

Case Assignment and Scheduling Record

Section 1 - Division of Records and Reporting (RAR) Completes

Docket No. 000982-EI Date Docketed: 07/28/2000 Title: Petition by Florida Power & Light Company for approval of conditional settlement agreement which terminates standard offer contracts originally entered into between FPL and Okeelanta Corporation and FPL and Osceola Farms, Co.

Company: Florida Power & Light Company

Official Filing Date: _____
Last Day to Suspend: _____

Expiration: _____

Referred to:
("()" indicates OPR)

ADM AFA APP CAF CMP CMU EAG ECR GCL LEG PAI RAR RGO (SER) WAW
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Section 2 - OPR Completes and returns to RAR in 10 workdays.

Time Schedule

Program/Module A4(c)

Staff Assignments

OPR Staff

Staff Counsel

OCRs ()

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Recommended assignments for hearing
and/or deciding this case:

Full Commission _____ Commission Panel _____
Hearing Examiner _____ Staff _____

Date filed with RAR: _____

Initials: OPR _____

Staff Counsel _____

**WARNING: THIS SCHEDULE IS AN INTERNAL PLANNING DOCUMENT.
IT IS TENTATIVE AND SUBJECT TO REVISION.
FOR UPDATES CONTACT THE RECORDS SECTION: (850) 413-6770**
Current CASR revision level

0

Due Dates

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Section 3 - Chairman Completes

Assignments are as follows:

- Hearing Officer(s)

Commissioners						Hrg. Exam.	Staff
ALL	DS	CL	JC	JB	NC		

Where panels are assigned the senior Commissioner is Panel Chairman;
the identical panel decides the case.

Where one Commissioner, a Hearing Examiner or a Staff Member is
assigned the full Commission decides the case.

- Prehearing Officer

Commissioners					ADM
DS	CL	JC	JB	NC	

Approved: _____

Date: / /

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Case Assignment and Scheduling Record

Section 1 - Division of Records and Report (RAR) Completes

Docket No. 000982-EI Date Docketed: 07/28/2000 Title: Petition by Florida Power & Light Company for approval of conditional settlement agreement which terminates standard offer contracts originally entered into between FPL and Okeelanta Corporation and FPL and Osceola Farms, Co.

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ADM AFA APP CAF CMP CMU EAG ECR GCL LEG PAI RAR RGO (SER) WAW
_____ X _____ X _____ X _____

Section 2 - OPR Completes and returns to RAR in 10 workdays.

Time Schedule

Program/Module A4(c)

Staff Assignments

OPR Staff M Haff, T Bohrmann, J Harlow,
D Lee

Staff Counsel C Keating

OCRs (ECR) P Lester

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Recommended assignments for hearing
and/or deciding this case:

Full Commission X Commission Panel _____
Hearing Examiner _____ Staff _____

Date filed with RAR: 08/14/2000

Initials: OPR _____
Staff Counsel _____

**WARNING: THIS SCHEDULE IS AN INTERNAL PLANNING DOCUMENT.
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FOR UPDATES CONTACT THE RECORDS SECTION: (850) 413-6770
Current CASR revision level**

0

Due Dates

Previous Current

1. Staff Recommendation	NONE	08/24/2000
2. Agenda	NONE	09/05/2000
3. PAA Order - Close if No Protest	NONE	09/25/2000
4. Consummating Order if No Protest	NONE	10/20/2000
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Section 3 - Chairman Completes

Assignments are as follows:

- Hearing Officer(s)

Commissioners						Hrg. Exam.	Staff
ALL	DS	JC	JB	NC	XX		
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the identical panel decides the case.
Where one Commissioner, a Hearing Examiner or a Staff Member is
assigned the full Commission decides the case.

- Prehearing Officer

Commissioners					ADM
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Approved: 20/Sm

Date: 08/14/2000

Case Assignment and Scheduling Record

Section 1 - Division of Records and Report (RAR) Completes

Docket No. 000982-EI Date Docketed: 07/28/2000 Title: Petition by Florida Power & Light Company for approval of conditional settlement agreement which terminates standard offer contracts originally entered into between FPL and Okeelanta Corporation and FPL and Osceola Farms, Co.

Company: Florida Power & Light Company

Official Filing Date: _____
Last Day to Suspend: _____

Expiration: _____

Referred to:
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ADM AFA APP CAF CMP CMU EAG ECR GCL LEG PAI RAR RGO (SER) WAW
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Section 2 - OPR Completes and returns to RAR in 10 workdays.

Time Schedule

Program/Module A4(c)

Staff Assignments

OPR Staff M Haff, T Bohrmann, J Harlow,
D Lee

Staff Counsel C Keating

OCRs (ECR) P Lester

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Recommended assignments for hearing
and/or deciding this case:

Full Commission X Commission Panel _____
Hearing Examiner _____ Staff _____

Date filed with RAR: 11/27/2000

Initials: OPR _____
Staff Counsel _____

WARNING: THIS SCHEDULE IS AN INTERNAL PLANNING DOCUMENT.
IT IS TENTATIVE AND SUBJECT TO REVISION.
FOR UPDATES CONTACT THE RECORDS SECTION: (850) 413-6770
Current CASR revision level

1

Due Dates

Previous Current

1. Staff Recommendation-FPL Motion for Summary Order	NONE	12/07/2000
2. Agenda	NONE	12/19/2000
3. Standard Order	NONE	01/08/2001
4. Close Docket or Revise CASR	NONE	02/09/2001
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Section 3 - Chairman Completes

Assignments are as follows:

- Hearing Officer(s)

Commissioners						Hrg. Exam.	Staff
ALL	DS	JC	JB	BZ	XX		
X							

Where panels are assigned the senior Commissioner is Panel Chairman;
the identical panel decides the case.
Where one Commissioner, a Hearing Examiner or a Staff Member is
assigned the full Commission decides the case.

- Prehearing Officer

Commissioners					ADM
DS	JC	JB	BZ	XX	
					X

Approved: 30/Sm

Date: 11/27/2000

STATE OF FLORIDA

Commissioners:
J. TERRY DEASON, CHAIRMAN
SUSAN F. CLARK
E. LEON JACOBS, JR.
LILA A. JABER



DIVISION OF RECORDS & REPORTING
BLANCA S. BAYÓ
DIRECTOR
(850) 413-6770

Public Service Commission

July 28, 2000

Kenneth A. Hoffman, Esquire
Rutledge, Ecenia, Purnell & Hoffman
Post Office Box 551
Tallahassee, Florida 32302-0551

Re: Docket No. 000982-EI

Dear Mr. Hoffman:

This will acknowledge receipt of a petition by Florida Power & Light Company for approval of conditional settlement agreement which terminates standard offer contracts originally entered into between FPL and Okeelanta Corporation and FPL and Osceola Farms, Co., which was filed in this office on July 28, 2000 and assigned the above-referenced docket number. Appropriate staff members will be advised.

Mediation may be available to resolve any dispute in this docket. If mediation is conducted, it does not affect a substantially interested person's right to an administrative hearing. For more information, contact the Office of General Counsel at (850) 413-6248 or FAX (850) 413-7180.

Division of Records and Reporting
Florida Public Service Commission



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: August 14, 2000

TO: Blanca Bayo, Director, Division of Records and Reporting

FROM: Melinda Butler, Assistant to Commissioner Jacobs *mb*

RE: Intercepted Communications From an Interested Party Received in
Docket No. 000982

This office has received the attached letter from Paul Troutt, dated September 18, 2000. The correspondence has not been viewed or considered in any way by Commissioner Jacobs. Under the terms of the advisory opinion from the Commission on Ethics (issued July 24, 1991 as COE 91-33-JULY 19, 1991), the letter does not constitute an ex parte communication by virtue of the fact that it was not shown to the Commissioner. Given that it is not an ex parte communication, it does not require dissemination to parties pursuant to the provisions of Section 350.042, Florida Statutes. However; in such cases Commissioner Jacobs has requested that a copy of the correspondence and this memo, as a matter of routine, be placed in the correspondence side of the file in this docket.

September 18, 2000

Mr Jacobs,

It is difficult to express the anger I feel toward FPL for requesting a 13 percent increase on top of a 6.2 percent increase granted earlier this year.

To add insult to injury, FPL wants the consumer to pay in excess of two hundred million dollars for law suit settlements.

Being on a fixed income, FPL is pushing our family to the limit. This increase on top of higher gas prices and taxes, we cannot afford.

If FPL can afford to purchase another electric company, they can afford to absorb higher fuel cost.

I urge you to vote against this insanity.

Sincerely,

Paul Troutt

Paul Troutt

RECEIVED

SEP 20 2000

FLORIDA PUBLIC SERVICE COMMISSION
Commissioner Jacobs

State of Florida



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: August 14, 2000
TO: Blanca Bayo, Director, Division of Records and Reporting
FROM: Melinda Butler, Assistant to Commissioner Jacobs *MB*
RE: Intercepted Communications From an Interested Party Received in
Docket No. 000982

This office has received the attached letter from Michael T. Caldwell dated August 1, 2000. The correspondence has not been viewed or considered in any way by Commissioner Jacobs. Under the terms of the advisory opinion from the Commission on Ethics (issued July 24, 1991 as COE 91-33-JULY 19, 1991), the letter does not constitute an ex parte communication by virtue of the fact that it was not shown to the Commissioner. Given that it is not an ex parte communication, it does not require dissemination to parties pursuant to the provisions of Section 350.042, Florida Statutes. However; in such cases Commissioner Jacobs has requested that a copy of the correspondence and this memo, as a matter of routine, be placed in the correspondence side of the file in this docket.

RECEIVED - FPSC
AUG 15 11:13
RECORDS AND
REPORTING

Michael T. Caldwell
12540 SW 108 Avenue
Miami, FL 33176

August 1, 2000

Commissioner J. Terry Deason
Chair, Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Dear Chair Deason:

I recently read an article in the Miami Herald regarding a possible settlement by Florida Power & Light Company (FPL) with the Fanjuls, owners of several sugar mills in western Palm Beach County. The issue pertained to a contract in which FPL had agreed to purchase cogeneration power from one of the Fanjul's facilities. I understand that FPL had signed the contract to purchase cogeneration power from the facility but later decided not to honor the contract. The facility went into bankruptcy, many personnel were dismissed by the sugar company, and other damages were incurred by FPL's refusal to honor the contract. Now, as a result of lawsuits, FPL has decided to settle the lawsuit for approximately \$222 million.

According to the Herald article (see enclosed copy), FPL intends to request that the Florida Public Service Commission (FPSC) approve FPL's being able to pass the entire \$222 million cost of the settlement on to the ratepayers! I find it unconscionable and abhorrent that the FPSC would even consider allowing FPL to pass on such a cost to the ratepayers. It is obvious that FPL voluntarily chose not to honor a contract that they had signed, figuring that with their monopoly power that they would succeed in again stifling competition and delaying deregulation in Florida. The proposed settlement is merely the result of a bad business decision by FPL and it should not be considered by the FPSC as an appropriate cost to be borne by the ratepayer, but should be borne solely by the power company. The ratepayer should not have to pay for such bad business decisions such as failure to honor signed contracts by a large company such as FPL. If the FPSC chooses to allow such a cost to be passed on, then the message that is being sent to the power company is that they can continue to make bad business decisions in the future with no financial consequences to the company.

I am therefore requesting that you deny this request by FPL to pass on any portion of the proposed settlement to the ratepayers since the settlement is the result of a bad business decision by FPL. The risk of such bad business decisions should be borne solely by the power company and not by the ratepayer.

I understand that FPL has not yet filed anything with the FPSC concerning this issue but that they will do so fairly soon. I would appreciate being kept apprised of developments regarding this important issue before the FPSC.

If you have any questions or need further information, please contact me at (305) 579-2594 (office), (305) 233-7779 (home), by email at mikec996@gateway.net, or at the address above.

Respectfully yours,

Michael T. Caldwell

Enclosure

cc: Commissioner Susan Clark
Commissioner E. Leon Jacobs
Commissioner Lila Jaber
Office of Public Counsel
James McNair, Miami Herald

Published Saturday, July 22, 2000, in the Miami Herald

FPL offers Fanjuls \$222M

Aims to settle 3-year-old lawsuit

BY JAMES McNAIR

jmcnair@herald.com

Florida Power & Light said Friday it is offering to pay \$222.5 million to settle a legal imbroglio stemming from the aborted purchase of electricity from the Fanjul family of Palm Beach — and FPL customers will pick up the tab.

But FPL said rate payers will be better off in the long run. If the company took its chances at trial and was forced to buy the expensive, cogenerated power from two Fanjul sugar mills, electric customers could be out more than \$350 million over 30 years.

FPL's proposed settlement Friday — which has yet to be reviewed by the Fanjuls — represents a possible end to a legal battle that began in January 1997.

Federal law in the early 1990s required electric utilities to buy power from sources that used renewable forms of energy instead of oil. This encouraged the development of cogeneration plants, where electric power is produced as a by-product of another industrial process.

The Fanjuls, together with U.S. Generating Corp., seized the opportunity to sell power generated from the burning of sugar cane waste produced at their Okeelanta and Osceola sugar mills in western Palm Beach County. But FPL cried foul when the sugar-derived electricity started flowing in 1997. It said the cogeneration plants had not achieved commercial status by the date specified by the contract. It also said the plants were plagued with equipment failures and produced power for twice the going market price. FPL sued to void the contract.

That triggered a chain of financial calamities. The Fanjul-U.S. Generating companies that owned the co-generation plants went into bankruptcy. They also defaulted on payments to the buyers of the \$288.5 million in tax-exempt bonds that were sold to build the plants.

According to its proposed settlement, FPL would make good on \$222.5 million of those bond obligations, or about 77 percent of the debt. The bondholders, including the likes of Dreyfus Funds, Franklin Funds and Goldman, Sachs & Co., are ready to end the litigation.

“This amount of money is more than adequate when compared with going <http://www.herald.com/content/sat/business/florida/digdocs/053538.htm>

7/26/00

ahead and trying the case," said William Smith, a Chicago lawyer who represents most of the bondholders. "This will allow us to bring an end to a three-year debacle."

Any settlement would have to be approved by U.S. Bankruptcy Court and the Florida Public Service Commission. And it would need the signatures of the Fanjul affiliates involved in the lawsuit. A spokesman for the Fanjuls, Jorge Dominicus, said the family hasn't yet reviewed the settlement proposal.

Dominicus said FPL's willingness to foot 77 percent of the debt to bondholders is a sharp turnabout from the utility's initial view of the 30-year power-buying deal.

"I think it's a recognition that it's a valid contract and needs to be dealt with," Dominicus said. "Obviously they owe money. We've always said they had a contract and that it was their arbitrary decision to renege that caused all these far-reaching consequences."

If the settlement is approved, FPL spokesman Bill Swank said the company will probably ask the Public Service Commission to allow FPL to recover the \$222.5 million from its customers under one of several cost-recovery provisions. Swank was unable to say how much more people will have to pay. He didn't know when bills will go up.

"I'm sure it'll be spread out over some period of time, but I don't know what it'll be," he said.

As the lawsuit plodded along, the Fanjuls have made their Okeelanta sugar mill and refinery self-sufficient in its power needs, Dominicus said. It even produces surplus power that is sold to FPL, Tampa Electric and other utilities, he said. The Osceola plant was shut down.

FPL shares fell 44 cents Friday, closing at \$52.75 on the New York Stock Exchange. Analysts said the proposed \$222.5 million payout shouldn't affect the stock price.

"It's not a big event for FPL," said Barry Abramson, an analyst with Paine Webber in New York.

10/09/00

Dick Durbin

From: mikec996@gateway.net [mikec996@gateway.net]
Sent: Monday, October 09, 2000 4:32 PM
To: Jim McNair
Cc: Dick Durbin
Subject: follow-up to FPL settlement

Jim - As you may be aware, the FPSC deadlocked in a 2-2 vote on September 26, 2000, on the issue of approval of the FPL settlement of \$222.5 million for the sugar mill cogeneration contracts. The FPSC asked for more information and will rehear the issue at the October 17, 2000 Agenda Conference.

I am attaching a copy of a letter that I am sending all FPSC commissioners and Public Counsel on this issue, asking that they deny approval of passing the settlement cost on to the FPL customers. I know that other customers are concerned as well based on editorials in the Miami Herald in past weeks (namely, Russ Costanzo and Paul Troutt), and they will probably be writing the Commission with their concerns as well.

It would be nice if the Miami Herald would do a follow-up article to the nice, detailed article you did on July 22, 2000. The FPSC Commissioners were quite concerned over issues such as the prudence and reasonableness of the costs (especially since they are damages and penalties associated with litigation), the calculation of supposed savings by FPL, and the benefits, if any, to the customer. FPL's customers should be made aware of such concerns so that they might express their own concerns to the Commissioners.

If you have any questions, please call me at 305-233-7779 (h) or at the office 305-579-2594.

thanks,
Mike Caldwell

☐ ADP
☐ CUF
☐ CMF
☐ COM
☐ CTR
☐ EOR
☐ LEG ☒
☐ OPC
☐ PAI
☐ RGO
☒ SEC
☒ SER
☐ OTH

Correspondence

DOCUMENT NUMBER-DATE

12851 OCT-98

FPSC-RECORDS/REPORTING

10/9/00

Braulio L. Baez
Commissioner




Capital Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0855
(850) 413-6042
Fax: (850) 413-6395

Public Service Commission

MEMORANDUM

RECEIVED-PSC
OCT 12 AM 10:29
RECORDS AND
REPORTING

TO: Blanca Bayó, Director, Division of Records and Reporting

FROM: Ignacio Ortiz-Petit, Assistant to Commissioner Baez 

RE: Docket No. 000982-EI - Petition by Florida Power & Light Company for approval of conditional settlement agreement which terminates standard offer contracts originally entered into between FPL and Okeelanta Corporation and FPL and Osceola Farms, Co.

DATE: October 11, 2000

This office has received the attached letter(s) in connection with the above-referenced docket. This correspondence has been placed in the appropriate intercept file. Commissioner Baez has no knowledge of this correspondence. No ex parte communication has taken place.

Please place the above-mentioned letters on the correspondence side of the file.

Michael T. Caldwell
12540 SW 108 Avenue
Miami, FL 33176

October 9, 2000

Commissioner J. Terry Deason
Chair, Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RECEIVED

OCT 11 2000

Florida Public Service Commission
COMMISSIONER BAEZ

Dear Chair Deason:

I listened with great interest to the audiovisual recording of the September 26, 2000 FPSC Agenda Conference, regarding Docket No. 000982-EI. This docket is the petition by Florida Power and Light Company (FPL) for approval of a conditional settlement agreement pertaining to standard offer contracts between FPL and Okeelanta Corporation, and FPL and Osceola Farms. This conditional settlement request proposes to pass on to the FPL customers a settlement of \$222.5 million that FPL would pay as damages for breaching cogeneration contracts with Okeelanta and Osceola. I was very glad to hear that some of the Commissioners had fundamental concerns regarding the prudence and reasonableness of FPL's request to pass these costs on to their customers. As an affected customer, I strongly oppose passing any of the settlement costs on to FPL's customers; the costs are imprudent and unreasonable, and should be borne strictly by FPL's shareholders since the costs resulted from bad business decisions by FPL's management.

The proposed settlement pertains to contracts in which FPL had agreed to purchase cogeneration power from two of the Fanjul's facilities - Okeelanta and Osceola (referred to as QFs - Qualifying Facilities). I understand that FPL had signed the contracts to purchase cogeneration power from the QFs but later decided not to honor the contracts. The QFs went into bankruptcy due to FPL's refusal to make capacity payments, many personnel were dismissed by the sugar company, and other damages were incurred by FPL's refusal to honor the contracts. Now, as a result of lawsuits, FPL has decided to settle for \$222.5 million in damages.

FPL characterizes the settlement as providing "benefits" to the customer. FPL calculates the savings to the customers at \$412 million which is the difference between FPL's projected cost of honoring the cogeneration contracts over 29 years (\$1.1 billion) and the QF's claim for \$490 million in damages and penalties. Therefore, the settlement of \$222.5 million is "in the best interests of the customer." To quote a well-known politician, this is a prime example of "fuzzy math."

Please note the following issues:

1. FPL voluntarily chose to breach these contracts. The proposed "settlement" of \$222.5 million is to cover those damages incurred by the bondholders who provided funding for the cogeneration facilities.
2. One of the Commissioners noted that the FPSC routinely approves buyouts of contracts when those buyouts are prudent and reasonable, and in the best interest of the customers. It was also clearly noted that FPL did not approach the FPSC with a request to buyout these cogeneration contracts in 1992 when they were signed, but chose instead to terminate the contracts in 1997, after the facilities came on line. Therefore, this "settlement" cannot be characterized as a buyout, and treated as a "buyout" by the FPSC. FPL is now saying that these were high cost contracts which far exceed replacement power costs; if that is the case, FPL should have brought this issue before the FPSC and requested approval to buyout the contracts instead of choosing to breach the contracts, thus incurring damages and penalties.

It was correctly noted that FPL is not buying out these contracts; FPL is facing a potential damage award of \$490 million as a result of breaching their contracts with the QFs.

3. It was stated that, by terminating the contract, FPL "saved" the customers over \$1.1 billion. This is calculated as the costs that FPL would pay the QFs over the life of the contracts (and those costs would have been passed on to the customers). However, please note that the customers would have received over 28.7 billion kilowatt hours of electricity during that period (please see Attachment A). In the case of the \$222.5 million "settlement", the customers received little, if any, electricity from the QF's. Therefore, there is no benefit to the customers from this settlement.
4. FPSC Commissioners questioned whether damages and penalties such as those discussed in this case are appropriate to be passed on to the customers. Staff indicated that they did not know, but did not think they would be appropriate. After further discussion, Staff indicated that such a decision would have to be based on the prudence and reasonableness of the costs.

I reiterate that such costs are imprudent and unreasonable, and should not be passed on to the customers, but should be fully absorbed by FPL's shareholders. The costs were incurred due to voluntary choices made by FPL's management to terminate valid contracts that the company had signed. These voluntary choices were bad business decisions which resulted in FPL being sued, thus incurring damages and penalties.

5. It was stated that FPL's customers are now "better off" due to FPL's decision. It is very difficult to understand that logic since FPL's customers are being asked to pay \$222.5 million for little, if any, power received under these contracts. If FPL had honored the contracts and paid \$1.1 billion over the life of the contracts, at least the customers would have received over 28 billion kilowatt hours of electricity for their money! As it is

proposed now, the customers get no benefit at all from paying the \$222.5 million. Therefore, this "settlement" cannot be considered in the best interests of the customer.

6. I also found it astounding that FPL is already assuming rapid approval by the FPSC of this "settlement" in their agreement in this lawsuit. I consider it very arrogant for FPL to request that the FPSC approve this settlement in an expedited manner and with a very specific cost recovery mechanism, or else "the deal is off, and FPL will be coming back with a request to approve passing on higher damage costs to the customers." FPL obviously expected this settlement to be "rubber-stamped" by the FPSC.
7. Commissioner Jaber noted that there should be sharing of such costs between FPL's customers and FPL's shareholders. I disagree in principle - if the company voluntarily chose an unreasonable and imprudent course of action that resulted in damages and penalties, then FPL and its shareholders should be fully responsible for those actions.

However, if the FPSC believes that those costs should be shared between customers and shareholders, it should be shared in the ratio that the customers benefited from the contracts. That is, the customers' share should be the \$222.5 million times the ratio of the amount of electricity actually received under those contracts (if any) by the customer versus the amount of electricity that the customers would have received over the life of the contracts (the 28.7 billion kilowatt hours of electricity).

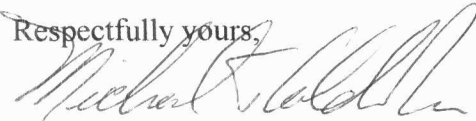
As an affected customer, I find it unconscionable and abhorrent that the FPSC would even consider allowing FPL to pass on such costs to the customers - the costs are clearly imprudent and unreasonable. It is obvious that FPL voluntarily chose not to honor a contract that they had signed, figuring that with their monopoly power that they would succeed in again stifling competition and delaying deregulation in Florida. FPL had other options such as coming to the FPSC and requesting a buyout of the contracts - they chose not to do so but instead breached the contracts and incurred damages and penalties. The proposed settlement is merely the result of a bad business decision by FPL and it should not be considered by the FPSC as an appropriate cost to be borne by the customers, but should be borne solely by the power company and its shareholders. The customers should not have to pay for such bad business decisions such as failure to honor signed contracts by a large company such as FPL. If the FPSC chooses to allow such a cost to be passed on, then the message that is being sent to the power company is that they can continue to make bad business decisions in the future with no financial consequences to the company. I trust that this is not the message that the FPSC wants to send to either utilities under their jurisdiction or the customers that the FPSC is responsible for protecting.

I understand that the Commission deadlocked on this issue at the September 26, 2000 Agenda Conference, voting 2-2. Commissioners were concerned with the calculation of the "savings" to the customers, with the issue of passing on costs associated with damages and penalties to the customers, and whether these costs were prudent and reasonable, or not. Commissioner Jaber indicated that she had specific questions to ask of FPSC Staff, and suggested that the issue be brought back at the October 17, 2000 FPSC Agenda Conference. Based on those valid concerns expressed by the Commissioners, and based on the issues discussed above, I am therefore

requesting that you deny this request by FPL to pass on any portion of the proposed settlement to the customers since the settlement is the result of a bad business decision by FPL, and the costs are imprudent and unreasonable. The risk of such bad business decisions should be borne solely by the power company and not by the ratepayer.

If you have any questions or need further information, please contact me at (305) 579-2594 (office), (305) 233-7779 (home), by email at mikec996@gateway.net, or at the address above.

Respectfully yours,

A handwritten signature in dark ink, appearing to read "Michael T. Caldwell", written over the typed name.

Michael T. Caldwell

Attachment

cc: Commissioner E. Leon Jacobs
Commissioner Lila Jaber
Commissioner Braulio L. Baez
Office of Public Counsel
James McNair, Miami Herald

Attachment A

Calculation of the amount of electricity that would have been received by FPL customers over the life of the contracts:

FPL indicated that the Okeelanta plant generated 70 MW of power, and the Osceola plant generated 59.9 MW of power. FPL noted that their calculation of savings was based on both plants operating at an 87% capacity factor. The contracts would have been in effect for the period 1/1/1997 through 12/31/2026.

The calculations are as follows:

- | | | | |
|----|--|---|--|
| a. | $70 \text{ MW} + 59.9 \text{ MW}$ | = | 129.9 MW |
| b. | $129.9 \text{ MW} \times 87\% \text{ capacity factor}$ | = | 113.01 MW |
| c. | Period 1/1/97-12/31/26 | = | 29 years |
| d. | $29 \text{ years} \times 365 \text{ days per year}$ | = | 10,585 days |
| e. | $10,585 \text{ days} \times 24 \text{ hours per day}$ | = | 254,040 hours |
| f. | $254,040 \text{ hours} \times 113.01 \text{ MW}$
(the units at 87% capacity factor) | = | 28,709,060.40 MW hours |
| g. | $28,709,060.40 \text{ MW hours} \times 1000 \text{ kilowatts/MW}$ | = | 28,709,060,400 KW hours or
28.7 billion Kilowatt hours |



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: October 12, 2000

TO: Blanca Bayo, Director, Division of Records and Reporting

FROM: William B. Berg, Assistant to Commissioner Deason

RE: Intercepted Communications From an Interested Party Received in
Docket No: 000982-EI

This office has received the attached correspondence from Michael T. Caldwell. The correspondence has not been viewed or considered in any way by Commissioner Deason. Under the terms of the advisory opinion from the Commission on Ethics (issued July 24, 1991 as COE 91-31-JULY 19, 1991), the following letter does not constitute an ex parte communication by virtue of the fact that it was not shown to the Commissioner. Because it is not deemed to be an ex parte communication, it does not require dissemination to parties pursuant to the provisions of Section 350.042, Florida Statutes. However, in such cases Commissioner Deason has requested that a copy of the correspondence and this memo be, as a matter of routine, placed in the correspondence side of the file in this docket.

WBB:mm

Intercepted

Michael T. Caldwell
12540 SW 108 Avenue
Miami, FL 33176

October 9, 2000

RECEIVED
OCT 11 2000
Florida Public Service Comm.
Chairman Deason

Commissioner J. Terry Deason
Chair, Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Dear Chair Deason:

I listened with great interest to the audiovisual recording of the September 26, 2000 FPSC Agenda Conference, regarding Docket No. 000982-EI. This docket is the petition by Florida Power and Light Company (FPL) for approval of a conditional settlement agreement pertaining to standard offer contracts between FPL and Okeelanta Corporation, and FPL and Osceola Farms. This conditional settlement request proposes to pass on to the FPL customers a settlement of \$222.5 million that FPL would pay as damages for breaching cogeneration contracts with Okeelanta and Osceola. I was very glad to hear that some of the Commissioners had fundamental concerns regarding the prudence and reasonableness of FPL's request to pass these costs on to their customers. As an affected customer, I strongly oppose passing any of the settlement costs on to FPL's customers; the costs are imprudent and unreasonable, and should be borne strictly by FPL's shareholders since the costs resulted from bad business decisions by FPL's management.

The proposed settlement pertains to contracts in which FPL had agreed to purchase cogeneration power from two of the Fanjul's facilities - Okeelanta and Osceola (referred to as QFs - Qualifying Facilities). I understand that FPL had signed the contracts to purchase cogeneration power from the QFs but later decided not to honor the contracts. The QFs went into bankruptcy due to FPL's refusal to make capacity payments, many personnel were dismissed by the sugar company, and other damages were incurred by FPL's refusal to honor the contracts. Now, as a result of lawsuits, FPL has decided to settle for \$222.5 million in damages.

FPL characterizes the settlement as providing "benefits" to the customer. FPL calculates the savings to the customers at \$412 million which is the difference between FPL's projected cost of honoring the cogeneration contracts over 29 years (\$1.1 billion) and the QF's claim for \$490 million in damages and penalties. Therefore, the settlement of \$222.5 million is "in the best interests of the customer." To quote a well-known politician, this is a prime example of "fuzzy math."

Please note the following issues:

1. FPL voluntarily chose to breach these contracts. The proposed "settlement" of \$222.5 million is to cover those damages incurred by the bondholders who provided funding for the cogeneration facilities.
2. One of the Commissioners noted that the FPSC routinely approves buyouts of contracts when those buyouts are prudent and reasonable, and in the best interest of the customers. It was also clearly noted that FPL did not approach the FPSC with a request to buyout these cogeneration contracts in 1992 when they were signed, but chose instead to terminate the contracts in 1997, after the facilities came on line. Therefore, this "settlement" cannot be characterized as a buyout, and treated as a "buyout" by the FPSC. FPL is now saying that these were high cost contracts which far exceed replacement power costs; if that is the case, FPL should have brought this issue before the FPSC and requested approval to buyout the contracts instead of choosing to breach the contracts, thus incurring damages and penalties.

It was correctly noted that FPL is not buying out these contracts; FPL is facing a potential damage award of \$490 million as a result of breaching their contracts with the QFs.

3. It was stated that, by terminating the contract, FPL "saved" the customers over \$1.1 billion. This is calculated as the costs that FPL would pay the QFs over the life of the contracts (and those costs would have been passed on to the customers). However, please note that the customers would have received over 28.7 billion kilowatt hours of electricity during that period (please see Attachment A). In the case of the \$222.5 million "settlement", the customers received little, if any, electricity from the QF's. Therefore, there is no benefit to the customers from this settlement.
4. FPSC Commissioners questioned whether damages and penalties such as those discussed in this case are appropriate to be passed on to the customers. Staff indicated that they did not know, but did not think they would be appropriate. After further discussion, Staff indicated that such a decision would have to be based on the prudence and reasonableness of the costs.

I reiterate that such costs are imprudent and unreasonable, and should not be passed on to the customers, but should be fully absorbed by FPL's shareholders. The costs were incurred due to voluntary choices made by FPL's management to terminate valid contracts that the company had signed. These voluntary choices were bad business decisions which resulted in FPL being sued, thus incurring damages and penalties.

5. It was stated that FPL's customers are now "better off" due to FPL's decision. It is very difficult to understand that logic since FPL's customers are being asked to pay \$222.5 million for little, if any, power received under these contracts. If FPL had honored the contracts and paid \$1.1 billion over the life of the contracts, at least the customers would have received over 28 billion kilowatt hours of electricity for their money! As it is

proposed now, the customers get no benefit at all from paying the \$222.5 million. Therefore, this "settlement" cannot be considered in the best interests of the customer.

6. I also found it astounding that FPL is already assuming rapid approval by the FPSC of this "settlement" in their agreement in this lawsuit. I consider it very arrogant for FPL to request that the FPSC approve this settlement in an expedited manner and with a very specific cost recovery mechanism, or else "the deal is off, and FPL will be coming back with a request to approve passing on higher damage costs to the customers." FPL obviously expected this settlement to be "rubber-stamped" by the FPSC.
7. Commissioner Jaber noted that there should be sharing of such costs between FPL's customers and FPL's shareholders. I disagree in principle - if the company voluntarily chose an unreasonable and imprudent course of action that resulted in damages and penalties, then FPL and its shareholders should be fully responsible for those actions.

However, if the FPSC believes that those costs should be shared between customers and shareholders, it should be shared in the ratio that the customers benefited from the contracts. That is, the customers' share should be the \$222.5 million times the ratio of the amount of electricity actually received under those contracts (if any) by the customer versus the amount of electricity that the customers would have received over the life of the contracts (the 28.7 billion kilowatt hours of electricity).

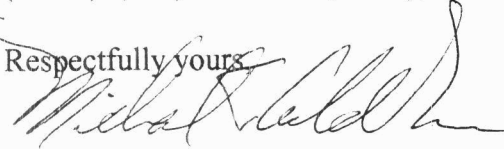
As an affected customer, I find it unconscionable and abhorrent that the FPSC would even consider allowing FPL to pass on such costs to the customers - the costs are clearly imprudent and unreasonable. It is obvious that FPL voluntarily chose not to honor a contract that they had signed, figuring that with their monopoly power that they would succeed in again stifling competition and delaying deregulation in Florida. FPL had other options such as coming to the FPSC and requesting a buyout of the contracts - they chose not to do so but instead breached the contracts and incurred damages and penalties. The proposed settlement is merely the result of a bad business decision by FPL and it should not be considered by the FPSC as an appropriate cost to be borne by the customers, but should be borne solely by the power company and its shareholders. The customers should not have to pay for such bad business decisions such as failure to honor signed contracts by a large company such as FPL. If the FPSC chooses to allow such a cost to be passed on, then the message that is being sent to the power company is that they can continue to make bad business decisions in the future with no financial consequences to the company. I trust that this is not the message that the FPSC wants to send to either utilities under their jurisdiction or the customers that the FPSC is responsible for protecting.

I understand that the Commission deadlocked on this issue at the September 26, 2000 Agenda Conference, voting 2-2. Commissioners were concerned with the calculation of the "savings" to the customers, with the issue of passing on costs associated with damages and penalties to the customers, and whether these costs were prudent and reasonable, or not. Commissioner Jaber indicated that she had specific questions to ask of FPSC Staff, and suggested that the issue be brought back at the October 17, 2000 FPSC Agenda Conference. Based on those valid concerns expressed by the Commissioners, and based on the issues discussed above, I am therefore

requesting that you deny this request by FPL to pass on any portion of the proposed settlement to the customers since the settlement is the result of a bad business decision by FPL, and the costs are imprudent and unreasonable. The risk of such bad business decisions should be borne solely by the power company and not by the ratepayer.

If you have any questions or need further information, please contact me at (305) 579-2594 (office), (305) 233-7779 (home), by email at mikec996@gateway.net, or at the address above.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Michael T. Caldwell", written over the closing "Respectfully yours,".

Michael T. Caldwell

Attachment

cc: Commissioner E. Leon Jacobs
Commissioner Lila Jaber
Commissioner Braulio L. Baez
Office of Public Counsel
James McNair, Miami Herald

Attachment A

Calculation of the amount of electricity that would have been received by FPL customers over the life of the contracts:

FPL indicated that the Okeelanta plant generated 70 MW of power, and the Osceola plant generated 59.9 MW of power. FPL noted that their calculation of savings was based on both plants operating at an 87% capacity factor. The contracts would have been in effect for the period 1/1/1997 through 12/31/2026.

The calculations are as follows:

- | | | | |
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| g. | $28,709,060.40 \text{ MW hours} \times 1000 \text{ kilowatts/MW}$ | = | 28,709,060,400 KW hours or
28.7 billion Kilowatt hours |

State of Florida



RECEIVED-PPSC

00 OCT 18 PM 3:13

RECORDS AND
REPORTING

-M-E-M-O-R-A-N-D-U-M-

DATE: October 17, 2000

TO: Blanca Bayo, Director, Division of Records & Reporting

FROM: Ignacio Ortiz-Petit, Aide to Commissioner Baez

RE: Docket #000982-EI

This office has received the attached letter in connection with the above referenced docket. The correspondence has been placed in our intercept file; Commissioner Baez has no knowledge of it, and no *ex parte* communication has taken place.

Please place the letter in the correspondence side of the docket file.

iao

Attachment

l
#42
cc

RECEIVED

10659 NE Quaybridge
Miami, FL 33138

OCT 17 2000

October 13, 2000

Florida Public Service Commission
COMMISSIONER BAEZ

Commissioner J. Terry Deason
Chairman Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Dear Mr. Deason:

I am writing you with regard to your meeting of September 26, 2000 (continued to October 16, 2000, at 9:00 A.M.) FPSC Agenda Conference regarding Docket No. 000982-EI. This docket is the petition by Florida Power and Light Company (FPL) for approval of a conditional settlement agreement pertaining to standard offer contracts between FPL and Okeelanta Corporation, and FPL and Osceola Farms. This conditional settlement request proposes to pass on to the FPL customers a settlement of \$222.5 million that FPL would pay as damage for breaching cogeneration contracts with Okeelanta and Osceola. As an affected customer, I strongly oppose passing any of the settlement costs on to FPL's customers; the costs are imprudent and unreasonable, and should be borne strictly by FPL's shareholders, bondholders; and executive officers (if it were possible).

It is astounding that FPL takes the position that since the costs resulted from bad business decisions by FPL's management. FPL must be rewarded for its blunders, it and its stockholders must be guaranteed a profit and the public must be made to pay.

Apparently FPL entered into a contract with the Fanjul's and U.S. Generating to buy the plant's output. FPL accused them of not meeting contract obligations. So why then did FPL stipulate to pay them \$222.5 million to avoid the possibility of a \$350 million judgment being entered against it if a jury forced FPL to live up to the purchase of power from the do-gen plants? Obviously, FPL was legally wrong for if it were in the right, it would not have to pay one red cent.

To compound this monumental error, FPL requested you, the Florida Public Service Commission to approve allowing us the FPL customers to pick up the tab. What a privilege! Naturally, the Florida Public Service Commission, the servant and protector of the people, must not recommend approving FPL's request. The result: if this cost recovery takes place, over a one-year period, it would add \$2.50 per 1,000 kilowatt hours of electricity consumed or about \$2.76 to the average residential monthly bill.

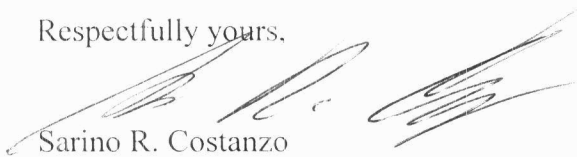
As if this were not enough then, you add the stickier shock that what customers will experience in January could be worse. The fuel recovery will be partly offset by a \$75 to \$100 million refund

Commissioner J. Terry Deason
Chairman Florida Public Service Commission
October 13, 2000
Page 2

brokered last year by FPL, the Public Service Commission and Public Counsel's office. I am therefore, urging that you deny this request by FPL to pass on any portion of the proposed settlement to the ratepayers since the settlement is the result of a bad business decision by FPL. The risk of such bad business decisions should be borne solely by the power company, its stockholders, bondholders, and executive officers (if it were possible).

If you have any questions or need further information, please contact me at (305) 856-7844 (office), (305) 899-1919 (home) or at the address above.

Respectfully yours,



Sarino R. Costanzo

cc: Florida Public Service Commissioner E. Leon Jacobs
Florida Public Service Commissioner Lila Jaber
Florida Public Service Commissioner Braulio L. Baez
Florida Public Service Commission - Office of Public Counsel

M E M O R A N D U M

OCTOBER 19, 2000

RECEIVED-HPSC

OCT 19 AM 10:56

RECORDS AND
REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (ELIAS) *RVE*

RE: DOCKET NO. 000982-EI - PETITION BY FLORIDA POWER & LIGHT
COMPANY FOR APPROVAL OF CONDITIONAL SETTLEMENT AGREEMENT
WHICH TERMINATES STANDARD OFFER CONTRACTS ORIGINALLY
ENTERED INTO BETWEEN FPL AND OKEELANTA CORPORATION AND
FPL AND OSCEOLA FARMS, CO.

PAD 1913

Attached is an NOTICE OF PROPOSED AGENCY ACTION - ORDER
APPROVING SETTLEMENT AGREEMENT to be issued in the above-referenced
docket. (Number of pages in order - 7)

RVE/jb

cc: Division of Safety and Electric Reliability (Haff, Harlow,
Bohrman, Lee)

Division of Economic Regulation (Lester)

I:000982or.rve

2/2
passed
unreviewed
Cy Scanning.

Pamela Johnson

From: Dick Durbin
Sent: Thursday, October 19, 2000 8:03 AM
To: Pamela Johnson
Subject: Docket #000982-EI

Pam,

How would you suggest I handle this one? This is on the FPL settlement with the cogenerators.

Dick

-----Original Message-----

From: mikec996@gateway.net [mailto:mikec996@gateway.net]
Sent: Thursday, October 19, 2000 1:28 AM
To: Dick Durbin
Subject: Fw: how do I file a protest?

Dick - this did not go through initially so I am trying to resend it.
Mike

-----Original Message-----

From: mikec996@gateway.net <mikec996@gateway.net>
To: Dick Durbin <ddurbin@psc.state.fl.us>
Date: Wednesday, October 18, 2000 10:26 PM
Subject: how do I file a protest?

Dick - I just listened to the 10/17/00 Agenda Conference and was extremely dismayed to hear that the FPL settlement of \$222.5 million passed, and passed unanimously! What happened?
I hope that you can help me. The notice I received from the FPSC on this item notes that "a person whose substantial interests are affected by the proposed agency action can file a protest within 21 days" which will avoid the docket being closed.

1. Can I be considered a person whose substantial interests are affected by this PAA?
2. If so, how do I go about filing a protest? Would a letter similar to those I have sent before but noting that I am protesting the PAA suffice? Or do I need to file something more substantial? If so, what?
3. Do I send such a letter/protest to all Commissioners like I did before?
4. What effect does the protest have? I understand that it would require that a full hearing be held. Is this a full hearing under the Fuel Cost Recovery Docket or some other recovery mechanism? When would this take place?
5. What other alternatives do I have at my disposal to try to get this issue re-addressed or overturned?

Please let me know via email or call me at the office (305-579-2594) or at home (305-233-7779). I certainly appreciate any assistance you might be able to provide.

Mike Caldwell
12540 SW 108 Avenue
Miami, FL 33176

RECEIVED FPSC
00 OCT 19 AM 8:46
RECORDS AND
REPORTING

STATE OF FLORIDA

Commissioners:
JOE GARCIA, CHAIRMAN
J. TERRY DEASON
E. LEON JACOBS, JR.
LILA A. JABER
BRAULLIO BAEZ



DIVISION OF CONSUMER AFFAIRS
BEVERLEE DEMELLO
DIRECTOR
(850) 413-6100
TOLL FREE 1-800-342-3552

Public Service Commission

October 20, 2000

Mr. Paul Troutt
10056 Southwest 126 Street
Miami, FL 33176

Re: DOCKET NO. 000982-EI
FPSC Inquiry #340904C

Dear Mr. Troutt:

Thank you for contacting the Florida Public Service Commission (PSC) about Florida Power & Light Company (FPL). We appreciate your comments.

Your letter was placed in the correspondence side of the docket and is available for review by all interested parties. The PSC voted on this docket at the Agenda Conference on October 17, 2000.

The Commission approved a settlement agreement between FPL and two cogenerators, Okeelanta and Osceola. As part of the agreement, FPL will make a settlement payment of \$222.5 million to the cogenerators in return for termination of their standard offer contracts. The agreement to terminate the contracts, including the settlement payment, is expected to save FPL's ratepayers approximately \$412 million over the next 25 years.

If you have any questions, please contact us at 1-800-342-3552 or by toll-free fax at 1-800-511-0809.

Sincerely,

A handwritten signature in cursive script that reads "Beverlee S. DeMello".

Beverlee S. DeMello, Director
Division of Consumer Affairs

BSD:kes

c: J. Terry Deason, Chairman

Records & Reporting

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD • TALLAHASSEE, FL 32399-0850

An Affirmative Action/Equal Opportunity Employer

PSC Website: <http://www.floridapsc.com>

Internet E-mail: contact@psc.state.fl.us

RECEIVED-PPSC
00 OCT 23 PM 3:27
RECORDS AND
REPORTING



Public Service Commission

State of Florida

-M-E-M-O-R-A-N-D-U-M-

DATE: October 27, 2000
TO: Blanca Bayó, Director, Records and Reporting
FROM: Jane Fautot, Chief, Bureau of Reporting
RE: DOCKET NO. 000982-EI, ITEM NO. 42 OF 10-17-00 AGENDA
CONFERENCE.

RE: PETITION BY FLORIDA POWER & LIGHT COMPANY FOR
APPROVAL OF CONDITIONAL SETTLEMENT AGREEMENT WHICH
TERMINATES STANDARD OFFER CONTRACTS ORIGINALLY ENTERED
INTO BETWEEN FPL AND OKEELANTA CORPORATION AND FPL AND
OSCEOLA FARMS, CO.

DOCUMENT NO. 13701, 10-26-00

The transcript for the above proceedings has been completed and is forwarded for placement in the docket file, including attachments.

Please note that Staff distribution of this transcript was made to:

LEGAL, ECR, SER

Acknowledged BY:



JF/pc

PSC/RAR 28 (Rev1/00)

Request No. 341546C

Name MAGNOR ,CAROLYN MS

Business: _____

FLORIDA PUBLIC SERVICE COMMISSION
CONSUMER REQUEST
2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FL. 32399-850
850-413-6100



Public Service Commission

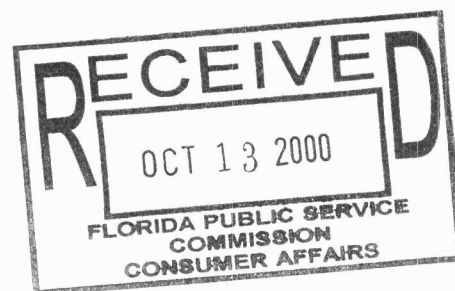
PLEASE RETURN THIS FORM
WITH REPORT OF ACTION TO:

KATE SMITH

Name <u>MAGNOR ,CAROLYN MS</u>	Company <u>FLORIDA POWER & LIGHT COMPANY</u>	Request No. <u>341546C</u>
Business Name _____		
Address _____	County _____	By <u>KES</u> Time <u>17:34</u> Date <u>10/17/200</u>
_____	Consumer's Telephone # _____	Type <u>PR-43</u> Phone <u>FAX</u>
City/Zip _____	Can be Reached <u>(561)-745-9514</u>	
Account Number _____	E-Mail Address _____	Outreach <u>OTHER</u> Date <u>10/17/20</u>
		Public Official <u>N</u>

Customer is protesting the settlement agreement. She did not give an address so no letter was sent to her. Correspondence sent to RAR for filing.

100982-ET
RECEIVED-FPSC
OCT 24 PM 4:34
RECORDS AND
REPORTING
FBI
COM
TR
FOR
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SEC
SER
OTH
white



FAX TO: T. Terry Deason, Chairman PSC
1-800-511-0809

FROM: Carolyn Magnor
(561) 745-9514

RE: FPL's PROPOSED SETTLEMENT

I refer to an article in the October 10, 2000 edition of the Palm Beach Post, concerning FPL's settlement proposal.

FPL should be treated no differently from any other corporation, when it comes to accepting the responsibility for investment mistakes. When one invests in a corporation, it is the responsibility of management to be held accountable to its investors for poor investment decisions. Irresponsible investment management decisions should be borne by the investors and not by the consumers.

FPL enjoys a non-competitive advantage in the market place as the consumer has no alternative with respect to how electricity needs will be met, since FPL is the sole provider in this area. There are many senior citizens who need air conditioning in order to protect the quality of their lives. There are limits with respect to what individual consumers can do concerning energy conservation and high energy costs, without seriously endangering their health. Excessive heat is just as dangerous to the consumer as excessive cold. FPL has made poor investment decisions and it is unreasonable to expect that FPL should be permitted to pass on costly ill-advised decisions to the consumer by way of increased rates.

I urge the commissioners to do what is right and fair for the consumer by voting "no" to FPL's proposed rate increases.

Sincerely,

A handwritten signature in cursive script, appearing to read "Carolyn Magnor".

Carolyn Magnor

ORIGINAL

Cochran Keating

To: mikec996@gateway.net
Subject: Response to your email concerning Docket No. 000982-EI

00-1913.ORD

13323-00.pdf

November 2, 2000

Mike Caldwell
mikec996@gateway.net

Re: Docket No. 000982-EI - Petition by Florida Power & Light Company for Approval of Conditional Settlement Agreement which Terminates Standard Offer Contracts Originally Entered into Between FPL and Okeelanta Corporation and FPL and Osceola Farms, Co.

Dear Mr. Caldwell:

Your emails, dated October 9 and 18, 2000, concerning Florida Power & Light Company's (FPL) request for approval of a settlement agreement to resolve contract litigation with two cogeneration facilities has been forwarded to me by Dick Durbin, Division of Consumer Affairs, for response.

As you are aware, the Commission, at its October 17, 2000, Agenda Conference, voted to grant FPL's request in the above-referenced docket for approval to recover the costs of its settlement agreement with Okeelanta Corporation and Osceola Farms, Co., from its ratepayers. The Commission's vote is memorialized in Order No. PSC-00-1913-PAA-EI, issued October 19, 2000. A copy of this Order is attached for your review.

In 1990, the Commission adopted rules requiring public utilities, such as FPL, to make standard offer contracts available to certain types of cogeneration facilities. As the attached Order indicates, in August 1991, the Commission approved a standard offer contract for FPL for up to 125 megawatts of capacity. In September 1991, Okeelanta and Osceola submitted signed standard offer contracts to FPL. The Commission found that these contracts were cost-effective and therefore approved recovery of the costs of electric power under these contracts from FPL's ratepayers. Since that time, however, the costs of purchasing power in the wholesale market and producing power with new power plants have decreased, thus making these contracts no longer cost-effective.

In this case, the Commission found that the proposed settlement agreement should be approved because FPL's ratepayers would pay less in the long run for the cost of the settlement plus the cost of replacing the electric power that would have been purchased under the two cogeneration contracts than they would pay for the cost of continuing to purchase power under the two contracts. The projected savings to FPL's ratepayers are indicated on page 3 of the Order. To mitigate the impact on customer rates, the Commission approved recovery of the settlement amount through FPL's rates over a five-year period beginning in 2002.

The attached Order was issued as proposed agency action. As stated in the "Notice of Further Proceedings or Judicial Review" on page 7 of the Order, the Order will become final and effective if no person whose substantial interests are affected by the actions proposed in the Order files a petition for a formal proceeding. Typically, a customer is considered a person whose substantial interests are affected. Any person requesting a formal proceeding is responsible for preparing and putting on its case. A formal administrative proceeding is very similar to litigation in court. The "Notice of Further Proceedings or Judicial Review" on page 7 of the Order sets forth all available methods for further review of the Commission's decision.

As noted on page 7 of the Order, any petition for formal proceeding must be received by the Commission's Division of Records and Reporting by the close of business on November 9, 2000. (The Commission currently does not accept electronic filings.) Such a petition should not be sent to the Commissioners. Rule 28-106.201, Florida Administrative Code, sets forth the requirements for such a petition. You may access the Florida Administrative Code on-line at the following address:

<http://election.dos.state.fl.us/fac/index.shtml>

RECEIVED-FPSC
00 NOV -3 PM 3:50
RECORDS AND
REPORTING

If you would like to discuss this matter further, please contact me by telephone at (850) 413-6193.

Sincerely,

Wm. Cochran Keating IV
Senior Attorney, Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
Phone: (850) 413-6193
Fax: (850) 413-6194
E-Mail: wkeating@psc.state.fl.us

cc: (hard copies)
Division of Records and Reporting
Division of Safety and Electric Reliability (Haff, Bohrmann)
Division of Consumer Affairs (Durbin)

Cochran Keating

To: windhaus@mindspring.com
Subject: Response to your email concerning PSC Docket No. 000982-EI

00-1913.ORD

November 2, 2000

Mr. Stephen Windhaus
windhaus@mindspring.com

Re: Docket No. 000982-EI - Petition by Florida Power & Light Company for Approval of Conditional Settlement Agreement which Terminates Standard Offer Contracts Originally Entered into Between FPL and Okeelanta Corporation and FPL and Osceola Farms, Co.

Dear Mr. Windhaus:

Your e-mail, dated October 10, 2000, concerning Florida Power & Light Company's (FPL) request for approval of a settlement agreement to resolve contract litigation with two cogeneration facilities has been forwarded to me by Commissioner Lila A. Jaber for response. Chapter 350, Florida Statutes, precludes a Commissioner from commenting on the merits of a proceeding pending before the Commission.

In your e-mail, you contest the Florida Public Service Commission staff's recommendation that the Commission grant FPL's request for approval of the settlement agreement and recovery of the settlement amount from FPL's ratepayers. At its October 17, 2000, Agenda Conference, the Commission voted to approve staff's recommendation. The Commission's vote is memorialized in Order No. PSC-00-1913-PAA-EI, issued October 19, 2000. A copy of this Order is attached for your review.

In 1990, the Commission adopted rules requiring public utilities, such as FPL, to make standard offer contracts available to certain types of cogeneration facilities. As the attached Order indicates, in August 1991, the Commission approved a standard offer contract for FPL for up to 125 megawatts of capacity. In September 1991, Okeelanta and Osceola submitted signed standard offer contracts to FPL. The Commission found that these contracts were cost-effective and therefore approved recovery of the costs of electric power under these contracts from FPL's ratepayers. Since that time, however, the costs of purchasing power in the wholesale market and producing power with new power plants have decreased, thus making these contracts no longer cost-effective.

In this case, the Commission found that the settlement agreement should be approved because FPL's ratepayers would pay less in the long run for the cost of the settlement plus the cost of replacing the electric power that would have been purchased under the two cogeneration contracts than they would pay for the cost of continuing to purchase power under the two contracts. The projected savings to FPL's ratepayers are indicated on page 3 of the Order. To mitigate the impact on customer rates, the Commission approved recovery of the settlement amount through FPL's rates over a five-year period beginning in 2002.

The attached Order was issued as proposed agency action. As stated on pages 6 and 7 of the Order, the Order will become final and effective if no person whose substantial interests are affected by the actions proposed in the Order files a petition for a formal proceeding. A formal administrative proceeding is very similar to litigation in court. Any person requesting a formal proceeding is responsible for preparing and putting on its case. As noted on page 7 of the Order, any petition for formal proceeding must be received by the Commission's Division of Records and Reporting by the close of business on November 9, 2000. (The Commission currently does not accept electronic filings.) Rule 28-106.201, Florida Administrative Code, sets forth the requirements for such a petition. You may access the Florida Administrative Code on-line at the following address:

<http://election.dos.state.fl.us/fac/index.shtml>

If you would like to discuss this matter further, please contact me by telephone at (850) 413-6193.

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State of Florida



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: November 13, 2000
TO: Blanca Bayo, Director, Division of Records and Reporting
FROM: Melinda Butler, Assistant to Commissioner Jacobs *MB*
RE: Intercepted Communications From an Interested Person Received in
Docket No. 000982-EI

This office has received the attached letter from Michael T. Caldwell. The correspondence has not been viewed or considered in any way by Commissioner Jacobs. Under the terms of the advisory opinion from the Commission on Ethics (issued July 24, 1991 as COE 91-33-JULY 19, 1991), the letter does not constitute an ex parte communication by virtue of the fact that it was not shown to the Commissioner. Given that it is not an ex parte communication, it does not require dissemination to parties pursuant to the provisions of Section 350.042, Florida Statutes. However; in such cases Commissioner Jacobs has requested that a copy of the correspondence and this memo, as a matter of routine, be placed in the correspondence side of the file in this docket.

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Michael T. Caldwell
12540 SW 108 Avenue
Miami, FL 33176

October 9, 2000

Commissioner J. Terry Deason
Chair, Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Dear Chair Deason:

I listened with great interest to the audiovisual recording of the September 26, 2000 FPSC Agenda Conference, regarding Docket No. 000982-EI. This docket is the petition by Florida Power and Light Company (FPL) for approval of a conditional settlement agreement pertaining to standard offer contracts between FPL and Okeelanta Corporation, and FPL and Osceola Farms. This conditional settlement request proposes to pass on to the FPL customers a settlement of \$222.5 million that FPL would pay as damages for breaching cogeneration contracts with Okeelanta and Osceola. I was very glad to hear that some of the Commissioners had fundamental concerns regarding the prudence and reasonableness of FPL's request to pass these costs on to their customers. As an affected customer, I strongly oppose passing any of the settlement costs on to FPL's customers; the costs are imprudent and unreasonable, and should be borne strictly by FPL's shareholders since the costs resulted from bad business decisions by FPL's management.

The proposed settlement pertains to contracts in which FPL had agreed to purchase cogeneration power from two of the Fajal's facilities - Okeelanta and Osceola (referred to as QFs - Qualifying Facilities). I understand that FPL had signed the contracts to purchase cogeneration power from the QFs but later decided not to honor the contracts. The QFs went into bankruptcy due to FPL's refusal to make capacity payments, many personnel were dismissed by the sugar company, and other damages were incurred by FPL's refusal to honor the contracts. Now, as a result of lawsuits, FPL has decided to settle for \$222.5 million in damages.

FPL characterizes the settlement as providing "benefits" to the customer. FPL calculates the savings to the customers at \$412 million which is the difference between FPL's projected cost of honoring the cogeneration contracts over 29 years (\$1.1 billion) and the QF's claim for \$490 million in damages and penalties. Therefore, the settlement of \$222.5 million is "in the best interests of the customer." To quote a well-known politician, this is a prime example of "fuzzy math."

Please note the following issues:

1. FPL voluntarily chose to breach these contracts. The proposed "settlement" of \$222.5 million is to cover those damages incurred by the bondholders who provided funding for the cogeneration facilities.
2. One of the Commissioners noted that the FPSC routinely approves buyouts of contracts when those buyouts are prudent and reasonable, and in the best interest of the customers. It was also clearly noted that FPL did not approach the FPSC with a request to buyout these cogeneration contracts in 1992 when they were signed, but chose instead to terminate the contracts in 1997, after the facilities came on line. Therefore, this "settlement" cannot be characterized as a buyout, and treated as a "buyout" by the FPSC. FPL is now saying that these were high cost contracts which far exceed replacement power costs; if that is the case, FPL should have brought this issue before the FPSC and requested approval to buyout the contracts instead of choosing to breach the contracts, thus incurring damages and penalties.

It was correctly noted that FPL is not buying out these contracts; FPL is facing a potential damage award of \$490 million as a result of breaching their contracts with the QFs.

3. It was stated that, by terminating the contract, FPL "saved" the customers over \$1.1 billion. This is calculated as the costs that FPL would pay the QFs over the life of the contracts (and those costs would have been passed on to the customers). However, please note that the customers would have received over **28.7 billion** kilowatt hours of electricity during that period (please see Attachment A). In the case of the \$222.5 million "settlement", the customers received little, if any, electricity from the QF's. Therefore, there is no benefit to the customers from this settlement.
4. FPSC Commissioners questioned whether damages and penalties such as those discussed in this case are appropriate to be passed on to the customers. Staff indicated that they did not know, but did not think they would be appropriate. After further discussion, Staff indicated that such a decision would have to be based on the prudence and reasonableness of the costs.

I reiterate that such costs are imprudent and unreasonable, and should not be passed on to the customers, but should be fully absorbed by FPL's shareholders. The costs were incurred due to voluntary choices made by FPL's management to terminate valid contracts that the company had signed. These voluntary choices were bad business decisions which resulted in FPL being sued, thus incurring damages and penalties.

5. It was stated that FPL's customers are now "better off" due to FPL's decision. It is very difficult to understand that logic since FPL's customers are being asked to pay \$222.5 million for little, if any, power received under these contracts. If FPL had honored the contracts and paid \$1.1 billion over the life of the contracts, at least the customers would have received over **28 billion** kilowatt hours of electricity for their money! As it is

proposed now, the customers get no benefit at all from paying the \$222.5 million. Therefore, this "settlement" cannot be considered in the best interests of the customer.

6. I also found it astounding that FPL is already assuming rapid approval by the FPSC of this "settlement" in their agreement in this lawsuit. I consider it very arrogant for FPL to request that the FPSC approve this settlement in an expedited manner and with a very specific cost recovery mechanism, or else "the deal is off, and FPL will be coming back with a request to approve passing on higher damage costs to the customers." FPL obviously expected this settlement to be "rubber-stamped" by the FPSC.
7. Commissioner Jaber noted that there should be sharing of such costs between FPL's customers and FPL's shareholders. I disagree in principle - if the company voluntarily chose an unreasonable and imprudent course of action that resulted in damages and penalties, then FPL and its shareholders should be fully responsible for those actions.

However, if the FPSC believes that those costs should be shared between customers and shareholders, it should be shared in the ratio that the customers benefited from the contracts. That is, the customers' share should be the \$222.5 million times the ratio of the amount of electricity actually received under those contracts (if any) by the customer versus the amount of electricity that the customers would have received over the life of the contracts (the 28.7 billion kilowatt hours of electricity).

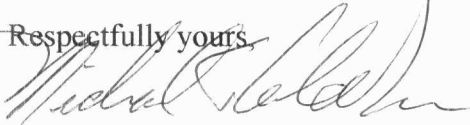
As an affected customer, I find it unconscionable and abhorrent that the FPSC would even consider allowing FPL to pass on such costs to the customers - the costs are clearly imprudent and unreasonable. It is obvious that FPL voluntarily chose not to honor a contract that they had signed, figuring that with their monopoly power that they would succeed in again stifling competition and delaying deregulation in Florida. FPL had other options such as coming to the FPSC and requesting a buyout of the contracts - they chose not to do so but instead breached the contracts and incurred damages and penalties. The proposed settlement is merely the result of a bad business decision by FPL and it should not be considered by the FPSC as an appropriate cost to be borne by the customers, but should be borne solely by the power company and its shareholders. The customers should not have to pay for such bad business decisions such as failure to honor signed contracts by a large company such as FPL. If the FPSC chooses to allow such a cost to be passed on, then the message that is being sent to the power company is that they can continue to make bad business decisions in the future with no financial consequences to the company. I trust that this is not the message that the FPSC wants to send to either utilities under their jurisdiction or the customers that the FPSC is responsible for protecting.

I understand that the Commission deadlocked on this issue at the September 26, 2000 Agenda Conference, voting 2-2. Commissioners were concerned with the calculation of the "savings" to the customers, with the issue of passing on costs associated with damages and penalties to the customers, and whether these costs were prudent and reasonable, or not. Commissioner Jaber indicated that she had specific questions to ask of FPSC Staff, and suggested that the issue be brought back at the October 17, 2000 FPSC Agenda Conference. Based on those valid concerns expressed by the Commissioners, and based on the issues discussed above, I am therefore

requesting that you deny this request by FPL to pass on any portion of the proposed settlement to the customers since the settlement is the result of a bad business decision by FPL, and the costs are imprudent and unreasonable. The risk of such bad business decisions should be borne solely by the power company and not by the ratepayer.

If you have any questions or need further information, please contact me at (305) 579-2594 (office), (305) 233-7779 (home), by email at mikec996@gateway.net, or at the address above.

Respectfully yours,



Michael T. Caldwell

Attachment

cc: Commissioner E. Leon Jacobs
Commissioner Lila Jaber
Commissioner Braulio L. Baez
Office of Public Counsel
James McNair, Miami Herald

Attachment A

Calculation of the amount of electricity that would have been received by FPL customers over the life of the contracts:

FPL indicated that the Okeelanta plant generated 70 MW of power, and the Osceola plant generated 59.9 MW of power. FPL noted that their calculation of savings was based on both plants operating at an 87% capacity factor. The contracts would have been in effect for the period 1/1/1997 through 12/31/2026.

The calculations are as follows:

- | | | | |
|----|--|---|--|
| a. | $70 \text{ MW} + 59.9 \text{ MW}$ | = | 129.9 MW |
| b. | $129.9 \text{ MW} \times 87\% \text{ capacity factor}$ | = | 113.01 MW |
| c. | Period 1/1/97-12/31/26 | = | 29 years |
| d. | $29 \text{ years} \times 365 \text{ days per year}$ | = | 10,585 days |
| e. | $10,585 \text{ days} \times 24 \text{ hours per day}$ | = | 254,040 hours |
| f. | $254,040 \text{ hours} \times 113.01 \text{ MW}$
(the units at 87% capacity factor) | = | 28,709,060.40 MW hours |
| g. | $28,709,060.40 \text{ MW hours} \times 1000 \text{ kilowatts/MW}$ | = | 28,709,060,400 KW hours or
28.7 billion Kilowatt hours |

State of Florida



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: November 13, 2000
TO: Blanca Bayo, Director, Division of Records and Reporting
FROM: Melinda Butler, Assistant to Commissioner Jacobs *MB*
RE: Intercepted Communications From an Interested Person Received in
Docket No. 000982-EI

This office has received the attached letter from Sarino R. Costanzo. The correspondence has not been viewed or considered in any way by Commissioner Jacobs. Under the terms of the advisory opinion from the Commission on Ethics (issued July 24, 1991 as COE 91-33-JULY 19, 1991), the letter does not constitute an ex parte communication by virtue of the fact that it was not shown to the Commissioner. Given that it is not an ex parte communication, it does not require dissemination to parties pursuant to the provisions of Section 350.042, Florida Statutes. However; in such cases Commissioner Jacobs has requested that a copy of the correspondence and this memo, as a matter of routine, be placed in the correspondence side of the file in this docket.

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10659 NE Quaybridge
Miami, FL 33138

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FLORIDA PUBLIC SERVICE COMMISSION
Commissioner Jacobs

October 13, 2000

Commissioner J. Terry Deason
Chairman Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Dear Mr. Deason:

I am writing you with regard to your meeting of September 26, 2000 (continued to October 16, 2000, at 9:00 A.M.) FPSC Agenda Conference regarding Docket No. 000982-EI. This docket is the petition by Florida Power and Light Company (FPL) for approval of a conditional settlement agreement pertaining to standard offer contracts between FPL and Okeelanta Corporation, and FPL and Osceola Farms. This conditional settlement request proposes to pass on to the FPL customers a settlement of \$222.5 million that FPL would pay as damage for breaching cogeneration contracts with Okeelanta and Osceola. As an affected customer, I strongly oppose passing any of the settlement costs on to FPL's customers; the costs are imprudent and unreasonable, and should be borne strictly by FPL's shareholders, bondholders; and executive officers (if it were possible).

It is astounding that FPL takes the position that since the costs resulted from bad business decisions by FPL's management. FPL must be rewarded for its blunders, it and its stockholders must be guaranteed a profit and the public must be made to pay.

Apparently FPL entered into a contract with the Fanjul's and U.S. Generating to buy the plant's output. FPL accused them of not meeting contract obligations. So why then did FPL stipulate to pay them \$222.5 million to avoid the possibility of a \$350 million judgment being entered against it if a jury forced FPL to live up to the purchase of power from the do-gen plants? Obviously, FPL was legally wrong for if it were in the right, it would not have to pay one red cent.

To compound this monumental error, FPL requested you, the Florida Public Service Commission to approve allowing us the FPL customers to pick up the tab. What a privilege! Naturally, the Florida Public Service Commission, the servant and protector of the people, must not recommend approving FPL's request. The result: if this cost recovery takes place, over a one-year period, it would add \$2.50 per 1,000 kilowatt hours of electricity consumed or about \$2.76 to the average residential monthly bill.

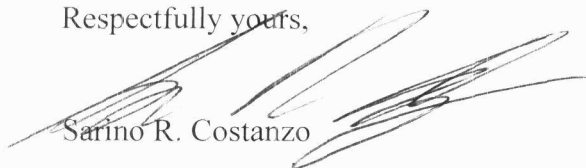
As if this were not enough then, you add the stickier shock that what customers will experience in January could be worse. The fuel recovery will be partly offset by a \$75 to \$100 million refund

Commissioner J. Terry Deason
Chairman Florida Public Service Commission
October 13, 2000
Page 2

brokered last year by FPL, the Public Service Commission and Public Counsel's office. I am therefore, urging that you deny this request by FPL to pass on any portion of the proposed settlement to the ratepayers since the settlement is the result of a bad business decision by FPL. The risk of such bad business decisions should be borne solely by the power company, its stockholders, bondholders, and executive officers (if it were possible).

If you have any questions or need further information, please contact me at (305) 856-7844 (office), (305) 899-1919 (home) or at the address above.

Respectfully yours,



Sarino R. Costanzo

cc: Florida Public Service Commissioner E. Leon Jacobs
Florida Public Service Commissioner Lila Jaber
Florida Public Service Commissioner Braulio L. Baez
Florida Public Service Commission - Office of Public Counsel

RECEIVED-FPSC

Pamela Johnson

From: Dick Durbin
Sent: Monday, November 27, 2000 7:09 AM
To: Pamela Johnson
Subject: RE: Fpl response to my petition

NOV 27 AM 11:39

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Pam,

Mr. Caldwell filed a protest to the PAA on docket 000982-EI. He is asking me for guidance on FPL's response to his petition. Would you please forward this to Cochran Keating ASAP.

Thanks,
 Dick

-----Original Message-----

From: mikec996@gateway.net [mailto:mikec996@gateway.net]
Sent: Thursday, November 23, 2000 11:43 PM
To: Dick Durbin
Subject: Fpl response to my petition

dick - I don't know if you saw the response that FPL filed to my petition. I assume that I do not have to respond to their allegations and that the Commission will hold a hearing on this issue based on the merits of the petition. Please let me know how the Commission will handle this issue - especially FPLs request for Summary Judgement and an expedited response.

I appreciate your help in this matter. I will be home at 305-233-7779 on Friday if you need to reach me and will also check my email.

thanks,

Mike Caldwell

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Agenda Addendum

***** -JOURNAL- ** ***** DATE DEC-01 100 ***** TIME 11:06 *** P.02

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51	OK	005	206	00:02:12	RCV	5748243	NOV-29	09:37	0507C00009030
52	OK	003	207	00:01:26	RCV		NOV-29	10:17	050FC00001070
53	OK	001	208	00:00:31	RCV	904 222 7952	NOV-29	10:25	0502C00001070
54	OK	001	209	00:00:26	RCV		NOV-29	10:30	0507C0000BCD0
55	OK	002	210	00:00:20	RCV	8502244073	NOV-29	10:34	0507C0000BCD0
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65	OK	001	220	00:00:31	RCV	301 578 1965	NOV-29	15:09	050FC0000A070
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89	OK	001/001	245	00:00:14	XMT	94881388	DEC-01	10:29	C107A2000BCC0
90	OK	003	246	00:00:50	XMT	RUTLEDGE LAW	DEC-01	10:35	6107A2000B070
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94	OK	003	250	00:00:52	XMT	KATZ, KUTTER	DEC-01	10:58	6107A2000B070
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-FPSC RAR (850-413-6770) -

***** -FPSC RECORDS REP- ***** 850 413 7118- *****

RAR Official Filing:

12/6/00***11:01 AM*****Matilda Sanders*****1**

Matilda Sanders

2341 - FOF

From: Carolyn Craig
Sent: Wednesday, December 06, 2000 9:25 AM
To: RAR - Orders-Notices
Cc: Patsy White; June Ariola
Subject: order

11pgs

An Order Granting Motion for Summary Final Order has been transferred and is ready to be issued.

Docket No. 000982-EI

File Name: 000982or.wck

WP9

2/2