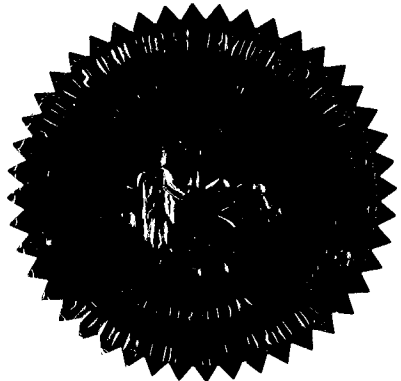


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 010283-EI

In the Matter of

CALCULATION OF GAINS AND  
APPROPRIATE TREATMENT FOR  
NON-SEPARATED WHOLESALE ENERGY  
SALES BY INVESTOR-OWNED  
ELECTRIC UTILITIES.



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PROCEEDINGS:           PREHEARING CONFERENCE

BEFORE:                 COMMISSIONER LILA A. JABER  
                              Prehearing Officer

DATE:                    Friday, July 13, 2001

TIME:                    Commenced at 10:00 a.m.  
                              Concluded at 10:47 a.m.

PLACE:                   Betty Easley Conference Center  
                              Room 152  
                              4075 Esplanade Way  
                              Tallahassee, Florida

REPORTED BY:           KORETTA E. STANFORD, RPR  
                              FPSC Official Reporter  
                              (850) 413-6734

FLORIDA PUBLIC SERVICE COMMISSION

08755 JUL 18 2001

FPSC-COMMISSION CLERK

## 1 APPEARANCES:

2 JAMES McGEE, Senior Counsel, Florida Power  
3 Corporation, Post Office Box 14042, 3201 34th Street South, St.  
4 Petersburg, Florida 33733, appearing on behalf of Florida Power  
5 Corporation.

6 MATTHEW M. CHILDS, Steel, Hector & Davis, 215 South  
7 Monroe Street, Suite 601, Tallahassee, Florida 32301, appearing  
8 on behalf of Florida Power & Light Company.

9 RUSSEL A. BADDERS and JEFFREY A. STONE, Beggs &  
10 Lane, 700 Blount Building, 3 West Garden Street, Post Office  
11 Box 12950, Pensacola, Florida 32576-2950, appearing on behalf  
12 of Gulf Power Company.

13 JAMES D. BEASLEY, Ausley & McMullen, Post Office  
14 Box 391, Tallahassee, Florida 32302, appearing on behalf of  
15 Tampa Electric Company.

16 VICKI GORDON KAUFMAN and JOHN McWHIRTER, McWhirter,  
17 Reeves, McGlothlin, Davidson, Dekker, Kaufman, Arnold & Steen,  
18 117 South Gadsden Street, Tallahassee, Florida 32301, appearing  
19 on behalf of Florida Industrial Power Users Group.

20 STEPHEN BURGESS and ROB VANDIVER, Office of  
21 Public Counsel, 111 West Madison Street, Room 812, Tallahassee,  
22 Florida 32399-1400, appearing on behalf of the Citizens of the  
23 State of Florida.

24

25

1 APPEARANCES CONTINUED:

2 BOB ELIAS, FPSC Division of Legal Services, 2540  
3 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850,  
4 appearing on behalf of the Commission Staff.

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## P R O C E E D I N G S

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COMMISSIONER JABER: Let's go ahead and start this prehearing conference. Mr. Elias, read the notice.

MR. ELIAS: Notice issued by the clerk of the Florida Public Service Commission on June 13th, 2001, advises that a prehearing is scheduled for this time and place in docket number 010283, that is the calculation of gains and appropriate regulatory treatment for nonseparated wholesale energy sales by investor-owned electric utilities.

COMMISSIONER JABER: Thank you, Mr. Elias. Let's take appearances in the order that they appear on the draft prehearing order for the sake of convenience.

MR. MCGEE: James McGee, Post Office Box 14042, St. Petersburg 33733, appearing on behalf of Florida Power Corporation.

MR. CHILDS: Matthew M. Childs from the firm of Steel, Hector & Davis, appearing on behalf of Florida Power & Light Company.

MR. BADDERS: Russell Badders with the law firm of Beggs & Lane, appearing on behalf of Gulf Power Company, also entering an appearance for Jeffrey Stone.

MR. BEASLEY: Jim Beasley with the Ausley, McMullen law firm representing Tampa Electric Company.

MS. KAUFMAN: John McWhirter and Vicki Gordon Kaufman of the McWhirter, Reeves law firm on behalf of the Florida

1 Industrial Power Users Group.

2 MR. BURGESS: Steve Burgess and Rob Vandiver for the  
3 Public Counsel's Office.

4 MR. ELIAS: And I'm Bob Elias on behalf of the  
5 Commission Staff.

6 COMMISSIONER JABER: Thank you.

7 Mr. Elias, I understand there are no preliminary  
8 matters, and we can get right down to the draft prehearing  
9 order. Everyone agrees with that? Okay. Before we get  
10 started I understand that there's been a lot of work put into  
11 this draft prehearing order and a lot of cooperation by the  
12 parties and by Staff, so I want to just take a few minutes to  
13 commend everyone and that always makes for a better prehearing  
14 and certainly for a better proceeding, so thank you.

15 And with that, let's get started on -- I think, I'd  
16 like to go section by section instead of page by page.  
17 Sections 1, 2, and 3, are there any changes? All right. I  
18 would just remind the parties to use those red folders if you  
19 intend to use confidential information at the hearing and to  
20 read thoroughly the process set out for the use of confidential  
21 information. Staff, you too.

22 Any changes to Section 4, Post-Hearing Proceedings?  
23 No anticipated problem with the page limit for the briefs?

24 MR. CHILDS: We have no problem with that. I wonder  
25 if it could be made -- if it needs to be mandatory to file the

1 post-hearing statement.

2 COMMISSIONER JABER: If it needs to be mandatory, do  
3 you mean if someone doesn't want to file?

4 MR. CHILDS: Right.

5 COMMISSIONER JABER: Let's see, the rule says --

6 MR. CHILDS: I thought it was permissive, not  
7 mandatory, but --

8 COMMISSIONER JABER: Well, you know, the part that's  
9 mandatory and, Mr. Elias, please correct me if I'm wrong, to  
10 the degree there are changes in positions, I think, the briefs  
11 are used for that.

12 MR. CHILDS: Right.

13 COMMISSIONER JABER: In that regard it would be  
14 mandatory. Mr. Elias, I don't -- we do not hold against any  
15 party the fact that they haven't filed a brief. What you do is  
16 you take the position from their prehearing order.

17 MR. ELIAS: Yes, as expressed in their prehearing  
18 statement.

19 MR. CHILDS: Okay.

20 COMMISSIONER JABER: Is that all right?

21 MR. CHILDS: Fine. Thank you.

22 COMMISSIONER JABER: You mean, you're not going to  
23 file a post-hearing brief, Mr. Childs?

24 MR. CHILDS: Well, you know, the wording was that end  
25 of the paragraph, it says if you fail to file a post-hearing

1 statement, you waive the issues and are dismissed from the  
2 proceeding, and I thought sometimes all we would say is -- some  
3 of these dockets we don't even file post-hearing statements of  
4 any kind, you know? But we're in good shape right now with  
5 that understanding.

6 MR. ELIAS: Commissioner, that language is  
7 boilerplate, but it does not reflect any mandate in any rule or  
8 statute that I'm aware of.

9 COMMISSIONER JABER: Right, but Mr. Childs raises a  
10 good point. As I recall, we started adding that language when  
11 the uniform rules took into effect. We wanted to make sure  
12 that what was in our rule was incorporated into our orders, so  
13 perhaps that sentence could be modified this time, Mr. Elias.

14 MR. BEASLEY: Certainly in instances when you rule  
15 from the bench, like fuel adjustment proceeding, there's no  
16 post-hearing filing by any party.

17 COMMISSIONER JABER: Mm-hmm. Well, I'll have Mr.  
18 Elias work --

19 MR. CHILDS: I didn't mean to create a problem with  
20 it.

21 COMMISSIONER JABER: No, you raise a good point.  
22 That's a very good point. Mr. Elias, try working on a  
23 modification to that sentence for this case, but if that will  
24 create more problem than it's worth we should all just have an  
25 understanding that to the degree, in this case, post-hearing

1 briefs are not filed, Staff will take the positions you've  
2 outlined here --

3 MR. CHILDS: Right, okay.

4 COMMISSIONER JABER: -- for the purpose of the  
5 recommendation. All right?

6 MR. CHILDS: Thank you.

7 COMMISSIONER JABER: Section 5; five-minute summaries  
8 of testimony. All right. Section 6, Order of Witnesses.

9 MR. CHILDS: The order is -- we have given Staff, I  
10 believe, the issues that are being identified by Ms. Dubin.  
11 Those are 2, 3, and 4 for her.

12 MR. BADDERS: And for Gulf we need to add to Susan  
13 Ritenour, Issue number 4.

14 COMMISSIONER JABER: Thank you. Now, FIPUG,  
15 Mr. Kordecki, does he address Issue 1? Let me see...

16 MS. KAUFMAN: He does not, Commissioner Jaber, so  
17 that should be deleted.

18 COMMISSIONER JABER: So, for Mr. Kordecki it will be  
19 Issues 2, 3, 4, and 5.

20 MS. KAUFMAN: That's correct.

21 COMMISSIONER JABER: TECO, any changes?

22 MR. BEASLEY: No changes.

23 COMMISSIONER JABER: Are there changes to the Basic  
24 Positions?

25 MS. KAUFMAN: Commissioner Jaber, FIPUG has a change.



1 There is a typographical error in their position. In the  
2 second full paragraph, the second to the last sentence that  
3 begins, "Therefore..." and I would just like to read into the  
4 record what that should say. It should say, "Therefore, when  
5 purchased power cost is the highest cost power on the utility  
6 system it is the incremental cost." And then, the line that  
7 begins, "of purchased power is incremental cost," those words  
8 should just be stricken.

9 COMMISSIONER JABER: Mr. Elias, do you have that?

10 MR. ELIAS: I'll get it from the transcript.

11 COMMISSIONER JABER: Okay.

12 MS. KAUFMAN: And then, Commissioner Jaber, in the  
13 next paragraph, the fifth line from the bottom which begins  
14 "For example,..." the last word should be "of" not "or."

15 COMMISSIONER JABER: Do the parties have those  
16 changes or do you need Ms. Kaufman to read them again?

17 MR. CHILDS: No, that's fine.

18 MR. BADDERS: I have them.

19 COMMISSIONER JABER: Anything else Ms. Kaufman?

20 MS. KAUFMAN: No, ma'am.

21 COMMISSIONER JABER: All right. Issues and  
22 Positions. Issue 1 looks like we need some positions from  
23 Florida Power Corp. and Florida Power & Light.

24 MR. CHILDS: We have -- Commissioner, we have no  
25 position on that issue. I don't want to be out of order, but

1 we have prepared written positions on Issues 2 and 3, given  
2 them to Staff and given to the court reporter, and if parties  
3 want them that's fine, and that's to avoid reading it out and  
4 copying it down, if that's helpful.

5 COMMISSIONER JABER: All right. We'll talk about  
6 that in just a minute. That will be helpful, yes. FP&L, can I  
7 go ahead, then, and have for Issue 1 reflected no position.

8 MR. CHILDS: No position.

9 COMMISSIONER JABER: This is a Gulf Power issue.  
10 Gulf, Mr. -- is it Ms. Ritenour?

11 MR. BADDERS: Yes, she's the witness.

12 COMMISSIONER JABER: All right. Can we move on to  
13 Issue 2?

14 MR. BURGESS: Commissioner Jaber, may I -- I'd like  
15 to hedge a little bit on our position and rather than say, "the  
16 regulatory treatment sought by Gulf is reasonable," say "it may  
17 be reasonable."

18 COMMISSIONER JABER: So, "Within its own context, the  
19 regulatory treatment sought by Gulf may be reasonable."

20 MR. BURGESS: Yes. And our concern -- our only  
21 concern is the circumstance we found ourselves in when we  
22 undertook the entire 80/20 issue with all the differences in  
23 the way generic principles were applied one company to the  
24 next, and that's the only concern we have. We don't have a  
25 concern with what Gulf is seeking, specifically, so it's

1 virtually no position other than just kind of a general  
2 statement of principle.

3 COMMISSIONER JABER: Thank you, Mr. Burgess.

4 MR. BADDERS: Has Staff taken a position at this  
5 time?

6 COMMISSIONER JABER: No, no position pending. Looks  
7 like review of discovery responses.

8 MR. BADDERS: I believe -- I spoke with them this  
9 morning. I believe, they may have a position.

10 MR. ELIAS: My understanding of the tenor of those  
11 discussions is that with a one-word change to Gulf's position  
12 that we could recommend approval of Gulf's proposed treatment,  
13 and that would be on the last line of Gulf's position, a change  
14 from should to can.

15 MR. BADDERS: We can agree with that.

16 COMMISSIONER JABER: Are you proposing a stipulation,  
17 Mr. Elias? Is that what you mean?

18 MR. ELIAS: Well, I don't know that FIPUG's taken a  
19 position on the issue so that we're in a position to --

20 COMMISSIONER JABER: Okay. Well, why don't you read  
21 what you would propose the language to be and let's allow  
22 Ms. Kaufman an opportunity to think about it.

23 MR. ELIAS: Okay. Well, it would essentially be  
24 Gulf's position for nonseparated wholesale energy sales that  
25 contain SO2 emission allowance component, that portion of the

1 sale price associated with the SO2 emission allowance can be  
2 credited to the fuel clause.

3 COMMISSIONER JABER: What do you think, Ms. Kaufman?  
4 Do you need time to think about it or do you disagree?

5 MS. KAUFMAN: I'm just questioning does that mean  
6 that the utility has the discretion whether or not they would  
7 credit it? I guess, I don't understand the change. Should  
8 means that they must.

9 MR. BADDERS: It would actually allow us to continue  
10 what we do now and, I believe, it would be permissive. We  
11 wouldn't have to, but it would allow us to.

12 MS. KAUFMAN: I guess, I would prefer the language  
13 the utility originally suggested.

14 MR. BREMAN: My name is Jim Breman. The possible  
15 problem that we're avoiding by saying can is that the fuel  
16 clause is something all utilities participate in without  
17 option.

18 COMMISSIONER JABER: You're trying not to make it a  
19 requirement of precedent for all of the companies.

20 MR. BREMAN: That's correct. So, right now we have  
21 the practice where it appears from the discovery we have that  
22 two utilities are recovering it one way. I'm not clear on a  
23 third. A fourth is certainly recovering it through the  
24 environmental clause. So, we have both things going on. And  
25 on a going-forward basis, when you have a rate case, it's very

1 possible that whatever costs are in the environmental cost  
2 recovery clause would no longer be in there, so you're issuing  
3 an order if it says, "should," the order is sort of a contrary  
4 result.

5 COMMISSIONER JABER: Mr. Breman and Mr. Elias, can  
6 your concern be addressed by making this specific to Gulf Power  
7 for purposes of this case and you would --

8 MR. BREMAN: My position still would be "can."

9 COMMISSIONER JABER: Right, but you would make it  
10 clear that your position would be limited to Gulf and all other  
11 -- and you may even want to consider adding a sentence that  
12 says, "To the degree this issue comes up with another company  
13 that that will be addressed for that company at a separate  
14 time."

15 MR. BREMAN: We can add, "For Gulf Power..." in the  
16 front, and that would be fine.

17 COMMISSIONER JABER: And Gulf Power, you all  
18 shouldn't care about that.

19 MR. BADDERS: We can agree with that.

20 COMMISSIONER JABER: Ms. Kaufman, that would satisfy  
21 your concerns as well, right?

22 MS. KAUFMAN: Yes, ma'am. I think, we can just take  
23 no position.

24 COMMISSIONER JABER: All right. Mr. Elias, we're  
25 going to take a break after discussing Issues 2 and 3 anyway.

1 So, if you'll work up some language, we'll get back on the  
2 record and read a proposed stipulation for Issue 1.

3 MS. KAUFMAN: Commissioner Jaber, I apologize, but I  
4 need to go back to FIPUG's basic position on Page 7. Someone  
5 was kind enough to point out to me an additional typo. It's at  
6 the bottom of the page, six lines from the bottom, the word  
7 "sun" should be "sum," s-u-m.

8 COMMISSIONER JABER: Spell check won't catch  
9 everything.

10 MS. KAUFMAN: No, it doesn't.

11 COMMISSIONER JABER: All right. Are we ready to move  
12 on to Issue 2? Now, I understand there is a dispute with  
13 respect to the wording of Issue 2. Florida Power Corporation,  
14 do you want to address your concern?

15 MR. McGEE: Yes, and I certainly didn't view it as a  
16 dispute. We don't have an objection to the phrasing that Staff  
17 used. We, in an attempt to sort of focus in on what we  
18 perceive to be the real issue based on FIPUG's protest, we  
19 thought that the wording that we had suggested which is on the  
20 following page, page 10, while somewhat more wordy, did focus  
21 in on the point better. It was offered as a suggestion. If  
22 it's the prehearing officer's preference to go with the other  
23 issue, we can support that, too.

24 COMMISSIONER JABER: Is there anyone else to address  
25 this before I tell you what I think about it? All right. I

1 looked at your position, Mr. McGee, and I looked at Staff's  
2 issue and I have to tell you, I think, you all get to the same  
3 place with either issue. I think, your proposed issue requires  
4 a yes or no answer and, I think, Staff's issue is a little bit  
5 more broad which, as a Commissioner, I prefer, because the time  
6 to restrict something will be in the position and your  
7 positions will reflect exactly what the restrictions are.

8           And I recognize that this is an issue that came out  
9 of a PAA part of an order, so I went back to that order and it  
10 occurs to me that the issue is fair game. It was protested.  
11 And in that regard, it's fair to leave it as broad as Staff has  
12 it. So, it's my preference to leave Staff's issue the way it's  
13 proposed, but I know that that will require a certain  
14 modification to your position. Now, do you need time to modify  
15 that?

16           MR. MCGEE: If we're planning to take a break, I  
17 would think that could be accomplished during that period.

18           COMMISSIONER JABER: Excellent. FP&L?

19           MR. CHILDS: We have a position written out. We've  
20 given it to Staff, and we have extra copies if parties would  
21 like to see that.

22           COMMISSIONER JABER: And Mr. Childs, that's a revised  
23 position using Staff's language for Issue 2?

24           MR. CHILDS: It is taking the issue as worded in this  
25 prehearing.

1 COMMISSIONER JABER: Do you mind going ahead and  
2 reading your position into the record for Issue 2, and then if  
3 you'll give the sheets over.

4 MR. CHILDS: Sure. The position is "Consistent with  
5 Commission order number PSC-00-1744-PAA-EI, in docket number  
6 991779 dated September 26, 2000, which states, quote: Each IOU  
7 shall credit its fuel and purchase power cost recovery clause  
8 for an amount equal to incremental fuel cost of generating the  
9 energy for each such sale," end quote, period.

10 COMMISSIONER JABER: Thank you, Mr. Childs. All  
11 right. FIPUG, first sentence should read, "The Commission  
12 should consider a utility's purchased power cost," right?

13 MS. KAUFMAN: Yes, ma'am.

14 COMMISSIONER JABER: Okay. Are there any other  
15 changes to your position?

16 MS. KAUFMAN: There are. In the second paragraph,  
17 the beginning at the fourth line, the word "power" should be  
18 inserted between purchased and should. And then, in the next  
19 line about in the middle, "not allocate and" should be deleted.

20 COMMISSIONER JABER: Thank you. Mr. Elias, do you  
21 have that?

22 MR. ELIAS: Yes, I do.

23 COMMISSIONER JABER: All right. Gulf, I need to know  
24 your witnesses for Issue 2.

25 MR. BADDERS: We do not have a witness. We'll just



1 be present to cross examine.

2 COMMISSIONER JABER: Thank you.

3 All right. Issue 3. Now, again, Mr. McGee, you  
4 expressed some of the same questions with respect to Issue 3.  
5 In light of what we did on Issue 2, I think -- is there anyone  
6 else that wants to address Issue 3?

7 MR. BURGESS: Commissioner, I'd like to address Issue  
8 3. It's curious, I find Florida Power Corp.'s language in  
9 response to their alternative issue to be language that I would  
10 like to adopt for our position, too, in response to the Issue 3  
11 as worded by Staff.

12 COMMISSIONER JABER: So, what are you saying,  
13 Mr. Burgess? Do you want them to clar-- it's too good to  
14 believe? Is what you're saying?

15 MR. BURGESS: No, no.

16 MR. MCGEE: That was my reaction.

17 MR. BURGESS: I certainly feel sheepish about it, but  
18 I would like to adopt Power Corp.'s language as our position in  
19 response to Issue 3.

20 COMMISSIONER JABER: All right. Mr. Elias, do you  
21 understand that?

22 MR. ELIAS: I believe so.

23 COMMISSIONER JABER: OPC would like to use the  
24 language proposed by Florida Power Corp. as their own position.

25 MR. MCGEE: Although, as with Issue number 2 to fit

1 our position under alternative number 3, we may need to make  
2 some fine-tuning.

3 COMMISSIONER JABER: Right. When we come back on the  
4 record I'll have you read that into the record. And  
5 Mr. Burgess, Mr. McGee raises a good point. You might want to  
6 hear that.

7 MR. BURGESS: Oh, I don't want to adopt their amended  
8 language. I want to adopt the language that I see here. I  
9 mean, to me, this answers the issue as posed by Staff.

10 COMMISSIONER JABER: Okay. Then, what we'll do is  
11 not show it as OPC adopts that position, but we'll use the  
12 language verbatim.

13 MR. BURGESS: Thank you. Thank you, Commissioner.

14 COMMISSIONER JABER: All right. FP&L, you want to  
15 read your new position into the record?

16 MR. CHILDS: For Issue 3, the position of FPL is as  
17 follows: "Consistent with Commission order number  
18 PSC-00-1744-PAA-EI, in docket number 991779 dated September  
19 26th, 2000, which states quote, "Each IOU shall credit its  
20 operating revenues for an amount equal to the incremental  
21 operating and maintenance, paren, O&M, closed paren, cost of  
22 generating the energy for each such sale" end quote, period.

23 COMMISSIONER JABER: Thank you, Mr. Childs.

24 All right. Let's move on to Issue 4. FP&L, Issue 4,  
25 do you have a witness?

1 MR. MCGEE: Ms. Dubin.

2 COMMISSIONER JABER: All right. Gulf you do not have  
3 a witness on Issue 4?

4 MR. BADDERS: We do. We have added Susan Ritenour as  
5 a witness on Issue 4.

6 COMMISSIONER JABER: Okay. FIPUG, do you have any  
7 objection to adding a reference to the order number after your  
8 position with respect to the date, effective January 1st, 2001,  
9 wasn't that done in an order?

10 MS. KAUFMAN: I believe it was, and we don't have an  
11 objection to adding that.

12 COMMISSIONER JABER: Mr. Elias, you'll go ahead and  
13 add it?

14 MR. ELIAS: Got that.

15 COMMISSIONER JABER: OPC, what's your position on  
16 Issue 4?

17 MR. BURGESS: Commissioner, we agree with PSC Staff.

18 COMMISSIONER JABER: Can we have it reflected as  
19 "Adopts Staff's position"?

20 MR. BURGESS: Yes.

21 COMMISSIONER JABER: Thank you.

22 Now, let me go ahead and give everyone fair warning  
23 that my concern on Issue 4 -- and, I think, Mr. Elias and the  
24 parties are prepared to address it at a later time, but my  
25 concern with Issue 4 is something I recall raising at the fuel

1 adjustment hearing, I think, is with respect to the reliance on  
2 Staff's memorandum.

3 As far as I can tell, that's not been introduced as  
4 an exhibit in anybody's testimony. I know that some testimony  
5 refers to it. I think, for the purposes of a clean record you  
6 all have to figure out how that needs to come in, so with that  
7 we can move on.

8 It seems to me, everybody -- everyone would want the  
9 methodology to be in the record and you wouldn't necessarily  
10 care about the memorandum, but to the degree you can reach a  
11 stipulation on the use of the memorandum for a limited purpose,  
12 that may be the way to go.

13 MR. CHILDS: Well, I will tentatively say that  
14 Florida Power & Light Company will be offering it and in an  
15 alternative will attempt to reach an accommodation with all of  
16 the parties.

17 COMMISSIONER JABER: Thank you, Mr. Childs.

18 MR. CHILDS: All right.

19 COMMISSIONER JABER: Mr. Elias, you'll work with all  
20 the parties on this?

21 MR. ELIAS: Yes.

22 COMMISSIONER JABER: All right. Issue 5, I'd like to  
23 delete.

24 MR. ELIAS: We can do that.

25 COMMISSIONER JABER: All right. Are there any

1 changes to the Exhibit List? There's only one prefiled  
2 exhibit; is that right?

3 MR. ELIAS: That was all I saw when I went through  
4 the testimony.

5 COMMISSIONER JABER: All right. Proposed  
6 Stipulations. Gulf, you have -- this is an outstanding offer  
7 that you're willing to consider inserting testimony into the  
8 record without cross examination?

9 MR. BADDERS: Yes, we are.

10 COMMISSIONER JABER: Is it premature to talk to the  
11 parties about that? Are you all ready to say which witnesses  
12 can be stipulated into the record?

13 MR. BURGESS: We -- go ahead, Vicki.

14 MS. KAUFMAN: We're not prepared at this time to do  
15 that, Commissioner Jaber.

16 MR. BURGESS: Nor are we.

17 COMMISSIONER JABER: I think, for purposes of issuing  
18 the prehearing order we can delete that, but certainly that's  
19 something to keep in everyone's mind. It's a good offer.

20 MR. BADDERS: So, it would be safe to say that if an  
21 issue is stipulated and a witness only covers that issue they  
22 would be excused?

23 COMMISSIONER JABER: Yes.

24 MR. BADDERS: Okay.

25 COMMISSIONER JABER: But you need to remind Mr. Elias

1 so that we can officially rule on it. What we do is Mr. Elias  
2 will make sure that the other Commissioners don't have  
3 questions of those witnesses before we excuse them from the  
4 hearing.

5 MR. BADDERS: Thank you.

6 COMMISSIONER JABER: So, as soon as you all know,  
7 make sure Mr. Elias knows. Is there anything else, Bob, in  
8 that regard?

9 MR. BURGESS: Commissioner, we intend to continue  
10 examining this, and if we do reach that decision to let the  
11 parties know, should we instead simply let Mr. Elias know that  
12 we've arrived at a conclusion that we have no cross examination  
13 for a particular witness?

14 COMMISSIONER JABER: How do you want to handle that,  
15 Mr. Elias? You definitely need to know, but I think as a  
16 courtesy the parties should know, too.

17 MR. BURGESS: The party and Mr. Elias, very good.

18 COMMISSIONER JABER: How many days is the hearing?  
19 This is a one-day hearing?

20 MR. ELIAS: It's a one-day hearing.

21 COMMISSIONER JABER: Keep that in mind. No Pending  
22 Motions at this time? No Pending Confidentiality Matters at  
23 this time? Under the Ruling section, we are noting that we are  
24 changing the hearing. Mr. Elias, I would just ask that you add  
25 a sentence that reflects that all other matters in the order on

1 procedure are, what, affirmed in all other respects, but let's  
2 talk about the discovery cut-off period. It was originally  
3 established as a week before what, August 2nd?

4 MR. ELIAS: The hearing was set for August 2nd, yes.

5 COMMISSIONER JABER: So, do we need to move the  
6 discovery cut-off period?

7 MR. ELIAS: That would be Staff's recommendation,  
8 yes, up to the same amount of time before the rescheduled  
9 hearing.

10 COMMISSIONER JABER: I can't imagine anyone would  
11 have any trouble making it a week prior to the new hearing,  
12 right? Go ahead and add that in the Ruling section, Mr. Elias.  
13 Opening statements shall not exceed 10 minutes per party, if  
14 any. That's not an invitation to do opening statements.

15 We are going to take a ten-minute break to allow  
16 Staff to come up with a proposed stipulation for Issue 1, to  
17 allow Mr. McGee to work out a modified position for Issues 2  
18 and 3, and we'll come back at 10:40. Thank you.

19 (Recess taken.)

20 COMMISSIONER JABER: Let's reconvene the prehearing  
21 conference. Mr. Elias, where we left it was that the parties  
22 would -- you and the parties would get together on a proposed  
23 stipulation for Issue 1, and Mr. McGee wanted time to modify  
24 his positions on Issues 2 and 3.

25 MR. ELIAS: Okay.

1 COMMISSIONER JABER: Would you give me an update,  
2 please?

3 MR. ELIAS: We have reached agreement on a  
4 stipulation for Issue 1, and I'd like to read both the revised  
5 issue and the proposed stipulation into the record.

6 The revised issue will read, "What is the appropriate  
7 regulatory treatment for SO2 emission allowances associated  
8 with nonseparated wholesale energy sales?" And the stipulated  
9 resolution is, "For nonseparated wholesale energy sales that  
10 contain SO2 emission allowance component, that portion of the  
11 sales price associated with the SO2 emission allowance, should  
12 be credited to either the fuel or environmental cost recovery  
13 clause."

14 COMMISSIONER JABER: And that is acceptable to all of  
15 the parties?

16 MR. ELIAS: My understanding that yes, it is.

17 MR. BADDERS: It is to Gulf.

18 MR. CHILDS: It is to Florida Power & Light.

19 MR. MCGEE: And to Florida Power.

20 MR. BEASLEY: And Tampa Electric.

21 COMMISSIONER JABER: Ms. Kaufman?

22 MS. KAUFMAN: Yes, Commissioner, that's fine.

23 COMMISSIONER JABER: OPC?

24 MR. BURGESS: Yes.

25 COMMISSIONER JABER: All right. Mr. Elias, I would



1 like to reflect Issue 1 as being stipulated so you don't have  
2 to list the issue, just say it's stipulated. And the language  
3 you read for the proposed stipulation, if you'll move it to the  
4 stipulation section, I think, that's the way to handle it.

5 Now, Ms. Ritenour is the only witness -- parties,  
6 correct me if I'm wrong, Ms. Ritenour is the only witness that  
7 filed testimony on Issue 1. That's correct. Mr. Elias, I  
8 would like to be able to excuse her attendance from the  
9 hearing.

10 MR. ELIAS: I think, she addresses another issue as  
11 well.

12 COMMISSIONER JABER: I see.

13 MR. BADDERS: She also addresses Issue 4, which may  
14 stipulate.

15 COMMISSIONER JABER: All right. So, the idea of  
16 excusing her from the hearing doesn't need to be addressed  
17 anyway.

18 MR. ELIAS: Not at this point.

19 COMMISSIONER JABER: Well, then, show Issue 1 as  
20 being a proposed stipulation.

21 All right. Issues 2 and 3, Mr. McGee.

22 MR. MCGEE: I had discussed this with Mr. Elias and  
23 agreed that I would prepare a written response to him and  
24 provide that either this afternoon or first thing in the  
25 morning.

1           COMMISSIONER JABER: I think, tomorrow is acceptable,  
2 Mr. Elias.

3           MR. ELIAS: Yes.

4           COMMISSIONER JABER: That's the way we'll handle it,  
5 and your revised issues will go into the prehearing order  
6 before it's issued.

7           MR. McGEE: Thank you.

8           MR. BURGESS: Commissioner, as well --

9           COMMISSIONER JABER: Yes.

10          MR. BURGESS: If I may, our position, I would like to  
11 on Issue 4 put a qualifier in our position with regard to  
12 adopting the Staff recommendation or the Staff language and the  
13 implementation and, basically, the thrust of it will be to the  
14 extent that's consistent with our positions on 2 and 3,  
15 basically, to the extent that any interpretation is consistent  
16 with our positions on Issues 2 and 3. I'll come up with --

17          COMMISSIONER JABER: So, that would be the qualifier  
18 to adopting Staff's position.

19          MR. BURGESS: Commissioner, that's correct, thank  
20 you.

21          COMMISSIONER JABER: Mr. Elias, do you understand  
22 that language?

23          MR. ELIAS: Yes, I do.

24          COMMISSIONER JABER: Thank you. Are there any other  
25 matters that need to come before me before I adjourn the

1 prehearing conference today?

2 MR. CHILDS: Commissioner, there may be one. We  
3 mentioned the Staff memorandum September 20, 2000. So far, we  
4 have not been able to have agreement on that. I think, it  
5 might be appropriate to at least tentatively identify that as  
6 an exhibit to be proffered by FPL.

7 COMMISSIONER JABER: That's a good idea, Mr. Childs.  
8 I don't think we need to do that today.

9 MR. CHILDS: Okay.

10 COMMISSIONER JABER: I'm going to allow you all time  
11 to depose witnesses and work this out informally.

12 MR. CHILDS: Okay.

13 COMMISSIONER JABER: It's not something that has to  
14 be incorporated into the prehearing order.

15 MR. CHILDS: I think, maybe we can.

16 COMMISSIONER JABER: Good luck. Thank you all. This  
17 prehearing conference is adjourned.

18 (Prehearing concluded at 10:47 a.m.)

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1 STATE OF FLORIDA )  
2 : CERTIFICATE OF REPORTER  
3 COUNTY OF LEON )  
4

5 I, KORETTA E. STANFORD, RPR, Official Commission  
6 Reporter, do hereby certify that a Prehearing Conference was  
heard at the time and place herein stated.

7 IT IS FURTHER CERTIFIED that I stenographically  
8 reported the said proceedings; that the same has been  
transcribed under my direct supervision; and that this  
9 transcript constitutes a true transcription of my notes of said  
proceedings.

10 I FURTHER CERTIFY that I am not a relative, employee,  
11 attorney or counsel of any of the parties, nor am I a relative  
or employee of any of the parties' attorneys or counsel  
12 connected with the action, nor am I financially interested in  
the action.

13 DATED this Wednesday, July 18, 2001.

14   
15 KORETTA E. STANFORD, RPR  
16 FPSC Official Commissioner Reporter  
(850) 413-6734

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