think essentially the origin was is that the
3 Commission did not want to have companies incur large
4 underrecoveries without at least being notified.

5 There is not, as far as I know, a
6 requirement by the Company to actually do something
7 about it, but there is a notification requirement; and
8 normally what has happened is when that notice is
9 given, then the Company may or may not ask for what's
10 called a mid-course correction where you make an
11 adjustment either up and down on rates. But under
12 normal circumstances, the Commission likes companies
13 to not have the true-up amounts get out of hand in
14 either direction, either a large over or
15 underrecovery.

16 **CHAIRMAN JOHNSON:** But the requirement is
17 just that you notify, not that you actually do the
18 mid-course correction.

19 **WITNESS WIELAND:** That's my understanding,
20 yes.

21 **CHAIRMAN JOHNSON:** In your opinion, when you
22 were kind of going through what you thought our policy
23 was and the reason for that policy and us not wanting
24 the true-up amounts to get out of hand, is this an
25 instance where the true-up amount is getting out of

1 hand, and will we be making an exception?

2 WITNESS WIELAND: Well, Commissioner, in one
3 sense, I guess, when we filed our petition on November
4 20th, we notified the Commission that the true-up of
5 70 million, that was well outside the 10% boundaries;
6 so -- and the Commission at that time, I think at an
7 agenda conference, concurred that it was okay for the
8 Company to wait until the following 12 months to get
9 that behind us. Of course, that was well before we
10 knew that the outage was going to be extended.

11 So in a sense we have already -- or the
12 Commission has already ruled that we should be allowed
13 to exceed that 10%, and the primary reason really
14 being one of mitigating rate changes. I mean, from
15 a -- you know, from a pure company perspective, all
16 other things being equal, truly we would -- you know,
17 we would prefer to cover -- to recover costs as
18 quickly as possible; but we are sensitive to rates,
19 and sometimes, you know, we make those compromises,
20 and we do that with the Commission's permission.

21 CHAIRMAN JOHNSON: Thank you. Any other
22 questions?

23 COMMISSIONER DEASON: Yes. The cogeneration
24 settlements which are included, that's part of the
25 amount you're requesting to be amortized over a

1 12-month period?

2 **WITNESS WIELAND:** There's a part of that
3 settlement that is in that 12-month amortization
4 period, Commissioner, because part of the settlement
5 affects capacity cost recovery, which is strictly --
6 well, which is both in the true-up as well as the
7 projection period. Some of it reflects -- some of it
8 has to do with energy.

9 The largest piece is a -- an energy
10 settlement, the way I understand it, which is about
11 five and a half million for each one, which the
12 Company has actually paid, I think, back in November,
13 December, so they're included in the actuals; and that
14 is automatically part of that 12 months' amortization.
15 So that there's no simple answer to that, but it's not
16 all of it, but a piece of it is in there.

17 **COMMISSIONER DEASON:** But are there not
18 ongoing buy-out costs beyond what you're simply
19 including in this 12 months' amortization, or is it a
20 one-time amount -- I'm not familiar with the buy-out.
21 I guess we'll be exploring that in the hearing coming
22 up. I need to know what the time schedule is in your
23 plan for the recovery of the settlement costs of those
24 contracts --

25 **WITNESS WIELAND:** I can -- I think I can

1 tell you at least what my understanding is as to where
2 these costs are, Commissioner. I mean, first, there
3 are some one-time costs. I mean, the two that I spoke
4 of, which are about five and a half million each, were
5 one-time costs. They were -- my understanding is that
6 they're like a true-up of energy prices. They're all
7 energy related, you know, how they make fuel payments.
8 That is a one-time cost.

9 In addition to that, though, there is a --
10 there are some ongoing changes, and I believe there
11 are even some shifts between what was energy and what
12 was capacity in the prior agreement versus the
13 settlement agreement.

14 So I think there's some of that, and I think
15 there's a third piece to it, and that has to do with
16 actually shortening the length of the outage. There's
17 some buy-out costs, if you want to call them that,
18 that go on for a period of years. I'm not precisely
19 sure how many, but it's in the neighborhood of five
20 years, I believe, that would be incurred over that
21 time period.

22 So it's a mix of different things, and
23 anything beyond that, I mean, I'm really not terribly
24 familiar with all of the details of those particular
25 settlements, but that's my understanding.

1 COMMISSIONER DEASON: But it is true, then,
2 there will be settlement related costs, assuming they
3 are approved, that will impact future recovery periods
4 beyond what is being contemplated at this time?

5 WITNESS WIELAND: Yes, sir, that is true.

6 COMMISSIONER DEASON: Now, given that, that
7 it's going to have an ongoing effect, given that
8 you're proposing to amortize the 102 million over a
9 12-month period, and recognizing that your current
10 projection assumes CR-3 to be on line, and we know
11 that that is not going to be the case, how is it that
12 you expect to achieve a total bill for 1000 kilowatt
13 hours not to exceed 88.65 for future periods?

14 WITNESS WIELAND: Well, Commissioner, that
15 is -- you know, that is something that we've been
16 looking at. Our numbers are preliminary, quite
17 obviously, and there are other issues in front of us;
18 but while I could not in good conscience guarantee
19 that 88.65 is it, I can assure you that we're going to
20 make every attempt to keep future increases to an
21 absolute minimum, and that we know that that will
22 require some significant deferrals into the future.

23 But we have looked at it enough to where at
24 least -- you know, at this stage we feel comfortable
25 that with the Commission's approval we can manage

1 through this process without having extensive or
2 significant increases going forward.

3 CHAIRMAN JOHNSON: Any other questions?
4 Redirect?

5 MR. MCGEE: No, ma'am.

6 COMMISSIONER KIESLING: Actually, I did have
7 a question. I just didn't say it enough, and I don't
8 know if this is the right witness. Now that Gulf and
9 TECO and FP&L apparently have settled their parts of
10 this, somewhere we must have calculations of what
11 their residential cost per thousand kilowatt hours is
12 going to be, and I just wanted to know how this is
13 going to compare with everybody else's then.

14 MS. JOHNSON: Staff is handing that out
15 right now.

16 COMMISSIONER KIESLING: Thank you. You
17 anticipated me.

18 MS. JOHNSON: We'd like to have that marked
19 for identification as an exhibit.

20 CHAIRMAN JOHNSON: It will be marked -- and
21 correct me if I'm wrong -- as Exhibit 25.

22 MS. JOHNSON: That's correct.

23 CHAIRMAN JOHNSON: And identified as
24 residential fuel factors for the period April through
25 September 1997.

1 MS. JOHNSON: That's correct. We would just
2 like to have inserted "proposed". Those are not yet
3 approved by the Commission.

4 CHAIRMAN JOHNSON: Proposed residential fuel
5 factors for the period April through September 1997.

6 (Exhibit 25 marked for identification.)

7 CHAIRMAN JOHNSON: Any other questions? Do
8 you want to wait?

9 COMMISSIONER KIESLING: I don't even know
10 who to ask a question about how they're going to
11 justify to their customers a 10 to \$20.00 price per
12 thousand over the others in Florida. I wouldn't even
13 know who to ask that question.

14 CHAIRMAN JOHNSON: Any additional questions?
15 Staff, did you have any questions based upon this
16 exhibit?

17 MS. JOHNSON: No, we do not. I'll just add
18 that those are -- the numbers that are represented
19 there are based upon what the companies requested,
20 proposed; and with the exception of Power Corp, those
21 issues have all been stipulated.

22 CHAIRMAN JOHNSON: And there was no
23 redirect?

24 MR. McGEE: No, ma'am.

25 CHAIRMAN JOHNSON: Exhibits, then.

1 MR. MCGEE: We would ask that Mr. Wieland's
2 exhibits be admitted into evidence.

3 CHAIRMAN JOHNSON: What were his exhibit
4 numbers?

5 MR. MCGEE: 3 and 4, I believe.

6 CHAIRMAN JOHNSON: Exhibits 3 and 4 will be
7 admitted into the record.

8 (Exhibits 3 and 4 received in evidence.)

9 CHAIRMAN JOHNSON: Staff, are we going to
10 have that marked, or are we going to have it -- do you
11 want that entered into the record, Exhibit 25?

12 MS. JOHNSON: Yes. Staff moves the
13 admission of Exhibit 25. Thank you.

14 CHAIRMAN JOHNSON: It will be admitted
15 without objection.

16 (Exhibit 25 received in evidence.)

17 CHAIRMAN JOHNSON: Thank you, sir. You're
18 excused.

19 (Witness Wieland excused.)

20 - - - - -

21 CHAIRMAN JOHNSON: Any other matters?

22 MS. JOHNSON: There are no other witnesses.
23 We've concluded the witness testimony. There's still
24 oral argument to be heard on Issues 14D, 18A and 18B,
25 I believe, and 14E also.

1 **CHAIRMAN JOHNSON:** We'll take a ten-minute
2 break, and then when we return we'll be hearing the
3 oral arguments.

4 (Brief recess.)

5 **CHAIRMAN JOHNSON:** We are going to go back
6 on the record.

7 Counsel, you stated that we were giving the
8 parties 15 minutes apiece?

9 **MS. JOHNSON:** That is correct.

10 **COMMISSIONER DEASON:** They do not have to
11 take the full 15 minutes.

12 **CHAIRMAN JOHNSON:** And, Ms. Kaufman, each of
13 the individuals is not -- you all aren't splitting
14 time, it's 15 minutes?

15 **MS. KAUFMAN:** No, ma'am.

16 **COMMISSIONER DEASON:** Each.

17 **CHAIRMAN JOHNSON:** Each. Just kidding.

18 Who should go first? This is an odd kind of
19 an argument. It's not really a motion, so help me out
20 with this.

21 Ms. Johnson, do you have any suggestions?

22 **MS. JOHNSON:** I guess I would suggest that
23 Power Corp go first. I mean, since they are seeking
24 recovery and they have the burden of proof.

25 **CHAIRMAN JOHNSON:** Very well. Power Corp.

1 MR. McGEE: Madam Chairman, Commissioners.
2 Public Counsel, and the position also supported by
3 FIPUG, wants the replacement fuel costs that are
4 associated with the extended outage at Crystal River 3
5 to be disallowed because --

6 CHAIRMAN JOHNSON: I know you only have 15
7 minutes, but slow down.

8 MR. McGEE: -- because Florida Power's
9 true-up testimony and its projection testimony, they
10 claim, has not justified the prudence of the outage.
11 This request and the approach, the result that would
12 be achieved by that, would establish a different
13 standard for dealing with the Commission's review of
14 nuclear plant outages than has previously existed
15 before the Commission.

16 I think this standard is wrong for several
17 reasons both legal and practical. Maybe the most
18 important legal consideration in this is the U.S.
19 Supreme Court has held that absent evidence to the
20 contrary, actions of a utility management are presumed
21 to be prudent. That's the case of West Ohio Gas
22 versus the Ohio Public Utility Commission.

23 The case that we have before us right now
24 finds no evidence that would rebut that presumption.
25 Public Counsel could have filed testimony, in which

1 case Florida Power would have the opportunity to file
2 rebuttal, but that wasn't done. Instead Public
3 Counsel has raised the issue in pleadings that were
4 filed subsequent to the filing of all the testimony.

5 And our position is that when Public Counsel
6 puts this matter at issue, then the burden is on
7 Florida Power to go forward and justify the prudence
8 of its actions. In this case, the prudence of its
9 actions that relate to the extended outage at the
10 nuclear plant. But that requires a further
11 evidentiary hearing, and this would be consistent with
12 the practice that the Commission has followed in the
13 past.

14 My review has indicated that there's been
15 eight nuclear outage investigations conducted by the
16 Commission. And in all of those, the procedure was
17 followed that, first, retained jurisdiction over the
18 expenditures that were involved, over the replacement
19 fuel costs; and then established a discovery and a
20 prehearing schedule so that the parties would have the
21 opportunity to fully apprise themselves of the issues;
22 and then setting a hearing with all of the costs
23 subject to the Commission's finding on prudence as the
24 final outcome of that hearing. And I think that's the
25 procedure that I think should be followed in this

1 case. I think that was the recommendation of Staff in
2 its prehearing statement and shown in the Prehearing
3 Order.

4 Going the other way, as Public Counsel would
5 suggest, really would provide an unworkable and
6 unrealistic standard to expect utilities to follow.
7 During the course of a six-month period, there can be
8 literally hundreds of events that can take place that
9 have an adverse effect on fuel costs. You can have
10 things like outages at generating plants, economy
11 purchases and sales that take place or don't take
12 place, changes in the availability of natural gas,
13 increased peaking generation; you could go on with
14 just a litany of individual events that could
15 adversely affect fuel costs. And to expect a witness
16 providing true-up testimony to identify, explain and
17 justify in detail every conceivable point that could
18 be put at issue is just not a workable approach.

19 Instead, the approach that we followed,
20 Mr. Scardino's testimony followed, and that I think
21 has been consistently followed in the true-up
22 testimony of the utilities, is to provide an overview
23 of the events that take place during the six-month
24 period. And specifically, to focus on variance
25 analysis. We already have projections that would have

1 preceded the true-up period, an expectation of what
2 the utility thought would happen.

3 When the true-up testimony is filed in the
4 case of Mr. Scardino, he presents an extensive
5 variance discussion which contrasts the projected
6 results from the actual results. And in particular,
7 identifies the costs that are associated with the
8 reduced generation from the Crystal River 3 nuclear
9 plant. That puts parties on notice. It gives them an
10 idea of where costs are being incurred, where they
11 aren't. It gives them an opportunity to then employ
12 the discovery and prehearing practices that are
13 available to them through the Commission to file
14 testimony.

15 If something is complex enough, which is
16 often the case with a nuclear plant that it can't be
17 dealt with in a short period of time, it gives them an
18 opportunity to raise issues that can be deferred and
19 taken up through an orderly process. That's the way
20 it's been done, and that's the way we think that it
21 would be appropriately done here. We think that the
22 law requires that because there is a presumption that
23 the costs that are reflected in that true-up testimony
24 are prudent. That presumption can be rebutted, but it
25 has to be based on evidence which we don't have at this

1 point.

2 The issue of Mr. Wieland's testimony, I
3 think, is much simpler. That is not true-up
4 testimony, that's projection testimony. The standard
5 is whether the projections are reasonable. And I
6 guess it's ironic in this case that if there was
7 anything that was going to be challenged about the
8 reasonableness of those projections, was leaving out
9 the replacement fuel costs for the summer period, not
10 the inclusion of them.

11 But I think the important point on that is
12 because it's projection testimony, it's subject to
13 true-up. The estimated actual current period that we
14 are in right now will be the subject of true-up
15 filings, true-up testimony in hearings in August. The
16 remaining period will be subject to true-up further
17 down the road.

18 What we would suggest, of course, as far as
19 this one outage since it encompasses several periods,
20 that a hearing on the recovery replacement fuel cost
21 be deferred until we know the conclusion of the
22 outage, establish a hearing and then proceed as we
23 have in the past. So I think that's really the
24 essence of both the legal and the practical
25 considerations that attend fully and fairly, hearing

1 the issues that relate to the nuclear plant outage.
2 We want to emphasize that we are not asking the
3 Commission to make any permanent decision, that we
4 simply want the opportunity to have due process fill
5 itself out and allow the company to present evidence
6 on the reasonableness of the costs that are associated
7 with the outage.

8 We have a remaining issue that has to do
9 with the GPIF testimony for the upcoming projection
10 period. That testimony was filed originally -- and I
11 think part of the explanation that Mr. Wieland gave
12 also applies to this. Both sets of testimony were
13 filed at exactly the same time. When it was filed for
14 January 13th, that was a Monday, it was actually
15 shipped out on Friday, January 10th, it was prior to
16 the determination that the nuclear plant outage was
17 going to be extended through -- into the fourth
18 quarter of 1997. Realizing that that change had
19 occurred, we contacted Staff to ask their guidance as
20 to the appropriate manner in which the nuclear plant
21 should be treated for the purposes of setting targets
22 during the upcoming period. Obviously, if there were
23 performance targets that were set, since we knew the
24 plant would be out, it wouldn't meet those targets.

25 Both the GPIF implementation manual and the

1 guidance that we were given by Staff suggested that it
2 was the proper procedure in dealing with the targets
3 and ranges for the summer period to have the nuclear
4 plant excluded. And there are sound reasons for that
5 that may not be apparent on the surface. But leaving
6 Crystal River 3 in the GPIF for the summer period not
7 only subjects the plant to those performance criteria,
8 but then the plant's actual performance for the summer
9 period enters the database, a three-year rolling
10 average database, that's used to project and set
11 targets for future GPIF periods.

12 By putting in low performance -- no
13 performance for that period time, it will lower the
14 targets that will be set for future GPIF periods. And
15 that, I think, is the underlying rationale for why you
16 don't want units that you know are going to be out to
17 be subjected to performance criteria during GPIF
18 periods. And so we have followed the Staff's
19 guidance, submitted revised testimony that was
20 identical to the original testimony with the exception
21 of showing the nuclear plant out of service. And that
22 concludes my argument.

23 CHAIRMAN JOHNSON: You want to save your
24 last five minutes for rebuttal?

25 MR. MCGEE: If I may.

1 **CHAIRMAN JOHNSON:** Commissioners, do you
2 want to ask questions now or at the end of all of the
3 argument? At the end? Okay.

4 Mr. Howe.

5 **MR. HOWE:** Thank you, Chairman Johnson,
6 Commissioners.

7 Back in July of 1996, Florida Power
8 Corporation received a midcourse correction to
9 increase its fuel cost recovery. And in that
10 Commission Order, which was Order No. 96-0908, the
11 Commission noted that the oil prices had increased by
12 approximately \$2 a barrel. And the increased price of
13 oil, the effect on customers was exacerbated by the
14 fact that the refueling outage at Crystal River 3 had
15 lasted longer than anticipated.

16 In its November filing, its notice of
17 estimated true-up underrecovery, Florida Power
18 Corporation stated that the oil prices which are
19 approximately \$3 to \$4 per barrel higher than
20 forecasted. I did a little math looking at some of
21 the schedules appended to Mr. Wieland's testimony, he
22 states in his prefiled testimony at Page 8 that the
23 nuclear fuel runs about -- he used the fee of .327
24 cents per million Btu in his schedules, so that
25 rounded off to 33 cents per million Btu. Heavy oil

1 costs \$2.70 per million Btu. It's about 8.2 times as
2 much. On a per megawatt hour basis, the comparison of
3 nuclear fuel to heavy oil, heavy oil is about 7.7
4 times as expensive.

5 I point those numbers out to you so you can
6 see just what an impact a nuclear outage has on the
7 fuel costs for Florida Power Corporation. They are
8 enormous. We are talking about real money coming out
9 of customers' pockets because the unit is not up and
10 running, and its lost generation is being replaced by
11 very expensive heavy oil which, in turn, has seen
12 significant recent price increases.

13 Now, Florida Power Corporation has proposed
14 to mitigate the effects of the ongoing outage by on
15 the one hand saying that they are only asking for
16 recovery for the current period, as they call it, the
17 October 1996 through March 1997 period. They are not
18 asking for recovery for the period April through
19 September 1997. They are also proposing to recover
20 the replacement fuel costs over a one-year period
21 instead of six months.

22 These proposals are commendable. They are
23 laudable, but they are not evidence. Your notice of
24 this proceeding states correctly that this proceeding
25 will be governed by the provisions of Chapter 120

1 Florida Statutes. The Administrative Procedure Act
2 assigns a burden of proof to the party seeking
3 affirmative relief, that is Florida Power Corporation
4 which desires to pass on replacement fuel costs to its
5 customers.

6 I've had to familiarize myself with some of
7 the changed numbering and so forth in the revisions to
8 the APA, but generally 120.579(H) says findings of
9 fact shall be based upon a preponderance of the
10 evidence. 120.569 says, "The Commission will base its
11 decisions on an evidence of a type commonly relied on
12 by reasonably prudent persons in the conduct of their
13 affairs."

14 I would suggest that a reasonably prudent
15 person while acknowledging that it's nice that Florida
16 Power Corporation is proposing to defer cost recovery
17 for 12 months instead of six and it's proposing to not
18 ask for recovery for the period April through
19 September 1997, that that's not evidence. A
20 reasonably prudent person would not say, well, given
21 your concessions, I'll find that the replacement fuel
22 costs you are asking for are reasonable.

23 I think this Commission has to decide -- if
24 they are going to vote today, they have to decide
25 today whether the decision will affect Florida Power

1 Corporation's substantial interest -- will determine
2 their substantial interest, to use precise terms. I
3 think the answer is clearly yes.

4 If you give Florida Power Corporation what
5 it is asking for, will that adversely affect its
6 customers? The answer is yes.

7 What evidence have they offered to you to
8 demonstrate that the replacement fuel costs is not the
9 responsibility of management, that it cannot have been
10 avoided, that the nuclear unit is not off line because
11 of the voluntary actions of the company?

12 Now, we heard Mr. Scardino say that he
13 disagreed with the press release from the NRC that
14 said they had taken off Crystal River 3 off line
15 voluntarily on September 2, 1996. But you also heard
16 him say that his information was what he had been told
17 within the company. There is another provision in the
18 APA that says you cannot base a finding of fact
19 exclusively on hearsay testimony. We are in an
20 APA-type proceeding.

21 Now, I'd also like to bring you back to that
22 motion I filed. We heard Mr. Wieland testify that at
23 the time they filed their testimony, they didn't know
24 that the outage would extend past the April 1st start
25 date for the next projection period.

1 In our motion filed on February 3rd,
2 Paragraph 3, Page 2, we stated, "The press reported
3 that FPC had announced on January 9, 1997, that CR-3
4 will remain shutdown at least through the end of June
5 1997." That was based upon an article we downloaded
6 from the Internet on January 10th.

7 The company chose not to respond to our
8 motion, chose not to point out any disagreement with
9 our assertion that they had announced before they
10 filed their testimony that the unit would be off line
11 well into the next projection period. I think you
12 need to take that into consideration, also. As I
13 stated earlier, my position on the fact that the
14 company had chosen not to respond meant that this
15 motion should be taken as not moot, but as unopposed.

16 When you look at the evidence before you, I
17 think you are going to be hard-pressed to find that
18 you have a basis upon which to even allow the company
19 to collect the replacement fuel costs associated with
20 the outage of CR-3 even subject to a future hearing.
21 Because, as the company has proposed, they want to
22 take that money from the customers, at least for the
23 seven-month period, September 2, 1996 through March
24 1997. And then from their perspective, they'll see if
25 we can get it back. I would suggest that you don't

1 have any basis consistent with the Administrative
2 Procedure Act to give it to them in the first place.

3 I'll touch upon a couple of things that
4 Mr. McGee raised. As far as the presumption of
5 prudence for the company, that was for them to
6 demonstrate under the Florida APA, and they have not
7 done so. As far as whether we were clued into the
8 fact that we should address this issue in testimony;
9 no, we were not.

10 Mr. Scardino doesn't mention the outage, the
11 current outage at CR-3, in his prefiled testimony.
12 What he talks about is the fact that they incurred
13 some cost, heavy and light oil for replacement
14 generation for the nuclear unit. Whether those
15 numbers referred to the extended refueling outage they
16 had early in the April through September 1996 period
17 or refer to the September 2nd through the end of the
18 month's outage, I honestly don't know. But there was
19 nothing in that evidence to clue us that when that
20 testimony was filed, that unit had been down for fully
21 two and a half months. And no mention was made that
22 they were in a current ongoing extended outage that
23 was going to have a very significant effect on
24 customers, which is demonstrated by the fact that
25 heavy oil costs eight times what nuclear fuel costs

1 for fuel adjustment purposes. And in the meantime,
2 the customers are paying base rates that include the
3 nuclear unit, which is only justified being in rate
4 base if it is offset by lower fuel costs from the
5 efficient operation of that plant at a high capacity
6 factor.

7 So we had no opportunity and we had no
8 evidence to confront. Moreover, if we had raised the
9 issue, we would have put the company in a position
10 where they were making their case in rebuttal. They
11 have an obligation to come forward and make a prima
12 facie case before this Commission.

13 So I don't think we are talking about an
14 unworkable standard. I don't think we are talking
15 about any great difficulty. I think the company has
16 an obligation to come before you and show you what's
17 going on, to tell you what's happening, to tell you
18 these costs, and at least to allege that these
19 enormous costs are not the responsibility of
20 management. Maybe at that point it would behoove
21 somebody, like our office, to come forward and say,
22 "Wait, this is complicated. Give us time to develop
23 the issue."

24 But I don't think the company has the right
25 to sit back and say, "We'll just touch it in a cursory

1 basis. We'll collect the money. And if there is a
2 future hearing, we'll see if the Commission orders us
3 to give it back."

4 Under these circumstances, if the Commission
5 is going to schedule a future hearing, I think they
6 should announce up front that the way this issue has
7 developed, the company should not be entitled to any
8 interest on underrecoveries. Thank you very much.

9 COMMISSIONER DEASON: Let me ask a question.
10 Mr. Howe, as I take your argument, part of the
11 motivation or the basis of the argument really boils
12 down to who keeps the money during the interim period
13 of time until a thorough review can take place in a
14 separate proceeding.

15 Is it your position that who has the money
16 in any way changes the burden of proof or the standard
17 that's going to be employed either by this Commission
18 or by an appellate court in looking at the final
19 determination of prudence?

20 MR. HOWE: No, not to the legal standard.
21 But I think you have a preliminary standard, and that
22 is not so much whether you could order the company to
23 give the money back and they would obey that order,
24 but do you have a basis to allow them to keep it in
25 the first place. Was there a preliminary showing, a

1 demonstration of likelihood of success, for example,
2 to use the stay of an appellate -- a final order on
3 appeal kind of standard? Was there any showing at all
4 on the company's part that would give you some comfort
5 as the regulator to say we're not sure, but we think
6 the company should be allowed to hold the money? And
7 that, I think, is a threshold decision.

8 I have no problem with the fact the legal
9 standard that would apply during the hearing, I think,
10 would be the same either way. But I don't think
11 you've heard anything here from witnesses or from
12 argument from the company that would give you any
13 comfort that you would be satisfying your legal
14 obligations to only allow recovery of expenses that
15 you believe are prudent that would allow you to let
16 the company collect this money pending a future
17 proceeding.

18 CHAIRMAN JOHNSON: Ms. Kaufman.

19 MS. KAUFMAN: Thank you, Chairman Johnson,
20 Commissioners. I probably won't take my full 15
21 minutes. I would adopt what Mr. Howe has told you,
22 and I have some additional comments that I would like
23 to make.

24 I think, as Mr. Howe said, this is an issue
25 that involves substantial dollars for the ratepayers.

1 We have some things that we know about what's going
2 on, and we have a whole lot of things that we don't
3 know.

4 What we are talking about here is a
5 substantial outage that involves Florida Power Corp's
6 low cost nuclear unit, as Mr. Howe said, that is in
7 rate base, and the ratepayers have paid for. We know
8 the unit has been down for over five months. We have
9 no idea when it's going to return. We know very
10 little about the reason for the outage, except from
11 what I've read, the outage may be attributable to
12 actions taken or not taken by management. We also
13 know that the replacement fuel costs that FPC wants to
14 recover from ratepayers are substantial, and that it's
15 the Crystal River unit that's contributing in the main
16 part to this substantial underrecovery in this period.

17 Now, based on these facts, or maybe more
18 accurately the lack of any facts, Power Corp wants to
19 recover the replacement fuel costs with no showing,
20 none, no showing that there's any justification for
21 them to recover, none. And I think that's important
22 to emphasize.

23 When Mr. Wieland was on the stand, there was
24 a lot of discussion about how the cost would be
25 recovered, what the time period would be, how

1 increases in rates would be mitigated, all based on
2 the assumption that the cost would be recovered with
3 no discussion as to the reason of the outage or the
4 reasonableness or lack of reasonableness.

5 It's my understanding, practicing before the
6 Commission, that in any instance where a utility wants
7 to recover money from ratepayers, the utility has the
8 burden of proof to show the reasonableness of their
9 actions, to show the reasonableness of any
10 expenditures that they are seeking to flow through the
11 ratepayers. And it's also my understanding that
12 that's the same burden in a fuel adjustment procedure
13 as it is in any other proceeding that the Commission
14 considers.

15 As I said earlier, we don't have any
16 evidence. You don't have any evidence from Power Corp
17 about this outage even though they have had ample
18 opportunity to present it to you. So we would suggest
19 that Power Corp has not met their burden of proof.

20 We would also suggest to you that it is not
21 the intervenors' burden to come forward and show,
22 almost prove a negative -- show that they have failed
23 to come forward and meet their burden. Initially, the
24 burden is on Power Corp, and they have failed to meet
25 it. And so, because we view this as almost a

1 threshold issue of burden of proof, we would suggest
2 to you, as Mr. Howe did, that you have no basis to
3 allow them to recover these costs; and we would ask
4 that you exclude these costs from the upcoming period.
5 Thank you.

6 CHAIRMAN JOHNSON: Thank you.

7 MR. McGEE: Just a couple comments in
8 rebuttal.

9 I was intrigued by a comment that Mr. Howe
10 made that Mr. Scardino's testimony, even though it was
11 filed in November, didn't address this outage that
12 began in September. Of course his testimony ended
13 with the period September 31st. But he indicated that
14 the costs that were presented in this testimony, while
15 not specific to that outage, covered nuclear outages
16 in general. And it sort of illustrated, I think,
17 that -- the quandary his approach would place Florida
18 Power in and any other utility in a similar situation.

19 Which outage do we use, with perhaps some
20 sort of clairvoyance, to know is going to be put at
21 issue after the testimony has been filed? As he
22 indicated, there was a refueling outage earlier during
23 that period. There was a short forced outage. And he
24 has no concern about those not being given the
25 detailed explanation. But now that it has been put at

1 issue, we should have had that foreknowledge
2 apparently that that particular outage that began
3 September 2nd should have been treated differently.
4 That just places the company in an untenable position.
5 What the situation involves in this case, and it
6 relates to a comment that Ms. Kaufman made, that the
7 utility has the burden of proof.

8 Well, Florida Power doesn't dispute that it
9 has the burden of proof, but it has the burden of
10 proof when costs have been put at issue. We start out
11 with a presumption that management acts prudently.
12 When that is called into question, we acknowledge that
13 we have the burden of proof going forward and showing
14 that those costs are reasonable and prudently
15 incurred, but we can't be expected to anticipate every
16 conceivable single thing that could come up when
17 true-up testimony is being filed. And certainly not
18 when projection testimony is filed which is based on
19 estimates to begin with.

20 I think that the approach that the
21 Commission has consistently used in the past when
22 these issues have been raised; they are set for
23 hearing, all costs are made subject to refund
24 depending on the outcome of the hearing, and the
25 Commission retains jurisdiction over all replacement

1 fuel costs, is the appropriate procedure to be used
2 here. Thank you.

3 CHAIRMAN JOHNSON: Let me ask you a
4 question because there appears to be some confusion,
5 or I don't know if you all are talking over each
6 other. In my mind, and perhaps Public Counsel will
7 correct me, there are two different issues. There's
8 the issue related to the costs and whether or not
9 those costs were prudently incurred, but they also --
10 and I think Ms. Kaufman -- they're kind of crafting
11 out an argument as to what caused it in the first
12 place. And if we were to make a determination that
13 management inefficiencies or management actions caused
14 this, we would never even get to costs; it would just
15 be disallowed.

16 And if that is so, if they are saying,
17 Commission, there should have been some allegation,
18 there should have been some statement that this
19 shutdown was not caused by management and that didn't
20 occur, how do you respond to that? How do you respond
21 to -- it appeared to me you were focusing in on the
22 prudence of the costs, and they seem to focus on the
23 costs that lead to the need to have these costs.

24 MR. MCGEE: Right. And if I phrased it that
25 way, I didn't intend to create that distinction. I

1 think we are talking about the same thing using
2 different terms.

3 Management prudence has been the standard
4 that the Commission has employed in the past to
5 determine whether costs can be recovered.

6 CHAIRMAN JOHNSON: Management prudence as to
7 what?

8 MR. McGEE: Well, for instance, the
9 distinction that's been made in past cases is that a
10 finding of imprudence, a disallowance, has to be based
11 on management imprudence as opposed to just the mere
12 happening of an accident, a failure, even to the point
13 of recognizing that an employee error is not a basis
14 for disallowance, that it has to be a function that
15 management exercises, the decision making, planning,
16 training, establishment of procedures, the things that
17 are within the province of management. If those
18 functions are imprudently carried out, then the
19 Commission bases its disallowance on that finding.

20 And what I have said about the testimony of
21 Mr. Scardino is that there is that initial presumption
22 that the actions of management involved in the
23 incurrence of the cost that he identifies in his
24 testimony is prudent.

25 CHAIRMAN JOHNSON: Maybe I was confused on

1 your analysis there, because you cited to a case about
2 the management's actions are presumed to be reasonable
3 or prudent --

4 COMMISSIONER KIESLING: Could you give us
5 that cite again, too?

6 MR. McGEE: Yes.

7 COMMISSIONER KIESLING: It was an Ohio
8 Public Utilities Commission case, but I didn't get the
9 cite.

10 MR. McGEE: This was a U.S. Supreme Court
11 case.

12 COMMISSIONER KIESLING: I understand, but it
13 arose out of the Ohio Commission.

14 MR. McGEE: Yes, that's correct. I'm only
15 going to be able to give you the U.S. cite.

16 COMMISSIONER KIESLING: I don't care.

17 MR. McGEE: It's 294 US 62.

18 CHAIRMAN JOHNSON: So now were you using --
19 is that the complete cite?

20 MR. McGEE: Yes, ma'am.

21 CHAIRMAN JOHNSON: Were you using that as
22 the legal authority to suggest that then there's no
23 need to make an allegation, that management didn't do
24 anything wrong in the first instance because there's
25 some legal presumption? So that in your pleading

1 there is a legal presumption that management acted
2 prudently or --

3 MR. McGEE: Well -- and I don't know that
4 any of us would be particularly better served if after
5 every reference to a cost there was some boilerplate
6 language that was inserted and saying "and these costs
7 were the result of prudent management actions."

8 From the standpoint of Mr. Scardino filing
9 his true-up testimony, the practical situation that he
10 was in is that that outage had just begun and it's in
11 the nature of nuclear plant outages; they are complex.
12 Florida Power isn't in a position, certainly wasn't in
13 a position at the time, to fully comment on the causes
14 and the implications that go along with that outage.
15 When these have been looked at in the past, there have
16 been extensive outage reports, evaluations that deal
17 with a number of criteria. Those have been submitted
18 into evidence after the fact, and it's one of the
19 things that suggests the benefits of conducting this
20 kind of review when all the facts are known from the
21 completion of the outage.

22 I just don't think it's a reasonable
23 expectation that Mr. Scardino at that particular point
24 could have given the kind of detailed explanation that
25 would have fully justified the recovery of the outage.

1 Anything he could have said would not have prevented
2 the need -- assuming the issue was raised, as it has
3 been, would not have prevented a need for a hearing
4 later on. His comments could have, at best, been
5 preliminary.

6 CHAIRMAN JOHNSON: So Public Counsel made
7 just a broad statement that there's not even an
8 allegation or a statement that the outage was not
9 caused by any misconduct of management. And that is
10 true, there aren't any statements addressing that
11 issue at all. It's your position that that's not
12 necessary?

13 MR. MCGEE: I think that goes to the heart
14 of the presumption. Mr. Howe wants to hold it against
15 Florida Power that it didn't state that there wasn't
16 mismanagement when, in fact, there is a presumption
17 that management is prudent.

18 And again, I don't want to overstate that
19 too much. I don't think that's the be all and end
20 all, because that once put at issue, I agree that then
21 it becomes the utility's burden ultimately to
22 establish that its actions were prudent, but that we
23 do avail ourselves of that presumption at the outset.

24 CHAIRMAN JOHNSON: Okay.

25 COMMISSIONER DEASON: Let me ask Mr. Howe a

1 question. I believe Mr. McGee made a statement, if I
2 understand him correctly, that there had been some
3 eight previous proceedings addressing replacement fuel
4 costs of some sort. And that in each and every case
5 the cost had been allowed to be recovered and then
6 there was a subsequent proceeding that looked at the
7 prudence.

8 Are you asking us to deviate from that? And
9 if you are, how do we reconcile those previous actions
10 with what you are asking us to do now?

11 MR. HOWE: I can't dispute the fact of
12 whether or not there's been eight previous
13 proceedings. Perhaps I've been doing this a little
14 bit too long because I remember one of them. I can
15 remember one where we were having a hearing down in
16 St. Pete, and I believe it was a fuel-type issue. But
17 the company's nuclear plant manager took the stand and
18 provided testimony. I think his -- if I can
19 paraphrase his language at the time, which we found
20 very interesting, it was something on the order of,
21 not only was there nothing that the company did that
22 was wrong, there was nothing the company could have
23 done that would obligate them to be responsible for
24 the fuel costs.

25 We challenged that, and that's what lead

1 into a very protracted hearing that, I believe,
2 ultimately perhaps was the genesis of drop test weight
3 case that went for years before the Supreme Court
4 announced its wisdom on the subject.

5 So what I'm getting at is it appears to me
6 that in those prior cases there's been some pretty
7 strong allegations by the company that what they did
8 was prudent, and it gave you some basis to challenge
9 it. In this particular case it seems to be, from the
10 company's perspective, there's a presumption of
11 prudence. That would seem to be the end of the matter
12 if it weren't challenged, if it really applied. But
13 yet that presumption is going to go away if you
14 schedule another hearing because I presume that the
15 company is going to have the burden of proof in that
16 future hearing.

17 I don't think under Florida's APA there is a
18 presumption independent of an evidentiary
19 presentation. So maybe there would be a presumption
20 if the company made well-founded allegations that
21 management was prudent; but in the absence of that, I
22 don't think so.

23 We don't have so much problem with the
24 future hearing to really dig into the issue. Our
25 concern is the company is saying just give us the

1 money. Give us the money until you sort it out. And
2 I'm saying that is a pretty substantial decision to
3 ask this Commission to make on no evidence. And our
4 view is that you can't make that decision under the
5 Florida APA because it would be a decision to
6 determining substantial interest adversely affecting
7 customers with no record of support.

8 COMMISSIONER DEASON: Let me ask. There are
9 a whole host of costs that have been included in this
10 fuel adjustment proceeding -- let's leave Florida
11 Power for a moment -- other companies that have been
12 presented, and there was no issue taken with them,
13 there was a stipulation reached. And I would suspect
14 that there were probably some costing included where
15 the company didn't state one way or the other whether
16 those costs were prudently incurred or not, they just
17 filed a form saying, you know, we spent X amount of
18 dollars on coal, and we are projecting X amount of
19 dollars during the projection period. And those were
20 looked at, reviewed, and they were either not taken
21 issue with or it was determined that those were
22 reasonable.

23 How do we reconcile treating those costs
24 that way when there wasn't a precise statement that
25 this was a prudent management decision to purchase

1 this coal at X dollars per ton? With this we are
2 saying that the company has the burden to come forward
3 for each and every cost, every dollar of cost, to make
4 that affirmative statement before there is any basis
5 upon which this Commission can pass those costs
6 through the fuel adjustment clause.

7 MR. HOWE: I guess I would answer by saying
8 implicit in the positions we've taken is the
9 materiality standard. Would a reasonable company
10 experiencing an event that causes their fuel charges
11 to their customers, just one event -- by that I mean
12 one plant being off line -- causes to replace their
13 fuel costs on their system in the retail jurisdiction,
14 if my math is correct, to increase by as much as \$12
15 million a month? Would a reasonable utility think
16 we'd better lay something out for the Commission and
17 for the parties because this is a lot of money and we
18 are going to be asking for it on faith pending the
19 outcome of some future proceeding?

20 Now, keep in mind the company didn't ask for
21 a future proceeding even in their filings. They are
22 just asking for the money. So I guess that would be
23 the standard.

24 If the Commission feels that a reasonable
25 management, a prudent company, would come forward and

1 tell you the details surrounding one event that causes
2 as much as \$12 million per month, \$350,000 a day more
3 in fuel adjustment charges, would you expect them to
4 present something to you before you would even give
5 them money on a conditional basis pending the outcome
6 of a future proceeding?

7 COMMISSIONER DEASON: Mr. McGee, what is
8 your position concerning the question of materiality
9 and that having an impact on your obligation to make
10 an affirmative showing at the very beginning before
11 any dollars are recovered?

12 MR. MCGEE: Well, I mean that, I guess,
13 maybe raises as many questions as I could answer where
14 the materiality threshold starts and some issues like
15 that.

16 When Mr. Scardino filed his testimony, he
17 had a 29-day outage that he was dealing with, and I
18 think the witness testified that the costs associated
19 with that were in the vicinity of \$12 million. I'm
20 not sure whether that is material or it's not.

21 I guess Mr. Howe is saying that even though
22 that was only a 29-day outage within his testimony,
23 that there were implications that went into the future
24 and it would have been good practice had we just
25 advised the Commission that something significant may

1 be going on here. And maybe from a presentation
2 standpoint and with the benefit of hindsight, that may
3 have been the appropriate thing.

4 I think it should be clear, though, that the
5 Commission has not been kept in the dark about the
6 goings on at the Crystal River nuclear plant. The
7 extent of the outage, that's been conveyed and
8 discussed with Staff, and the Commission has been made
9 fully aware of that. But I don't think a claim for a
10 disallowance should be based on criticism of a manner
11 of presentation that perhaps we should have been more
12 informative. But the fact remains that no matter what
13 we would have put into that testimony, in terms of the
14 issue, the ultimate issue of recoverability, we could
15 not have given you the basis to ultimately conclude
16 that the actions of Florida Power's management was
17 prudent. We were at the most preliminary stages of
18 this.

19 So I guess we have separate issues here, and
20 I think Mr. Howe has now got into a different issue,
21 is that it would have been better practice had we been
22 more fully informative in the testimony. And that's a
23 matter of judgment, and he's entitled to his opinion.
24 And perhaps we should have done a better job.

25 It doesn't take away from the prudence that

1 is presumed for management, and it needs to be kept in
2 a perspective that existed at the time. With
3 hindsight we see a lot of things. At the time, that
4 outage was not scheduled to go past February. That
5 was all that was known by the witness at the time he
6 prepared his testimony.

7 So we are dealing with somewhat of a moving
8 target here, but in terms of the more fundamental
9 underlying issues, I don't think that those comments
10 are really germane.

11 COMMISSIONER DEASON: Mr. Howe, let me ask
12 you another question. Do you see any distinction
13 between a fuel adjustment proceeding, which has
14 true-up mechanisms and interest provisions going up
15 and down, depending on whether there is an
16 overrecovery or underrecovery, with periodic thorough
17 investigations as the need arises, with, say, a
18 classic rate case proceeding where a company comes in,
19 files MFRs, has burden of proof from Day One to
20 demonstrate that they need an increase in their base
21 rates, realizing there's no true-ups, there's no
22 refunds and things of that nature? Do you see a
23 distinction between those two basic types of cases?

24 And if there is a distinction, how does that
25 affect what we are trying to do here with the recovery

1 mechanism as you argue it?

2 MR. HOWE: I guess I have to say I do see a
3 distinction. The rate case, of course, fits more
4 clearly within the traditional: put on your case, get
5 a final order. When a final becomes final, it's all
6 over until you do it again. And the fuel adjustment
7 does have that ongoing nature.

8 However, I view the ongoing nature as
9 putting a special obligation on the company. The
10 reason is -- I can't cite to you the case, but it was
11 once raised to the Supreme Court. I think it was
12 Justice Sundberg, wrote the opinion where basically a
13 company said, "Hey, it's too late to delve into this
14 after the fact."

15 And the court said, "Wait a minute. You've
16 been given a forward-looking rapid recovery mechanism.
17 It's no place for you to complain about the Commission
18 learning after the fact that something needs to be
19 dealt with in detail." And having a hearing and
20 really triggering all the true-up provisions, that
21 seems to impose a certain obligation on the company to
22 come forward. It's too easy for things to just slip
23 through the cracks in this type of a proceeding.

24 And I guess that ties back to what I was
25 saying about materiality. When you have one event

1 have an enormous impact on your customers, it should
2 trigger the requirement to disclose the circumstances
3 and at least make a prima facie showing of
4 reasonableness, because so much happens so fast in the
5 fuel docket that we might not learn about it later.

6 So I see it as being different, but I see it
7 perhaps as imposing a duty on the utility, you know,
8 to make reasonable decisions about what it should
9 disclose in its filings in the fuel docket.

10 COMMISSIONER DEASON: Mr. McGee, do you see
11 a distinction? And if so, how does that affect what
12 force the --

13 MR. MCGEE: Yeah. I think there are some
14 distinctions, and I think it has a large part to do
15 with the routine nature of the fuel adjustment
16 docket -- the fuel adjustment proceedings ever since
17 the Commission adopted the projected fuel cost back in
18 1980.

19 But while Mr. Howe is correct that things do
20 move fast, I think it's also important to note that
21 there are some safeguards that are built into this.
22 We are continually dealing with a -- I'm not sure I
23 can describe this even adequately, but with a rolling
24 18-month period. We are always in a current six-month
25 period. We are always looking back at a prior

1 six-month period and projecting forward to another
2 six-month period.

3 Events that take place at any particular
4 point in time have an opportunity to come to the
5 knowledge of interested parties through various means,
6 though testimony, discovery, all the way through from
7 the time they happen through the true-up period. And
8 we've had it happen on a number of instances where
9 something comes up somewhat late, there isn't an
10 opportunity to fully evaluate it. And when that
11 happens, the Commission routinely reserves
12 jurisdiction over that. It's deferred to another
13 period, so that there are mechanisms that are not only
14 available to the Commission, but that they've used
15 frequently to deal with the fact that there are a lot
16 of dollars passing through, a number of clauses and
17 events do take place quickly.

18 I think the Commission was very careful in
19 the way it designed the fuel adjustment procedure to
20 make sure that there were safeguards. Safeguards like
21 the interest on true-up so that neither the customer
22 nor the utility is affected by regulatory lag. I
23 mean, it's a very efficient procedure.

24 And what I think we have been saying here is
25 that the procedure has worked well through the past,

1 including the evaluation of complicated outages, like
2 exists with the case of nuclear plants, and that
3 that's the procedure that we should continue
4 following. It's proven itself. It's worked well in
5 the past, and that's the procedure we ought to
6 continue following here. At least I haven't heard of
7 anything that suggests that all of a sudden something
8 is broken and we need to go a different way.

9 COMMISSIONER DEASON: That raises another
10 question. Mr. Howe, you realize how things have been
11 done in the past and you want things done a certain
12 way for this particular case because of the
13 significance of the dollars in question. Is that a
14 change, in your mind, from what has been done in the
15 past? And if so, is that a change in the rules of the
16 game, so to speak, in midstream and would then be
17 unfair to the participants in the docket?

18 MR. HOWE: Well, I hate to be kind to the
19 company, but I have to say right now I really don't
20 know. And the reason I'm saying that is I'm trying to
21 picture the presentations, for example, that Florida
22 Power & Light has made in the past and so forth.

23 I seem to recall that generally we were
24 apprised up front in the prefiled testimony and so
25 forth. But without going back and checking, I can't

1 say that it's a change. I can tell you that, I think,
2 we telegraphed with our pleading that we thought this
3 was real unusual. Everybody in the world seems to
4 know that Crystal River 3 was down on September 2,
5 1996. Everybody seems to know it's probably not going
6 to be on line in 1997 barring some change. No
7 evidence at all on the subject.

8 I can tell you, I was surprised. And
9 whether that surprise was based upon some perceived
10 difference from prior filings by other companies, I
11 can't cite to you, I can just tell you I found it very
12 unusual the way that this case was presented.

13 COMMISSIONER DEASON: Mr. McGee, do you know
14 if there have been, in these other instances where you
15 referenced there being a recovery of dollars and there
16 being a subsequent proceeding to look at those dollars
17 in detail, do you know if there was any showing
18 whatsoever at the beginning of that recovery period to
19 make a preliminary showing of the reasonableness of
20 those dollars before those dollars were allowed to be
21 recovered and before the subsequent in-depth
22 proceeding was held?

23 MR. MCGEE: In the research that I've done,
24 I found one instance with Florida Power & Light where
25 an outage, a particular outage, was identified. It's

1 my understanding in that particular case that there
2 had been an issue related to that that had come up
3 during the prior proceeding -- the six months before
4 is what I'm saying -- and was followed up in some
5 true-up testimony that specifically identified an
6 outage. In every other one, all the Florida Powers,
7 the remainder of Florida Power & Light's -- and I will
8 qualify this not to try and be clever, but based on
9 the research that we've done. We have quite a bit of
10 extensive information -- we have not found any other
11 true-up information that specifically identifies and
12 attempts to justify the reasonableness of a particular
13 nuclear outage.

14 COMMISSIONER DEASON: What about projection
15 testimony? You said true-up testimony.

16 MR. McGEE: Yeah. In other words, if you
17 were going to expect it, I would think that's where
18 you would find it. In the projection testimony --
19 well, I mean, if it's a forced outage, I mean --

20 COMMISSIONER DEASON: I'm talking about in
21 this situation where they're -- I know you are not
22 asking for it, but suppose you had been asking for
23 recovery on a projected basis as well, knowing that
24 during -- at the start of the projection period the
25 plant was out and would be out for the entire

1 projection period or a significant portion thereof, in
2 that situation, would that situation ever occur? And
3 if so, was there testimony on the front end indicating
4 that the outage was not the fault of management and
5 that those dollars should be recovered on the current
6 basis?

7 MR. McGEE: Commissioner, I honestly don't
8 know that I've seen cases like that. I can say in the
9 cases before the Commission on nuclear plant
10 investigations, I have not seen any projection
11 testimony like that. To be honest with you, I
12 focussed on true-up testimony.

13 CHAIRMAN JOHNSON: Staff, are you aware of
14 any?

15 MS. JOHNSON: Are we aware of cases where
16 there was detailed testimony with respect to the
17 projection period?

18 CHAIRMAN JOHNSON: Either. Let's start with
19 the true-up. Preliminary showing of reasonableness.

20 MS. JOHNSON: The most recent case that
21 comes to mind for me is the Florida Power & Light
22 St. Lucie outage. Staff raised that as an issue in
23 the February 1996 hearing. The issue was deferred.
24 And my recollection is there was not any testimony by
25 Florida Power & Light in February. But in August they

1 did file testimony and that issue was addressed at the
2 August hearing.

3 CHAIRMAN JOHNSON: So that in their initial
4 filings, they did not present anything. Is that what
5 you're saying?

6 MS. JOHNSON: There were no details. And I
7 guess what Staff is considering is the fact that in
8 this filing, Florida Power Corp did at least make
9 mention of the fact that it was an outage. It was not
10 something that they attempted to hide from Staff or
11 the parties. There was no detail testimony.

12 And my recollection was that Florida Power &
13 Light did not have detailed testimony as well.

14 CHAIRMAN JOHNSON: Any other instances?

15 MS. JOHNSON: None that I'm aware of, but
16 Mr. Elias may comment on it.

17 MR. ELIAS: Madam Chairman, Mr. McGee -- if
18 I could ask Mr. McGee a question.

19 The instance that you spoke of, was that the
20 FP&L Turkey Point outage circa in 1989 and 1990?

21 MR. MCGEE: The one I'm referring to is a
22 recent one. And I think it's the one that Ms. Johnson
23 referred to. I did find a Turkey Point related
24 outage, true-up testimony for that outage that was
25 silent on the subject.

1 MR. ELIAS: I remember a representative from
2 FP&L at the 1990 fuel -- August 1990 fuel hearing, I
3 believe it was, giving some testimony about what was
4 going to happen or what was happening with a unit that
5 was -- with a nuclear unit that was out of service.
6 But as to how it relates with the timing of the outage
7 and which testimony, whether it was true-up or
8 projection, I just don't have that in the front of my
9 brain. I would have to go back and look at the
10 transcripts and see what we were dealing with.

11 But I do remember testimony on exactly what
12 activities were taking place, and I believe the
13 outage, if it was not ongoing, was scheduled to begin
14 shortly; and it was a case of a unit being out of
15 service for a year or more.

16 CHAIRMAN JOHNSON: What about Commissioner
17 Deason's general question as to the process, one where
18 we would require a preliminary showing of
19 reasonableness -- and that's just what I'm calling
20 it -- of management's actions being initiated -- well,
21 being required at the front end? If we were to make
22 such a ruling that they did have that obligation, is
23 that a change in rule or a change in policy from
24 Staff's perspective?

25 MR. ELIAS: And I think it's a question of

1 what you are deciding is reasonable as far as whether
2 it's the reasons for the outage or the costs that are
3 going to be incurred.

4 CHAIRMAN JOHNSON: Let's go with reason for
5 the outage.

6 MR. ELIAS: Traditionally, in my experience,
7 which is not as extensive as some of the other people
8 in the room, so they may wish to have an opportunity
9 to add to what I say, prudence reviews of nuclear
10 outages, and the reasons therefor, have taken place
11 after the outage was concluded for reasons of judicial
12 economy, not getting into a situation where you are
13 trying to develop a number and the situation was still
14 ongoing.

15 Frequently, in past nuclear outages we've
16 gotten into issues where there was an accident that
17 caused the outage that could have been fixed in X
18 days, but it was more cost effective to take care of
19 needed maintenance that was going to occur in a
20 subsequent period anyway as part of that outage and
21 incur those fuel costs now rather than waiting. So as
22 to the reasonableness of the causes for the outages,
23 in my experience, it's taken place after the outage
24 was concluded.

25 I believe that the utility has some

1 affirmative obligation to show that its projection
2 filings are reasonable. Now, whether that means that
3 the reason that the replacement fuel costs are being
4 incurred is one perspective to take or as to whether
5 or not it just extends to whether the numbers
6 themselves make actual sense in terms of what's going
7 to be incurred by the company in the next period is
8 another perspective to take.

9 And I heretofore had always been operating
10 under the second, that we were looking at the fuel
11 projections in terms of whether or not this was what
12 was likely to occur, knowing full well that the
13 prudence was going to be dealt with after the period
14 was closed. And that's absent some specific
15 information up front that's brought to the Commission
16 or the Staff's attention that the utility is doing
17 something imprudent.

18 CHAIRMAN JOHNSON: What you just said, Staff
19 kind of applied or the Commission has applied a
20 presumption, because you just said absent someone
21 coming up telling us otherwise and we presume --

22 MR. ELIAS: And I don't think it has a
23 presumption of prudence. If anything, it has a
24 presumption of reasonableness as to exactly what -- as
25 to the expenses that are going to be incurred, not

1 whether they are prudently incurred. And it would be
2 up to someone at that point in time to say, you know,
3 they projected light oil to be \$60 a barrel and \$30 is
4 a more appropriate price and they shouldn't be
5 recovering this money from the ratepayers over this
6 projected period because they are not going to incur
7 those kinds of costs.

8 **CHAIRMAN JOHNSON:** And that's saying
9 presumption of reasonableness as it relates to cost
10 also relates to the actions of management to cost?

11 **MR. ELIAS:** I didn't finish reading this
12 case yet, and I think the context is not necessarily
13 analogous.

14 There's other sides to that. The utility
15 has the affirmative obligation to demonstrate by a
16 preponderance of the evidence that its rates and
17 charges are reasonable at some point in time.

18 We had a case where the Commission -- about
19 10 years ago where there was no one but the company
20 offering testimony, the Commission chose to reject
21 that testimony, and that action was upheld by the
22 Supreme Court.

23 But as to whether or not there's a
24 presumption of prudence that applies to the
25 reasonableness of the company's projections based on

1 what's in the West Ohio versus Ohio PSC case, I'm not
2 ready to offer an opinion on that.

3 CHAIRMAN JOHNSON: Mr. Shreve.

4 MR. SHREVE: If I may, Madam Chairman.

5 COMMISSIONER KIESLING: Would you push your
6 button first?

7 MR. SHREVE: I'm sorry.

8 COMMISSIONER KIESLING: It's going to be the
9 remedial course for you again.

10 MR. SHREVE: It went the wrong way. Just a
11 couple of comments. With regard to what --
12 Commissioner Deason's question about the difference in
13 this and regular ratemaking, of course there is a
14 difference. There is a give and take in the fuel
15 adjustment charge when there is an underrecovery or an
16 overrecovery.

17 As you know, the companies endorsed the fuel
18 adjustment recovery clause we have now, and it seems
19 to work well. There haven't been a great deal of
20 problems with it. But I don't think there's anything
21 in there that is going to say that always the burden
22 of paying the money out of the pockets from the
23 customer into the company is going to be a
24 requirement. That wasn't what anybody ever thought in
25 terms of. I don't even think there's any precedent

1 that would ever come up with that. Just the fact that
2 companies have been allowed to recover it and then
3 have the opportunity to get it back to the customers
4 at some time in the future with another hearing would
5 really even come close to saying that.

6 The protection that you are alluding to and
7 that is there goes both ways. If the company does not
8 receive this money at this point because they have not
9 come forth with one scintilla of evidence that would
10 show that it is not their responsibility, then they
11 are protected in the future.

12 Why does that protection always have to go
13 the other way with the customers paying the money up
14 and then the company being able to recover it -- I
15 meant with the customers being able to recover it and
16 they have it in their pockets? That burden should not
17 always be borne by the customer if you've got
18 protection that actually goes both ways. I think
19 that's the way the fuel adjustment clause was seen.
20 And the companies were perfectly willing to go along
21 with that. If there was an underrecovery or an
22 overrecovery, it works both ways and not that the
23 burden will always be borne by the customers, not to
24 the tune of \$102 million.

25 As to the point -- which I disagree with

1 Mr. McGee -- on the fact of presumption of management
2 actions being prudent, but let's say he's right. What
3 management actions are we talking about? Have they
4 told you what management actions that they have even
5 taken? What are we talking about? What is the cause?

6 We don't even know, and you don't know. Are
7 you going to accept the fact that management actions
8 that you are not even told what they are, are prudent?
9 I don't think any case ever went that far. That's the
10 only comments. Thank you very much.

11 CHAIRMAN JOHNSON: Any other questions?

12 COMMISSIONER DEASON: Yeah, I have a
13 question. Mr. Howe, what is your position on the
14 cogeneration contracts of --

15 MR. HOWE: Well, my position simply was that
16 the company should not be allowed to recover costs
17 that have not yet been approved by the Commission
18 through policy rule or otherwise for recovery. If and
19 when the Commission approves recovery, they can start
20 recovering those costs.

21 I believe the company is of the mind that if
22 that happens, then they could recover back with
23 interest. I don't think that's true either. I say if
24 the Commission should approve these buyouts in the
25 future, from that point forward, the company can

1 recover the costs, period. I think it's a prospective
2 thing, and I don't think there would be any interest
3 assignable to the fact that the company chose to book
4 it in its records at an earlier date.

5 CHAIRMAN JOHNSON: Any other questions? I'm
6 going to look back through my notes.

7 Florida Power Corp, with respect to the same
8 question that was just asked of Mr. Howe, what was
9 your rationale or your reasoning for reaching the
10 conclusion that although the Commission had not yet
11 approved those costs that they should be recoverable?

12 MR. MCGEE: Well, really, I guess the way I
13 looked at is that the position that Mr. Howe was
14 advocating was sort of the exception. We have costs
15 that are incurred routinely that aren't -- and I'm
16 talking about routine type of costs that we incur that
17 aren't specifically approved. And maybe this goes
18 back to some other issues we've been talking about
19 this morning. If something comes up through the fuel
20 adjustment proceeding in this case through a separate
21 docket that will be considering these, it causes those
22 costs to be subject to Commission scrutiny and then
23 disapproved, then we already have a mechanism that is
24 in place designed to deal just with those kind of
25 situations, the true-up provision, even to the point

1 of providing interest so that everyone is made whole.

2 And one of the important points in this one
3 is we are talking about costs that have been actually
4 incurred, money paid out, out-of-hand, and the
5 Commission's proceedings in the two related dockets
6 dealing with Lake Cogen and Pasco Cogen will be making
7 a decision shortly on that, and we have every ability
8 to recognize the Commission's decision should it be
9 something other than approval in dealing with those
10 costs in future true-up proceedings. I just think
11 it's designed to handle costs exactly this way.

12 **CHAIRMAN JOHNSON:** Staff, do we have any
13 precedent in this issue?

14 **MS. JOHNSON:** I'm not aware of any cases.
15 And it's my understanding, particularly in the
16 conservation arena, that the Commission had said
17 unless a program is approved, that it's inappropriate
18 to recover the costs until that program is approved.

19 However, I note, and I think the witness
20 mentioned this in his testimony, that with respect to,
21 I believe, Issue 14A, the parties have stipulated to a
22 recovering costs which have not been approved by the
23 Commission. That is the conversion of their units
24 from gas -- from oil to gas. So to the extent that
25 that represents -- it doesn't represent precedent, but

1 it's something similar, and it's something, if I
2 recall, Public Counsel took no position on that
3 particular issue.

4 COMMISSIONER DEASON: But wasn't there an
5 allegation they'd be no recovery of dollars up to the
6 amount of savings or something along -- that there was
7 really no risk upon the customer? Or am I getting my
8 issues confused? Wasn't there a demonstration of the
9 cost-effectiveness of those conversions?

10 MS. JOHNSON: That's true.

11 COMMISSIONER DEASON: Okay.

12 MS. JOHNSON: Yes.

13 CHAIRMAN JOHNSON: Any other questions?
14 Seeing none, Staff, what's the next step?

15 MS. JOHNSON: The next step is to vote on
16 the issues.

17 If I might, it's just something I wanted to
18 add while we were still on the record. With respect
19 to the fuel adjustment proceedings that -- and I
20 notice that none of the parties made mention of this
21 Supreme Court decision, but it was the Gulf Power
22 versus Florida Public Service Commission which is
23 called -- I guess known as the Maxine Mine case, in
24 that case the Supreme Court said that the fuel
25 adjustment proceeding is a continuous proceeding. And

1 in that case they said that it was appropriate for the
2 Commission to order a refund when it made a
3 determination that management had acted imprudently.
4 And that determination was made many years after the
5 costs, in fact, had been recovered. So that there is
6 precedent for what Staff is recommending, and that is
7 to recover the costs subject to refund in the true-up.

8 But we are ready to proceed with our
9 recommendation on the issues.

10 CHAIRMAN JOHNSON: Commissioners, do you
11 need a break, or do you want --

12 COMMISSIONER KIESLING: Well, I want to read
13 the West Ohio case.

14 CHAIRMAN JOHNSON: Do you want to take a
15 lunch break or do you want to --

16 COMMISSIONER KIESLING: But I don't want
17 to -- if you all are ready to go.

18 CHAIRMAN JOHNSON: Oh, no.

19 COMMISSIONER KIESLING: I mean, I need a
20 little bit of time to look at some of this.

21 CHAIRMAN JOHNSON: Well, that's great; it
22 will give Staff some time, too.

23 COMMISSIONER KIESLING: If that's
24 acceptable. I'd like to just take an hour?

25 CHAIRMAN JOHNSON: Yeah. We are going to

1 break until 2:00, break for lunch, give Staff an
2 opportunity to further think through the issues and do
3 the same for the Commission.

4 (Thereupon, lunch recess was taken at
5 1:58 p.m.)

6 CHAIRMAN JOHNSON: We're going back on the
7 record. Staff.

8 MS. JOHNSON: Chairman Johnson, earlier you
9 asked a question with respect to whether or not the
10 Commission had ever approved the recovery of expenses
11 that it had not previously approved and that was in
12 relation to the Lake and Pasco settlement payments.

13 Staff has found one instance when this did
14 occur. We are handing it out right now, and it's from
15 a 1993 fuel order that was issued. The Order No. is
16 PSC-93-0443-FOF-EI in Docket No. 930001. And in that
17 instance it states that Florida Power & Light would be
18 allowed to recover \$2.5 million in payments to the
19 Department of Energy for cost of the decontamination
20 and decommissioning of the DOE's uranium enrichment
21 plants subject to refund pending our decision on the
22 issue in August.

23 COMMISSIONER KIESLING: Wait a minute, I'm
24 confused. Where is that on here?

25 MS. JOHNSON: We only handed out the page.

1 It's on what's noted as Page 5, which is the left-hand
2 side of the document at the very top. It begins with
3 "The following issue," which is the first full
4 paragraph.

5 COMMISSIONER KIESLING: Yeah. It says that
6 it has been deferred to the August fuel proceeding.

7 MS. JOHNSON: But if you read down to the
8 very next sentence, it says even though they deferred
9 the issue, they would allow Florida Power & Light to
10 recover its payments in this fuel hearing, which was
11 the February fuel hearing, subject to refund pending
12 the Commission's decision on the issue in August.

13 Essentially, this is the treatment that
14 Staff is recommending in our position on the issues
15 with respect to the Lake and Pasco settlement
16 payments.

17 CHAIRMAN JOHNSON: Any other preliminary
18 matters?

19 COMMISSIONER DEASON: Let me ask a question.
20 Do you recall in this instance concerning Florida
21 Power & Light whether there had been any demonstration
22 in the form of testimony or argument concerning the
23 necessity of that payment to DOE?

24 MS. BASS: Commissioner Deason, if I
25 remember correctly, those amounts were included in

1 their projections. And this is going back several
2 years, I'm trying to remember back. And I believe
3 Staff raised it as an issue that they should not be
4 included because they were projected amounts. And it
5 was subsequently determined that they would be allowed
6 to recover them subject to the Commission's final
7 decision. And we requested additional information
8 between the February and the August hearings on
9 whether or not they were appropriate for recovery
10 through the clause.

11 I don't remember whether or not they were
12 specifically identified in testimony. My recollection
13 is they were included in their projection schedules.
14 There may have been mention of them in the testimony,
15 though.

16 COMMISSIONER KIESLING: Well, let me get
17 some further clarification on that. Since we only
18 have two pages, it's a little difficult. Was the
19 payment of costs for decontamination and
20 decommissioning to DOE something that DOE had ordered?
21 How did it come about that they had to make payments
22 of some sort?

23 MS. BASS: It was a payment that DOE had
24 required, and the utilities included it in their
25 projection filing as a lump sum payment.

1 If I remember correctly, Staff did not
2 believe there was enough information available at the
3 time for us to say, yes, it was appropriate for
4 recovery through the fuel clause. We also were
5 concerned that they were going to recover a cost that
6 the Commission had not specifically determined was
7 appropriate for recovery, but they were including it
8 in their projections. And that was our concern with
9 it. And the issue was resolved by allowing them to
10 recover it based on the Commission's final
11 determination in August that it was appropriate.

12 COMMISSIONER KIESLING: Okay.

13 CHAIRMAN JOHNSON: But you mention that in
14 this particular case Staff was concerned that the
15 Commission had not approved the particular costs.

16 MS. BASS: Yes, and that it was included in
17 the projections. And I think there was some timing
18 concern about whether it would be paid during one
19 month of the projection or another month of the
20 projection. It slowly comes back as I think about
21 this.

22 But I remember we had concerns that it had
23 not been specifically approved by the Commission, and
24 the utilities were not exactly sure when it would be
25 paid during the projection period, but that it would

1 be paid sometime during that six months.

2 And maybe Mr. McGee can help me out because
3 he was here then, too, doing this. And our concern
4 was not having specific approval for recovery through
5 the clause and that they weren't sure exactly when it
6 would be paid during the projection period.

7 COMMISSIONER KIESLING: But if I understood
8 your answer to my question just a minute ago, it was
9 at least a payment that they were going to have to
10 make to DOE and that was the justification for having
11 something in there.

12 MS. BASS: Yes. It was a payment they were
13 going to have to make, yes.

14 CHAIRMAN JOHNSON: And in this instance it's
15 a cost that's been incurred, but we've not determined
16 whether or not they will be able to recover those
17 costs.

18 MS. BASS: It was a cost that they were
19 going to have to pay, and it was a projected amount.

20 CHAIRMAN JOHNSON: In this instance. In
21 this case.

22 MS. BASS: Oh, I'm sorry.

23 CHAIRMAN JOHNSON: In this case we are
24 dealing with a situation where the costs have already
25 been incurred.

1 MS. BASS: Some of them have been incurred
2 and some will continue to be incurred on an ongoing
3 basis, not only in the next six-month period, but in
4 the following six months and on until total recovery.

5 COMMISSIONER KIESLING: But if we look at
6 the contracts regarding the Lake and the Pasco, they
7 have not occurred yet, they have not gone to the
8 Commission yet, there's been no approval for those
9 buyouts yet, right?

10 MS. BASS: The costs have been incurred.
11 The approval for recovery of these amounts through
12 fuel adjustment and the specific amounts have not been
13 approved. Very similar to these costs that we are
14 talking about in this '83 -- or '93 Order that Staff
15 was not convinced that those costs were even
16 appropriate for recovery through the clause because we
17 did not have sufficient information that recovery
18 through the clause was appropriate.

19 CHAIRMAN JOHNSON: Okay. Any other
20 preliminary matters? Did legal Staff have an
21 opportunity to review the case that was cited by
22 Florida Power Corp?

23 MS. JOHNSON: Yes, we did. The case
24 involves a rate case for a gas company. And as part
25 of the rate case, with respect to unaccounted for gas,

1 the Company had reported this on their books at a rate
2 of 9%. The Commission, though, the Ohio Commission,
3 in its rate case determined that it should be 7%.
4 There really was no basis, apparently, in the record
5 for that reduction of 2%, and the court said that the
6 presumption of correctness that gives aid --
7 controversy of this order to the books of public
8 service corporations was confirmed in this instance.

9 Later on in the order, it makes reference to
10 a second item which the Commission, the Ohio
11 Commission, had reduced with respect to the expenses
12 incurred in procuring new business. In that instance
13 the company had requested \$12,000 per year. The
14 Commission allowed them to recover \$5,000 per year,
15 but the case states that there was no evidence in the
16 record to support that \$12,000 was imprudent. And it
17 goes on to state that in the absence of such a showing
18 of inefficiency or improvidence, a court will not
19 substitute their judgment for theirs, meaning the
20 business managers, as to the measure of a prudent
21 outlay.

22 COMMISSIONER KIESLING: I have a question
23 about that case because I read it too, during lunch.
24 And it's a 1935 case. Did anyone have a chance to
25 Sheppardize it or check to see if it's still being

1 followed or if it's sort of been lost somewhere in the
2 shuffle and is not --

3 MS. JOHNSON: I did not. I don't know if
4 Mr. McGee has.

5 MR. MCGEE: Yes, I have. I have that case
6 Sheppardized and it's been cited in numerous cases
7 including recent ones.

8 COMMISSIONER KIESLING: Recently, is that
9 what you said?

10 MR. MCGEE: I received a memo from my
11 paralegal. And I don't know how recent the most
12 recent is, but I'm told it has numerous cites and that
13 it's regarded as a landmark case. I'm also told that
14 there are no cites in Florida, I should add.

15 CHAIRMAN JOHNSON: Any other questions?

16 COMMISSIONER DEASON: Well, our Staff just
17 told us about some case where there was no evidence in
18 the -- that the only evidence in the record was a
19 position that was being placed by a utility; and this
20 Commission decided that that was not evidence that
21 could be relied upon and made a contrary decision and
22 that was the only evidence in the record. And that
23 was upheld by the Florida Supreme Court; is that
24 correct? Was that Mr. Elias --

25 MR. ELIAS: Yeah, that's correct. It's

1 South Florida Natural Gas, and it's a 1986 or '87
2 case.

3 COMMISSIONER DEASON: It seems to me you can
4 find a case that probably says anything you want it to
5 say.

6 MR. ELIAS: That's part of the beauty of the
7 law.

8 COMMISSIONER KIESLING: And I would
9 definitely agree with that and I certainly think since
10 the advent of the APA in Florida, which has set out
11 new kinds of procedures and standards for making some
12 of these determinations, that the applicability or the
13 existence of a presumption being read into that from a
14 1935 case is doubtful in my mind.

15 CHAIRMAN JOHNSON: Any other matters?

16 MS. JOHNSON: No.

17 CHAIRMAN JOHNSON: Is Staff ready to make
18 its recommendations?

19 MS. JOHNSON: Yes.

20 CHAIRMAN JOHNSON: We'll proceed then, I
21 guess, issue by issue, or whatever your preference.

22 MS. BASS: I guess on Issue 14B, which deals
23 with a settlement agreement between Florida Power
24 Corporation and Lake Cogen, that Staff believes that
25 the costs associated with those contracts are the type

1 of costs that are appropriate for recovery through the
2 clause and that the utility should include all
3 anticipated fuel costs when they are determining their
4 projected fuel costs. Whether or not those costs
5 ultimately should be recovered through the clause will
6 be determined by the Commission in a subsequent
7 docket, and any adjustments necessary as a result of
8 the Commission's decision in that docket will be
9 reflected in the fuel costs. Therefore, we recommend
10 that those costs should be included for the setting of
11 the factor for the April '97 through September '97
12 period.

13 COMMISSIONER KIESLING: And this is 14B,
14 right?

15 MS. BASS: Yes, ma'am.

16 COMMISSIONER KIESLING: Okay.

17 MS. BASS: 14C, our position is
18 essentially -- exactly the same relative to the Pasco
19 Cogen contract. I really don't have anything further
20 to say regarding that.

21 Issue 14D, should the utility be permitted
22 to recover the replacement fuel costs? Staff's
23 position is, yes, they should. We have recommended
24 that the issue be deferred until a review of the
25 nuclear outage can be conducted. The recovery of the

1 costs on an ongoing basis, Staff believes is
2 consistent with the Commission's previous decisions in
3 cases such as these when there has been a specific
4 issue raised relative to recovery of an item.

5 Staff will conduct a review, an ongoing
6 review, of the nuclear outage. And if at a future
7 time at the conclusion of the outage Staff believes
8 that an adjustment needs to be made to the replacement
9 fuel costs, we would bring that before the Commission
10 for their final determination.

11 CHAIRMAN JOHNSON: Now, you are stating that
12 it's Staff's opinion that the process that -- that the
13 Public Service Commission's current process and
14 procedures requires this action?

15 MS. BASS: No.

16 CHAIRMAN JOHNSON: But it would be --

17 MS. BASS: It would be consistent to allow
18 them to recover the replacement fuel costs subject to
19 a final determination on whether or not the outage was
20 the result of imprudent management or if they made
21 prudent management decisions. That final
22 determination will be made by the Commission.

23 Until that time, I believe the utility
24 should be allowed to recover the replacement fuel
25 costs. And I believe that procedure is consistent

1 with the Commission's actions in other fuel issues
2 such as this.

3 CHAIRMAN JOHNSON: When you say "until that
4 time," when will that time --

5 MS. BASS: I would say that time would be
6 the conclusion of the outage when we have all the
7 information relative to the outage and it can be
8 reviewed in it's entirety and we know the entire
9 amount of costs that we are dealing with.

10 CHAIRMAN JOHNSON: And do we have any
11 indication as to when we will no longer be in the
12 outage situation?

13 MS. BASS: From what I understand, it will
14 probably be the fourth quarter of 1997.

15 CHAIRMAN JOHNSON: And so it would be
16 Staff's opinion that as it relates to the cost of the
17 outage that we wait until that point in time to
18 investigate to make a determination.

19 MS. BASS: I think that's the most
20 reasonable point to do it. We can begin an
21 investigation prior to that. My only concern with
22 that is if Staff begins to conduct an investigation of
23 the outage as it stands now, that requires us issuing
24 interrogatories, production of documents, visiting the
25 company, talking with their management, talking with

1 the plant people; and our concern has always been that
2 during an outage we want the company to focus on
3 getting that unit up and running rather than spending
4 their time dealing with regulatory representatives who
5 are trying to gather the same information they are.

6 I would rather have them focus on getting
7 the unit up and running and doing what they need to
8 do, that, than spending their time responding to our
9 interrogatories and our production of documents and
10 taking us on plant tours and that sort of thing.
11 That's why we have generally done our investigations
12 at the conclusion of the outage when we have all the
13 information available, and we can look at all the
14 steps and all the decisions that were made to get that
15 unit back up and running.

16 CHAIRMAN JOHNSON: Now, you are focusing on
17 getting the unit back up and running, and I guess
18 that's tied to why it went down in the first place.

19 COMMISSIONER KIESLING: Which we don't know.

20 MS. BASS: We don't know.

21 CHAIRMAN JOHNSON: And you are saying the
22 only way we could know, or the most thorough and
23 appropriate place to conduct that investigation, is
24 after it's back up. Then we find out why it went
25 down. We wait until then?

1 MS. BASS: Yes. I think that's the
2 appropriate time to do it.

3 COMMISSIONER KIESLING: Now, I'm troubled by
4 that. And the reason I am is we know that it went
5 down on September 2nd because some oil line blew out.
6 And then at some point after September 2nd -- but we
7 don't know when -- they decided, not in relationship
8 to repairing that, but that they were going to stay
9 down for some period of time for something. And we
10 don't know what any of those reasons were past fixing
11 the oil pipe that blew out. I mean, it just seems
12 incomprehensible to me that we have to accept
13 prudencies of that decision when they don't even have
14 to tell us why they aren't up.

15 MS. BASS: And I can understand your
16 concern, and I would share that concern, too. Like I
17 said, our concern is that if we go in now, and we can,
18 I just don't want to jeopardize in any way bringing
19 that unit back up on line by taking people away from
20 bringing the unit back into service.

21 COMMISSIONER KIESLING: But if we don't even
22 know why the unit is down, we have no way of knowing
23 whether the same personnel would be answering us that
24 are working on it.

25 MS. BASS: We don't know specifically, but I

1 think that we've looked at these outages enough to
2 know that generally there's the same people that are
3 making the decisions that need to be made to get the
4 unit back up and running, are the ones who are
5 spending time with us.

6 I don't have a problem with going in now and
7 doing it, we just don't want to do anything that might
8 jeopardize and prolong the outage and jeopardize the
9 unit returning to service. But we can go in now.

10 CHAIRMAN JOHNSON: And it's your opinion
11 that Staff's efforts to find out what caused this
12 outage to occur would somehow infringe upon the
13 utility's ability to get that unit back up and
14 running?

15 MS. BASS: I don't know if it will infringe
16 on their ability, I just don't want to put the
17 Commission in a position to be blamed for extending it
18 in any way because they were having to respond to our
19 inquiries and were not able to do what they needed to
20 do with other -- because we are not the only
21 regulatory agency that will be in there; the NRC is in
22 there too and constantly working with the people. I
23 don't want this Commission to be blamed for any
24 extension of that outage.

25 CHAIRMAN JOHNSON: I don't think it will be

1 blamed. I think it would be hard-pressed to blame us
2 for their outage or for us trying to inquire for the
3 benefit of our ratepayers what happened. And I almost
4 believe it is -- not almost, I believe that it is an
5 obligation.

6 And to the extent that we have some kind of
7 investigation or some kind of fact finding to
8 determine what happened here, what if we did? What if
9 we had an investigation looking into the facts to
10 determine the cause -- and this is hypothetical -- and
11 it was determined that it was some negligence or some
12 mismanagement on behalf of the company. Could we not
13 then have an opportunity to act?

14 And the problem I have with waiting -- I
15 know Staff is saying to wait, and I know Staff is
16 saying then to go ahead and allow the increases to be
17 put in place. And then we'll wait until the end of
18 the outage to make a determination as to whether it
19 was prudent. And then if we determine that it was
20 not, then there will be some refunds.

21 But to the extent that we were to decide to
22 go ahead and allow the rates to be put in place, it
23 would appear that we would want to know as soon as
24 possible for the benefit of the ratepayers whether or
25 not there was management misconduct or mismanagement

1 or some errors on behalf of the management. And if we
2 were to find that to be the case, then it might be
3 time for a midcourse correction, or whatever you all
4 call those things, but we would be able to react
5 faster, as opposed to waiting until the end.

6 And that's just kind of my concerns thinking
7 out loud. And I don't know what we are going to do on
8 any of the votes. But to the extent we were even to
9 follow your recommendation that these costs should be
10 recovered, if we were to follow that at a minimum, I
11 would think that we would want to investigate this as
12 soon as possible and reach some sort of determination
13 on the issues.

14 MS. BASS: And we could do that. I agree
15 with you, we do have an obligation to look at this
16 very closely to determine whether or not it was the
17 utility's mismanagement or imprudent decision making
18 that caused that unit to go down, and we can go in as
19 soon as possible and do that.

20 CHAIRMAN JOHNSON: And the problem is -- we
21 just don't know. The problem is that it's not that
22 there was mismanagement; it's not that there wasn't.
23 Just as it's been alleged they have not said there was
24 no mismanagement, there's nothing in the record either
25 way.

1 So as a Commissioner, I'm sitting here
2 without any facts upon which to base my decision. The
3 only information that I have with respect to what has
4 happened -- and it's not the quality fault of the
5 company because they can't communicate to me what
6 happened because of the situation that we are in --
7 but it's from newspaper articles, it's from the
8 Nuclear Regulatory Commission's releases.

9 But I feel like my hands have been somewhat
10 tied, and I'm sitting in a position making decisions
11 in an irresponsible way without the benefit of some
12 fact finding and some real evidence upon which to base
13 these decisions. And I'm more, much much more
14 uncomfortable being in this situation given the
15 magnitude of the increases here. And I'm going to be
16 hard-pressed to tell customers that they have this
17 huge rate increase and that we'll all just wait and
18 see, and we'll wait and see and wait until the end of
19 this outage before we start investigating the cause
20 because we're concerned that the company can't handle
21 us asking them questions, too.

22 I don't think that the customers would
23 appreciate that, and perhaps there's something more
24 that we could do. I don't know what the right answer
25 is, but perhaps there's a little something more we

1 could do. And I understand what we have done in the
2 past. But the situation here appears to be a little
3 unique and may cause the need for us to do a little
4 more than what we've generally done.

5 MS. BASS: And that's definitely an
6 alternative that the Commission can choose to adopt.
7 And that is open an investigation, and if they direct
8 Staff to do that investigation right away, we will
9 definitely do that.

10 COMMISSIONER KIESLING: Let me tell you my
11 concern, and it's somewhat similar to Chairman
12 Johnson's. And that is that if we make a decision
13 here based on any concern about what -- that we might
14 be blamed for prolonging the outage, you know, I have
15 to figure out how to respond to customers when they
16 blame us for raising their rates to this magnitude
17 which really takes the cost for the residential
18 customer out of the main for everyone else in this
19 state. I mean, it's raising it to a point where I
20 think we have got to be concerned about being
21 accountable for what evidence we use to make this
22 decision. And that concerns me, too.

23 CHAIRMAN JOHNSON: Anyways, we interrupted
24 you. Sorry.

25 MS. BASS: Issue 14E on whether or not the

1 proposal to collect the underrecovery should be spread
2 over a 12-month period, Staff says, yes, that it
3 should be spread over a 12-month period, and that's
4 just to lessen the impact on the ratepayers.

5 COMMISSIONER KIESLING: Let me just ask
6 something so that I'm clear on how 14E plays in with
7 everything else.

8 If we do not allow them to make either or
9 all of the -- to recover the costs associated with
10 14B, 14C and 14D, will 14E still be necessary?

11 MS. BASS: No. I would imagine if you
12 disallow recovery of the replacement fuel costs, that
13 will substantially reduce the underrecovery so it
14 would not be necessary to spread it over a 12-month
15 period. Or that's what Staff's position would be. I
16 don't know what the company's would be.

17 COMMISSIONER KIESLING: Okay, thank you.

18 MS. BASS: Issue 18A -- I'm sorry, Issue 18B
19 on whether or not Crystal River No. 3 should be
20 included in the GPIF targets for the April through
21 September 1997 period, Staff's position would be that
22 the Crystal River No. 3 should be removed from the
23 GPIF calculation. That is in accordance with the GPIF
24 manual and calculating targets, that if the utility
25 knows that unit will be out for the projected period,

1 that that unit should be removed from the targets
2 thereby allowing the other units to be adjusted to
3 reflect how they will operate less the one unit.

4 CHAIRMAN JOHNSON: How did Staff react to
5 the argument almost of the mismatch? If we are going
6 to acknowledge that it's not going to be on line in
7 one instance, but when it comes to the projections, we
8 are going to assume that the nuclear plant is on line
9 and that you won't have to have those replacement fuel
10 costs. It does seem like a little mismatch, and like
11 we are schizophrenic.

12 MS. BASS: I do have concerns for the
13 inconsistency and saying that for fuel purposes
14 Crystal River 3 will be up and running, but for GPIF
15 purposes it will not. And my concern is more with the
16 rate impact on the ratepayer. But if you do not
17 include Crystal River 3 in the projections, if you do
18 not include them, the bills will go up substantially
19 as Mr. Wieland testified, about \$4.50 a month per
20 thousand, yes, if Crystal River 3 is excluded from the
21 filings for the April through September period. And I
22 have real concerns with that.

23 I think it's appropriate though that for
24 purposes of calculating the reward or penalty in the
25 April through September period that your other units

1 are adjusted to reflect how they should operate and
2 what their targets and heat rate should be, minus the
3 nuclear unit.

4 CHAIRMAN JOHNSON: Okay.

5 COMMISSIONER DEASON: Let me ask a question.
6 18B, is it strictly on a forward-going basis, or does
7 it have impact on the GPIF rewards or penalties during
8 this period for which rates are being set?

9 MS. BASS: No. It has no impact on the
10 reward or penalty for this period. It's strictly
11 setting the targets and heat rates for the April '97
12 through September '97 period.

13 CHAIRMAN JOHNSON: In agreeing with the
14 company on treating the projections as if the nuclear
15 plant was on line, then I guess -- not to prejudge,
16 but I'm just trying to get into Staff's head, too.
17 Since we know it's not on line, we know we are
18 probably going to be in an underrecovery position, so
19 are we buying into their plan where we have to then
20 later address the new underrecovery that was caused by
21 the fact that we didn't take the plan out at this
22 particular time?

23 MS. BASS: Yes, that's definitely something
24 we'll have to deal with. If we don't take it out now,
25 then we we're going to have to recognize the fact that

1 it was not -- that it was in there, but not operating
2 in the next period.

3 CHAIRMAN JOHNSON: So we almost -- we are
4 guaranteeing ourselves, or we are recognizing that
5 they will be generally, they will probably be in
6 another underrecovery mode?

7 MS. BASS: Yes. I also might add that
8 Staff's position on the GPIF targets would reflect the
9 GPIF witnesses' testimony that was filed January 31st.

10 CHAIRMAN JOHNSON: The revised.

11 MS. BASS: The revised.

12 CHAIRMAN JOHNSON: And the revised took it
13 out.

14 MS. BASS: The revised took it out. I just
15 wanted to make that clarification that this would be
16 the January 31st testimony of the GPIF witness.

17 COMMISSIONER DEASON: The revised testimony,
18 what impact does it have on the GPIF targets for the
19 remaining units?

20 MS. BASS: I'll have to ask someone else
21 that. (Pause)

22 I am told that the availability factors do
23 not change for the remaining units, but the net output
24 factors change.

25 COMMISSIONER DEASON: Up or down? One would

1 think that the expected outcome would increase without
2 the base unit of CR-3 being on line, and that's what
3 I'm trying to ascertain.

4 MS. BASS: I'm going to let Mr. Matlock
5 answer these questions.

6 MR. MATLOCK: The part of the revised
7 testimony that changed resulted from the changes in
8 the dispatch of the remaining units. It varies how
9 much the change in the projected heat rate was. The
10 targets in the January 31st testimony are generally
11 lower, the heat rate targets are lower than they were
12 in the January 19th testimony -- January 13th
13 testimony.

14 COMMISSIONER DEASON: The heat rate targets
15 are lower because the plants are expected to produce
16 more energy? Is that the effect?

17 MR. MATLOCK: Generally, the net output
18 factor is increased. Yes, that's true, the net output
19 factors projected are higher than they were in the
20 original testimony, and the heat rates are lower.

21 COMMISSIONER DEASON: But it's a normal
22 consequence to have a lower heat rate if you have
23 higher output; is that correct?

24 MR. MATLOCK: Yes, sir, I believe so.

25 COMMISSIONER DEASON: It seems to me that

1 GPIF is based upon a number of things. One is
2 availability, one is heat rate, one is net output.
3 And all these things interact to come up with what is
4 expected to be your target. Am I correct in that
5 assumption?

6 MR. MATLOCK: Yes, sir.

7 COMMISSIONER DEASON: I guess my main
8 concern is that I don't want to take an action by
9 either including or excluding -- by excluding CR-3
10 that's going to result in a greater likelihood of an
11 award being achieved in the projected period. I think
12 that would be a perverse incentive. If you loose your
13 cheapest baseload unit, then all of a sudden your
14 targets are easier to achieve in the six-month period
15 and there's more likelihood there's going to be
16 rewards. That's what I want to avoid. That's what
17 I'm trying to ascertain. Can you help me?

18 MR. MATLOCK: Well, the lower heat rates are
19 the harder to attain. That's the more -- lower heat
20 rates result from more efficient operating.

21 COMMISSIONER DEASON: And the effect of
22 excluding CR-3, what is that effect on heat rates?

23 MR. MATLOCK: Is that the -- the targets for
24 the remaining units are more ambitious than they were
25 for the same units before Crystal River 3 was

1 excluded.

2 COMMISSIONER DEASON: So if CR-3 is
3 excluded, the heat rates, those targets, are more
4 ambitious, therefor more beneficial to the customer?

5 MR. MATLOCK: Yes, sir. And availability is
6 the same. Actually, they have the same availability
7 targets. And then based on historical data we have
8 some regression coefficients. Those coefficients
9 didn't change between the two filings of testimony.
10 What changed was what we call an independent variable
11 which is net output factor.

12 COMMISSIONER DEASON: And even with the
13 higher output, there's going to be a more stringent
14 criteria in terms of heat rate with CR-3 out?

15 MR. MATLOCK: Yes, sir.

16 COMMISSIONER DEASON: So with CR-3 out of
17 the calculations, they are going to have to operate
18 more efficiently than otherwise before they would be
19 entitled to a reward in the next projection period?

20 MR. MATLOCK: Yes.

21 CHAIRMAN JOHNSON: Thank you.

22 MS. BASS: The remaining issue is Issue 24A
23 and 24B, which are the capacity payments associated
24 with the Lake Cogen and the Pasco Cogen. And our
25 position relative to the energy payments for those two

1 contracts would be the same for the capacity.

2 CHAIRMAN JOHNSON: Thank you. And those are
3 all of our outstanding issues?

4 MS. BASS: The remaining issue are just the
5 fallout issues 1 through 4 and Issue 7.

6 CHAIRMAN JOHNSON: Okay. Commissioners,
7 what's your pleasure?

8 COMMISSIONER DEASON: Well, which issue are
9 we going to take up first?

10 CHAIRMAN JOHNSON: Probably -- what was it,
11 14B? Was that our first?

12 COMMISSIONER KIESLING: It seems like that's
13 the -- since 1 through 4 and 7 are fallouts, they
14 can't be calculated until we know the answers to the
15 14, 18 and 24.

16 MS. BASS: That's correct.

17 COMMISSIONER DEASON: Well, I'm prepared at
18 least to initiate the discussion and at least express
19 my viewpoint. And this viewpoint would be applicable
20 to 14B, 14C, 24A and 24B.

21 My basic position would be that I'm very
22 reluctant at this point to include those costs given
23 that they have not yet been approved. Let me say up
24 front that I see a distinction between these type
25 costs and the CR-3 replacement fuel costs. But

1 limiting the discussion to the settlement agreements
2 with the cogeneration contracts, those are -- we are
3 going to explore those in depth. There's never been
4 any decision whatsoever by this Commission that those
5 buyouts are in the public interest or in our benefits
6 to the customers. Absent that type of information, I
7 think that it would be inappropriate to include those
8 costs in this projection period.

9 I think that fuel adjustment by it's very
10 nature is designed to keep the customer whole, as well
11 as to keep the customer whole. And that if at some
12 future point it's determined that those contracts,
13 those settlement agreements, are appropriate, we can
14 deal with it at that time and take whatever
15 appropriate action. But until that time comes, I'm
16 not prepared to include those costs in this projection
17 period. That's my basic position, but I'm willing to
18 discuss it.

19 COMMISSIONER KIESLING: I agree with you, so
20 I don't know how much more discussion we will need if
21 you want to make a motion.

22 CHAIRMAN JOHNSON: And I would just be in
23 agreement, and I'll tell you why. The main reason is
24 that we have not made a determination yet on this
25 particular issue, whether or not this type buyout is

1 in the public interest. That's not to say if we had
2 made a determination and had more of a policy position
3 on this type issue, that had Staff brought that to me
4 and we had some basis to rely upon, I would feel more
5 comfortable doing that because the costs, most of the
6 costs, were already incurred. And to the extent that
7 we had a solid Commission policy statement on the
8 issue, it would probably be a different case for me.

9 But in this instance, this, in my mind, will
10 be somewhat of a case for first impression, and there
11 is a bit too much uncertainty there with those
12 particular issues.

13 COMMISSIONER DEASON: Given that, I would
14 move that the fuel-related costs and the
15 capacity-related costs associated with the two
16 settlement agreements as described in Issues 14B, 14C,
17 24A and 14B be disallowed for recovery during this
18 projection period.

19 COMMISSIONER KIESLING: And I would second
20 that motion. I do want to note that having had some
21 discussions now about the '93 fuel recovery that Staff
22 gave us when we started up, I see that as a real
23 different situation because there was an obligation.
24 They were going to have to pay the money and pay it to
25 someone else, another agency. And the only question

1 was when should they start recovering it. And I see
2 this as a much more speculative situation.

3 CHAIRMAN JOHNSON: And that was your second?

4 COMMISSIONER RIESLING: That was my second.

5 CHAIRMAN JOHNSON: Show then Staff
6 recommendation denied and that the costs associated
7 with the settlement will not be approved for cost
8 recovery through the cost recovery clause.

9 Did you all understand that? You look
10 puzzled. Did you understand that?

11 MR. McGEE: I was wondering if you were
12 meaning for -- that that decision was limited to this
13 period?

14 COMMISSIONER DEASON: The motion is for this
15 period. There's no final -- I mean, we are going to
16 review those contracts and a decision will be made.
17 And if it needs to be revisited in fuel adjustment,
18 that would be the appropriate thing to do.

19 MR. McGEE: Thank you.

20 CHAIRMAN JOHNSON: And it's my understanding
21 that that decision will be made in like August, won't
22 it? At the end of this period? Close to it.

23 MR. McGEE: I think that it's scheduled for
24 a Commission agenda in March, I believe. March 18th.

25 CHAIRMAN JOHNSON: Okay.

1 MR. MCGEE: Very soon.

2 CHAIRMAN JOHNSON: Very good. That disposes
3 of Issues 14B, 14C, 24A and, was it, 24B?

4 COMMISSIONER DEASON: Yes, it is.

5 CHAIRMAN JOHNSON: Now, what do we have
6 outstanding? 14D.

7 COMMISSIONER KIESLING: And E.

8 MS. JOHNSON: 14D, 14E and 18B.

9 COMMISSIONER DEASON: And I suppose we need
10 to address 14B because that could have an impact on
11 14E. And here, again, I'm willing to at least
12 initiate some discussion. And I think that just kind
13 of getting a feel for some of the discussion that's
14 gone on before, I may be in a different position than
15 some of my fellow Commissioners. I'm not sure, but
16 we'll see.

17 I just want to describe where I am on 14D
18 and to say that I see a distinction between the
19 replacement fuel costs situation and the settlement
20 agreements. Replacement fuel costs are something --
21 regrettably, but nevertheless -- are something that
22 seem to be associated with the ongoing operations of a
23 nuclear unit. These issues regrettably surface from
24 time to time.

25 CR-3 has been addressed by this Commission.

1 It's been included in rate base as part of the
2 baseload generation of this utility. It's an accepted
3 part of Power Corp's operation. So I see that it is
4 kind of an ongoing part of the operation, not
5 something not materially different like the settlement
6 agreements, which is something totally new that we
7 have not even taken a first look at. So given that,
8 let me say that I put the replacement fuel costs in a
9 different category than the costs associated with the
10 settlement agreements.

11 Now, having said that, let me say that I
12 have great deal of difficulty associated with these
13 costs. I tend to, to a limited extent, agree with
14 arguments of Public Counsel that there should have
15 been some initial presentation, some prima facie
16 showing given the significance of these costs so that
17 we could have a basis to determine if they should be
18 recovered in this period. I'm weighing that on one
19 side.

20 The other side is that I've seen the fuel
21 adjustment proceeding in operation for a number of
22 years, and I think I've got a basic understanding of
23 the structure and the way it was designed. And it is
24 designed to make all participants whole. That being
25 the utility company and the customers. And I am

1 unsure that it's ever been required before for there
2 to be an up-front showing. I think that it is not
3 unreasonable -- given the prior history to fuel
4 adjustment, it's not unreasonable for Power Corp to
5 have expected that these costs would have been
6 included realizing that they would have to meet their
7 burden of proof in a proceeding specifically designed
8 to determine the prudence of those costs.

9 I am somewhat reluctant at this point to
10 engage in what I would consider a change in the rules
11 of the game. Now, that's not to say that the rules
12 should not change. But if we are going to change the
13 rules, I think we need to do it on a generic basis and
14 put all participants on notice that when there is a
15 significant enough event of this nature, that there's
16 going to have to be a showing at the very beginning
17 before the first dollar is ever allowed to be flowed
18 through the clause.

19 I think if we were to go Public Counsel's
20 route, we would be changing that to some extent, and
21 that does cause me some cause for discomfort. It
22 would have been -- in retrospect it would have been
23 better had Power Corp initially provided that
24 information to us, but that they failed to do so. So
25 that brings me to the question of what's fair for the

1 customer and what's fair for the company.

2 I am somewhat troubled by, if we continue to
3 put these costs off indefinitely and it is determined
4 at some point that all our significant portions of the
5 costs were prudently incurred, we are going to be
6 putting a tremendously significant burden on the
7 customers at some future period. And in the meantime,
8 there's going to be interest accumulated on all of
9 this, which is even going to further heighten that
10 burden at some future point. I do realize that in
11 this case the burden is mitigated to some extent
12 because Power Corp has requested a 12-month recovery
13 for the costs heretofore incurred, and they are not
14 including any of their projection costs on a
15 going-forward basis.

16 Now, we now know that that is a deviation
17 from reality because we know that that plant is going
18 to be off line. It is in an effort to help mitigate
19 the impact on the customer. So I see it almost as a
20 split the baby type thing. One extreme would be to
21 include all of the costs that have heretofore been
22 incurred and to project all the costs that are going
23 to be expected to be incurred before the plant comes
24 back on line. The other extreme would be to totally
25 ignore all of the nuclear related replacement costs

1 for this projection period. I think there is an
2 amount of risk associated with either one of those.

3 I think what we have in front of us is
4 perhaps a reasonable alternative. And that is, some
5 but not all of the associated costs are being
6 included -- would be included if we go with Staff's
7 recommendation. Now, I'm also comfortable to some
8 extent to realize that some of these costs are going
9 to be determined reasonable in the sense that there
10 are costs associated with generation. And even if the
11 plant were on line generating, there would be nuclear
12 costs involved in generating the electricity.

13 Now, according to Public Counsel, it may be
14 just one-eighth of the replacement fuel costs, but
15 nevertheless there are some costs that are going to be
16 incurred during this projection period that are going
17 to be benefiting customers. Of course the question is
18 going to be the magnitude of those costs and whether
19 the difference between the nuclear generation costs
20 and replacement fuel costs is reasonable.

21 Given all of those things -- and none of
22 these positions are easy to take given the magnitude
23 on the customer -- but it would be my position that we
24 would approve Staff's recommendation for this period
25 as it has been advanced by Power Corp and as our Staff

1 has explained why they think it is the appropriate
2 thing to do.

3 So I'm not yet making a motion. I am still
4 formulating my position as we talk. I'm certainly
5 eager to hear from other Commissioners. And if
6 there's some other position that is more appropriate
7 or some compromise, I'm certainly willing to listen to
8 that. But right now, that's basically where I'm
9 coming down on this issue.

10 CHAIRMAN JOHNSON: No, I think I
11 generally -- I'm sure Commissioner Kiesling is dealing
12 with the same issues -- share your thoughts and your
13 feelings. My question is -- with respect to trying to
14 probe Staff -- is perhaps there is a middle ground.
15 Perhaps -- one of the things that disturbed me most,
16 was to the extent that we were going to allow the
17 recovery of these costs, that we were going to wait
18 until the end of the outage to start investigating
19 this. And I think that that might send the wrong
20 message to the customers. And that was one of the
21 reasons I was trying to have the conversation with
22 Staff to at least suggest, well, perhaps I know that
23 the Nuclear Regulatory Commission people are going to
24 be down there, but perhaps we should, too.

25 We can't just put on blinders and go ahead.

1 We perhaps need to be actively involved in this
2 process. Not to harass the company, but to find the
3 right answers and to make determinations as to whether
4 or not there were management problems, whether or not
5 there is something that should be done. And given the
6 fact that we have kind of amortized this over
7 12-months, if in three-months Staff came back and
8 said, "Wow, we have some big problems here, this is
9 management's fault," we could talk about some
10 midcourse corrections if we had already implemented
11 this.

12 I'm just trying to find a middle ground,
13 too, because I do agree that if we were to adopt the
14 procedure stated by Public Counsel, to me it's a new
15 procedure, at least in the context of this kind of a
16 replacement fuel cost mechanism to say, yes, there
17 must be this prima facie showing because we've not
18 done that in the past from what I can see and what
19 I've gleaned from listening to all of the arguments.
20 We've never been faced with an issue like this either.

21 So given the magnitude of these dollars, I
22 feel compelled to have us do something, to help work
23 through this for the customers, to make that
24 determination, to have that fact finding or at least
25 to be working toward that, as opposed to waiting until

1 the end of the process.

2 So that's kind of where I am. And one of
3 the reasons for my hesitancy in saying, well, we will
4 say they can't recover those fuel costs in this
5 proceeding is that what if we did later, way way down
6 the line, make a determination, "Oops, there wasn't a
7 problem," "Company, you can make this recovery." and
8 then the customer is going to be hit with a huge huge
9 bill all at once. Not only paying for underrecovery
10 but paying for everything else, paying their regular
11 bill on top of that.

12 So that causes me some concern to be able to
13 roll the dice and then for us to make a determination
14 of prudence and then the costs -- or the rates for the
15 customers to be even higher than ever anticipated. So
16 those are kind of my thoughts, generally.

17 COMMISSIONER KIESLING: Well, I share all of
18 your thoughts, not usually -- not because I can read
19 them, but because both you and Commissioner Deason
20 have addressed areas that I'm also concerned about.
21 And I guess part of my hope in trying to find a middle
22 ground is that we give an appropriate recognition that
23 the initial outage that began on September 2nd was a
24 forced outage, that there was an equipment problem
25 that had to be corrected. And, therefore, that we

1 include and allow recovery for the fuel replacement
2 for some period of time that would be reasonable, but
3 that we also initiate very soon an investigation that
4 allows us to determine why the outage continues. And
5 if it's not related to that equipment problem, then
6 what it is related to. Because that's where my
7 concern comes in.

8 Not that I'm suggesting any bad motives to
9 the company, because I'm not. But it does seem to me
10 that there can be any number of reasons why a company
11 would want to extend an outage especially in these
12 days and times when the course that the future
13 electric industry restructuring is going to take are
14 up in the air. And so I want to be satisfied before
15 we allow too much recovery, that the reasons behind
16 this outage are prudent management decisions that lead
17 to and resulted in costs that are appropriately passed
18 onto the customers now.

19 I don't know exactly where to draw that
20 line, and that's probably partially a result of the
21 fact that I haven't been doing this but for three
22 years, and I think I've only sat on half the fuel
23 recoveries in that time. So trying to understand the
24 whole mechanism of how the past period, the current
25 period, and the projected period fit together is --

1 I'm finding somewhat difficult.

2 So unless someone from Staff, or unless
3 Commissioner Deason who seems to understand all this a
4 little bit better than I do, can help me to understand
5 how those three periods, since it's a rolling number,
6 how they fit together, I don't know how to do the
7 separation.

8 **CHAIRMAN JOHNSON:** Perhaps Staff can help
9 with that. And I'll make one, while you all are
10 thinking about that -- I see you smiling.

11 I don't think I have a problem allowing the
12 recovery as it has been requested. My main issue went
13 to us getting in there as quick as possible and making
14 our determination, and Staff coming back to the
15 Commissioners and kind of telling the Commissioners --
16 kind of doing that fact finding and telling us whether
17 or not the actions were prudent or whether they were
18 managerial problems, that kind of thing, as soon as
19 possible. And I don't even know what "as soon as
20 possible" is going to mean. And I'm sure Staff
21 doesn't know either what the time frame would be like.

22 But what I hear you saying, Commissioner
23 Kiesling, is there's some of these costs that you
24 might want to pull out now.

25 **COMMISSIONER KIESLING:** Well, if I'm

1 understanding how this works correctly, the number
2 that we are coming up with here is a combined number
3 that reflects what happened during the period April
4 through September of '96, what happened between
5 October and the end of March '97, and what we think is
6 going to happen from April 1st through September of
7 '97. Am I right so far?

8 MS. BASS: Yes.

9 COMMISSIONER KIESLING: Yes.

10 MS. BASS: Let me see if I can do this very
11 simply. The true-up amount that we've talked about,
12 the 102 million, is the result of two periods, the
13 April '96 through September '96, and the October '96
14 through March of '97. That's associated -- the \$102
15 million true-up is associated with the true-up for
16 those two periods.

17 COMMISSIONER KIESLING: Just for the nuclear
18 outage.

19 MS. BASS: No, not just for the nuclear.
20 All the operations of the company and the way the
21 company runs is reflected in that true-up, whether it
22 be a difference in sales between what was projected
23 and what actually occurred, whether the other units
24 ran differences in fuel price, it's everything. So
25 you can't say the \$102 million is strictly due to the

1 nuclear unit.

2 COMMISSIONER DEASON: The 102 also includes
3 the settlement agreements which we just voted to
4 disallow.

5 COMMISSIONER KIESLING: That's what I was
6 trying to understand. That was the focus of my
7 question.

8 MS. BASS: That true-up is one piece when we
9 set the fuel factor; so you have those two periods
10 which we'd call the past, the prior period, and the
11 current period. Then we have the projected period.
12 And what the utility does is they project what their
13 fuel costs will be for the April through September '97
14 period. They add up all those fuel costs and
15 generation costs and all that, and then the true-up is
16 added or subtracted from that to determine what the
17 final factor is.

18 So there really is no true-up associated
19 with the April through September '97 period because
20 that's strictly projected.

21 COMMISSIONER KIESLING: Then the \$102
22 million that you just mentioned, isn't really \$102
23 million based on what we voted on 14B and C and 24A
24 and B.

25 MS. BASS: There is a piece of the 14B and C

1 and the 24A and B in that current period, the
2 estimated actual period that we are in.

3 COMMISSIONER KIESLING: Right.

4 MS. BASS: There's a piece of it that is
5 included in that 102 million underrecovery.

6 COMMISSIONER KIESLING: Right. Which is
7 going to shift now --

8 MS. BASS: Which will be taken out.

9 COMMISSIONER KIESLING: -- to the projected
10 period if it's approved.

11 MS. BASS: No. What you voted is the piece
12 of the cogen contract settlement that was included in
13 the 102 million. That will be removed. The piece of
14 it that's included in the total cost of system
15 generation for the April '97 through September '97,
16 that will be removed.

17 COMMISSIONER KIESLING: So what is the
18 number then? If it's not 102, what is it?

19 MS. BASS: For the Pasco Cogen and the Lake
20 Cogen, the amount that will be removed is 13,675,669.

21 CHAIRMAN JOHNSON: Say that again.

22 MS. BASS: That will be removed from the
23 true-up out of the 102 million.

24 COMMISSIONER KIESLING: So we are down to
25 about 90 million?

1 MS. BASS: Yes.

2 COMMISSIONER KIESLING: I mean, I didn't
3 have a calculator, I just did it in my head.

4 MS. BASS: The amounts that will be removed
5 from the April '97 through September '97 period is
6 2,704,627. That doesn't affect the true-up, though.

7 COMMISSIONER KIESLING: Right.

8 COMMISSIONER DEASON: It doesn't affect the
9 true-up, but it does have an effect on the factor
10 which is going to be utilized in calculating
11 customers' bills.

12 MS. BASS: Exactly.

13 COMMISSIONER KIESLING: Essentially, there
14 is no middle ground then from what I'm understanding.
15 It's either, with the fuel replacements costs, if it's
16 going to be included in the true-up factor, it's going
17 to be the costs that were incurred between April 1,
18 '96, and March 31 --

19 MS. BASS: 31.

20 COMMISSIONER KIESLING: 31, thank you, '97.

21 MS. BASS: Correct.

22 COMMISSIONER DEASON: The company is not
23 requesting any projected replacement fuel costs
24 beginning with this next projection period.

25 COMMISSIONER KIESLING: Okay. I've got that

1 part.

2 So then, I guess Commissioner Deason or
3 Chairman Johnson, we are all looking for some middle
4 ground. What middle ground is possible?

5 COMMISSIONER DEASON: Well, when I was
6 describing my position, I -- I think there's two
7 extreme positions. And the one extreme, I think even
8 Power Corp is not proposing. That would be to
9 calculate all the replacement fuel costs, even those
10 that they would project. They are not doing that.
11 And they are also requesting that the underrecovery be
12 amortized over a 12-month period when normally it's
13 done over six months. So that's spreading the cost to
14 some extent.

15 The other position, the other extreme
16 position, would be to not allow any dollars in
17 replacement fuel costs whatsoever to impact this
18 period's fuel adjustment factor. That would be
19 following the argument for Public Counsel that there's
20 not been any showing whatsoever of the prudence of
21 those costs and, therefore, it would be inappropriate
22 to begin allowing any recovery whatsoever.

23 And there is some merit to that argument. I
24 am not just dismissing it all together. The concern
25 that I have is that fuel adjustment by its nature is a

1 make whole type proceeding. And if at some point we
2 do a thorough investigation and we decide that all or
3 a significant portion of the replacement fuel costs
4 were prudently incurred, there's going to be a
5 tremendous burden on the customers to be paid at that
6 point.

7 And given the impacts now, which are
8 mitigated to some extent by the fact that it doesn't
9 include any projections and the underrecovery part is
10 being amortized over 12 months, and seeing the impact,
11 I would be extremely fearful to see what the impact
12 would be if we do something two years from now and
13 it's finally determined that most of those costs were
14 prudently incurred. And then you've got two years of
15 interest on top of that to see what the impact would
16 be. It would be extremely frightening. And so, while
17 I understand Public Counsel's argument and there's a
18 lot of merit to it, I'm reluctant to go that far with
19 it, given the fact that at some point some of those
20 costs may have to be flowed through the clause.

21 I think that Staff's recommendation is
22 pretty much a compromise in itself, given the fact
23 that there is some impact on customers now, but
24 realizing that customers are protected, too. If we go
25 through our investigation and it is determined that

1 those replacement fuel costs were imprudently
2 incurred, then the customers will get that money
3 refunded with interest. So there is protection there
4 as well.

5 So that's why I think what Staff is
6 recommending is pretty much a middle of the road
7 approach as it is, even though the impact is very
8 significant by looking at Exhibit 25. The only thing
9 I can say is that with our vote on the Lake and Pasco
10 Cogen agreements, that that number, that 8865, will be
11 reduced to some extent. How much? I don't know.

12 Does Staff have an idea of what that impact
13 would be on the 8865 just roughly?

14 MR. WHEELER: Are you talking about the
15 total amount that's been --

16 COMMISSIONER DEASON: The total residence
17 for 100 kilowatt hours total bill from Florida Power
18 Corporation?

19 MR. WHEELER: No, I don't have it broken
20 down to that basis, but the total is about 27 million
21 between capacity and fuel. I haven't translated that
22 into the impact on the bill, but we can do that fairly
23 quickly.

24 COMMISSIONER DEASON: But we do know the
25 direction. The direction would be down from the 8865.

1 And let me say that I agree with Chairman
2 Johnson that we do need to initiate an investigation
3 as quickly as possible. I do understand the rationale
4 that has been utilized in the past, that we don't want
5 to initiate a full-fledged investigation and that in
6 some way hinder the company's efforts to getting this
7 plant on line. I don't want that to be the result.

8 But on the other side of this coin, we are
9 looking at an extremely long outage. We already have
10 the consumers counsel, Mr. Shreve and Mr. Howe,
11 telling us that they think that we should have already
12 had some evidence in front of us today before we allow
13 the first dollar to be included in the clause. I
14 think that under Staff's recommendation we are not
15 recognizing all of those costs, but a portion of
16 those. That we need to go ahead and get moving and
17 trying to get that information as quickly as possible.

18 And let me say that if it appears that those
19 costs, even if it's just a preliminary determination
20 by our Staff, that those costs, those replacement fuel
21 costs, are being incurred because of an imprudent
22 action by management, that I'd be the first to suggest
23 that we do a midcourse correction and go ahead and get
24 those dollars out of the recovery.

25 Like I say, my biggest concern is in the

1 event that those costs are prudently incurred and at
2 some future time we have to recognize those costs and
3 have an extremely large impact on the customers, I'm
4 trying to avoid that to some extent. And I think
5 Staff's recommendation does that to a limited extent
6 and that it would be the appropriate thing to do at
7 this time.

8 MR. WHEELER: Excuse me, we did get an
9 estimate from the company, excluding the buyout costs,
10 would reduce the typical bill by \$1.23.

11 COMMISSIONER KIESLING: Okay. Well, I think
12 I can second your motion, but I can tell you that I'm
13 only seconding it because we are going to have an
14 investigation. It's going to be quick, it's going to
15 be soon, and that we'll have some idea of what is
16 going on certainly by the time we get to the next fuel
17 adjustment. And I just hope I'm assigned to that
18 panel.

19 COMMISSIONER DEASON: And let me further say
20 that if we get to the next projection period and we
21 still don't have any information about the basic
22 character of this outage and the reasons for it and
23 some more information on the expected outcome of it,
24 if that information is lacking at that point and the
25 record is totally void like it is right now, that I

1 would be extremely hesitant to even allow the
2 continuation of what has already been determined to be
3 allowed for recovery, so --

4 COMMISSIONER KIESLING: Then I hope you are
5 also assigned to that panel.

6 CHAIRMAN JOHNSON: I'm taking notes.

7 COMMISSIONER KIESLING: Okay.

8 CHAIRMAN JOHNSON: And that would be to
9 approve Staff recommendation -- I guess we are
10 modifying it a bit because they did say that the issue
11 should be deferred until a review of the nuclear
12 outage, they weren't contemplating the investigation.
13 So we'll modify it.

14 COMMISSIONER KIESLING: Yeah, I think that
15 was the motion that Commissioner Deason made, was to
16 give it to them in this period, but initiate an
17 investigation that will be as quick as Staff can fit
18 it in. Obviously, I recognize that quick is
19 difficult.

20 COMMISSIONER DEASON: And let me say that
21 even if that cannot -- if the full fledged
22 investigation just cannot be scheduled and
23 accomplished before the next projection period, we are
24 going to have to have some basic information to even
25 include any of these costs in the next projection

1 period.

2 COMMISSIONER KIESLING: And I guess to that
3 end, while we haven't voted -- there's been a motion
4 and a second, I think it's probably going to pass, and
5 I would just urge the company to don't make us to have
6 to come and ask you every question. You understand
7 the problem now, and you understand the kind of
8 information we are looking for. And if you make it
9 pulling teeth, then you may not get to avail yourself
10 of it in the future.

11 MS. JOHNSON: Staff would just like to know
12 whether or not you would like an investigation to be
13 in a separate docket that we open or as a part of the
14 fuel proceeding.

15 CHAIRMAN JOHNSON: Which would be the most
16 expeditious?

17 COMMISSIONER DEASON: Mr. Shreve has a
18 comment.

19 MR. SHREVE: I have a question. So far the
20 entire reference has been to the Staff investigation.
21 Now, the Commission has a mechanism that they can
22 carry out investigations that are confidential and
23 handled totally by the Staff and the Commission. I
24 think it's an oversight, but the Public Counsel and
25 FIPUG is going to be totally involved in this and not

1 just rely on the Staff investigation.

2 COMMISSIONER DEASON: I'm glad you brought
3 that up. Let me clarify. In some instances the term
4 "investigation" has a very special meaning and our
5 procedures cover that, that's not what I had
6 envisioned. When I talk about -- I'm talking about a
7 docket, full due process, full participation.

8 There may be other people out there that
9 want the to intervene, other than Public Counsel and
10 FIPUG, they would be welcome to intervene. It's a
11 docket. And when I use that term "investigation," I
12 didn't mean it in the very limited sense.

13 MR. SHREVE: No, no. I wasn't talking
14 about -- I think everybody has just kind of as an
15 oversight been talking about the Staff investigation,
16 but we raised the issue. We do intend to pursue it
17 and not wait. We think it needs to go ahead and be
18 pursued immediately to lay everything out.

19 And the only reason I raised it is because I
20 thought you meant it probably would be in the context
21 of a fuel adjustment docket and we'd go through the
22 discovery and everything and do whatever we wanted to.
23 But since there has been mechanisms for investigation
24 in the past, I didn't want it to be like one of those.

25 COMMISSIONER DEASON: It's certainly not

1 limited to our Staff and that's not what I envision
2 whatsoever. The only thing is the only people we can
3 direct to do anything is our Staff. And so I guess we
4 are directing them and inviting you to participate.

5 MR. SHREVE: We accept.

6 CHAIRMAN JOHNSON: Thanks for the
7 clarification. Do we need to vote then?

8 MS. JOHNSON: Well, Staff's concern is that
9 for the fuel docket, we already have established
10 hearing dates. And those dates are -- I couldn't tell
11 you right now, but they are already on the calendar.
12 If we were to open a separate docket, there's no
13 guarantee that hearing dates would be available prior
14 to the August fuel hearing.

15 COMMISSIONER DEASON: Well, I think this is
16 something you can work out with the Chairman's office.

17 CHAIRMAN JOHNSON: Yeah.

18 COMMISSIONER DEASON: Since I am no longer
19 the Chairman, I don't have to worry about that.

20 CHAIRMAN JOHNSON: He loves to say that.

21 (Laughter)

22 MS. JOHNSON: And also, whether or not --
23 the question would be whether or not it should be
24 assigned to the same panel as the fuel docket.

25 CHAIRMAN JOHNSON: We'll work through those

1 issues. There is a motion and a second.

2 COMMISSIONER DEASON: And one further
3 clarification. I guess inherent in my motion I'm also
4 addressing 14E because I think we need to do it under
5 a 12-month recovery to mitigate the impact.

6 COMMISSIONER KIESLING: And I would also
7 second that because it does seem that the amount that
8 we are talking about is still large enough that that's
9 the only way we could do it with some concern for the
10 customers.

11 MR. HOWE: Commissioners, before you vote,
12 could I ask for a piece of clarification? As I
13 understand the company's proposal, their original
14 underrecovery was 102 million, and they were only
15 going to collect \$54 million of that during the next
16 projection period. If you lower that total from 102
17 to 90, or 80, or anything else, they could still be
18 collecting 54. So I want to know if by this vote, as
19 you've been discussing it, you intend that the buyouts
20 come off of the next month projection period as they
21 proposed it.

22 COMMISSIONER DEASON: No. I'm glad you
23 raised that. The intention of my motion is that it
24 would still be on a 50/50 split basis, realizing
25 though that the number of kilowatt hours produced in

1 one six-month period is going to be different than
2 another six-month period. That could have an affect,
3 but it should roughly be half of the 90 million and
4 not just keep the 54 million in place. That's the
5 nature of the motion.

6 COMMISSIONER KIESLING: Well, could I get a
7 clarification because I thought I understood the
8 testimony to be that it wasn't 50/50 and they
9 acknowledged that up front.

10 COMMISSIONER DEASON: Well, that's because
11 there's a different number of -- during one six-month
12 period they project a certain amount of kilowatt hours
13 and in a different six-month period there's another
14 amount of kilowatt hours, and I guess it has to do
15 with the seasonality of consumption. And that's the
16 reason they came up with 54 --

17 COMMISSIONER KIESLING: Okay.

18 COMMISSIONER DEASON: -- as opposed to 51.
19 That difference, I don't have a problem with that,
20 realizing kilowatt hour projections are going to vary
21 from one six-month period to another. But that the
22 basic theory being that it's going to be spread over
23 12 months as opposed to six, that needs to continue.

24 CHAIRMAN JOHNSON: With that clarification,
25 then the motion is -- show it approved unanimously.

1 And on the procedural issues and how we will set up
2 the dockets and the assignments, we'll take care of
3 that after this proceeding and make sure all the
4 parties are put on notice.

5 But it will be a full participatory
6 investigative docket or activity.

7 COMMISSIONER DEASON: I think that leaves
8 Issue 18B.

9 MS. JOHNSON: Yes, that's correct.

10 COMMISSIONER DEASON: Commissioners, I asked
11 a few questions on this because since it does not
12 impact the rewards or penalties for this period, but
13 is basically to impact what is going to be the
14 targets, the next reward or penalty phase of this
15 proceeding, then I want to make sure whatever action
16 we take puts the strictest targets on the Company; the
17 targets which would encourage them to be as efficient
18 as possible, especially realizing that CR-3 is going
19 to be off line.

20 What Staff has told me is that they believe
21 that that objective is reached by their recommendation
22 which would take CR-3 out of those target
23 calculations, and with that understanding I would move
24 Staff's recommendation on Issue 18B.

25 COMMISSIONER KIESLING: I will second that

1 for the same reasons. And I'm so glad you asked those
2 questions, because I didn't have much of an idea about
3 what the long range impact was of taking it in or
4 excluding it.

5 CHAIRMAN JOHNSON: We'll have a unanimous
6 vote on this particular issue.

7 I did raise the issue, and approached Staff
8 about the fact that this seems a bit of a mismatch,
9 and it is. But I recognize that the policy reasons
10 behind that are lessening the impact on the customers
11 with respect to allowing the projected numbers to
12 include the particular unit, but with respect to the
13 GPIF have them exclude it.

14 So recognizing that and the policy reasons
15 behind that, show this recommendation on Issue 18 be
16 approved unanimously.

17 MS. JOHNSON: I'll note that Issue 18A is a
18 fallout as a result of your decision on 18B. And also
19 to remind the Commission that now that we've ruled on
20 Issue 18B, we can now move into evidence the revised
21 version of the testimony for FPC's GPIF witness and
22 his exhibits.

23 CHAIRMAN JOHNSON: Which witness was that
24 in?

25 MR. McGEE: Zuloaga.

1 **CHAIRMAN JOHNSON:** Show that testimony then
2 inserted into the record as though read.

3 **MS. JOHNSON:** There were exhibits, yes. They
4 are Exhibits 5 and 6.

5 **CHAIRMAN JOHNSON:** And Exhibits 5 and 6 will
6 be admitted as identified and as marked. Are there
7 any other issues?

8 (Exhibits 5 and 6 received in evidence.)

9 **MS. JOHNSON:** The stipulated issues have not
10 yet been approved and the fallouts as well.

11 **COMMISSIONER DEASON:** I would move approval
12 of all stipulated issues and allow Staff to calculate
13 the fallouts and approve those consistent with our
14 vote.

15 **COMMISSIONER KIESLING:** Second.

16 **CHAIRMAN JOHNSON:** Show those approved
17 unanimously.

18 **COMMISSIONER DEASON:** Before we adjourn, let
19 me say that I know that Staff is going to have their
20 hands full looking at the CR-3 situation and I want
21 them to certainly have that as their high priority.
22 But I think Public Counsel has raised a very
23 fundamental question during this proceeding, and at
24 some point we need to take a look at it. And that is
25 when we have a situation of this nature, should we

1 require a company to make an up-front showing before
2 there are replacement fuel costs allowed to be
3 included in the fuel adjustment factor?

4 I think heretofore we have not done that, at
5 least we've not done it consistently. And I was
6 concerned with changing the rules, so to speak, in
7 mid-stream for this current projection period.

8 I don't have a problem doing it if everybody
9 is put on notice up front that's what we expect. Then
10 if a party fails to do it, not to allow that recovery.
11 I think that's a very fundamental question that needs
12 to be addressed at some point. So I'd want that --
13 while you may put it on the back burner for right now,
14 when you look at the more pressing matters, I don't
15 want it ignored. I think it's something that needs to
16 be looked at and probably something we need input on
17 not only from Public Counsel's office but from the
18 other investor-owned utilities as well, not just Power
19 Corp.

20 MS. BASS: Commissioner Deason, I believe
21 based on our discussion here today and the comments
22 from the Commission, all of the utilities are probably
23 on notice now and will look more carefully at their
24 fillings to ensure they do have sufficient information
25 in their prefiled testimony that addresses all the

1 issues.

2 **CHAIRMAN JOHNSON:** You raise an excellent
3 point. Staff and I, we met late yesterday, this
4 evening and this morning, to discuss just that point.
5 And it was interesting to me as we went through the
6 exercise that there wasn't a set rule; that we didn't
7 have criteria but we could rely upon our past
8 precedent and past precedent wouldn't lend itself to
9 this kind of a procedure that Public Counsel had
10 articulated.

11 But I must say, when Public Counsel raised
12 the argument, it makes sense that we do this. We just
13 need to come up with a formal process, put all of the
14 parties on notice, particularly when you're dealing
15 with these kinds of dollars and issues of this
16 magnitude, we can not allow ourselves to sit with
17 blinders and go forward in a mechanical way. We must
18 analyze both costs and causes. And to the extent that
19 there are problems, put ourselves in a position where
20 we can address them as quickly as possible. Given the
21 fact what we were dealing with here today, I think
22 we've put ourselves in a position where we can address
23 them as quickly as possible; not as quickly as you
24 would have wanted, but I appreciate your bringing the
25 issue to our attention, and hopefully it will help us

1 focus our direction and perhaps change that direction.

2 And again, it wasn't picking at the Company.

3 And I think you even recognize that perhaps in
4 hindsight it might have been better had more issues
5 and more facts been presented.

6 We're all on notice now as to what we're
7 going to try to achieve and we will have a opportunity
8 to explore those facts in a subsequent proceedings.
9 Thank you very much. Any other questions or
10 concerns?

11 MR. McGEE: I have just one question on
12 clarification. It concerns Issues 14B, C; 24A and B
13 Lake and Pasco cogen issues.

14 Your ruling indicated that the costs were
15 disallowed for this period. I just wanted it to be
16 clear that they were to be excluded for purposes of
17 calculating the bill, but that assuming -- if those
18 items are approved in March, then they'll be able to
19 be included in the calculation next time just as they
20 would have been in the current period.

21 COMMISSIONER DEASON: I'm the one that made
22 the motion so let me clarify my motion: is that they
23 are disallowed for purposes of this proceeding, or
24 excluded from the calculation. We'll look at the
25 prudence of that. But I want to put you on notice

1 that Public Counsel has raised an argument about the
2 timing and whether -- if those are approved whether
3 the timing for inclusion in the fuel adjustment would
4 be with our approval or if there would be some
5 retroactive application concerning actions you took in
6 settling those contracts. I think that's an open
7 issue. My motion does not say whether it will be
8 retroactive or not. Once prudence is determined,
9 we'll determine when those costs begin to flow through
10 the clause and at what point those costs start to
11 accrue for inclusion in fuel adjustment. I'm making
12 no determination whatsoever on that question.

13 But I am agreeing with you that the basic
14 question of prudence will be determined. And if those
15 costs are determined to be prudent, it certainly will
16 impact fuel adjustment at some point. Today's vote is
17 no determination on the prudence of those decisions
18 whatsoever one way or the other.

19 MR. McGEE: Thank you.

20 CHAIRMAN JOHNSON: Any other clarifications
21 needed? Any other questions? Any additional matters?

22 MS. JOHNSON: Not that I'm aware of.

23 CHAIRMAN JOHNSON: Seeing none, this hearing
24 is adjourned. Thank you very much.

25 (Thereupon, the hearing concluded at

1 that Public Counsel has raised an argument about the
2 timing and whether -- if those are approved whether
3 the timing for inclusion in the fuel adjustment would
4 be with our approval or if there would be some
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15 costs are determined to be prudent, it certainly will
16 impact fuel adjustment at some point. Today's vote is
17 no determination on the prudence of those decisions
18 whatsoever one way or the other.

19 MR. MCGEE: Thank you.

20 CHAIRMAN JOHNSON: Any other clarifications
21 needed? Any other questions? Any additional matters?

22 MS. JOHNSON: Not that I'm aware of.

23 CHAIRMAN JOHNSON: Seeing none, this hearing
24 is adjourned. Thank you very much.

25 (Thereupon, the hearing concluded at 3:30 p.m.)

1 STATE OF FLORIDA)
2 :
3 COUNTY OF LEON)

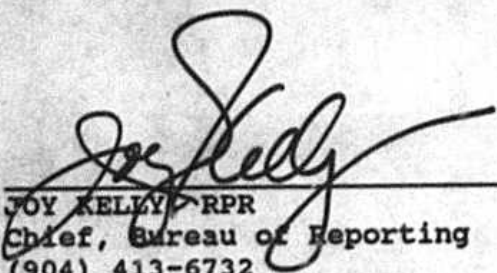
CERTIFICATE OF REPORTERS

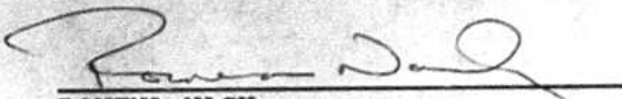
4 We, JOY KELLY, CSR, RPR, Chief, Bureau of
5 Reporting, ROWENA NASH and RUTHE POTAMI, CSR, RPR
6 Official Commission Reporters,

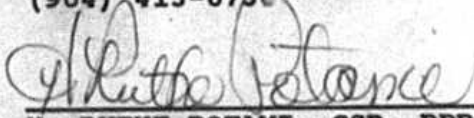
7 DO HEREBY CERTIFY that the Hearing in Docket
8 No. 970001-EI was heard by the Florida Public Service
9 Commission at the time and place herein stated; it is
10 further

11 CERTIFIED that we stenographically reported
12 the said proceedings; that the same has been
13 transcribed under our direct supervision; and that
14 this transcript, consisting of 366 pages, Volumes 1
15 and 2, inclusive, constitutes a true transcription of
16 our notes of said proceedings and the insertion of the
17 prescribed prefiled testimony of the witnesses.

18 DATED this 25th day of February, 1997.

19 
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21 Chief, Bureau of Reporting
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