

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

IN RE: DOCKET NO. 010827-EI - Petition by Gulf Power
Company for approval of purchased power
arrangement regarding Smith Unit 3 for cost
recovery through recovery clauses dealing with
purchased capacity and purchased energy.

BEFORE: CHAIRMAN E. LEON JACOBS, JR.
COMMISSIONER J. TERRY DEASON
COMMISSIONER LILA A. JABER
COMMISSIONER BRAULIO L. BAEZ
COMMISSIONER MICHAEL A. PALECKI

PROCEEDINGS: AGENDA CONFERENCE

ITEM NUMBER: 12A

DATE: Tuesday, June 25, 2001

PLACE: 4075 Esplanade Way, Room 148
Tallahassee, Florida

REPORTED BY: MARY ALLEN NEEL
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08052 JUN 29 2001

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PARTICIPANTS:

BOB ELIAS, on behalf of the Commission Staff.
JUDY HARLOW, Commission Staff.
ROGER HOWE, on behalf of the Citizens of the
State of Florida.
JOSEPH MCGLOTHLIN, on behalf of the Florida
Industrial Power Users Group.
MARLENE STERN, on behalf of the Commission
Staff.
JEFFREY STONE, on behalf of Gulf Power Company.
ROB VANDIVER, on behalf of the Citizens of the
State of Florida.

STAFF RECOMMENDATION

ISSUE 1: Should Gulf Power Company's (Gulf) Motion
for Expedited Treatment and Request for Procedural
Schedule regarding Docket No. 010827-EI be approved?
RECOMMENDATION: No. Staff recommends that an
October hearing would: (1) allow interested persons a
reasonable period of time to prepare for hearing; (2)
allow adequate time for the necessary discovery; (3)
address Gulf's concerns; and, (4) provide time for
Gulf to compete negotiations with Southern Power.
Setting a schedule with a hearing in the October time
frame does not preclude a settlement or disposition by
proposed agency action if the parties reach agreement
or if it appears that the issues have been resolved.

ISSUE 2: Should this docket be closed?
RECOMMENDATION: No. This docket should not be
closed.

PROCEEDINGS

1
2 CHAIRMAN JACOBS: We're back on the record.
3 We're on Item 12A.

4 MS. HARLOW: Commissioners, Item 12A is
5 staff's recommendation for Gulf's Motion for
6 Expedited Treatment on the determination of cost
7 recovery for a purchased power agreement
8 regarding Smith Unit 3. This purchased power
9 agreement anticipates the transfer of Smith 3 to
10 Southern Power Company, a subsidiary of Southern
11 Company.

12 Gulf received a need determination for
13 Smith 3 in August '99, and the unit was
14 certified by the Power Plant Siting Board July
15 28, 2000. Smith 3 is currently under
16 construction, with an estimated June 2001
17 in-service date. Excuse me. That's 2002.

18 On June 8th, Gulf filed a petition seeking
19 approval for cost recovery through the recovery
20 clauses for a purchased power arrangement with
21 Southern Power. Gulf simultaneously filed a
22 purchased power agreement and a motion for
23 expedited treatment, which we will address
24 today.

25 As outlined in staff's recommendation,

1 staff believes Gulf's petition involves issues
2 which are beyond the scope of a typical
3 purchased power arrangement, because it involves
4 the transfer of Smith 3. Therefore, reasonable
5 time for discovery must be allowed to determine
6 the impact on ratepayers. Staff also believes
7 that no good cause has been shown by Gulf
8 according to the schedule proposed in Gulf's
9 motion.

10 And June 19th, staff held a meeting with
11 Gulf and the parties to discuss Gulf's petition.
12 Staff proposed several options which we believed
13 would accommodate Gulf's concerns, while
14 allowing reasonable time for discovery.

15 Staff would like to emphasize that on
16 Friday, June 22nd, this past Friday, Gulf filed
17 a revised purchased power agreement with a
18 request for confidentiality on this document.
19 Staff has not been notified whether revised
20 testimony will be submitted.

21 Staff and representatives of the company
22 and other parties are available for any of your
23 questions.

24 COMMISSIONER DEASON: Was that a final
25 agreement that was filed Friday, or is this one

1 that's still being discussed?

2 MS. HARLOW: We would assume it's a final
3 agreement.

4 Commissioner Deason, there are several
5 other agreements that have to be -- that are
6 still to be reached by Gulf and Southern Power,
7 and as far as we know, they have not been
8 reached yet. They have not been filed yet. For
9 example, one document would involve the transfer
10 of the asset. Another document would involve
11 the operations of the assets, and a further
12 document would involve the interconnection
13 agreement.

14 When we were in the meeting on June 19th,
15 we asked Gulf when they thought these documents
16 would be available for us to review, and they
17 could not guarantee that those documents would
18 be available prior to their proposed June 27th
19 -- July 27th hearing date.

20 CHAIRMAN JACOBS: Mr. Stone?

21 MR. STONE: Mr. Chairman, thank you. Good
22 afternoon, Commissioners. As you know, I'm
23 Jeffrey A. Stone with the Pensacola law firm of
24 Beggs & Lane, and I'm here representing Gulf
25 Power Company.

1 I will be speaking to Gulf's motion to
2 expedite, which is the sole matter before the
3 Commission today. I'm also prepared to answer
4 your questions, and if we get into a sufficient
5 level of detail that I need assistance, we have
6 brought a number of people from the company, in
7 an effort to be sure that we don't leave
8 reasonable questions unanswered today.

9 We recognize that our petition does
10 represent a different approach than the
11 traditional treatment of a life-of-plant rate
12 base treatment for new power capacity
13 constructed by a utility. And as a result of
14 that, we acknowledge that we have a burden in
15 conjunction with our request for expedited
16 treatment to take extraordinary steps to be sure
17 that reasonable questions and important
18 questions are answered in a timely fashion.
19 Part of that effort we have undertaken thus far
20 is to ensure hand delivery of the documents as
21 much as possible, including the original
22 petition, which was hand delivered to the
23 parties who are participants in our stipulation
24 under which we're operating today.

25 We have worked out a nondisclosure

1 agreement with the representatives for FIPUG,
2 and Mr. McWhirter, Mr. McGlothlin's partner,
3 should have a copy of the purchased power
4 agreement today in his possession after having
5 signed that nondisclosure agreement on Friday.
6 We are prepared to hand deliver copies of the
7 PPA to Mr. McGlothlin as soon as he signs such a
8 nondisclosure agreement. He was not available
9 on Friday, is my understanding.

10 We've also made arrangements to get a copy
11 of the PPA to the Office of Public Counsel
12 pursuant to a request for production, and it's
13 subject to the confidentiality provisions under
14 our request for confidential treatment. And it
15 is my understanding that that document was hand
16 delivered to the Office of Public Counsel on
17 Friday.

18 With regard to staff's concern about the
19 change in the document on Friday, there was one
20 scrivener's error that was changed, and it does
21 not affect anything else in the document. And
22 we'll be happy to address that when it becomes
23 time on the merits. But it will not result in
24 any change in testimony.

25 I mentioned that we have presented a

1 different approach to traditional rate base
2 treatment, life-of-plant treatment for
3 generating capacity by this petition. It is
4 different in that respect only because we are
5 involved in an affiliate transaction. It is not
6 different in the sense that purchased power
7 agreements have been considered by this
8 Commission and passed through to customers
9 through the purchased power capacity cost
10 recovery clause for many years now.

11 What we are asking for through our petition
12 is for you to approve a purchased power
13 arrangement with our sister wholesale operating
14 company, Southern Power, and upon approval of
15 that purchased power agreement, that it be
16 treated the same as any other purchased power
17 agreement, that the capacity charges go through
18 the capacity cost recovery clause and the energy
19 charges go through the fuel and purchased energy
20 cost recovery clause. That's, in essence, what
21 we've asked.

22 And because of the different nature,
23 because it is a plant that was certificated as
24 Gulf Power building it and we are proposing that
25 we transfer it to our affiliate and take the

1 power back through a purchased power agreement,
2 we felt it important to present it to you
3 outside the normal structure of the purchased
4 power and capacity cost recovery clause docket
5 so that you would have an opportunity to
6 consider it. But we also felt that it was
7 important that we need to know your answer as
8 soon as possible, because we do need rate
9 recovery for this unit, and if we are not
10 allowed to go through this different approach,
11 then we have to go through a more traditional
12 approach with the associated time frame that
13 goes with that. We present this as an option to
14 you.

15 COMMISSIONER DEASON: Mr. Stone, when would
16 you have to initiate a rate case if you were
17 going to take that route as opposed to a
18 purchased power arrangement with it being
19 recovered through a capacity clause?

20 MR. STONE: Based on the statutory clock,
21 and assuming that we need rates in effect as of
22 the commercial in-service date of June 1, 2002,
23 I think the latest that we could file a rate
24 case and be assured of having a final decision
25 in time for that date would be the first of

1 September.

2 We are presenting this option to you of a
3 PPA for this capacity because we believe that
4 the Commission has asked for such new
5 approaches. Based on the comments of others,
6 particularly Governor Jeb Bush, we also believe
7 that such new approaches are envisioned for this
8 state. And so we are responding to that
9 dialogue that we've heard, particularly over the
10 last 12 months. And we are presenting this as
11 an option to the Commission. Clearly, the rate
12 base, life-of-plant option is something that
13 could traditionally be pursued and something
14 that, if this option is not approved by you, we
15 will be pursuing.

16 But that brings me to the reason we are
17 here today. In order for the company to follow
18 this option of the PPA approach, it is important
19 that Gulf have a final decision before August in
20 order to preserve its options, in order to
21 preserve its financial integrity.

22 We mentioned in our petition the fact that
23 the projection deadline is in September. And it
24 makes sense that with this type of approach for
25 this particular unit, that we give you a chance

1 to review it prior to actually incorporating it
2 in our projections.

3 That fact is consistent with the direction
4 that the staff urged on the company last year at
5 the fuel and cost recovery hearings, where they
6 were asking that projections be filed as soon as
7 we knew things. They were trying to move up the
8 deadlines to give more time for discussion and
9 understanding so that we would not pushing all
10 these things into the fuel hearings. And so
11 that approach is certainly consistent, and
12 that's what we've tried to follow in this
13 proceeding.

14 But we also have other --

15 COMMISSIONER DEASON: Mr. Stone, I hate to
16 interrupt, but staff was urging you for this
17 unit specifically, or for --

18 MR. STONE: No, sir.

19 COMMISSIONER DEASON: -- any purchased
20 power agreement which you enter into, they want
21 as much advance notice --

22 MR. STONE: No, sir. And I didn't mean to
23 imply that they spoke to us about this
24 particular unit. It was a generic proceeding, a
25 generic issue in last year's fuel and capacity

1 cost recovery hearing about trying to change the
2 calendar for filing of true-up testimony and
3 projection testimony and all those other
4 filings, in order to get more time between the
5 time of the filings and the time of the
6 hearing. And what I'm suggesting to you is that
7 our approach of presenting this particular
8 purchased power arrangement in June rather than
9 waiting until September is consistent with that
10 goal.

11 But I also point out to you that there are
12 other factors that affect the timing of whether
13 or not this purchased power arrangement will be
14 ultimately approved. We believe that the
15 Florida Public Service Commission should be
16 primary, because you are making the decisions
17 that affect our retail customers. And this is,
18 by and large, a retail issue. But after you
19 have ruled on this docket, assuming that you
20 approve it, we then have to go to the FERC and
21 gain their approval of the document, and we need
22 to have the time frame to be able to do that.
23 It is our hope that if we meet the deadline
24 proposed in our motion to expedite that we would
25 be in a position to have the FERC's final ruling

1 before the November hearings when we would
2 actually be setting the factors for next
3 calendar year.

4 There was a statement in staff's
5 recommendation that I need to comment upon, and
6 that was the concern that we might be seeking an
7 early -- an early rate impact on our customers
8 because of this PPA approach. That is not
9 what's at issue in this docket. That would be
10 something that would be taken care of in the
11 fuel hearing, assuming you approve the PPA. But
12 in our preliminary discussions, it is not our
13 intention that the actual rate impact from this
14 unit take place prior to the in-service date of
15 the unit. And so although staff raised that as
16 a potential, that certainly was not our
17 intention, to seek a way to get an early rate
18 impact on our customers. It may be that after
19 analysis, we determine that an appropriate way
20 of transitioning to this capacity may seek an
21 early rate impact, but that's not what's at
22 issue in this docket.

23 I would also point out that it's not an
24 issue in this docket about either the transfer
25 agreement or the operating agreement or -- and

1 there's a third agreement that has to be entered
2 into, and that's an interconnection agreement.
3 None of those three agreements have anything to
4 do with cost recovery, and none of those
5 agreements have anything to do with the
6 purchased power capacity cost recovery clause or
7 the energy cost recovery clause. Even if this
8 PPA is approved, those documents, which have not
9 yet been completed, will be relevant in a base
10 rate context, not in this particular clause
11 recovery proposal.

12 Notwithstanding that, it is our goal to
13 have those documents completed at the earliest
14 possible date. They will all be contingent on
15 ultimate approval of the PPA, because, clearly,
16 if the PPA is not approved, either by the FPSC,
17 which we believe should have primary
18 jurisdiction over it, or the FERC, which by
19 statute does have ultimate say on whether or not
20 it's approved between the two companies, if it's
21 not approved by either of those, then there will
22 not be a transfer. There will not be a PPA, and
23 we will be following the traditional
24 life-of-plant rate base treatment for the unit.

25 COMMISSIONER JABER: Mr. Stone, educate me

1 on what it means for the Commission to approve
2 the PPA. My understanding is that if this
3 agency eventually approves the purchased power
4 agreement, that means that the cost of fuel
5 passes through the capacity clause. Is that
6 correct?

7 MR. STONE: No, Commissioner. What would
8 happen if this proposed purchased power
9 arrangement is approved, there will be some
10 capacity charges that are paid by Gulf to
11 Southern Power. Those capacity charges will be
12 passed through to our retail customers through
13 the capacity cost recovery clause. As we
14 purchase energy out of the unit, then those
15 energy purchases will be passed through the fuel
16 and purchased energy cost recovery clause.

17 And the reason for the difference between
18 the two clauses -- and that's the same for any
19 purchased power arrangement. We have purchased
20 power arrangements with other non-affiliates,
21 and that's exactly how they're divided up,
22 between capacity and energy. And the reason for
23 the distinction is, they're allocated
24 differently to the classes of customers based on
25 whether they're demand capacity or whether

1 they're energy, which is the purchased energy
2 portion.

3 COMMISSIONER JABER: Okay. You've helped
4 me a lot with that clarification, because I've
5 been trying to understand what the difference is
6 with what you're asking for, recognizing we're
7 not here today to discuss the merits, but just
8 an understanding why you would want this
9 expedited. This is different from, for example,
10 the Calpine/Seminole situation, because although
11 your merchant plant is taking the risk
12 associated with the cost of the plant once the
13 transfer is made, Gulf Power would be seeking
14 recovery for fuel costs and capacity charges
15 through the clauses.

16 MR. STONE: Yes, Commissioner, although I
17 wouldn't refer to it as fuel costs. I would
18 refer to it as energy costs, because the -- we
19 would be charged a capacity charge, essentially,
20 a reservation charge for the right to use the
21 capacity, and an energy charge as we actually
22 use it if it's the economic choice.

23 COMMISSIONER JABER: Right. And that -- in
24 your opinion, that's consistent with the Energy
25 Commission's interim report?

1 MR. STONE: We believe that -- you know,
2 the controversy that came out of the Energy
3 Commission's report centered on what do you do
4 with existing plant. And what we're talking
5 about is a plant that doesn't exist today. As
6 noted by staff's introductory comments, the
7 plant is under construction. It is not in rate
8 base. It is not -- it's essentially not a
9 regulated asset as of today. And so we've
10 envisioned that this is the opportunity to take
11 care of that type of investment if we want to
12 pursue that option of having the flexibility of
13 purchased power in our portfolio of generating
14 assets for the next ten years with regard to
15 this particular capacity.

16 COMMISSIONER JABER: Now, with respect to
17 the ten years, that's a deviation from the
18 interim report. In fact, you're proposing that
19 the transition period be extended to ten years.
20 The interim report called for six years; right?

21 MR. STONE: And that's where I think we
22 differ from the interim report, because, now,
23 we're not talking about -- we're not
24 implementing the interim report in this context.
25 We took what was stated in the interim report as

1 an indication that new capacity should not be
2 rate-based and that we ought to find alternative
3 means of dealing with it. We then from that
4 position, rather than strictly following that
5 transition period, as it were, in the proposed
6 statute, we envisioned that what we ought to do
7 is negotiate what we thought was the best deal
8 for our customers.

9 And we believe, given the commitment that
10 we were trying to achieve and what we thought we
11 achieved from a cost-effective -- in fact, did
12 achieve from a cost-effective standpoint through
13 the need determination process, and going
14 through the RFP process and getting outside
15 parties to submit proposals in response to what
16 we had identified as a capacity need. We went
17 through all that process and identified Smith 3
18 as the most cost-effective alternative. We're
19 pursuing that with all vigor to get it
20 constructed and on line and ready to go by June
21 1, 2002, which is to meet the capacity need that
22 we had.

23 We feel like that an appropriate mix for
24 our particular portfolio of generating assets
25 is, if we're going to convert that to a

1 purchased power arrangement, that ten years is
2 an appropriate window for our customers, so that
3 in ten years, if all the pundits are correct and
4 there is a competitive wholesale market
5 available in Florida, then when we go back to
6 market at the end of that contractual period,
7 our customers will be able to take advantage of
8 the marketplace at that time.

9 But we also believe that there may be
10 technology advances in that ten-year period of
11 time that would be foreclosed to our customers
12 if we do not have the option of this purchased
13 power arrangement.

14 All that said -- that's all getting into
15 the merits of case, which we intend to present
16 to you at a hearing. And with our request for
17 expedited treatment, that hearing would take
18 place approximately a month from now. And
19 that's what we're here today about, is to talk
20 about that request for expedited treatment.

21 COMMISSIONER JABER: Well, here's my
22 point. I need to understand why this needs to
23 be expedited. And if this is consistent with
24 the interim report but for the change in the
25 ten-year period versus six, then why not wait to

1 see what the Energy Commission would do? What's
2 the compelling interest to expedite it?

3 MR. STONE: I'll be happy to assist you in
4 that regard, Commissioner. The problem that we
5 face is this. We certainly waited for the
6 Legislature to find out what the ultimate
7 outcome was going to be this session, and when
8 it did not take final action, we then began our
9 efforts to come up with an option for this
10 Commission to consider, and that led to our June
11 8th filing.

12 The option is this purchased power
13 arrangement versus rate base treatment. We have
14 an asset that is currently under construction
15 that will be in service on June 1, 2002. We
16 need rates to cover that asset on that date to
17 protect the financial integrity of the company,
18 to be able to make sure that we do not suffer
19 adversely in our credit rating. And we need to
20 be able to express certainly to the financial
21 analysts and to the credit rating agencies that
22 there will in fact be rates to provide support
23 for this unit by that time certain. We cannot
24 afford to wait for the Legislature to take
25 action in the next session and find out what

1 that action is, because whatever action they
2 take will be too late to be able to assure the
3 financial markets, our investors, and other
4 interested parties that there will be sufficient
5 rates to cover this investment. So any adverse
6 effects on the company will have already been
7 visited upon us.

8 COMMISSIONER JABER: Okay. Now,
9 hypothetically speaking, let's say we choose not
10 to expedite this, and the company for whatever
11 reason feels like it needs to apply for a rate
12 case to include the rate base treatment of Smith
13 Unit 3, and the Legislature does go forward with
14 a report, the Energy Commission report.

15 MR. STONE: Then we will be controlled by
16 the statute.

17 COMMISSIONER JABER: You will be controlled
18 by the statute, and then would the determination
19 for us be a stranded cost determination?

20 MR. STONE: You know, it's hard to envision
21 there's a whole lot of stranded costs if we're
22 talking about a unit that's going on line at
23 that point some 60 days after the legislation is
24 enacted under the scenario you've outlined.

25 On the other hand, I think the issue then

1 becomes, are we tying the hands of the company
2 unnecessarily? I mean, we cannot afford -- as I
3 indicated, we cannot afford to wait to initiate
4 a rate case until after the next legislative
5 session. The adverse financial impacts would be
6 felt by company after the session and for many
7 months thereafter until we had rate relief. We
8 have to take action.

9 What we want to do is present this option
10 to the Commission. If you like it after we've
11 had a hearing, hopefully this summer, then we
12 can pursue it. If you don't like it, then we
13 know we can go the traditional route and still
14 do what we have to do to protect the financial
15 integrity of the company so that we are in a
16 position to fulfill our obligations to our
17 customers, both from a generating standpoint,
18 which is what this unit represents, but also the
19 financial resources necessary to fulfill all of
20 our obligations to our customers, both from a
21 distribution and from a transmission basis as
22 well.

23 It is very important that we know the
24 course that we're taking by the end of this
25 summer in order to fulfill our obligations to

1 our customers, and that's why we've asked for
2 expedited treatment.

3 We're certainly mindful that it does
4 present a burden to intervenors and to the
5 staff, and we are doing everything we know to
6 make it as easy as possible to get the
7 information they need to help advise you on the
8 course to take. But ultimately, what we want to
9 do is preserve an option for the Commission that
10 we think is essentially foreclosed once we have
11 to file a rate case, because, quite frankly, we
12 don't have the resources to pursue parallel
13 paths for this. If the purchased power option
14 for this new capacity is not acceptable to the
15 Commission, then we need to devote our resources
16 to the rate case.

17 And we think that the staff is in a very
18 similar position, because as I understand it,
19 you already have scheduled MFR filings for two
20 other electric utilities coming in the August
21 and September time frame. And I've already
22 indicated to you that if this option is not
23 acceptable to the Commission, then we very well
24 will be filing a rate case in that same time
25 frame as well.

1 And we don't have the resources as a
2 company to pursue parallel paths before this
3 Commission, and so that's the reason we're
4 asking for a prompt hearing. And we understand
5 that we're taking a risk that we may not meet
6 our burden to show you that this is in the best
7 interests of our customers. We believe that we
8 will, and we believe, if given a chance, that
9 you will find this option attractive. And
10 that's all we're asking for today, is to have
11 that option available to you, to have that
12 opportunity to try and present our case during
13 this summer session. And if we fail that, then
14 we know that the other route is the route we
15 will have to take.

16 COMMISSIONER PALECKI: Staff points out
17 that they haven't received evidence yet
18 regarding cost-effectiveness and rate impact.
19 How quickly could you provide that information
20 to our staff?

21 MR. STONE: Well, to my understanding,
22 Commissioner, we have not actually received a
23 specific request. And so we have committed
24 ourselves to working expeditiously to answer any
25 requests to make sure that we provide any

1 necessary information. At this point, we have
2 not received such a request, and it's
3 speculation as to the form of that request, and
4 we want to make sure that we're meeting what
5 they've asked for. But we will -- we do stand
6 committed to doing our dead level best to get
7 them information in a timely fashion.

8 COMMISSIONER PALECKI: Is there a ten-year
9 price stream in the contract or the agreement
10 itself outside of the fuel --

11 MR. STONE: The contract -- and I hope I'm
12 not misstating it. The capacity charges under
13 the contract are fixed for ten years. There are
14 some escalation factors applied to certain
15 components. I believe variable O&M may be one
16 of them. But the capacity charge, which is the
17 major component of the contract, is a fixed
18 price for the ten years. I hope I've stated
19 that correctly.

20 COMMISSIONER PALECKI: I'm certainly
21 amenable to some expedition of this matter, but
22 it seems that the schedule that Gulf has
23 submitted is extremely aggressive, especially
24 considering that these are some major issues,
25 especially the discovery completion date that

1 you've set forth of July 2nd. I just don't see
2 that as being at all possible.

3 MR. STONE: Commissioner, if I may, perhaps
4 I can help you with that. Those dates were
5 suggestions. They were not meant to limit the
6 Commission's ability to tweak some of those
7 dates. The main thing we were trying to do was
8 identify the time frame for the Commission as to
9 when we needed to have a decision by. We then
10 backed up and looked at the Commission's -- what
11 we knew the Commission's potential availability
12 for hearing dates was and worked off of that.

13 What we believe would be appropriate as far
14 as the full Commission today to resolve is to
15 decide whether or not our request for expedited
16 treatment should be granted, and if so, the
17 appointment of a prehearing officer, and we
18 would work with the prehearing officer on those
19 particulars of those dates, because we think
20 that's an appropriate role for the prehearing
21 officer with the parties to work on. The
22 concept of the expedited treatment I think is
23 what's important to work out today, and not the
24 details of which date and those things. I'm not
25 sure that's an appropriate --

1 COMMISSIONER PALECKI: It's more the order
2 of magnitude that I'm talking about. Let me ask
3 you a couple questions about -- and I don't need
4 exact dates, but I want to know if you can make
5 any commitments. It seems to me on these types
6 of issues we're going to probably see two sets
7 of interrogatories and a round of depositions.
8 What kind of response or turnaround time could
9 you commit to on interrogatories?

10 MR. STONE: Obviously, that depends on the
11 nature of the question, Commissioner, and so I
12 have to let you know that depending on the
13 nature of the question, it may affect our
14 turnaround time. But we have got a lot of
15 people committed to this process to try and make
16 it as full a disclosure as necessary for the
17 Commission to honor our request for an expedited
18 hearing. I can't commit to a specific number of
19 days without knowing what the question is.

20 But I can tell that you when we did receive
21 the formal request for production of documents
22 from the Office of Public Counsel, it is my
23 understanding that we complied with that either
24 the same day or the next day. And similarly,
25 you know, we hand delivered the documents that

1 started this docket to all the parties the day
2 that we filed it with the Commission. That's
3 something -- an extraordinary step, if you will,
4 but we made great efforts to do that.

5 And we will continue to make those great
6 efforts without any untoward delay. We'll try
7 to avoid using the mail whenever possible. We
8 will try to use expedited means of getting it
9 into people's hands. As far as whether it has
10 to be formal interrogatories or depositions or
11 whether it can be meetings and data requests --
12 I mean, we are committed to innovative ways of
13 making sure that the information is provided in
14 a timely fashion.

15 COMMISSIONER PALECKI: If the Commission
16 was able to expedite this matter, but not to the
17 aggressive schedules that you've suggested --
18 and let me just make a suggestion that we could
19 be fully prepared and ready for a hearing the
20 last of August or the first of September. Would
21 that be of any value to you, or is that too late
22 already?

23 MR. STONE: Commissioner --

24 COMMISSIONER PALECKI: I think that's more
25 realistic.

1 MR. STONE: Our request is to have a
2 decision by the end of August or the first of
3 September. And if we could be assured that we
4 would have a hearing in that time frame that
5 would allow a decision in that time frame, we
6 certainly have room -- flexibility for a matter
7 of days on some of these other dates.

8 Our concern is that staff's recommendation
9 wasn't talking about a matter of days, but it
10 was talking about a matter of months. And that
11 type of change is simply -- you inject so much
12 uncertainty into the process that there's really
13 -- it leaves us with no other alternative but to
14 pursue the more traditional approach.

15 Again, our goal by the motion for expedited
16 treatment was to preserve an option for the
17 Commission. And what we're asking by this
18 motion is for you all to give it a chance.
19 Clearly, if at the end of giving this a chance,
20 and we go to hearing and you are not comfortable
21 with the evidence that's presented as giving you
22 all the information you may need to make a
23 decision in favor of this process, then you have
24 the option to turn it down. But what we're
25 saying is, in order to give us the opportunity

1 to present this option to you, we also need a
2 commitment to a time frame for a decision by the
3 end of August.

4 COMMISSIONER PALECKI: Well, my concern is
5 that our staff at least have adequate time to do
6 the type of investigation and the discovery they
7 need to do.

8 MR. STONE: And I guess all I'm saying,
9 Commissioner, is, we would like for them to try,
10 and we would like to try with them and see if we
11 can get to the point they need to be at.

12 CHAIRMAN JACOBS: Does that conclude your
13 statement, Mr. Stone?

14 MR. STONE: Commissioners, the bottom line
15 is that Gulf wants to present this opportunity
16 to the Commission, but in order to do so, we
17 need a quick turnaround of our petition. We
18 have heard over the last several months that you
19 want such alternatives presented to you. It's
20 unfortunate that the nature of the legislative
21 process last year was such that we weren't in a
22 position where we could work on this until the
23 end of the session, but we did it as quickly as
24 we could and presented it to you as quickly as
25 we could, and we want to try to get this thing

1 to hearing as quickly as possible so that we
2 know what route we need to take.

3 What we're asking for you to do is to give
4 it a chance. If it doesn't meet your comfort
5 level at the end of this process that we've
6 outlined, then we know which course we need to
7 take. But we want to give this option a chance,
8 and we hope that you will too.

9 Thank you.

10 CHAIRMAN JACOBS: Very well.

11 Mr. McGlothlin.

12 MR. MCGLOTHLIN: Joe McGlothlin for the
13 Florida Industrial Power Users Group.

14 As Mr. Stone said early on, the only thing
15 before you is the motion to expedite, but it's
16 obvious in talking about that that there's a lot
17 of meat on this petition, some substantial
18 issues, not the least of which is the interplay,
19 if any, between the proposal of the company and
20 the existing revenue sharing stipulation on the
21 base rate side. And it's clear to me, and I
22 think it would be obvious to anyone that looks
23 at the proposed schedule that the proposed
24 schedule is inadequate on its face.

25 FIPUG supports the more reasonable and more

1 realistic schedule proposed by staff, and FIPUG
2 sees no compelling reason why the affected
3 parties should be stampeded through an
4 inadequate schedule to deal with these important
5 issues.

6 CHAIRMAN JACOBS: Very well.

7 MR. VANDIVER: Rob Vandiver, Office of
8 Public Counsel.

9 I would echo what Mr. McGlothlin said.
10 These are very important issues. This plant was
11 just brought for a need determination in August
12 of 1999. There are some very important policy
13 considerations here. We want to proceed to
14 discovery, and we want to get some of these
15 answers, but I think we need to do it in a
16 reasoned, very considerate manner. And there
17 are some very important questions that we need
18 answers to, and to the extent we can get those
19 quickly, that's fine, but there are many, many,
20 many questions associated with this filing.

21 We're ready to go quickly, but we haven't
22 even considered the hiring of witnesses or
23 anything like that, and it's going to take some
24 time. And I just don't -- I don't see going
25 very quickly in this process.

1 If I wasn't worried about the discovery --
2 this petition was filed June 8th. We got the
3 revised filing Friday afternoon sometime after
4 4:30. I'm just not real optimistic about
5 discovery happening in a really expeditious
6 manner. We'll proceed apace, but I think we
7 need a reasoned approach to discovery, and I
8 think we need to ask many, many questions about
9 this filing.

10 COMMISSIONER PALECKI: Mr. Vandiver, if we
11 were able to come up with some hearing dates --
12 and I'm not sure we will be, because we have a
13 very full hearing schedule, but around the last
14 of August or first of September, would that
15 provide you with a reasonable amount of
16 discovery time in which to conduct your
17 discovery, to hire your witnesses and move
18 forward with this case?

19 MR. VANDIVER: I can't commit to that at
20 this time. We would have to see how the
21 discovery went, and again, how things went.

22 COMMISSIONER PALECKI: But there may be
23 some room for compromise where we can expedite
24 this to some extent without going quite -- I
25 agree with you, the time schedule that we have,

1 which is Gulf's suggested time schedule, does
2 not seem to provide adequate time. But if we
3 perhaps move that out to some extent, would -- I
4 guess the question I have is, are you amenable
5 to working with Gulf to try to expedite this,
6 but not quite as aggressively as they've asked
7 for?

8 MR. VANDIVER: We're willing to work, but
9 we would need the cooperation of an active
10 prehearing officer and a lot of luck.

11 COMMISSIONER DEASON: Let me ask Gulf a
12 question. And it's basically -- I'm going to
13 reask the question that Commissioner Palecki has
14 already asked, and I want a direct answer, not
15 that your question wasn't that -- never mind. I
16 won't go there.

17 He asked you if we're going to have this
18 option in front of us and it's still useful to
19 you to make a timely evaluation as to whether
20 you need to file a rate proceeding, what is the
21 latest date that you can have a decision from
22 this Commission? And let me -- I want to ask
23 you a specific date. Assume -- and I don't know
24 what the prehearing officer would decide. I
25 don't even know who the prehearing officer would

1 be. Just for the sake of argument, as an
2 example, if this were scheduled such that it
3 would come before the Commission on our
4 regularly scheduled agenda conference on October
5 the 2nd, is that too late, and we just need to
6 go ahead and scrap it right now and say, "Don't
7 bother"?

8 MR. STONE: It is my understanding that
9 that would be too late, Commissioner. On the
10 other hand, if we had a hearing at the end of
11 August and a bench decision, that would not be
12 too late.

13 COMMISSIONER DEASON: Well, what happens if
14 we go through this exercise and at the end of
15 the hearing we're not comfortable making a bench
16 decision?

17 MR. STONE: Commissioner, again, what I'm
18 suggesting to you is that if you're not
19 comfortable with it, then we will pursue the
20 other option. If you are comfortable with it,
21 then there should be no problem with rendering a
22 bench decision. And that's sort of -- where
23 we're coming from is, that is an option we're
24 presenting to you. And if we can -- anything we
25 can do to help make you comfortable with it,

1 because we do believe it's in the best interests
2 of our customers. We do believe that given the
3 opportunity to have a hearing, if not in July,
4 certainly a hearing in August, we believe that
5 we can make a compelling case to you that this
6 is the appropriate direction for the Commission
7 to take. If the Commission is not comfortable
8 with that at the end of that hearing, then
9 certainly we know what direction we need to
10 take, and that is to go the other route.

11 COMMISSIONER DEASON: Well, let me ask you
12 a little more in-depth question on that point.
13 If we go that route and the Commission decides
14 that we're not comfortable, and you have devoted
15 all your resources to the expedited proceeding
16 in pursuit of a possible PPA, how are you going
17 to turn around -- are you going to be able to
18 turn around and file a rate case the next day?

19 MR. STONE: Commissioner, that's something
20 we have weighed heavily in our process of
21 deciding whether to even present this option to
22 you, and that's exactly why we are concerned
23 about our ability to press our resources and go
24 down a simultaneous path, as has been suggested
25 in staff's recommendation. We may not be able

1 to make the filing the very next day, but we
2 certainly would make it in a matter of days in
3 an effort to be sure that we protect the
4 financial integrity of the company for the
5 benefit of our customers. And that's why we
6 cannot afford to let this thing delay any
7 further than what I've suggested.

8 COMMISSIONER PALECKI: I note that there
9 has been a hearing scheduled in Docket No.
10 000808-EI for September 19th. If this
11 Commission was to --

12 MR. STONE: I'm sorry, Commissioner.
13 September 19th?

14 COMMISSIONER PALECKI: September 19th. Was
15 to hear this matter on September 19th and make a
16 bench decision at that time, would that be
17 within your time limitations?

18 MR. STONE: No, Commissioner, it's my
19 understanding that it would not.

20 COMMISSIONER PALECKI: And why not?

21 MR. STONE: For the very reason that I've
22 already tried to outline, that that would not
23 allow us to have base rates in effect when the
24 unit goes on line, and the degradation to the
25 company's earnings at that point would be to the

1 point that we could not afford to pursue this
2 option any further.

3 COMMISSIONER JABER: Mr. Stone, but why not
4 expedite the rate case? Why not worry about
5 that problem if we don't agree with you that
6 this is an appropriate option? I mean, I don't
7 know what hearing is conducted on September
8 19th, but what I heard you say to previous
9 questions was that the latest to file a rate
10 case would be September 1st.

11 MR. STONE: The first part of the month of
12 September, absolutely.

13 COMMISSIONER JABER: All right. Well --

14 MS. HARLOW: Commissioner Jaber, I'm sorry
15 to interrupt, but staff has looked at that as we
16 are here at the bench, and we think that that
17 would be October. So we have a conflict.

18 COMMISSIONER JABER: What would be October?

19 MS. STERN: They would have eight months.
20 A rate case, it's our understanding, takes eight
21 months. Backing up eight months from June, it
22 puts you at October 1st, not September 1st.
23 Now, I'm not sure why Gulf -- maybe there's
24 another reason why Gulf thinks they have to file
25 by September 1st. But based on the statute,

1 they have to file by October 1st.

2 COMMISSIONER JABER: Maybe it's because
3 they don't have any faith that they'll meet the
4 MFR official filing date right away.

5 MR. STONE: Commissioner, I can address
6 what the confusion with staff is. Yes, there's
7 the eight-month clock, but you don't -- the
8 Commission's practice has not been to allow
9 rates to go into effect for 30 days after that.
10 And so in order to ensure that we have rates in
11 effect in a timely fashion --

12 COMMISSIONER JABER: You backed up 30 days.

13 MR. STONE: We backed it up to the first of
14 September.

15 COMMISSIONER JABER: But --

16 COMMISSIONER DEASON: Mr. Stone, let me ask
17 -- I'm sorry. Go ahead.

18 COMMISSIONER JABER: But that goes back to
19 the original question, though. Why not worry
20 about trying to expedite the rate case as
21 opposed to -- I mean --

22 MR. STONE: Commissioner, the company takes
23 great comfort in the statute. And the
24 difficulty we see in the Commission expediting a
25 rate case, quite frankly, comes from the fact

1 that, number one, it looks like you're going to
2 have three of them going at the same time. You
3 know, I just don't see that there's any
4 practical way for you to expedite a rate case.

5 Our experience in rate cases, albeit
6 somewhat ancient history at this point, has been
7 that they really push to the last possible
8 minute. And although we would certainly welcome
9 an opportunity to expedite the rate case, that's
10 an awful lot of uncertainty to place upon the
11 company, and therefore have to face that
12 uncertainty in the financial markets and
13 elsewhere, when we can control our own destiny
14 by filing a case for --

15 COMMISSIONER JABER: We've combined our
16 divisions, and we put our water and wastewater
17 rate case section in the electric section too,
18 so we can dedicate as many resources, I would
19 believe, that we have to to meet all of these
20 filing dates.

21 I guess I'm just wondering why you're
22 worried about the rate case if you really want
23 to pursue this option. It's almost like, you
24 know, one step at a time, and you cross that
25 bridge when you come to it.

1 And again, Commissioner Palecki's
2 suggestion, assuming that this is a hearing that
3 can be moved, September 19th is only 18 days
4 away from what you're suggested --

5 MR. STONE: Well, but then again, we're
6 talking about -- I still have the FERC process
7 to go through. There are other issues that have
8 to be resolved. And so we've looked at it, and
9 we've tightened our calendar as much as we could
10 and feel comfortable that we're doing the right
11 thing for our customers in being able to protect
12 the financial integrity of the company and to be
13 able to have the resources necessary to provide
14 quality service.

15 COMMISSIONER DEASON: I have a question on
16 the -- the in-service date right now is expected
17 to be June 1st?

18 MR. STONE: Yes, Commissioner.

19 COMMISSIONER DEASON: How firm is that
20 date?

21 MR. STONE: I've been assured that it will
22 be on line June 1st, so it's firm.

23 COMMISSIONER DEASON: So we can hold you to
24 it, huh? We can expect it to be up and running
25 June --

1 MR. STONE: As much as I hate to say that,
2 I have been told that we will be on line June
3 1st, 2002.

4 COMMISSIONER DEASON: Then I have another
5 question. Maybe it's a little sensitive. I
6 don't know. But you have a revenue sharing plan
7 which expires either with the in-service date of
8 the plant or at the end of 2002, I believe,
9 whichever occurs first.

10 MR. STONE: That is correct.

11 COMMISSIONER DEASON: So if you're
12 confident as to the June 1st date, well, then
13 that would occur first, and you would no longer
14 be under the requirements under that revenue
15 sharing plan. And I don't know what your
16 earnings will be at that time. I guess nobody
17 knows unless they've got a crystal ball. But I
18 can hear some people argue that, "So what if you
19 don't get rates for a couple of months? After
20 June the 1st, you're no longer under the sharing
21 plan, and you probably could cover that without
22 it having any severe adverse impact on the
23 rates." What would your response to that be?

24 MR. STONE: Commissioner, I -- you know, we
25 obviously have been evaluating a rate case and

1 the timing of the generating plant going on
2 line, and it is our expectation that our ROE
3 will be below our authorized ROE for 2002 and
4 2003 even with adequate revenues to cover Smith
5 Unit 3. So I guess the answer to your question
6 is that the expiration of the revenue sharing
7 plan, given everything that we've got to do, we
8 will not be earning an adequate return, even if
9 we have adequate revenues to cover Smith Unit 3.

10 COMMISSIONER DEASON: You're saying that
11 even if you go the rate case route and you get
12 adequate revenues, you're still going to
13 underearn? That doesn't make sense.

14 MR. STONE: I didn't mean to say that. I
15 misstated. What I was saying is that even if
16 you approve this PPA concept where we're just
17 dealing exclusively with the plant, at the
18 expiration of the revenue sharing plan, we will
19 not be -- we will be below our authorized ROE.

20 COMMISSIONER DEASON: You're suffering
21 attrition of earnings outside of any
22 consideration of Smith 3?

23 MR. STONE: That is correct. We've
24 identified areas where we need to be spending
25 dollars and will be spending dollars, and in

1 fact are starting to spend those dollars, such
2 that even though our return may be at an area
3 that doesn't give the Christian great comfort
4 right at this moment, we expect, as we've
5 indicated in our surveillance reports, that our
6 return is going to be below the authorized --
7 the top of the range by the end of the year, and
8 will certainly be below our authorized ROE
9 during 2002 and 2003, even if this PPA process
10 is approved.

11 COMMISSIONER JABER: Commissioners, I have
12 a question of staff, and then perhaps something
13 that would have a discussion amongst ourselves
14 too. It seems to me that with respect to the
15 motion to expedite, staff would just need
16 direction from us whether or not we're
17 interested in expediting, and then the
18 prehearing officer and the Chairman perhaps
19 could look at the calendar and determine what
20 the appropriate date would be. I agree with
21 Commissioner Palecki that to the degree we can
22 expedite this for a different reason -- I'm the
23 prehearing officer on the fuel adjustment case,
24 and I would like to have some sort of answer or
25 discussion prior to the fuel adjustment

1 hearing. I think that would help in forming the
2 issues in that proceeding as well. So I'm very
3 much interested in expediting it.

4 And I do commend the utility for thinking
5 out of the box and getting some alternatives in
6 front of us. Whether or not we agree with them
7 at the end of the day, I certainly don't want to
8 discourage companies to embrace a changing
9 market. But I don't feel like we have to, and I
10 don't think staff is asking us to figure out
11 what the date is today.

12 MS. STERN: We're not asking -- I think
13 today you have -- a decision has to be made on
14 this schedule that's in the motion for expedited
15 hearing.

16 COMMISSIONER DEASON: Let me --

17 MS. STERN: But as far as an alternative
18 date, like if this -- for example, this Exhibit
19 A calls for a hearing on July 27th. I think by
20 denying -- or by moving staff on this, for
21 example, you don't preclude the option of having
22 a hearing on August 24th with a bench decision.
23 But a decision on whether or not to grant the
24 motion, this specific motion, this specific
25 schedule in Exhibit A, I believe has to be made

1 today.

2 COMMISSIONER BAEZ: We're already behind on
3 this schedule, aren't we?

4 CHAIRMAN JACOBS: Yeah.

5 MS. STERN: Well, yes, yes.

6 COMMISSIONER BAEZ: So --

7 MR. STONE: Commissioners, if I may respond
8 to that briefly. We submitted a proposed
9 schedule. That was not intended to be the only
10 schedule that would work under expedited
11 treatment. What I have indicated is that we
12 need a decision by the end of August, and any
13 other schedule that would accommodate that is
14 certainly something that's contemplated by our
15 motion. I would hate for this Commission to
16 deny our motion and expect us to refile a series
17 of possible dates.

18 What I urge the Commission to do is, if you
19 are inclined to expedite this, to grant our
20 motion for expedited treatment, appoint a
21 prehearing officer, and we will work out the
22 dates.

23 COMMISSIONER DEASON: Well, I guess I agree
24 that we do not have to establish a date today,
25 and the proposed schedule is not something that

1 we -- we can grant the motion to expedite and
2 not adopt this schedule. I guess my concern is,
3 I need a general idea of the parameters in which
4 we're working, because why indicate that we are
5 interested in having an expedited schedule if we
6 know from the beginning we're going to fail?
7 And under the most aggressive schedule that we
8 could come up with and still meet your September
9 1 date, it seems to me that we would have a
10 hearing at the end of August with a bench
11 decision and still have adequate time for
12 discovery. And even that would be expedited
13 discovery and expedited testimony being filed
14 under a short period of time.

15 And to me -- perhaps that's doable. But if
16 we do all of that, I want an idea as to what we
17 can reasonably accomplish before we even
18 indicate that we want the prehearing officer to
19 consider an expedited schedule. And I know
20 you're firm that you want a decision by
21 September the 1st. I think that's a little
22 inflexible, and I don't know how workable that
23 is, in all honesty. To give adequate time for
24 discovery, you're looking at a hearing in late
25 August with a bench decision, and I don't see

1 any way around that.

2 MR. STONE: Commissioner, I would suggest
3 to you that that's not inconsistent with the
4 schedule that has been followed in the fuel and
5 purchased power cost recovery clauses for many,
6 many years. The time frame of filing
7 essentially a contract on June 8th and having a
8 bench decision by the end of August is not
9 inconsistent with how the Commission has dealt
10 with fuel and purchased capacity matters for as
11 long as I've been practicing before the
12 Commission.

13 MS. HARLOW: Commissioners, if this were
14 purely a purchased power agreement, staff would
15 have no problem with that. We do deal with that
16 on that typical schedule every year. It's not
17 that it's just a purchased power agreement.
18 It's a purchased power agreement with a transfer
19 of a major asset. Two very important decisions
20 were made by you predicated on Gulf owning that
21 plant. For example, I would agree with
22 Commissioner Palecki that staff needs time for
23 at least two rounds of interrogatories and
24 depositions.

25 Let me just talk to you for a second about

1 some of the things that we need to look at.
2 Gulf keeps stressing -- they stressed this at
3 the meeting, and they stress it today, that this
4 is an affiliate transaction, and they think
5 that's what's triggering our concern. I
6 disagree with that. If an affiliate weren't
7 even involved in this, I would still need the
8 time as a staff person to develop the record
9 that you need for a comfort level that compares
10 Gulf owning the plant to the rate impact of
11 Southern Power owning it.

12 Say it's not an affiliate. Say it's
13 Enron. Say it's somebody else. I still need to
14 give you the comfort level that the transfer of
15 the asset to the other party is the correct
16 thing to do for the ratepayers. Now we have the
17 affiliate level of complexity on top of that.
18 And then staff has to develop for you that we
19 compared Southern Power option, the Southern
20 Power option, transferring the asset to the
21 affiliate and Gulf then purchasing the power
22 back, to other market options that are available
23 for Gulf. We can't do that in a couple of
24 weeks. It takes time even to develop the proper
25 questions to be asked. And then if we miss on

1 the questions the first time, there's too much
2 risk if we only have one opportunity to ask
3 these questions.

4 And I do agree with Gulf, even though I'm
5 not an attorney, that it's their burden to build
6 their case. I totally agree with that. But if
7 we go to hearing and they don't build their case
8 and we don't give you the comfort level you need
9 to make a fully informed decision, we're just
10 wasting everybody's time. We don't want to
11 waste everybody's time. We want to give you the
12 time that you need, the time that we need, the
13 time that the parties need, so that you can make
14 a fully developed decision, so that if this is a
15 great thing for the ratepayers, we all know that
16 at the end of the day. That's our only concern.
17 We're really not trying to block anything.
18 We're not trying to delay. We are trying to
19 negotiate and give us all we need to give you
20 the comfort level of a fully informed decision.

21 COMMISSIONER DEASON: Let me ask you a
22 question on that. You mentioned the issue or
23 issues surrounding the transfer of the asset
24 from a rate base -- what would be a rate base
25 asset to one that would be transferred out of

1 rate base. Is that part of this review? Are we
2 just looking at the cost-effectiveness of a
3 purchased power agreement, and whatever
4 transaction they wish with their sister company
5 on transferring that, is that a rate base -- a
6 base rate or a rate base decision that's outside
7 the context of a purchased power agreement, and
8 that would be something that would have to be
9 reviewed in that context?

10 MS. HARLOW: The first thing that staff
11 needs to do is just look at cost-effectiveness,
12 period.

13 COMMISSIONER DEASON: Of the purchased
14 power agreement.

15 MS. HARLOW: Of the agreement. And
16 remember, when the need determination was made,
17 an RFP was issued according to our rules. And
18 when the cost-effectiveness analysis was done by
19 staff and by the company at that time, it was
20 based on the company owning the asset. The
21 costs were reviewed with the company owning the
22 asset. And when you do that, you look at it
23 going into rate base. Now it's not going into
24 rate base. It's going through a purchased power
25 -- it's going through the clauses. It's a

1 totally different thing than looking at the
2 costs if they're in rate base if you look at it
3 year by year. So we just need the time to look
4 at it.

5 COMMISSIONER DEASON: Well, I understand
6 that. You've got to make a comparison for
7 cost-effectiveness purposes of having an asset
8 in rate base for 30 years, and you're going to
9 have to make some assumptions about fuel cost
10 and operating efficiencies and maintenance costs
11 and all that, basically the scenario under a
12 purchased power agreement where you've got
13 apparently a constant capacity cost with some
14 escalators on fuel and other things a ten-year
15 period versus 30, and you're going to have to
16 make some assumption about what future
17 generating costs are going to be. It's a little
18 bit like looking into a crystal ball, but I
19 guess everybody can try to make some reasonable
20 assumption and try to come up with what is
21 considered to be a cost-effective alternative,
22 one versus the other.

23 My question to you was, their decision to
24 sell that asset and at what price and all that,
25 that doesn't affect the cost-effectiveness of

1 the PAA -- I mean of the PPA, does it? That's a
2 rate case type issue, is it not, like stranded
3 costs or stranded benefits?

4 MS. HARLOW: I see that as a separate
5 issue.

6 COMMISSIONER DEASON: Okay.

7 MS. HARLOW: But I also believe that we
8 should have information at this point in time to
9 be able to look at it and know if it is a
10 separate issue, are there any cross-over
11 issues. And it concerns me that all the
12 documents are not complete at this time for the
13 total deal. I would like to see everything on
14 the table at one time so that staff knows which
15 questions should we ask.

16 COMMISSIONER JABER: Can I ask Mr. Elias a
17 question? When we finally got the agreement
18 from Calpine and Seminole, how long did it take
19 you all to bring a recommendation to us,
20 including the hearing regarding Calpine and
21 Seminole? I remember it was a very short time
22 frame. What was that time frame?

23 MR. ELIAS: I'm going to let Ms. Harlow
24 address that, because she was the one that
25 actually did the review, and she would be better

1 informed to comment on the differences between
2 what had been posited in terms of the memorandum
3 of understanding and what was ultimately filed
4 with us. You have to remember, there was a --

5 COMMISSIONER JABER: All I'm looking for,
6 Ms. Harlow, is the time frame from when you got
7 the executed PPA, because I know that there were
8 some confidentiality questions, but from when
9 you got the document to the time it took for us
10 to make a final decision, what was that time
11 frame? It seems to me that would be a good
12 proxy to use in figuring out how long we can do
13 it for --

14 MS. HARLOW: I'm having difficulty
15 recalling, and I'll have to go back and look at
16 that. We were faced in that case, as you know,
17 with a purchased power agreement that was not a
18 full agreement, and then we received an
19 agreement later, and I'm afraid I will confuse
20 those dates for you. I would rather go back and
21 check my notes.

22 COMMISSIONER JABER: I would like that, but
23 I can tell you, it's my recollection it didn't
24 take very long. And I keep trying to keep that
25 in focus as I consider this, because absent the

1 transfer of the asset, it really isn't any
2 different than the Calpine/Seminole.

3 MS. HARLOW: I believe -- and I hope I'm
4 not speaking out of turn, but I believe that
5 once we received the final contract that we
6 remained in the 90-day time clock for a need
7 determination.

8 COMMISSIONER JABER: Right.

9 MR. HOWE: Commissioners, if I could, could
10 I comment on this? I've been listening in the
11 audience, and it struck me that one element is
12 perhaps missing from your consideration.
13 Normally when a company files a petition and so
14 forth, it would reasonably be expected if nobody
15 showed up in opposition that the company's
16 petition and supporting data and testimony would
17 be adequate to support a finding of fact
18 granting them the relief they're seeking.

19 In this particular case, I think it's
20 self-evident to everybody that the ultimate
21 issue is going to be whether or not it is
22 cost-beneficial to the ratepayers for the
23 company to pursue this purchased power agreement
24 in lieu of rate-basing Smith Unit 3. As such,
25 you would expect that there would have been

1 testimony already filed on that issue. You
2 would expect that there were already
3 cost-benefit studies filed. There aren't any.
4 The company has not yet, to my knowledge, even
5 made an allegation in its petition or through
6 testimony that the purchased power agreement
7 will necessarily be less costly to the customers
8 than if they continue and rate-base the asset.

9 So I want you to be fully aware. When
10 Mr. Vandiver was talking about the time for
11 discovery, we're almost being asked through the
12 discovery process to find out what the company's
13 case is, and then pursue the series of
14 interrogatories which necessarily lead to --
15 excuse me, lead to production of document
16 requests, which then lead to depositions. We
17 don't have the starting point filed yet in this
18 case.

19 I would suggest if the company is
20 interested in an expedited consideration, and if
21 the Commission is amenable to grant it, that the
22 burden be put on the company to file sufficient
23 testimony and supporting data to start with
24 that, in the absence of opposition, would
25 provide the Commission with enough information

1 to know that the PPA would be a good choice in
2 contrast to the rate base treatment.

3 COMMISSIONER DEASON: Mr. Howe, are you
4 saying that based upon the filing that they have
5 made to date, that even if there were no
6 opposition or no intervenors and we just went to
7 hearing on their case, that they have not put in
8 enough information for us to make a decision to
9 find that the purchased power agreement is more
10 cost-effective than rate-basing Smith 3?

11 MR. HOWE: Yes, sir, that's exactly what I
12 mean. I think you would find that there's no
13 exhibits and there's no testimony on that
14 subject. Excuse me.

15 I just reviewed the testimony in a fairly
16 cursory fashion, but, for example, the one
17 witness who refers to the cost-effectiveness, I
18 believe the only allegation is that the
19 purchased power agreement would be less costly
20 than the RFP responses that they rejected. I do
21 not believe it addresses the question of whether
22 the PPA would be less expensive than rate-basing
23 the asset.

24 So we don't have any of that cumulative
25 present worth revenue requirement analysis that

1 you would expect. So I want you to be fully
2 aware that the starting point for our discovery,
3 if we're put in the posture to address it on an
4 expedited basis, would be to first ask the
5 company what its case is, get the response, and
6 then really start discovery.

7 COMMISSIONER DEASON: Mr. Stone?

8 MR. STONE: Commissioner, what I would
9 suggest to you is that there are no minimum
10 filing requirements for this type of proceeding,
11 there is no established prima facie case, that
12 what we're asking you to do is engage in a
13 policy decision about which course you want the
14 companies to take. And we're suggesting to you
15 that regardless -- and we do believe that it is
16 cost-beneficial to our customers, at least
17 certainly in the ten-year time frame, and to
18 preserve the options for years beyond that
19 rather than having a life-of-plant commitment to
20 this unit.

21 But regardless of that, what we're
22 suggesting to the Commission is that there are
23 other non-price factors that need to be
24 considered in establishing a policy about what
25 to do. And we are suggesting to you that we are

1 talking about, rather than having all of our
2 capacity tied up in rate base capacity, that we
3 have an opportunity, an option, if you will, to
4 present to you that we can have a purchased
5 power agreement for an asset which you have
6 already certified the need for on a
7 cost-effective basis, based on the competing
8 RFPs, the responses to our RFP from
9 non-affiliates.

10 Smith Unit 3 is cost-effective capacity,
11 and this purchased power arrangement, this
12 change, if you will, of what we're proposing
13 this summer, is simply a recognition of the
14 changes that have taken place in the
15 marketplace, the changes that are foretold for
16 the marketplace, and to preserve options for our
17 customers in the near term, a ten-year time
18 frame versus a 30-year time frame. And that is
19 a philosophical decision that the Commission is
20 going to need to make, and we hope to have
21 enough evidence before you that you are
22 comfortable making that decision.

23 COMMISSIONER DEASON: Do you have evidence
24 that you've filed as of today that shows that
25 the purchased power agreement is more

1 cost-effective than rate-basing Smith 3?

2 MR. STONE: Commissioner, with regard to
3 the actual evidence we've filed today, we're
4 obviously constrained by the confidentiality,
5 the confidential nature of this agreement. And
6 so we hope to be able to answer questions like
7 those posed by Mr. Vandiver and Mr. --

8 COMMISSIONER DEASON: Did you file anything
9 under confidential --

10 MR. STONE: But I do not believe that we
11 have that filed as of this moment.

12 CHAIRMAN JACOBS: You mentioned that --
13 when you did your initial need determination for
14 Unit 3, did you receive any responses?

15 MR. STONE: Yes, we did, Commissioner, and
16 those were evaluated in the need determination
17 process, and Smith Unit 3 came to be the
18 cost-effective choice versus the purchased power
19 proposals that had been submitted to us at that
20 time.

21 COMMISSIONER DEASON: But all those
22 responses were for your RFP, which was for
23 basically a 30-year asset; correct?

24 MR. STONE: No, Commissioner. Some of
25 those responses were, as I recall -- and there

1 may be others in the room that can correct me.
2 I think some of those were ten-year contract
3 proposals. Some them may have been as much as
4 20-year contract proposals. I don't believe any
5 of them were a 30-year contract proposal. And I
6 believe what we had to do was to evaluate over a
7 30-year time frame. But the responses to the
8 RFP were not for a life-of-plant commitment.
9 They were for shorter time frames and were very
10 similar to that which is being proposed in this
11 proceeding.

12 CHAIRMAN JACOBS: Any other questions,
13 Commissioners?

14 COMMISSIONER PALECKI: I have a suggestion
15 that I would like to make.

16 CHAIRMAN JACOBS: Very well.

17 COMMISSIONER PALECKI: I think the company
18 is asking us to make a decision by the 1st of
19 September. I'm unwilling to commit to that
20 short a time frame. I think that I would like
21 to expedite this matter. I think by committing
22 to a date of September 1st, we are really
23 putting our staff in a position where they may
24 not be able to do adequate discovery, and it's
25 just an overly aggressive time frame.

1 My suggestion is that we grant the motion
2 to expedite, that we turn this matter over to
3 the prehearing officer with a suggestion that we
4 try, that we try to have this decided by the 1st
5 of October, which I think would be a little more
6 reasonable.

7 COMMISSIONER JABER: Isn't this
8 Commissioner Baez's month? Correct?

9 MR. ELIAS: Just one point for
10 clarification, to correct something that was
11 said earlier. And I'm quoting from page 2 of
12 the motion to expedite here, about four or five
13 lines down. The company specifically requests
14 that the Commission set this matter for an early
15 hearing during the week of July 23rd and to
16 issue a final decision on its proposal no later
17 than August 14, 2001. I want the Commission to
18 be aware that that's specifically what they
19 asked for so that you can --

20 COMMISSIONER PALECKI: My suggestion is not
21 that we expedite to that extent, but that we
22 grant the concept of expediting this matter, we
23 grant the motion to that extent, that we will
24 move it along much more quickly than we would
25 normally move along a case of this magnitude.

1 COMMISSIONER DEASON: I'm willing to go
2 along with that, with the idea that that process
3 be expedited, that there be a prehearing officer
4 designated as quickly as possible, and that he
5 or she go ahead and have a meeting as quickly as
6 possible and let's find out if this is doable or
7 not.

8 CHAIRMAN JACOBS: That occurs to me to be a
9 more precise way, because otherwise, we -- I
10 think we've brought on the idea of kind of
11 giving the prehearing officer a stacked deck, or
12 certainly an unfriendly deck.

13 COMMISSIONER JABER: It depends on how you
14 look at it. I --

15 COMMISSIONER BAEZ: No, no, wait a second.
16 Wait a second. If the Commission approves in
17 concept expediting the docket -- and I want this
18 to sound like a negotiation here, but there has
19 to be -- there has to come with it the ability
20 to kill it all, the ability to make the decision
21 that, you know, there is no time, because we're
22 not going to be burning fuel on this until
23 August, to then decide -- you know, to then have
24 Gulf Power walk off and say, "Forget it. We
25 can't make it. We're going to go file." So it

1 has to have, you know, either a date, a
2 drop-dead date by which an agreement on an
3 acceptable timetable to everyone has to be made,
4 or the prehearing officer can have the authority
5 to pull the plug on this docket. And I don't
6 know if that's even legal.

7 COMMISSIONER JABER: See, when I brought it
8 up, what I envisioned was that the company would
9 pull the plug. I think that they've asked us to
10 consider expediting it. The prehearing officer
11 and the chairman have to look at the Commission
12 calendar, and whatever date we can come up with
13 should be set forth as a drop-dead date in an
14 order. And if that's not acceptable to the
15 company who has filed this petition, then they
16 need to withdraw their petition.

17 COMMISSIONER BAEZ: I think that's fine.

18 COMMISSIONER JABER: But for us -- and I
19 also don't want to set -- our dates are not
20 negotiable. The company took a stab at
21 suggesting an outline for the dates, and I
22 understand that, but we have to think of
23 workload, Commission workload, not just the
24 electric industry, but all of the industries.
25 We have to think of staff workload, which is why

1 I think it appropriately belongs with the
2 prehearing officer and the chairman, and comes
3 with that the ability to --

4 COMMISSIONER BAEZ: Commissioner --

5 COMMISSIONER JABER: -- send it, to set the
6 date in an order, and if they don't like it,
7 they can withdraw the petition and regroup.

8 COMMISSIONER BAEZ: Commissioner, the
9 notion is -- if the notion is that our dates are
10 not negotiable, then I -- you know, I mean, I
11 hope that the staff is not offering -- hasn't
12 offered up dates that weren't in -- you know,
13 that weren't possibly the best that you can do.
14 Now, there may be some wiggle room there, but,
15 you know, if everybody -- if we all assume that
16 the staff was, you know, setting out dates that
17 were at least very, very close to the best that
18 they could do, and we're that far apart, I -- I
19 guess the problem that I'm having is that the
20 concept of expediting is good, because I think
21 it offers us an opportunity to deal with an
22 issue in a new and different way, and we should
23 all be -- you know, take that on as a challenge
24 and relish that.

25 But the dates and the time frames that

1 we've been discussing and the time frames that
2 the company has set out, I'm assuming in good
3 faith, as being almost non-negotiable on their
4 side, they're not -- you know, the dates on
5 either side are not jibing. And why are we
6 going through this if we can't get close to
7 something -- I mean, I'm not hearing from the
8 company that they have an ability to move and
9 still get their work done on time, and I'm
10 certainly not hearing it from the staff.

11 COMMISSIONER JABER: I don't know what the
12 staff looked at in coming up with the October
13 hearing. I'm assuming they already went through
14 the Chairman's office and talked to our -- you
15 know, and looked at the calendar. There are
16 many staff-assisted rate cases that don't come
17 to fruition. Perhaps that's something to look
18 at. I think what Commissioner Palecki threw out
19 is something to look at.

20 But to the degree a hearing could be held
21 in September, I would welcome it. And again,
22 there is some benefit to having this issue at
23 least partially resolved, if not fully resolved,
24 before the fuel adjustment hearing.

25 MR. ELIAS: As far as the time frame, we

1 didn't even look at the calendar. We looked at
2 what we felt like we needed to do to make sure
3 that we could present you with all the
4 information necessary to make a fully informed
5 decision on the merits of Gulf's proposal. And
6 it's not just discovery. It's the time to
7 formulate and file testimony if necessary. And
8 that's why -- and conduct a whole panoply of
9 prehearing activities, including identifying
10 issues after the testimony and the discovery is
11 had, addressing what are certain to be some
12 fairly contentious procedural issues along the
13 way about the scope of the proceeding and
14 whether an issue was appropriate, before we said
15 that, okay, if we schedule a hearing in October,
16 that's roughly three months or 90 days after the
17 Commission makes a decision on whether or not to
18 expedite it, that we could feel comfortable in
19 having some reasonable assurance that we would
20 be able to present you with all the information
21 that you need to make a fully informed decision.

22 Could we do it faster? Conceivably. But,
23 you know, for the reasons that Gulf presented to
24 have this in time for the fuel adjustment
25 hearing, you know, we've told you that the FERC

1 proceeding can take place simultaneously. It
2 could be a whole lot faster, the fact that this
3 plant doesn't come on line until the middle of
4 next year means that there could be some kinds
5 of alternative means for incorporating the
6 expenses of the PPA into the capacity cost
7 recovery clause if that's ultimately shown to be
8 in the best interests of Gulf's ratepayers.

9 The time frame that we were looking at was
10 what we felt like was most reasonable in terms
11 of making sure that the information and the
12 proof could be marshalled in a reasonable time
13 frame for the Commission to make an informed
14 decision.

15 COMMISSIONER DEASON: Let me say this. My
16 overriding concern is this. It's that Gulf is
17 coming to us with an option, and I applaud them
18 for doing that. The problem is the time frames
19 involved. And we all know at least the schedule
20 that was originally proposed is very, very
21 aggressive and probably unworkable.

22 If we do not pursue at least the
23 possibility of expediting, I think what we're
24 doing is, we're making a decision today -- we're
25 telling Gulf Power, "Go and file a rate case."

1 That's what we're telling them. And we're
2 telling them, "Don't pursue a purchased power
3 agreement. Go and file a rate case and put this
4 plant in your rate base for 30 years, assuming
5 that there's not a legislative change which
6 changes the whole way we regulate and consider
7 generation in this state." So by not at least
8 exploring the possibility of expediting, we're
9 making a decision. And I would feel more
10 comfortable at least pursuing the possibility.

11 COMMISSIONER BAEZ: Commissioner, I agree
12 with you. I think if by our vote today what
13 we're doing is opening the door to let's explore
14 the possibility, let's see if we can all get
15 together and make it work, then I'm 100% for it.

16 COMMISSIONER DEASON: And let me say this.
17 I know that Gulf has been very adamant about
18 their September 1st date. And if that's the
19 case and the best we can do is come up with a
20 decision on October the 1st and they can't live
21 with it, then the ball is in their court and
22 they made that decision. It wasn't us. We did
23 the best that we could. Maybe they can go back
24 and look at things, and maybe they can be a
25 little more flexible. I don't know. But I

1 think we owe it to everyone involved to at least
2 give it a shot and see what we can come up with.

3 COMMISSIONER BAEZ: I guess the point that
4 I wanted to make is, just hearing what I'm
5 hearing today, this vote already has a suspended
6 sentence over it, and we're all going to have to
7 work -- you know, staff and the parties are all
8 going to have to work very, very hard to make
9 this work, because the deck is stacked against
10 it. I haven't heard anything -- you know, I
11 haven't heard a whole lot today that's going to
12 say we can resolve this. And I hope to be
13 proven wrong.

14 But I am in agreement with you. I think we
15 need to offer the opportunity.

16 COMMISSIONER DEASON: And maybe it's easy
17 for me to say, because apparently I'm not the
18 prehearing officer and you are.

19 COMMISSIONER BAEZ: Well, that's -- you
20 know --

21 COMMISSIONER DEASON: I don't know. When
22 was this filed? Was it filed this month, June?

23 COMMISSIONER BAEZ: The book hasn't been
24 written on that yet.

25 MS. HARLOW: It was filed June the 8th.

1 Can I make a quick comment on the
2 schedule? Staff did check the scheduling, and
3 we found that there were panel dates available
4 September, October, and November. The first
5 just completely open date for a full Commission
6 was January, early January, other than right
7 around the holidays. We did not investigate the
8 opportunity of moving full Commission dates,
9 other than the September 19th date that
10 Commissioner Palecki mentioned for the 808
11 docket, which is Gulf's docket. And we did not
12 speak with the company about their feeling on
13 using that hearing date.

14 COMMISSIONER DEASON: Let me --

15 CHAIRMAN JACOBS: I can sit down with the
16 prehearing officer if it is the desire of the
17 Commission, and I assume it would be, that this
18 be a full Commission item. We'll sit down and
19 figure out what times --

20 COMMISSIONER DEASON: We routinely process
21 PAA --

22 COMMISSIONER BAEZ: PPA.

23 COMMISSIONER DEASON: PPA with panels, so I
24 don't know that this has to be a full
25 Commission. It may be desirable to have it full

1 Commission. But if you're looking at a January
2 hearing date --

3 COMMISSIONER BAEZ: That's out of the
4 question.

5 COMMISSIONER DEASON: That's out of the
6 question.

7 I'm prepared to make a motion,
8 Mr. Chairman.

9 CHAIRMAN JACOBS: One brief question. We
10 addressed it briefly, but there are two very
11 distinct and important policy issues here. One
12 is the idea of to what extent a plant that has
13 been approved for rate base can subsequently
14 come along and be put into an unregulated
15 affiliate, and to what extent -- what does that
16 do to the operating company which got original
17 approval. And then, of course, the other is to
18 what extent then, if that entity -- if the
19 operating company chooses to purchase power back
20 from that entity, what are the elements of
21 prudence for that purchase transaction.

22 And I'm understanding that we're intending
23 that this docket encompass both policy issues,
24 or just the latter? I've heard -- most of the
25 discussion has been regarding the latter and not

1 necessarily the former.

2 MS. HARLOW: It's my opinion at this point
3 in time that we haven't had the time to develop,
4 fully develop what is the scope of the docket.
5 If we had to hold an issue ID meeting this
6 afternoon, I don't think I'm prepared to have a
7 list of initial issues.

8 CHAIRMAN JACOBS: That obviously will have
9 a lot to do with the time which we can come up
10 with that. We'll wait --

11 COMMISSIONER DEASON: Well, let's explore
12 that for just a moment. I would assume -- and,
13 Mr. Elias and Mr. McLean, if you're here,
14 correct me if I'm wrong.

15 This company could, if they wanted to, they
16 could enter into the purchased power agreement
17 without us reviewing it beforehand. They just
18 carry the risk and the burden that they've done
19 the right thing, and they come before us in a
20 capacity clause review or whatever, and them
21 already having made the decision, they've got
22 the burden to demonstrate that it was
23 cost-effective. And to the extent we determine
24 that it was not cost-effective, we would just
25 impute what we thought a reasonable cost would

1 be, and they would have to eat the difference.

2 They could do that, or they could go ahead
3 if they wanted to and build this plant, and they
4 could sell it. I don't think there's any
5 statutory prohibition that says a utility cannot
6 sell its assets. But I think there's a big risk
7 associated with that. And they wanted to come
8 forward with all the parties present and try to
9 get a determination if this makes sense on the
10 front end before they make the commitment.

11 MR. HOWE: Commissioner Deason, I would
12 disagree. I think one of the first issues that
13 our office will raise is the question of, in a
14 situation where a utility has come to the
15 Commission and asked for a need determination,
16 essentially the Commission order approving that
17 need determination is a direction from the
18 Commission to build, to own, and to operate that
19 asset. We think this would be the appropriate
20 forum to question whether under those
21 circumstances Gulf Power has the latitude to
22 transfer outside the Commission's jurisdiction a
23 generating unit that the Commission has told
24 them to build, to operate, and to own after a
25 finding that that asset is necessary to serve

1 the retail customers.

2 COMMISSIONER DEASON: Well, Mr. Howe,
3 that's an interesting legal/regulatory debate,
4 and I don't mean to debate it today, but I think
5 that we would be shortsighted if we were to say
6 because we have made a need determination that
7 this company is obligated to go forward and
8 build this power plant and put it in rate base
9 conceivably for 30 years. If there is a more
10 cost-effective alternative out there and they
11 can demonstrate that it's more cost-effective,
12 then I think we have an obligation to consider
13 it.

14 And I think to the extent they knew that
15 there was a more cost-effective alternative out
16 there and they decided not to pursue it, you
17 probably could have a case that you're not
18 managing the utility correctly because, sure,
19 you got a need determination, and you went ahead
20 and you built it and you put it in rate base,
21 but you knew there was a better alternative out
22 there, and you didn't pursue it, so you're not
23 managing the company correctly.

24 MR. HOWE: That's correct. I think the
25 distinction is whether the Commission would

1 authorize the transfer because there is a more
2 cost-effective alternative. I was just
3 addressing your point, which seemed to be that
4 the Commission should not even look at whether
5 they have the authority to question the transfer
6 itself.

7 COMMISSIONER DEASON: Oh, no, we can
8 question it. But I think legally if they want
9 to sell at this time -- if the power plant
10 belongs to them and they want to sell it, they
11 probably can sell it, and I don't think we can
12 prevent them. We can probably penalize them in
13 earnings on a prospective basis because they
14 made an imprudent decision.

15 MR. HOWE: Well, I don't want to debate
16 this too much, but you understand, Commissioner
17 Deason, there's a provision in the statutes that
18 says this Commission can order utilities to make
19 additions to plant, to generation, to
20 transmission, and so forth. I would suggest
21 that a fair reading that of statute would
22 suggest that a company that is required to build
23 a plant at the Commission's direction can't
24 unilaterally decide to divest the Commission of
25 jurisdiction over that plant.

1 COMMISSIONER DEASON: That's interesting.
2 I don't think -- Mr. Howe, if you're going to be
3 involved in this case, there's no way it can be
4 concluded in 90 days.

5 CHAIRMAN JACOBS: Well, now, I still don't
6 think we got an answer to the question about
7 scope, but I still think probably that has to be
8 dealt with in the context of the prehearing
9 officer, and we'll figure out how we go from
10 there. But we do apparently have a motion to
11 approve staff, but --

12 COMMISSIONER DEASON: No, no, no, no. My
13 motion is --

14 CHAIRMAN JACOBS: I'm sorry. To do an
15 expedited.

16 COMMISSIONER DEASON: Well, let me be very
17 clear. Mr. Elias has indicated that there's
18 very specific language within the motion so that
19 if we approve the motion, we could conceivably
20 be approving specific dates, and I don't think
21 that's what we want to do.

22 MR. STONE: Commissioner, if I may, I would
23 move to amend my motion. And I have reread the
24 portion that Mr. Elias has reference to, and I
25 guess in our haste, we did not leave open the

1 flexibility that I thought we had left open in
2 our motion. It certainly was our intent.

3 Those were suggested dates. They were not
4 meant to be the only possible dates. The part
5 of our motion that we raised is that we needed a
6 decision by the end of August, and I would amend
7 my motion to that regard, or such other just and
8 reasonable relief as this Commission be --

9 COMMISSIONER DEASON: Well, what I would
10 do, I would move to grant in part and deny in
11 part. And the only part that I'm granting is
12 the concept that we explore expediting this
13 proceeding. And that exploration would not
14 require that there be a decision by September
15 the 1st. If we can't meet that, we just lay out
16 the best alternative, and the company either
17 takes it or walks away from it. So it would be
18 granting in part and denying in part within that
19 framework, and that we go ahead and explore
20 expediting this proceeding, and that that be
21 expedited as well, that we name a prehearing
22 officer as quickly as possible, and that there
23 be a status conference, or whatever you want to
24 call it, as quickly as possible.

25 What are the noticing requirements for a

1 status -- can we go ahead and notice that today,
2 and that meets the requirements?

3 MR. ELIAS: I believe if we get some help
4 from Carol, we could probably make sure that we
5 make the next -- the July 5th or 6th FAW. Or
6 are those already gone?

7 COMMISSIONER DEASON: No, I'm thinking we
8 announce today when the status conference is
9 going to be, and that meets the notice
10 requirements.

11 COMMISSIONER JABER: You would have to know
12 the date, I think, Commissioner.

13 COMMISSIONER DEASON: That's what I'm
14 saying. Can we find a date today to have a
15 status conference?

16 CHAIRMAN JACOBS: Why don't we --

17 COMMISSIONER DEASON: Because if it's going
18 to be three or four weeks before we can have a
19 status conference, I think we're already dead in
20 the water.

21 CHAIRMAN JACOBS: Why don't we come up with
22 the last possible date that a status conference
23 can possibly be held, and we'll go along with
24 it.

25 COMMISSIONER BAEZ: Yesterday.

1 COMMISSIONER JABER: Well, I mean, the
2 status conference to be held by the prehearing
3 officer?

4 COMMISSIONER DEASON: Yes.

5 COMMISSIONER JABER: Well, then we need to
6 know the prehearing officer's availability.

7 COMMISSIONER BAEZ: And I can't speak with
8 any knowledge.

9 CHAIRMAN JACOBS: I don't think anyone
10 knows. But I think what we can do is kind of
11 give a drop-dead date. If the stars can't align
12 by that point in time, then this process won't
13 work.

14 COMMISSIONER JABER: Should we take a
15 break?

16 COMMISSIONER PALECKI: Yes, but I think
17 what Commissioner Deason was trying to do is
18 announce it publicly at this scheduled agenda
19 conference so we don't need to go through the
20 FAW. It might take a recess for us to do that,
21 but I think it would be desirable.

22 COMMISSIONER DEASON: That may give us two
23 or three weeks right there.

24 COMMISSIONER BAEZ: So what are the
25 noticing requirements? If you announced it

1 right now --

2 CHAIRMAN JACOBS: On the alternative, can
3 notice be waived here?

4 MS. STERN: Can I just get some
5 clarification? Were you asking that the notice
6 that -- the announcement today serve --

7 COMMISSIONER DEASON: Would constitute
8 notice.

9 MS. STERN: Serve as notice. Okay. I
10 don't think that that --

11 COMMISSIONER DEASON: We can't do that?

12 MS. STERN: I believe it has to be in the
13 FAW. The FAW --

14 CHAIRMAN JACOBS: Can notice be waived?

15 MS. STERN: Under certain circumstances,
16 but I'm not sure --

17 COMMISSIONER JABER: What do the uniform
18 rules say on emergency meetings and workshops
19 and emergency hearings?

20 MS. STERN: Well, I think that section
21 starts when there's an immediate danger to the
22 public health, safety, and welfare, and I don't
23 think that we could meet that standard here.

24 COMMISSIONER BAEZ: I might have a heart
25 attack.

1 COMMISSIONER DEASON: Well, what I'm saying
2 is, if it's going to be a month before we can
3 have a status conference to determine what the
4 schedule is going to be, there's no way.

5 MS. STERN: It won't be a month. It might
6 be three weeks, because we have to get it -- we
7 won't be able to get it in the FAW till next
8 Friday published, and it's got to be seven days
9 notice once it's in there.

10 MR. ELIAS: So that would be the 13th.

11 COMMISSIONER PALECKI: Well, if all of the
12 parties here today waive the FAW --

13 MR. ELIAS: I think the issue is reasonable
14 notice under the sunshine law as that has been
15 interpreted in Chapter 28.106, and I think that
16 says seven days.

17 MS. STERN: While we try to figure this
18 out, one concern is that there is a party in the
19 stipulation, the stipulation that accompanied
20 the need determination order, that isn't here
21 today. That's the Equitable Rates Group.

22 COMMISSIONER DEASON: But this agenda was
23 noticed, and I suppose that if they wanted to
24 have been here, they could have been here, so
25 they've had notice that this was going to be

1 discussed.

2 MS. STERN: But that doesn't mean that
3 they --

4 COMMISSIONER DEASON: And a schedule could
5 have been set today. Part of the motion was
6 that there would be a schedule perhaps set
7 today.

8 MS. STERN: I don't know if that entitles
9 them to be waived of a FAW notice of a status
10 conference with the prehearing officer.

11 COMMISSIONER DEASON: Okay. Assuming we go
12 the FAW route, when is the soonest that a status
13 conference could be held?

14 MR. ELIAS: July 13th.

15 COMMISSIONER DEASON: So it would be the
16 middle of July, about a month from now, before
17 we could even have a meeting to determine if we
18 could expedite this proceeding, not a month, but
19 three weeks from now.

20 MR. ELIAS: Well, again, you know, I guess
21 my question is, is that something that the
22 prehearing officer necessarily has to preside
23 over? I mean, you've given us substantial
24 direction here today.

25 I think we routinely meet with parties and

1 try and come up with a negotiated resolution.
2 We can get people's best positions on where they
3 stand on what's a reasonable schedule, put it to
4 the prehearing officer, who can either issue an
5 order reflecting what he believes is appropriate
6 based on the argument of the parties, or refer
7 it to the full Commission, and we can bring it
8 back to agenda if that's appropriate. In other
9 words, I see another alternative to get to where
10 you want to go without necessarily requiring
11 that the prehearing officer preside over a
12 determination in --

13 COMMISSIONER DEASON: Well, we can
14 certainly assign a prehearing officer as quickly
15 as possible, and he or she can determine whether
16 they want to be present at the meeting and go
17 the FAW route or whether he or she wants staff
18 to do that and they be available to sign an
19 order indicating what the parties thought the
20 dates could be. So that's my motion.

21 COMMISSIONER PALECKI: I would second that
22 motion.

23 CHAIRMAN JACOBS: We're all clear on it?
24 Staff? Great. It has been moved and seconded.
25 All in favor, aye.

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COMMISSIONER PALECKI: Aye.

COMMISSIONER BAEZ: Aye.

COMMISSIONER DEASON: Aye.

COMMISSIONER JABER: Aye.

CHAIRMAN JACOBS: Aye. Opposed? Show it approved, Item 12A. That takes care of all the issues. Thank you.

(Conclusion of consideration of Item 12A.)

1
2 CERTIFICATE OF REPORTER
3

4 STATE OF FLORIDA)

5 COUNTY OF LEON)
6

7 I, MARY ALLEN NEEL, do hereby certify that the
8 foregoing proceedings were taken before me at the time
9 and place therein designated; that my shorthand notes
10 were thereafter transcribed under my supervision; and
11 that the foregoing pages numbered 1 through 85 are a
12 true and correct transcription of my stenographic
13 notes.

14 I FURTHER CERTIFY that I am not a relative,
15 employee, attorney or counsel of any of the parties,
16 or relative or employee of such attorney or counsel,
17 or financially interested in the action.

18 DATED THIS 28th day of June, 2001.
19
20
21

22 _____
23 MARY ALLEN NEEL, RPR
24 100 Salem Court
25 Tallahassee, Florida 32301
(850) 878-2221