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BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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: In Re: Fuel and purchased power cost: DOCKET NO. 990001-EI  
: recovery clause and generating :  
: performance incentive factor :  
: \_\_\_\_\_:

PROCEEDINGS: PREHEARING CONFERENCE  
  
BEFORE: COMMISSIONER CLARK (By phone)  
PREHEARING OFFICER  
  
DATE: JANUARY 27, 1999  
  
TIME: COMMENCED AT 3:00 P.M.  
CONCLUDED AT 3:45 P.M.  
  
PLACE: BETTY EASLEY CONFERENCE CENTER  
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P R O C E E D I N G S

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COMMISSIONER CLARK: Hello.

MR. KEATING: Hello.

COMMISSIONER CLARK: Who is this?

MR. KEATING: This is Cochran, Cochran Keating.

COMMISSIONER CLARK: Hi, Cochran, how are you?

Are we in the hearing room, or can everybody hear me?

MR. KEATING: Mostly, yes.

COMMISSIONER CLARK: Mostly yes, okay. Are we ready to start?

MR. KEATING: Yes, ready to start with the notice.

COMMISSIONER CLARK: Please.

MR. KEATING: Pursuant to notice issued January 6th, 1999, a prehearing conference has been set for this time and place for the transmission reconsideration portion of Docket Number 990001-EI, Fuel and Purchase Power Cost Recovery Clause and Generating Performance Incentive Factor.

COMMISSIONER CLARK: Okay. We'll take appearances.

MR. STONE: I'm Jeffrey A. Stone of the law firm of Beggs and Lane, representing Gulf Power Company.

MR. BEASLEY: Commissioner Clark, James D.

1 Beasley of the law firm of Ausley & McMullen, and I'm  
2 representing Tampa Electric Company.

3 MR. MCGEE: James McGee on behalf of Florida  
4 Power Corporation.

5 MR. CHILDS: Matthew Childs with the firm Steel,  
6 Hector & Davis for Florida Power & Light Company.

7 MR. BURGESS: Steve Burgess for the Public  
8 Counsel's Office representing the citizens of the State of  
9 Florida.

10 MS. GORDON KAUFMAN: Vicki Gordon Kaufman of the  
11 McWhirter, Reeves law firm representing the Florida  
12 Industrial Power Users Group.

13 MR. KEATING: And Cochran Keating representing  
14 the Commission staff.

15 COMMISSIONER CLARK: Thank you. Are there any  
16 preliminary matters we need to take up?

17 MR. KEATING: Well, Commissioner Clark, I'm not  
18 sure if we want to take this up as a preliminary matter at  
19 this time. Public Counsel raised a legal issue concerning  
20 the scope of this proceeding, and it's listed on the  
21 prehearing order, the draft prehearing order on Page 12.  
22 I'm not sure if this is something that the Public Counsel  
23 would like to take up at this time or not.

24 MR. BURGESS: That would be fine, Commissioner,  
25 if you want to do it now, or if you'd prefer to wait until

1 we finish up positions on the other issues; we'll do it  
2 either way.

3 COMMISSIONER CLARK: Let's go through the list of  
4 the prehearing order and come back to that.

5 MR. BURGESS: Okay.

6 COMMISSIONER CLARK: Can you hear me okay?

7 MR. KEATING: Yes.

8 COMMISSIONER CLARK: Okay.

9 MR. KEATING: Staff does have a correction on the  
10 first page of the prehearing order on the draft. It's the  
11 date on the third line. It should be January 27th.

12 COMMISSIONER CLARK: Okay.

13 MR. KEATING: And I believe that's the only  
14 correction that staff has to make.

15 COMMISSIONER CLARK: Okay. Are there any changes  
16 through Page 4?

17 MR. KEATING: I'm sorry, we couldn't hear you  
18 there.

19 COMMISSIONER CLARK: Are there any changes  
20 through Page 4?

21 (NO RESPONSE)

22 COMMISSIONER CLARK: No one is indicating any  
23 changes?

24 MR. KEATING: I don't believe there are.

25 COMMISSIONER CLARK: Okay. Any changes to the

1 order of witnesses?

2 (NO RESPONSE)

3 MR. KEATING: It appears that there aren't.

4 COMMISSIONER CLARK: Okay. Basic positions, any  
5 changes to the basic positions?

6 MS. GORDON KAUFMAN: Commissioner Clark, this is  
7 Vicki Kaufman and on Page 6 FIPUG would like to insert  
8 their position, and it is that transmission revenues should  
9 be separated on an energy basis.

10 COMMISSIONER CLARK: Okay. Anyone else?

11 (NO RESPONSE)

12 COMMISSIONER CLARK: Okay. Let's move to Issue  
13 1. Any changes there?

14 MS. GORDON KAUFMAN: On Page 7, FIPUG would like  
15 to insert its position on that issue, and our position is  
16 that this issue remains to be proven at hearing.

17 COMMISSIONER CLARK: Any changes to Issue 3?

18 MS. GORDON KAUFMAN: Commissioner Clark, on Issue  
19 2 we'd like to put in our position on that, which is on the  
20 bottom of Page 8.

21 COMMISSIONER CLARK: I'm sorry, that's where I  
22 was for you initially. Okay.

23 MS. GORDON KAUFMAN: And our position is  
24 transmission revenue should be separated on an energy  
25 basis.

1 MR. BURGESS: Commissioner, this is Steve  
2 Burgess, if I might make a change. I had used the term  
3 "production basis --" or "production separation factor,"  
4 and I would use the term, like to change that to "energy  
5 basis."

6 COMMISSIONER CLARK: Well, would you read me what  
7 your position should read on three then?

8 MR. BURGESS: By using the energy related  
9 separation factor.

10 COMMISSIONER CLARK: Okay.

11 MR. BURGESS: Thank you. And Commissioner, if I  
12 might at this point, that was the position, I think, that  
13 was throughout for the four companies, and that same change  
14 needs to be made on each as applied to the respective  
15 companies.

16 COMMISSIONER CLARK: Okay.

17 MR. CHILDS: Commissioner, this is Matt Childs,  
18 at that point, if I could, I do not understand the  
19 difference between the wording of Issue 2 and Issue 3 and  
20 4. We have separated in issue -- the word "separated" in  
21 Issue 2, and we have the word "allocated" in Issue 3, and I  
22 don't understand the distinction.

23 COMMISSIONER CLARK: Can staff respond to that?

24 MR. KEATING: Yes, just a second.

25 (DISCUSSION AMONG STAFF OFF THE RECORD)

1           COMMISSIONER CLARK: Staff, it doesn't strike to  
2 me that they are intended to mean anything different.

3           MR. KEATING: Yeah, I think I would agree, but  
4 I'm waiting for an opinion from our technical staff.

5           COMMISSIONER CLARK: Okay.

6           MR. KEATING: Commissioner Clark, if the parties  
7 would agree, I think we can change the wording of Issue 2.  
8 Instead of using the word "separated," we can use  
9 "allocated."

10          COMMISSIONER CLARK: Is there any objection to  
11 that?

12          (NO RESPONSE)

13          COMMISSIONER CLARK: All right. We'll make that  
14 change.

15          Now we are on -- I guess we are through with  
16 Issue 3, or are we on Issue 3?

17          MR. KEATING: I think we are up to Issue 3 now.

18          COMMISSIONER CLARK: Okay. Any changes?

19          MS. GORDON KAUFMAN: Yes, Commissioner. FIPUG  
20 has the same position on Issue 3 and 4 and 5 that I related  
21 on Issue 2.

22          COMMISSIONER CLARK: And that's the same for  
23 OPC?

24          MR. BURGESS: That's correct, Commissioner.

25          COMMISSIONER CLARK: Okay. Anyone else have a



1 change to 3, 4, 5 or 6?

2 (NO RESPONSE)

3 MR. CHILDS: Does staff have a position on those  
4 issues?

5 MR. KEATING: The staff's position is still no  
6 position at this time, and --

7 MR. CHILDS: Well, the reason I ask is we have a  
8 witness -- Commissioner, this is Matt Childs again. We  
9 have a witness, we have approximately a page and a half of  
10 testimony, and I think that we have agreement with FIPUG  
11 and OPC; and if possible -- if we don't need to bring that  
12 witness to a hearing, we would certainly appreciate not  
13 doing that.

14 MR. KEATING: Well, Commissioner Clark, I think  
15 staff could agree. We still have no position, but I think  
16 that we may be able to, I guess to ease FPL's concerns, by  
17 stipulating the testimony and the deposition transcript and  
18 discovery responses we received from Florida Power & Light  
19 into the record. I don't think that we will have any cross  
20 examination for Florida Power & Light's witness.

21 MR. CHILDS: That's acceptable.

22 COMMISSIONER CLARK: Did you say that was  
23 acceptable?

24 MR. CHILDS: I did.

25 COMMISSIONER CLARK: Okay. So staff will

1 maintain no position at this time, but your witness who is  
2 going to be presenting testimony on that, we will stipulate  
3 his testimony into the record along with his deposition.  
4 And what else, staff?

5 MR. KEATING: We'd also like to move into the  
6 record the interrogatory responses, and I'm not sure if  
7 there are any requests for production responses.

8 COMMISSIONER CLARK: All right.

9 MR. KEATING: I don't believe there are.

10 COMMISSIONER CLARK: Would you make sure that you  
11 let Mr. Childs know what you want to stipulate in the  
12 record, and then when that's resolved, we will indicate  
13 that his testimony and those items will be stipulated into  
14 the record?

15 MR. KEATING: Yes.

16 COMMISSIONER CLARK: Okay. All right. Now we  
17 are on the legal issue that Public Counsel is concerned  
18 with; is that correct?

19 MR. BURGESS: Commissioner, this is Steve  
20 Burgess. The problem that I have is that Florida Power  
21 Corporation has taken the position, I think both in their  
22 position on the prehearing order and in the -- in  
23 testimony, that supporting the proposition that certain  
24 energy sales transmission related revenues that are  
25 separated in from certain economy energy sales should go

1 through the company's base rates, should be credited to the  
2 company's base rates. And my understanding of the order  
3 from which we are taking reconsideration was that that  
4 order said -- basically dealt with the proposition that to  
5 the extent that it dealt with at all the issue of whether  
6 any revenue credit should go through the base rates as  
7 opposed to fuel clause, or capacity clause, it clearly  
8 stated that it would go through fuel clause and said  
9 nothing about any revenue being justified to be credited  
10 into base rates. And Florida Power Corp in its  
11 reconsideration asked for the Commission to reconsider its  
12 determination on the proper separation factor, whether it  
13 should be a transmission related or energy related, but did  
14 not raise anything that I recall. I don't have right in  
15 front of me the motion, but I've looked through it, and I  
16 couldn't find anything where they've raised the issue of  
17 any revenues being credited into base rates. So I think to  
18 take the position, attempting to justify the propriety of  
19 crediting any transmission revenues into base rates based  
20 on energy sales is an expansion of the motion for  
21 reconsideration and should be prohibited.

22 I also -- I don't know where that would leave us  
23 with regard to the issue. My reading of the orders in the  
24 past that have dealt with the issue of economy energy sales  
25 indicate that any revenue received on non-separated sales

1 would be credited into the energy clause, and my  
2 understanding through the deposition of Florida Power  
3 Corporation witness is that Florida Power Corporation  
4 believes it's proper to credit these transmission revenues  
5 after they've been required to be separated by FERC to  
6 credit them into base rates, and I think that's improper,  
7 and I certainly don't think it was something that was  
8 approved through any of the Commission's action with regard  
9 to this particular proceeding and seems to be, at least  
10 from the little bit of research that I've done, seems to be  
11 directly contrary to what the Commission has ruled in the  
12 past in fuel adjustment.

13 COMMISSIONER CLARK: Hold on just a second and  
14 then I'll hear from you, Mr. McGee. Go ahead, Mr. McGee.

15 MR. MCGEE: Good afternoon, Commissioner. This  
16 is Jim McGee. And let me comment briefly on Mr. Burgess'  
17 argument. I think it somewhat mischaracterizes Florida  
18 Power's position. Under Issue 3, and really consistent  
19 with Florida Power's testimony in the initial fuel  
20 adjustment docket that led to the order under  
21 reconsideration, in its petition for reconsideration and in  
22 its prehearing statement, Florida Power has maintained that  
23 because of FERC Order 888, which was the impetus for this  
24 proceeding, that a distinction needs to be made between  
25 what we refer to as existing contracts and new contracts.

1 The existing ones were those that were in effect before 888  
2 was issued; new ones are those that became effective  
3 afterwards.

4 Both kinds of agreement are still in effect and  
5 transactions take place under them. Florida Power has  
6 said, and I'm reading from our position under Issue 3, that  
7 where revenues have simply been unbundled into generation  
8 and transmission components, the appropriate jurisdictional  
9 portions of both generation and transmission components of  
10 economy sales should be treated as a credit to the retail  
11 customer's fuel charge. Florida Power went on, though, to  
12 make the distinction between those transactions under  
13 existing contracts and new ones that should come along  
14 later on where a separate charge is added on top of the  
15 revenues that would otherwise be collected, and that those  
16 need to be treated consistent with the way they've always  
17 been treated for ratemaking purposes before the Commission  
18 as a credit in setting base rates.

19 Florida Power has not attempted to change its  
20 position or take a position other than the one that it  
21 advocated when it asked the Commission to reconsider the  
22 earlier order from the fuel adjustment clause. So I think  
23 we are just -- in describing how the credits need to be  
24 made to the fuel adjustment clause, it's essential that we  
25 make this distinction to differentiate two distinctly

1 different kinds of transactions based on the distinction  
2 that actually comes from FERC Order 888 to begin with. So  
3 I'm really not sure if Mr. Burgess thinks we are changing  
4 our position. If that's the case, that's not correct. And  
5 if he is not indicating that we are changing our position,  
6 then we are being very consistent from what we have  
7 advocated from the outset of the raising of this issue  
8 about a year and a half ago in the fuel adjustment clause.  
9 Thank you.

10 COMMISSIONER CLARK: Staff, do you have any  
11 comment?

12 MR. KEATING: Commissioner Clark, my -- I guess  
13 my opinion is based on going back and taking a look at the  
14 motion for reconsideration and our order on the motion for  
15 reconsideration. In Florida Power Corporation's motion for  
16 reconsideration, they requested that the original order be  
17 revised, and it's, quote, to provide for the jurisdictional  
18 separation of transmission revenues from economy sales to  
19 be credited to the fuel clause using transmission related  
20 separation factors.

21 The original order had already provided for these  
22 revenues to be credited to the fuel clause, so I think the  
23 only issue left from Florida Power Corporation's request  
24 was the appropriate allocation factor. I couldn't find  
25 anything in the Commission's order granting the motion for

1 reconsideration that would suggest the Commission intended  
2 to reconsider its finding --

3 COMMISSIONER CLARK: And move it into base rates?

4 MR. KEATING: -- that these revenues should be  
5 credited to the fuel clause. So it's my opinion -- it's  
6 staff's opinion that what Florida Power Corporation is  
7 doing may go outside the scope of this proceeding.

8 COMMISSIONER CLARK: Who is assigned to this  
9 proceeding and when are we holding it?

10 MR. KEATING: Excuse me?

11 COMMISSIONER CLARK: Who is assigned to this  
12 docket, and when is the hearing?

13 MR. KEATING: The hearing is scheduled for  
14 Friday, February 12th, and Judy Harlow and David Wheeler  
15 and Todd Bohrman.

16 COMMISSIONER CLARK: I meant commissioners.

17 MR. KEATING: I'm sorry. You want to know the  
18 panel.

19 COMMISSIONER CLARK: Yes.

20 MR. KEATING: I believe it's Commissioners Garcia  
21 and Jacobs.

22 COMMISSIONER CLARK: Okay.

23 MR. KEATING: Along with yourself.

24 COMMISSIONER CLARK: Mr. Burgess, you may be  
25 right about this, but my thought in wanting to have the

1 reconsideration of the order was it was not clear to me  
2 just how with the implementation of Order 888 that it was  
3 most appropriate to charge the transmission revenues, and  
4 I'm inclined at this point to just go forward and  
5 reconsider it. To the extent Florida Power Corporation  
6 wants to make that kind of argument, I hope you're in a  
7 position to respond to it.

8 MR. BURGESS: Okay. But let me see if I  
9 understand. So the issue now is that the Commission is  
10 reconsidering whether its decision to require this -- these  
11 transmission revenues to be credited into the fuel  
12 adjustment or capacity clauses? I didn't -- I guess  
13 that's -- My question is whether that's what the effect  
14 of your ruling is because that was the, what the intention  
15 of my objection was, was for the Commission to state  
16 clearly it had no intention to revisit the issue of whether  
17 any revenue credit should go through base rates as opposed  
18 to the fuel clause.

19 COMMISSIONER CLARK: And staff, your position is  
20 that was not part of our reconsideration?

21 MR. KEATING: Yes, it's our position that this  
22 docket deals only with the broker sales, and I think that  
23 the new transactions that the Florida Power Corporation is  
24 referring to, the post Order 888 transactions, may not be  
25 broker transactions.



1 MS. GORDON KAUFMAN: Commissioner Clark.

2 MR. KEATING: Commissioner -- I'm sorry, go  
3 ahead.

4 COMMISSIONER CLARK: Ms. Kaufman.

5 MS. GORDON KAUFMAN: This is Vicki Kaufman. I  
6 just wanted to jump in and give you my two cents if it's  
7 all right.

8 COMMISSIONER CLARK: Yes.

9 MS. GORDON KAUFMAN: We support Public Counsel's  
10 position on this, and I have the order on reconsideration  
11 in front of me, and on Page 8 I think the -- excuse me,  
12 Page 6, the Commission clearly set out what we were going  
13 to reconsider, and it says toward the bottom: "In sum, FPC  
14 has met the standard for reconsideration of Commission  
15 orders. FPC has adequately demonstrated that there may be  
16 mistake or inadvertence in that portion of the order  
17 relating to jurisdictional separation of broker  
18 transmission."

19 And it was my understanding that that was the  
20 only issue that we were going to take up on  
21 reconsideration, and as Mr. Burgess said, we weren't going  
22 to be -- no one asked you to and we weren't going to be  
23 discussing changing the crediting from the fuel clause to  
24 base rates.

25 COMMISSIONER CLARK: And would that, in your

1 opinion, require you all to have witnesses to respond to  
2 that?

3 MS. GORDON KAUFMAN: If we were going to consider  
4 that issue?

5 COMMISSIONER CLARK: Yeah.

6 MS. GORDON KAUFMAN: At this --

7 COMMISSIONER CLARK: At this point the testimony  
8 does not cover that?

9 MS. GORDON KAUFMAN: No, ma'am, FIPUG has not  
10 filed any testimony in this case based on what we thought  
11 the issues were.

12 COMMISSIONER CLARK: Okay.

13 MR. BURGESS: Commissioner, if I might, just one  
14 more thing, unless there's something I'm missing in Power  
15 Corp's own motion and that where it sought reconsideration,  
16 it said, "Seek Commission to revise its decision set forth  
17 to provide for the jurisdictional separation of  
18 transmission revenues for economy sales to be credited the  
19 fuel clause using transmission related separation factors."  
20 So I mean even in its motion which started the whole thing  
21 off, Power Corp was limiting the issue to the  
22 jurisdictional separation and not to whether the -- any of  
23 the revenues would be credited to the base rates as opposed  
24 to fuel clause.

25 COMMISSIONER CLARK: Let me ask, is Power

1 Corporation the only one who takes the position that they  
2 might properly be credited to base rates?

3 MS. GORDON KAUFMAN: I think so, Commissioner  
4 Clark.

5 COMMISSIONER CLARK: Okay. Let me ask staff  
6 another thing. If we limit it to reconsideration, does  
7 this mean in, say, another proceeding they couldn't raise  
8 the issue that it's more properly done a different way?

9 MR. BURGESS: Commissioner, with regard as to  
10 whether this was the position of Power Corp only, my  
11 recollection was that during the case TECO also sought to  
12 have transmission revenues credited into base rates. My  
13 understanding was that the Commission rejected that and  
14 that it wasn't sought to be reconsidered. So in  
15 reconsideration, as I understand it, Power Corp is the only  
16 one taking that position, but --

17 COMMISSIONER CLARK: Okay. So you're saying,  
18 Mr. Burgess, the matter has been settled?

19 MR. BURGESS: My understanding is that it was  
20 settled and it was never even sought for reconsideration.

21 COMMISSIONER CLARK: Mr. McGee.

22 MR. MCGEE: Yes. Commissioner Clark, we are  
23 dealing with a little bit of confusion here. The issue  
24 that Florida Power asked to have reconsidered by the  
25 Commission had to do with the underlying question that came

1 about from Order 888, and that had to do with this somewhat  
2 unusual situation where an existing stream of revenues, to  
3 use their phrase, unbundled so that we now had a  
4 transmission component and a generation component but no  
5 additional revenues. And the question logically came  
6 about: How do you separate that and credit it to the fuel  
7 clause? And we have not changed our position on that. We  
8 think those revenues should be credited to the fuel clause.  
9 We are in agreement with Mr. Burgess. We simply wanted to  
10 point out the distinction that for other kinds of  
11 transactions, that where the issue raised by 888 is no  
12 longer in question, where we are dealing with transactions  
13 that come about under the new world after 888, that those  
14 would be treated just like -- those transmission revenues,  
15 excuse me, would be treated just like transmission revenues  
16 have always been treated.

17 COMMISSIONER CLARK: Let me ask you a question.

18 MR. MCGEE: We simply didn't want our statement  
19 to be too broad. We wanted to address the issue that was  
20 raised by 888 and the Commission raised in the fuel  
21 adjustment hearing, that's all.

22 COMMISSIONER CLARK: But for broker sales, which  
23 is what I understand we are concerned with now; is that  
24 what we're concerned with?

25 MR. MCGEE: Yes, we are concerned with --

1 COMMISSIONER CLARK: Broker sales?

2 MR. MCGEE: Yes.

3 COMMISSIONER CLARK: And you agree that it should  
4 go through the energy clause?

5 MR. MCGEE: Those unbundled transmission revenues  
6 that were required by Order 888 should go through the fuel  
7 adjustment clause, even though they are characterized as  
8 transmission. Normally --

9 COMMISSIONER CLARK: Okay. Then it sounds like  
10 there is no disagreement actually. Mr. Burgess?

11 MR. BURGESS: Yeah, I think that's correct, and I  
12 think the problem is that the position now taken by Power  
13 Corp in this case deals with the second issue, that which  
14 was not reconsidered; and that is, which the Commission,  
15 frankly, perhaps did not directly address in the primary  
16 order.

17 COMMISSIONER CLARK: Okay.

18 MR. BURGESS: And so it strikes me that -- I mean  
19 whether it's consistent with the testimony put forth by  
20 Power Corp during the hearing is wholly irrelevant. The  
21 question is whether it is something that was taken on  
22 reconsideration for which the Commission said, yes, we find  
23 this to be a proper subject of reconsideration and we will  
24 hold a hearing on that.

25 COMMISSIONER CLARK: Okay. Staff, what do I do

1 if I agree that we shouldn't consider the revenue credit to  
2 base rates when it's other than a broker sale?

3 MR. KEATING: Did you say should or shouldn't?

4 COMMISSIONER CLARK: Shouldn't consider it in  
5 this case. Then I drop it as a legal issue or --

6 MR. KEATING: Oh, if you --

7 COMMISSIONER CLARK: I grant their motion.

8 MR. KEATING: If you accept Public Counsel's  
9 arguments?

10 COMMISSIONER CLARK: Yes.

11 MR. KEATING: I believe that that issue would be,  
12 would still be live, it would still be a live issue for  
13 another proceeding. I don't think you're foreclosing Power  
14 Corporation's ability to discuss that in another  
15 proceeding. I think that part of their position there on  
16 Issue 3 that is in dispute, that the second half of it  
17 there, in our opinion, goes to non-broker sales which  
18 wouldn't be within the scope of this proceeding.

19 COMMISSIONER CLARK: All right.

20 MR. MCGEE: I don't have any disagreement with  
21 that. I mean that was an attempt just to be clear in what  
22 we were saying. If it would help the concern that  
23 Mr. Burgess raised to just indicate that the -- that our  
24 position relates to the unbundled transmission revenues  
25 that arise from Order 888 and leave it at that, I don't

1 think that changes our position. And if the phrasing  
2 causes some additional comfort on Mr. Burgess' part, I have  
3 no problem with that.

4 MS. GORDON KAUFMAN: Commissioner Clark, this is  
5 Vicki Kaufman. I think that we are here on reconsideration  
6 of an issue that I'll admit was pretty confusing, and I  
7 think that this position of Florida Power Corp's and  
8 Mr. Slusser's testimony on it ought to be stricken if it's  
9 not going to be taken up; otherwise, I think, you know,  
10 we'll have just as much confusion at the conclusion of the  
11 proceeding.

12 COMMISSIONER CLARK: Staff, I'm trying to figure  
13 out if I agree with Public Counsel that it is not a matter  
14 that should be taken up within the scope of this  
15 reconsideration. What do I do, grant Public Counsel's  
16 motion?

17 MR. BURGESS: Commissioner, this is Steve  
18 Burgess. May I try to address that?

19 COMMISSIONER CLARK: Yes.

20 MR. BURGESS: I think really about all that could  
21 be done within the context of this motion is a removal of  
22 the last two and a half lines of Power Corp's position on  
23 Page 9 of the draft prehearing statement; that is, that  
24 part that begins with the word "and the jurisdictional  
25 portion;" and I think Mr. McGee has indicated that he has

1 no problem with that. And there's similar language in  
2 Mr. Slusser's testimony that I've identified on Page 5,  
3 Lines 7 and 8 that reflects perhaps almost identical  
4 language.

5 COMMISSIONER CLARK: Okay. So Mr. McGee has  
6 agreed to drop that from his position and we'll also strike  
7 it from his testimony?

8 MR. MCGEE: Yes. Right. It was simply the  
9 point I made before, that we were just trying to  
10 differentiate between the kind of transmission revenues we  
11 were talking about in this proceeding and other  
12 transmission revenues.

13 COMMISSIONER CLARK: Okay.

14 MR. MCGEE: So that there wouldn't be confusion.  
15 If that is, in fact, adding to it, then I don't think it  
16 changes the impetus of our position.

17 COMMISSIONER CLARK: All right. Well, we'll take  
18 it out of the issue, and we'll take it out of -- strike it  
19 from the testimony, and then we can delete that proposed  
20 legal issue.

21 MR. BURGESS: Thank you, Commissioner.

22 MR. KEATING: Commissioner Clark, staff would  
23 just like to clarify exactly what lines that we'd be  
24 striking from the testimony.

25 COMMISSIONER CLARK: Okay.



1 MR. KEATING: I think there is a little confusion  
2 on our part.

3 COMMISSIONER CLARK: Mr. Burgess.

4 MR. BURGESS: I will have to find a copy of  
5 Mr. Slusser's testimony. In my position I had cited  
6 Mr. Slusser's testimony, Page 5, Lines 7 and 8, but I don't  
7 have Mr. Slusser's testimony at hand.

8 MR. KEATING: I believe it would -- I believe the  
9 language that's been removed from Florida Power  
10 Corporation's position on Issue 3 is identical to language  
11 in the testimony at Page 5 on, I believe, lines 11 through  
12 13 or beginning at 8 through 13.

13 COMMISSIONER CLARK: I'll tell you what, we'll  
14 strike it from the prehearing order, and then I'll rely on  
15 you all to reach agreement as to what in the testimony  
16 should be stricken.

17 MR. KEATING: Okay.

18 COMMISSIONER CLARK: Is there anything else we  
19 need to take up at this time?

20 MR. STONE: Commissioner Clark, this is Jeff  
21 Stone on behalf of Gulf. We would like to explore the  
22 possibility of stipulating Mr. Howell's testimony into the  
23 record and excusing him from attending the hearing. It is  
24 my understanding that the parties are all in agreement on  
25 that, and if that can be done, we would like to show that

1 as of record. I think that would carry with it the  
2 introduction of his deposition testimony and any late-filed  
3 exhibits.

4 COMMISSIONER CLARK: I'll tell you what,  
5 Mr. Stone, I'm a little reluctant to do that for this  
6 reason: I have found this issue confusing, and I'm just  
7 wondering if it would be worthwhile to have him there in  
8 case we have any questions. Is Mr. Howell the only one  
9 you're not going to have at the hearing?

10 MR. STONE: That is correct.

11 COMMISSIONER CLARK: And what does his testimony  
12 cover?

13 MR. STONE: His testimony covered the FERC's  
14 requirement that transmission -- non-firm transmission  
15 revenues be reflected in transmission rates. His testimony  
16 also reflects the fact that Gulf, as part of Southern, has  
17 a transmission tariff that is being -- is in the process of  
18 being stipulated to before the FERC that would not have the  
19 annual adjustment to transmission rates that we believe was  
20 originally contemplated by FERC 888; and as a result, we --  
21 I mean his testimony reflects that discussion, and I don't  
22 believe anybody has any cross examination for him. But he  
23 basically just tracks what FERC 888 speaks to with regard  
24 to the allocation -- or, that is, the crediting of non-firm  
25 transmission revenues in the form of firm transmission

1 rates, and also he talks about the history of Southern's  
2 transmission tariff.

3 COMMISSIONER CLARK: Are the other witnesses  
4 going to be there?

5 MR. STONE: We have one other witness who will be  
6 there.

7 COMMISSIONER CLARK: And FPL's and FPC's witness  
8 will be there?

9 MR. STONE: I think you've already excused FPL's  
10 witness?

11 MR. MCGEE: FPC's witness will be present?

12 COMMISSIONER CLARK: I did excuse FPL's?

13 MR. STONE: That was my understanding of what  
14 Mr. Childs had asked earlier and you had granted.

15 MR. KEATING: Yes, that was my understanding,  
16 Commissioner Clark. This is Cochran Keating.

17 COMMISSIONER CLARK: I remember it now, sorry.  
18 I'm not thinking too well, I'm sorry.

19 I'll tell you what, I will grant that request  
20 also, but I would ask staff to let the other commissioners  
21 know that they are being excused and if they do want  
22 them there, they should let staff know by Friday of next  
23 week.

24 MR. KEATING: Right. That is something that I  
25 did want to bring up, and thank you for bringing it up. We

1 don't want to cut the other commissioners chance to cross  
2 examine witnesses.

3 COMMISSIONER CLARK: Okay. Anything else we have  
4 to take up?

5 MR. KEATING: I think the only thing left in the  
6 draft prehearing order was possibly exhibits. I don't know  
7 if we covered those or not.

8 COMMISSIONER CLARK: Are there any changes to the  
9 exhibit list?

10 (NO RESPONSE)

11 MR. KEATING: I don't believe so.

12 COMMISSIONER CLARK: Okay. Anything else we need  
13 to take up?

14 MR. STONE: Just as a matter of information,  
15 we will be refileing Ms. Ritenour's testimony. There's  
16 one substantive change that we made that was discussed  
17 at the deposition with all the parties to update and use  
18 a more correct factor in the analysis, and the numbers  
19 have already been revealed to staff and the parties at  
20 deposition, and we are just conforming her testimony to  
21 that discussion at the deposition. We will also be  
22 correcting her name to reflect her current marital  
23 status.

24 COMMISSIONER CLARK: Okay. Well, thank you all  
25 very much.

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MR. KEATING: Thank you.

(WHEREUPON, THE PREHEARING CONFERENCE WAS  
ADJOURNED)

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CERTIFICATE

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STATE OF FLORIDA     )  
COUNTY OF LEON     )

I, NANCY S. METZKE, Certified Shorthand Reporter and Registered Professional Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 29th day of January, 1998.

\_\_\_\_\_  
NANCY S. METZKE, CCR, RPR

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