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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

IN RE: DOCKET NO. 000824-EI - Review of Florida Power Corporation's earnings, including effects of proposed acquisition of Florida Power Corporation by Carolina Power and Light.

DOCKET NO. 001148-EI - Review of retail rates of Florida Power & Light Company.

DOCKET NO. 010577-EI - Review of Tampa Electric Company and impact of its participation in GridFlorida, a Florida transmission company, on TECO's retail rates.

BEFORE: CHAIRMAN LILA A. JABER
COMMISSIONER J. TERRY DEASON
COMMISSIONER BRAULIO L. BAEZ
COMMISSIONER MICHAEL A. PALECKI

PROCEEDINGS: AGENDA CONFERENCE

ITEM NUMBER: 6

DATE: Tuesday, February 19, 2002

PLACE: 4075 Esplanade way, Room 148
Tallahassee, Florida

TRANSCRIBED BY: MARY ALLEN NEEL
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1 APPEARANCES:

2 ROBERTA BASS and COCHRAN KEATING, FPSC Staff.
3 JOSEPH MCGLOTHLIN, McWhirter Reeves Law Firm, on
4 behalf of Reliant.

5 LESLEY PAUGH, Landers & Parsons, on behalf of
6 Mirant.

7 STAFF RECOMMENDATION

8 ISSUE 1: Should the Commission grant the joint
9 movants' joint request for oral argument on the joint
10 motion for reconsideration of Order No.
11 PSC-01-2489-FOF-EI?

12 RECOMMENDATION: No. The basis for the joint motion
13 for reconsideration is adequately and thoroughly
14 described within the motion. Oral argument would not
15 aid the Commission in evaluating and comprehending the
16 issues set forth in the joint motion.

17 ISSUE 2: Should the Commission grant the joint
18 movants' motion for reconsideration of Order No.
19 PSC-01-2489-FOF-EI?

20 RECOMMENDATION: No. The Commission did not overlook
21 or fail to consider any point of law or fact in
22 rendering Order No. PSC-01-2489-FOF-EI.

23 ISSUE 3: Should the Commission grant Tampa Electric
24 Company's cross motion for clarification of Order No.
25 PSC-01-2489-FOF-EI?

RECOMMENDATION: The Commission should grant TECO'S
cross motion for clarification, in part, to reconfirm
that it did not vote on Issue 10 as listed in the
Prehearing Order. TECO's request that the Commission
correct a clerical error in Order No.
PSC-01-2489-FOF-EI is moot because the requested
correction has already been made in an amendatory
order.

ISSUE 4: Should these dockets be closed?

RECOMMENDATION: As set forth in Order No.
PSC-01-2489-FOF-EI, Docket No. 000824-EI and Docket
No. 001148-EI should remain open to permit the
Commission to complete its pending rate reviews in
those dockets for Florida Power Corporation and
Florida Power & Light Company, respectively, and
Docket No. 010577-EI should be closed.

CHAIRMAN JABER: And that brings us back to the panel item, Number 6.

Commissioner Bradley, for purposes of internal affairs, how about we take it up immediately after this item, internal affairs in the internal affairs room.

Go ahead, staff.

MR. KEATING: Commissioners, Item 6 is staff's recommendation to deny the joint motion of Reliant, Duke, Calpine, and Mirant for reconsideration of specific portions of the Commission's order concerning the GridFlorida RTO proposal. Staff's recommendation also addresses TECO's cross-motion for clarification of the GridFlorida order, and staff recommends that TECO's cross-motion be granted.

Counsel for Reliant, Duke, Calpine, and Mirant have requested oral argument on their motion for reconsideration. The staff believes, however, that oral argument would not aid the Commission in evaluating the issue before it, because the arguments offered in support of the motion are thoroughly set forth in the motion. Of course, the issue before you today is whether the Commission overlooked or failed to consider

1 some point of fact or law in rendering the
2 GridFlorida order. I believe that is addressed
3 adequately in the motion. But it is, of course,
4 within your discretion to hear oral argument.

5 COMMISSIONER DEASON: Madam Chairman, let
6 me say that in regards to Issue 1 that I think
7 staff has done an outstanding job in their
8 recommendation. I think it's very thoughtful
9 and complete. However, to me it would be
10 helpful -- I think it's within our discretion,
11 and to me it would be helpful to hear from the
12 parties. So in that vein, I would move that we
13 would deny staff on Issue 1 and have -- give the
14 parties an opportunity to address us.

15 CHAIRMAN JABER: Okay, Commissioner Deason.
16 There has been a motion to deny staff on Issue 1
17 and to hear oral argument from the parties.

18 COMMISSIONER PALECKI: Second.

19 CHAIRMAN JABER: Motion and a second. All
20 those in favor say aye.

21 (Simultaneous affirmative votes.)

22 CHAIRMAN JABER: Okay. Oral arguments.
23 Who do we have? Ms. Paugh and Mr. McGlothlin.

24 MR. MCGLOTHLIN: Yes. Ms. Paugh and I have
25 divided the labor on this, and I'll begin. We

1 will share the time.

2 We appreciate the opportunity to address
3 you on this matter. It involves some subjects
4 that are important to our clients and we think
5 important to the Commission, and ultimately to
6 the ratepayers as well.

7 Let me start by putting things in proper
8 perspective. To ensure that you understand
9 thoroughly that with respect to the major thrust
10 of the Commission's order on GridFlorida, we
11 commend the Commission and the staff for the
12 direction taken. We are gratified by the
13 recognition in the order that RTO formation is a
14 desirable thing because it will facilitate the
15 development of a more competitive wholesale
16 market to the ultimate benefit of the
17 ratepayers.

18 I want to make the point also that our
19 motion for reconsideration is very limited.
20 We've asked to you reconsider those aspects of
21 the order that would mandate at the outset
22 physical transmission rights as opposed to
23 financial transmission rights, and at the same
24 time, rule that this subject is off the table
25 and will not be considered in the new proceeding

1 that the Commission will convene to review the
2 revised RTO proposal that it ordered in that
3 ruling, and also, that aspect of the order that
4 prescribes balance schedules and at the same
5 time rules that this is off the table and will
6 not be considered further in the upcoming
7 proceeding on the revised GridFlorida proposal.

8 And as we footnoted in the motion for
9 reconsideration, we believe that caught up in
10 this is the ruling in the order that the "get
11 what you bid" mechanism for short-term
12 transactions is to be mandated and is not to be
13 reviewed further, because as an aspect of
14 overall congestion management, this becomes a
15 function of other parts of the decision.

16 COMMISSIONER DEASON: Mr. McGlothlin, I
17 need to interrupt you. The "get what you bid"
18 approach, is that part of your reconsideration?

19 MR. MCGLOTHLIN: You'll notice that in the
20 motion for reconsideration, we've suggested that
21 because it's an overall part of congestion
22 management, it should at least be reviewed in
23 terms of perhaps related to the principal
24 arguments that we're making with respect to
25 balance schedules.

1 COMMISSIONER DEASON: So it's kind of a
2 subissue within overall congestion management
3 and balance schedules?

4 MR. MCGLOTHLIN: Yes, sir.

5 COMMISSIONER DEASON: Thank you.

6 MR. MCGLOTHLIN: The basis for the motion
7 for reconsideration is that the Commission made
8 a mistake of law when it did not recognize that
9 with respect to these limited issues, there was
10 no notice to affected parties of the intent to
11 consider the rulings and no opportunity for
12 those parties to protect their interests with
13 testimony on the subjects. And as result of
14 that, not only were the due process rights of
15 the parties violated, but the Commission put
16 itself in the position of rendering rulings on
17 less than a complete record.

18 And our request for relief is simply that
19 since you have this proceeding to be opened for
20 the consideration of the revised RTO anyway, we
21 request that you reconsider your rulings on
22 these aspects and rule that the parties may
23 address these subjects within the context of
24 that new proceeding.

25 with respect to the due process point, I

1 would like to remind the Commission that when
2 these issues of GridFlorida first surfaced, it
3 was in the context of the rate cases, and the
4 emphasis was on whether the decision of the
5 GridFlorida applicants to form the RTO was
6 prudent and whether the RTO would be
7 cost-effective, with implications for whether
8 they would be entitled to cost recovery, and
9 that led to a request by the applicants for a
10 consolidated docket to consider the prudence
11 issue, which the Commission granted only in
12 part. You agreed to consolidate these issues
13 for Phase 1 of the rate case, but you denied the
14 separate proceeding.

15 But with respect -- at that time you told
16 the applicants, "Come to us, file your
17 petitions, tell us what you maintain you need to
18 go forward with GridFlorida," because at the
19 time, the GridFlorida applicants were saying,
20 "Unless we have a ruling on the prudence, we
21 have put the brakes on RTO development, and
22 we're not going to go further until we have our
23 answer." The issues that were contained in
24 those petitions had to do with overall prudence
25 and cost recovery. And then --

1 CHAIRMAN JABER: Mr. McGlothlin, may I
2 interrupt you so that I make sure that I
3 understand the point you're trying to make. You
4 would acknowledge that even 12 months prior to
5 that, we had numerous workshops on the general
6 formation of GridFlorida and that this
7 Commission sent a very strong signal that then
8 was codified in our decision to take a look at
9 GridFlorida, a very strong signal that we wanted
10 to look at the formation of GridFlorida prior to
11 FERC even acting on it, and that we wanted to
12 take a look at GridFlorida and the benefit that
13 such a formation would have on the retail
14 ratepayers. I want to make sure that you're
15 acknowledging all of that, because that's the
16 complete picture, isn't it?

17 MR. MCGLOTHLIN: I certainly do acknowledge
18 that this collaborative undertaking was going on
19 long before the point at which the Commission
20 indicated it was going to review the impact on
21 retail rates. But I do maintain that that was
22 the point at which the GridFlorida applicants
23 asked for an expedited ruling on prudence. And
24 that teed up the issues that the Commission
25 identified in Phase 1 which culminated in the

1 order for which we've asked reconsideration. We
2 certainly do acknowledge and accept your
3 pointing out that there was a collaborative
4 undertaking long before that point.

5 The Commission has developed a very
6 elaborate prehearing mechanism designed to
7 apprise both the parties and Commission and its
8 staff as to exactly what's on the table for the
9 parties to address and for the Commission to
10 rule on. Following the petitions of the
11 GridFlorida applicants, the Prehearing Order
12 specified the issues to be considered at the
13 hearing. And again, there's nothing in the
14 issues that were identified that put the parties
15 on notice that the Commission intended to
16 prescribe or consider prescribing these
17 particular components of the overall RTO.

18 COMMISSIONER BAEZ: Mr. McGlothlin, a
19 question. As part of the prehearing process,
20 did the movants, did your clients and the rest
21 provide proposed issues?

22 MR. MCGLOTHLIN: Yes. As a matter of fact,
23 staff points out in its recommendation that
24 Issue 7, which is a very important component of
25 the overall recommendation, was proffered by my

1 client and others. We asked that the Commission
2 add the overall policy question, what policy
3 position should the Commission take with respect
4 to GridFlorida.

5 COMMISSIONER BAEZ: Were there any issues
6 proposed that were specific to these issues now
7 that you're moving for reconsideration?

8 MR. MCGLOTHLIN: I'm highly confident that
9 the answer is no, that there was never an
10 indication that the Commission was going to
11 address or mandate the particular detail.

12 COMMISSIONER BAEZ: I'm not talking about
13 -- I mean for your part, for Mirant and Reliant
14 and the rest of the companies, the rest of the
15 participants, did you all have any issues that
16 wished to address congestion management
17 specifically?

18 MR. MCGLOTHLIN: No, sir. Reliant's
19 specific interest was in developing a record
20 that would inform the question as to the likely
21 cost-effectiveness of the RTO. The
22 Commissioners had indicated more than once that
23 they desired a comfort level that if this thing
24 were to go forward, it would result in benefits
25 to the ratepayers. Reliant believed that it was

1 in a position to provide some information that
2 went directly to that point, and that was the
3 primary focus of Reliant's participation.

4 We also asked that the policy issue be
5 added, because the Commissioners had indicated
6 that they would be communicating their policy
7 positions to the Legislature, to the 2020
8 Committee, and to FERC, and so it made sense to
9 us to include a question that was specific to
10 the policy statement that the Commission would
11 provide.

12 If I may turn now to the --

13 CHAIRMAN JABER: On that note, as a
14 follow-up, you don't believe that whether we
15 agree with the physical transmission right
16 methodology or financial right methodology, that
17 that goes somewhat to the idea of whether it's
18 prudent to implement an RTO? You know, I think
19 the Prehearing Officer and this Commission took
20 great pains to make sure that those issues were
21 broad, were purposefully broad, and we wanted an
22 inclusive process not an exclusive process.

23 And I have to tell you something I haven't
24 said yet publicly after the RTO hearing, but
25 I'll take this opportunity today. I was

1 actually quite surprised by the lack of
2 participation at our hearing from Reliant and
3 Duke and Calpine. I expected a little more
4 participation and some fleshing out of the
5 issues.

6 But having said all of that, setting aside
7 for a moment the due process arguments, whether
8 the issues were specific or not specific, would
9 your concerns be satisfied if we included as
10 part of our 90-day filing an opportunity for you
11 to comment on whether we should implement a
12 physical transmission right methodology or a
13 financial transmission right? I don't think
14 this rises to the level of whether your due
15 process rights were violated, because you were a
16 party to the case, you got the issues, broad as
17 they were, like everyone else, you had an
18 opportunity to participate, you had adequate
19 notice.

20 My question is a bottom line question.
21 would your concerns be satisfied if you just had
22 an opportunity to comment? Because at the end
23 of the day, we're trying to get an RTO that is
24 feasible for the State of Florida, and that's
25 what I'm interested in.

1 MR. MCGLOTHLIN: Chairman Jaber, when you
2 say opportunity to comment, does this
3 contemplate participation in evidentiary
4 hearings where these subjects will be reviewed?

5 CHAIRMAN JABER: Yes, I would, to answer
6 your question, because what we said in the
7 90-day filing is we would resolve the 90-day
8 filing in a PAA process. Is that correct,
9 Mr. Keating?

10 MR. KEATING: I don't know if we -- I don't
11 think that we specified a PAA process.

12 CHAIRMAN JABER: I recall a --

13 MR. KEATING: Let me look at the order.

14 CHAIRMAN JABER: -- very long discussion
15 about that, because I actually didn't like that
16 it was going to be a PAA process, but someone
17 told me that we had to do a PAA that day.

18 And the reason that's important,
19 Mr. McGlothlin, is if it is a PAA process, you
20 not only would have had the opportunity to
21 comment in the 90-day filing, but you'll also
22 have an opportunity to protest the PAA order.

23 MR. MCGLOTHLIN: Ms. Paugh has directed me
24 to page 25 of the order that's the subject of
25 our motion that says, "Upon the filing of the

1 modified RTO proposal, a new generic docket
2 shall be opened to address the filing." I
3 understand that to mean that will be the
4 opportunity for an evidentiary proceeding where
5 we can fully explore the merits and lack of
6 merits of all aspects of those. Yes, that would
7 satisfy our concern.

8 COMMISSIONER BAEZ: One way or another, I
9 mean, whether it's -- I guess going back to your
10 question, whether it's issued as a PAA and then
11 with an opportunity to be protested and follow
12 the hearing track, or whether it's set for
13 hearing out of hand.

14 MR. MCGLOTHLIN: Yes.

15 COMMISSIONER BAEZ: Either way; right?

16 MR. MCGLOTHLIN: Yes. As long as we have a
17 forum in which these are issues and the
18 Commission gives us the opportunity to provide
19 evidence and argument on the merits of all those
20 alternatives, that's what we're asking for.

21 COMMISSIONER BAEZ: Ms. Bass, a question to
22 you. I mean, part of the filing -- at least
23 it's my impression that part of the complete
24 90-day filing is going to include a proposal on
25 congestion management and these other issues

1 that the -- I mean, I would imagine; right?

2 MS. BASS: Yes. It's my expectation that
3 it will be a complete filing very similar to
4 what was originally filed with FERC.

5 COMMISSIONER BAEZ: I went back and I read
6 the order and the language that you propose, and
7 I guess my impression was more -- or at least my
8 intent was more that that language was reserving
9 the status quo, with the anticipation that there
10 would be a filing where it would get -- I
11 hesitate to use the word, but reconsidered, not
12 in a legal sense, but --

13 MR. MCGLOTHLIN: We would not have filed
14 for reconsideration if that were the case.
15 There's a paragraph on page 24 that says the
16 Commission intends not to relitigate certain
17 subjects, and those are the ones that we have
18 identified in our motion for reconsideration.

19 So our request is that to the extent you
20 choose to do it -- I don't concede the due
21 process point, but whether it's by recognition
22 of our due process point or by the recognition
23 that staff pointed out that the presentations,
24 in his words, were one-sided, we think there's a
25 benefit to you and to the decision-making

1 process to have a full record on these things.

2 COMMISSIONER BAEZ: And I don't disagree
3 with you there, just on the due process part,
4 and I'm not asking you to concede anything. But
5 I remember having to sit through two days of
6 prehearing and issue ID, and I think -- and I
7 can speak from my personal experience, that what
8 the intent of that order was was to leave it as
9 broad as possible so that anybody participating
10 could have screamed about anything they wanted.
11 I mean, in my heart of hearts, that was the
12 purpose of that order. Whether we want to start
13 splitting hairs as to whether it should have
14 been more specific or not, I think the intent
15 was exactly the opposite, let's keep it an
16 inclusive process.

17 And it's my feeling that, yes, you did have
18 an opportunity to offer testimony and to offer
19 comments. If you had a problem with the
20 congestion management proposal, if there was a
21 problem with that specific issue, everyone was
22 free to make the arguments and present their
23 case the way that they wanted, and I remember
24 using exactly those words. That went for the
25 applicants as well as the intervenors.

1 Now, I think we're past that now, because I
2 think the Chairman raises a good point. Let's
3 talk bottom line. If the consideration of the
4 90-day filing is going to be in toto, everything
5 is going to be considered, then you're already
6 -- I would assume you're getting an opportunity
7 to make that argument or raise those issues that
8 you feel at least you didn't have a chance to
9 raise before.

10 I don't know whether reconsideration is
11 even necessary if have that. You know, I don't
12 know how the other Commissioners feel, but if we
13 have that understanding, I'm not seeing the
14 purpose of it.

15 MR. MCGLOTHLIN: I would just add that to
16 the extent that the order that's the subject of
17 our motion makes some very definite findings, we
18 would request that to the extent you're going to
19 continue to entertain input on those, that those
20 specific findings be modified to reflect that
21 there's going to be another round.

22 CHAIRMAN JABER: Let me take an opportunity
23 to clarify a couple of things. First of all, as
24 I recall, I was the Commissioner that insisted
25 that language in the order be placed to indicate

1 we don't want to relitigate issues. If you go
2 back to the transcript, Mr. McGlothlin, you will
3 find that that's in the context of we're not
4 starting over, we are not relitigating whether
5 it was prudent to participate in the GridFlorida
6 process, and that philosophically, the
7 Commissioners agreed that an RTO, a
8 Florida-specific RTO was good for the State of
9 Florida.

10 And with respect to the physical
11 transmission rights, I've lost that page,
12 Ms. Bass, but I could have sworn we said keep it
13 the way it is until review of the 90-day filing,
14 so that in and of itself indicates to you -- I
15 saw this just last night, Ms. Bass, but I've
16 lost that page.

17 MS. BASS: And I can't tell you
18 specifically what page it was, but I remember
19 that our concern was that the original proposal
20 indicated that specific things could be changed
21 within the GridFlorida structure and that they
22 would not come back to this Commission for
23 review or approval of those changes, and we were
24 trying to protect those by saying, "This is
25 what's currently proposed, keep it in place. If

1 you do change it, come back to the Commission
2 and let us look at it again," our concern being
3 that if we approved something that was prudent,
4 the utilities could change it the next day,
5 which may change the decision on whether it was
6 prudent.

7 CHAIRMAN JABER: It's page 24, first
8 paragraph. "We find that the approach of using
9 PTRs shall remain fixed until such time that
10 GridFlorida petitions this Commission and
11 justifies a different approach."

12 Mr. McGlothlin, just as one Commissioner
13 voting, I have to tell that you the messages I
14 was sending about moving the process forward was
15 recognizing that all companies, including your
16 clients, wanted to act expeditiously on the
17 RTO. So it wasn't a way of precluding you from
18 the process, although I recognize we use the
19 word "GridFlorida" loosely. We use the word
20 "GridFlorida" to refer to the three big IOUs,
21 Florida Power, Florida Power & Light, and TECO.
22 It was not my intent as one Commissioner voting
23 to preclude you from participating in the 90-day
24 filing process.

25 I would hope that if this Commission allows

1 you affirmatively to participate in the 90-day
2 filing process with clarification on the
3 transmission right issue that you use it as an
4 opportunity to collaborate with the GridFlorida
5 companies, not as an opportunity to litigate at
6 the end of the 90 days. It's not an invitation
7 for us to go to hearing. I'm hoping that your
8 participation in the filing will actually engage
9 all of you in a dialogue on that issue.

10 COMMISSIONER PALECKI: Chairman Jaber, I
11 agree you with 100%, and I would just reiterate
12 that no party would be precluded from going to
13 hearing on these issues of balance schedules and
14 PTRs at that time. But we certainly would
15 prefer to see a collaborative process with the
16 investor-owned utilities.

17 My feeling is that we could move staff's
18 recommendation. There's no need whatsoever that
19 we grant reconsideration, because I think we're
20 all of the agreement that any party, any
21 interested party can raise these issues after
22 the filing. And so I would move staff's
23 recommendation.

24 COMMISSIONER BAEZ: Does that include --
25 what is it? Issue 2, or Issue -- I'm sorry,

1 Issue 3. Are you moving the entire
2 recommendation?

3 CHAIRMAN JABER: Let me make sure
4 Commissioners have not been precluded from
5 asking questions. Commissioner Deason, do you
6 have any questions?

7 COMMISSIONER DEASON: well, no, I think I
8 can support the motion. I guess there's some
9 question as to whether we should reconsider
10 anything on our own motion. I agree that we can
11 deny the motion for reconsideration. I don't
12 think there has been any mistake of law. I
13 don't think there has been any denial of due
14 process.

15 However, I think staff adequately addresses
16 this in their recommendation, and I would direct
17 you to page 9. Staff indicates that if the
18 Commission believes that additional evidence may
19 be helpful, then it may be necessary for to us
20 reconsider relevant portions of the order on our
21 own motion. I don't know if that's necessary or
22 not. I think that if the Commission just
23 indicates that it was our intent to allow these
24 type issues to be considered as part of the
25 90-day process, that may be sufficient.

1 I agree with staff that it probably would
2 be helpful to have more information in regard to
3 these particular issues, and however we get
4 there, that's what I support. But I do agree
5 with Commissioner Palecki. I don't think -- and
6 I agree with staff that there's no need to grant
7 the reconsideration as filed, but that we can
8 get there from here. So I guess I would support
9 the -- if there hasn't been a motion filed, with
10 that understanding, I guess I could support it.

11 MR. KEATING: And to explain why staff used
12 the term "reconsideration" there, it was because
13 there was the language in the order that said we
14 would not relitigate those matters, and I felt
15 that perhaps we would need to reconsider that
16 language in the order to go forward on these two
17 issues.

18 COMMISSIONER DEASON: Perhaps we just need
19 to clarify our order.

20 MR. KEATING: That's exactly what we need
21 to do, is just clarify that language.

22 CHAIRMAN JABER: Yes. You know, I want to
23 reinforce that we're not relitigating issues
24 that are well decided with respect to the
25 prudence of the companies' participation in

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GridFlorida and the actual formation.

COMMISSIONER BAEZ: The policy questions.

CHAIRMAN JABER: Right. You know, it's common sense, folks. Don't take it, you know, one sentence removed from the entire discussion we had. But I think if anything, we've clarified our intent today, and that should suffice.

So there has been a motion and a second to move staff's recommendation. All those in favor say aye.

(Simultaneous affirmative votes.)

CHAIRMAN JABER: Opposed, nay.

(No response.)

CHAIRMAN JABER: Okay. Item Number 6 has been approved unanimously.

(Conclusion of consideration of Item 6.)

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CERTIFICATE OF TRANSCRIBER


STATE OF FLORIDA:

COUNTY OF LEON:

I, MARY ALLEN NEEL, do hereby certify that the foregoing was transcribed by me from an audiotape, and that the foregoing pages numbered 1 through 24 are a true and correct transcription of the aforesaid proceedings to the best of my ability.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing matter.

DATED THIS 23rd day of February, 2002.


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