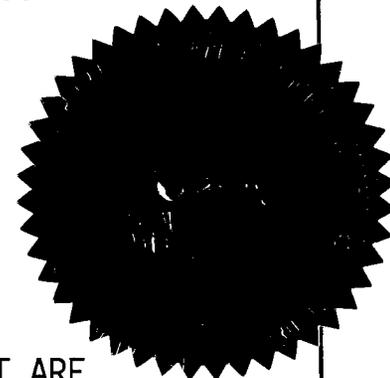


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 000824-EI

In the Matter of:

REVIEW OF FLORIDA POWER  
CORPORATION'S EARNINGS, INCLUDING  
EFFECTS OF PROPOSED ACQUISITION OF  
FLORIDA POWER CORPORATION BY  
CAROLINA POWER & LIGHT.



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PROCEEDINGS: SPECIAL AGENDA CONFERENCE

BEFORE: CHAIRMAN LILA A. JABER  
COMMISSIONER J. TERRY DEASON  
COMMISSIONER BRAULIO L. BAEZ  
COMMISSIONER RUDOLPH "RUDY" BRADLEY  
COMMISSIONER CHARLES M. DAVIDSON

DATE: Wednesday, July 9, 2003

TIME: Commenced at 9:30 a.m.  
Concluded at 2:40 p.m.

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR  
Chief, Office of Hearing Reporter  
FPSC Division of Commission Clerk  
Administrative Services  
(850) 413-6732

## 1 PARTICIPATING:

2 JAMES McGEE, ESQUIRE, and VINCENT DOLAN, Post Office  
3 Box 14042, St. Petersburg, Florida 33733, and GARY L. SASSO,  
4 ESQUIRE, Carlton, Fields Law Firm, P. O. Box 2861, St.  
5 Petersburg, Florida 33731, appearing on behalf of Progress  
6 Energy Florida, Inc.

7 VICKIE KAUFMAN, ESQUIRE, McWhirter, Reeves Law Firm,  
8 117 S. Gadsden Street, Tallahassee, Florida 32301, appearing on  
9 behalf of Florida Industrial Power Users Group.

10 MIKE B. TWOMEY, ESQUIRE, Post Office Box 5256,  
11 Tallahassee, Florida 32314-5226, appearing on behalf of  
12 Sugarmill Woods Civic Association and Buddy Hansen.

13 CHARLIE CRIST, ATTORNEY GENERAL, and CHRISTOPHER KISE,  
14 ESQUIRE, Office of the Attorney General, PL01, The Capitol,  
15 Tallahassee, Florida 32399-1050, appearing on behalf of the  
16 Office of the Attorney General.

17 JACK SHREVE, ESQUIRE, and CHARLIE BECK, ESQUIRE,  
18 Office of Public Counsel, c/o The Florida Legislature, 111 W.  
19 Madison Street, Suite 812, Tallahassee, Florida 32399,  
20 appearing on behalf of the Citizens of the State of Florida.

21 HAROLD McLEAN, GENERAL COUNSEL, JENNIFER BRUBAKER,  
22 ESQUIRE, TIM DEVLIN, JOHN SLEMKEWICZ and DAVID WHEELER, 2540  
23 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850,  
24 appearing on behalf of the Commission Staff.

25

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

1  
2 CHAIRMAN JABER: Please take your seat and let's get  
3 started.

4 Ms. Brubaker, do you have an introduction?

5 MS. BRUBAKER: Commissioners, this special agenda was  
6 scheduled to consider the motion to enforce settlement  
7 agreement filed by Public Counsel and other parties to the  
8 agreement. Staff notes that both Issue A and 1 of Staff's  
9 recommendation inadvertently address oral argument. Staff  
10 recommends that Issue A is moot and that no vote is required on  
11 that issue.

12 Issue 2 addresses the consideration that the  
13 Commission should take into account in deciding whether to  
14 approve the motion to enforce settlement agreement, and Staff  
15 notes that there are representatives of the various parties  
16 here today to speak at the Commission's discretion. Staff is  
17 prepared to address any questions the Commission may have.

18 CHAIRMAN JABER: Thank you, Ms. Brubaker.

19 Before we start with the introductions and the issue  
20 on oral argument, people have handed us some documents and I  
21 need to get clear in my mind what came from where. It looks  
22 like a recommendation dated May 8 that has a 6 circled around  
23 it. Mr. Twomey, I remember you handed us that.

24 MR. TWOMEY: That is correct, Madam Chairman.

25 MR. McLEAN: Madam Chairman, that is a draft

1 recommendation, I believe.

2 CHAIRMAN JABER: Okay. Thank you. There is a  
3 stamped packet that has 1 through 5.

4 MR. SASSO: Yes, Chairman Jaber, that is from me.  
5 That is a collection of some documents that I intend to discuss  
6 today, including what is itemized in the cover page.

7 CHAIRMAN JABER: Thank you, Mr. Sasso. There is a  
8 one-page document that has calculation of refund owed for 2002  
9 on the top of it.

10 MR. BECK: Madam Chairman, I handed that out. I am  
11 going to use that during oral argument, and we also passed out  
12 a copy of the order that has the settlement agreement attached  
13 to it.

14 CHAIRMAN JABER: Thank you, Mr. Beck.

15 And, parties, all of these documents we have you have  
16 passed out to each other?

17 MR. SASSO: Yes, ma'am, we made an effort to do that.

18 CHAIRMAN JABER: Great. Thank you.

19 COMMISSIONER BRADLEY: (Inaudible. Microphone off.)

20 CHAIRMAN JABER: Go ahead, Commissioner Bradley.

21 COMMISSIONER BRADLEY: (Inaudible. Microphone off.)

22 CHAIRMAN JABER: Yes, I'm sorry, Mr. Beck did  
23 identify it as -- is that the order you are holding up, Mr.  
24 Beck?

25 COMMISSIONER BRADLEY: Yes.

1 CHAIRMAN JABER: Commissioner Bradley, yes. Order  
2 PSC-02-0655, that came from Public Counsel.

3 COMMISSIONER BRADLEY: Okay. Thank you.

4 CHAIRMAN JABER: Thank you. The first order of  
5 business, Commissioners, we do have an issue on oral argument.  
6 Before I ask for a motion, let me tell you my preference this  
7 time around is that we go ahead and complete oral argument,  
8 initially from all the parties. That we not put a time limit.  
9 These are very reasonable parties, I would ask and give  
10 direction that, you know, parties, don't repeat yourselves, be  
11 cognizant of the time, and the need to get information to the  
12 Commission so we can make the most informed decision. I don't  
13 feel the need, Commissioners, to have a time period associated  
14 with this item. Your feelings and emotion.

15 COMMISSIONER DEASON: Madam Chairman, I would move  
16 we conduct oral argument and that we just allow the chair at  
17 her discretion to impose any time requirements or to give  
18 whatever latitude necessary to have a thorough and complete  
19 oral argument.

20 COMMISSIONER BAEZ: Second.

21 CHAIRMAN JABER: There has been a motion and a second  
22 to accept oral argument on this item. All those in favor, say  
23 aye.

24 (Unanimous affirmative vote.)

25 CHAIRMAN JABER: Approved unanimously.

1           And, again, parties, I would just emphasize I am  
2 giving you discretion on time. I would ask that you be  
3 reasonable in how you conduct your time allocation.

4           This is an original motion by Public Counsel to have  
5 the Commission enforce a settlement agreement. I think it  
6 would be appropriate to start with Public Counsel. I don't  
7 know if you have informally agreed on the order of  
8 presentation, but we will conclude with Progress Energy.

9           MR. BECK: Thank you, Madam Chairman. I think I have  
10 been elected to start and to summarize our position concerning  
11 the refund.

12           Commissioners, last Monday the Commission ruled that  
13 you would limit the evidence you receive in this case and the  
14 argument to three items; that is the agreement itself, the  
15 order that approved the agreement, and the transcript of the  
16 agenda conference where the Commission took up the agreement  
17 and approved it. And so what I would like to do briefly this  
18 morning is review those three items and the portions of those  
19 items that concern the refund that is due for 2002.

20           Now, I handed out the order that approved the  
21 settlement agreement, and attached to that order is the  
22 settlement agreement itself. And what I would like to ask you  
23 to do is turn to Page 16 of the order. And that page of that  
24 order contains the settlement agreement provisions that control  
25 the refund for 2002. And what I would like to do to start is

1 simply go over that language and then try to fill in the blanks  
2 and show you how the calculations that are called for by that  
3 paragraph compel a refund of \$23 million for 2002.

4           The settlement agreement contains a sharing  
5 threshold, and that starts at Roman numeral II on Page 16 of  
6 the order. And it says retail based revenues between the  
7 sharing threshold amount and retail base revenue cap will be  
8 divided into two shares on a one-third/two-third basis.  
9 Florida Power's shareholders shall receive the one-third share,  
10 the two-thirds share will be refunded to retail customers. The  
11 sharing threshold for 2002 will be \$1,296,000,000 in retail  
12 base rate revenues. And for 2002 only the refund to the  
13 customers will be limited to 67.1 percent, May 1 through  
14 December 31, of the two-third customer share. That is the  
15 provision that controls the refund for 2002.

16           So the first item -- and, again, I have also handed  
17 out a worksheet that shows you the calculation of the refund  
18 from that language, and what I would like to do is go over  
19 that. The first item in calculating the refund is the 2002  
20 revenues for retail base rate revenues. And I put the item up  
21 there of \$1,323,003,903. That is the number that is reported  
22 by Progress Energy as their retail base rate revenues for 2002.  
23 There is no disagreement at all about that number.

24           The next item to take to that concerns interim  
25 revenues, and you have to go to a different portion of the

1 agreement to look at that. There are two items I would like  
2 for you to look at with respect to interim revenues. The first  
3 is on Page 5 of the order. And at the bottom of Page 5 of the  
4 order there is a discussion about Paragraph 14, Paragraph 14 of  
5 the agreement. And this is the Commission's order again that  
6 controls how the refund will be calculated. And the Commission  
7 says in its order that the agreement calls for a \$35 million  
8 refund of interim revenues collected subject to revenue since  
9 March 13, 2001.

10           And it goes on. It says unless there is specific  
11 evidence to the contrary, it is normally assumed that the  
12 amount to be refunded has been accumulated on an even monthly  
13 basis during the interim period. At the bottom of the  
14 paragraph, the Commission concludes that we find that only  
15 \$10,370,000 of the total refund of 35 million is attributable  
16 to revenues collected subject to refund during the January 1,  
17 2002 through April 30, 2002 period.

18           Now, during 2002, Progress Energy refunded the \$35  
19 million, and the reduction of \$35 million is included in the  
20 revenue figure that they provided, the \$1.323 billion figure.  
21 What the Commission order says is that only a portion of that  
22 amount applies to 2002. Even though all the revenues came out  
23 of 2002, there is only 10,370,000 out of 35 million that apply  
24 to 2002.

25           So in order to get the pot right, you have to add in

1 the portion that is attributable to earlier periods, 2001. And  
2 the Commission spells that out. It is the difference between  
3 35 million and the 10,370,000. And so what I have shown you on  
4 the worksheet here is the addition back in of the interim  
5 refund that actually took place in 2002, but is attributable to  
6 2001. That gets you the proper revenue amount for 2002.

7           There is also a portion of the transcript of the  
8 agenda where that was briefly discussed, and I think Progress  
9 Energy has handed out the transcript. I suspect you already  
10 have it anyhow. But it is on Page 21, Line 23, through Page  
11 22, Line 11, where the Commission discussed that.

12           COMMISSIONER BRADLEY: Just a minute. Page 21?

13           MR. BECK: Yes, Page 21 beginning at Line 23. At the  
14 bottom there it begins with a question by Chairman Jaber, and I  
15 am referring to the transcript of the agenda conference.

16           COMMISSIONER BRADLEY: Which document are you --

17           MR. SASSO: On the copy that I handed out it would be  
18 Page 19, if that helps.

19           MR. BECK: And I guess the difference is there, as it  
20 printed out from the word processing document, that the page  
21 numbers must have changed.

22           COMMISSIONER BRADLEY: It is on Page 19?

23           MR. BECK: Okay. On the copy that Progress Energy  
24 handed out it is Page 19, Line 17. And Commissioner Jaber, or  
25 Chairman Jaber says to the Staff, "No, it is on Page 5 of your

1 recommendation, Staff. It sounded like you were not clear on a  
2 provision in Section 14 related to how the refund allocations  
3 were to be made." And she asked do you agree what -- she asked  
4 Progress Energy, "Do you agree with what the Staff has said on  
5 the bottom of Page 5," and then she says, "which is because the  
6 settlement is silent, we will assume that the amount to be  
7 refunded has been accumulated on an even monthly basis during  
8 the interim period?" Mr. Dolan, perhaps on behalf of Progress  
9 Energy says, "Yes, Madam Chairman, we do agree." Again, that  
10 is on how you allocate the revenues, and this is the discussion  
11 that took place at agenda conference. Okay. So that is the  
12 evidence that you have concerning the interim revenues. I  
13 don't think there is any question whatsoever about the right  
14 thing to do is to add back the \$24.63 million.

15           Progress Energy disagree with us on that adjustment.  
16 And so far what I have described to you as far as the revenues  
17 go, there is no disagreement. But Progress Energy disagrees.  
18 They think that you should add back the entire \$35 million,  
19 contrary to the explicit language of the order. Interestingly  
20 enough, that would go against them more so than what we have  
21 put forward. I don't understand why they have done that. I  
22 will leave that to them to explain why they think that they  
23 should disregard the language of the order, disregard the  
24 agreement they made in the transcript of the agenda conference,  
25 and propose something different than what was ordered. That is

1 up to them, I don't understand why.

2           Once you come up with the actual revenues for 2002  
3 with the apportionment of the refund amount you come up with  
4 the total revenues of \$1.347 million, and that is the third  
5 line on the handout that I have given you. After that it is a  
6 fairly straightforward computation. If you go back to the  
7 agreement provisions I cited at the beginning, which is on Page  
8 16 of the order, it says the starting point is the revenues for  
9 2002, and then it gives you a sharing threshold of 1.296  
10 million. So what I have done on the computation is taken the  
11 difference between the actual revenues and the sharing  
12 threshold, and you come up with a difference between the  
13 threshold and the actual revenues of \$51.633 million, and that  
14 is listed on my sheet.

15           And then there are two things that have to be done  
16 once you come up with that \$51 million. The first thing is you  
17 have to compute the customer's share. And the customers get  
18 two-thirds, the company gets one-third according to the  
19 agreement. The two-thirds share is \$34.439 million as shown on  
20 my sheet. And for any year other than 2002, that would be the  
21 end of the computation. But we had a special provision  
22 included in the agreement that applied only to 2002, and that  
23 is for that year you would take 67.1 percent of the amount  
24 customers would otherwise get. And that is what I have shown  
25 you as the last item on our agreement, so we have taken that

1 that portion of the customer share to come up with \$23.1  
2 million. That is the end of the computation. That is what the  
3 agreement calls for. It is very straightforward.

4 Now, having done that, if there are no questions  
5 about how we came up with that, I think I need to at least try  
6 it address some of the arguments we anticipate Progress Energy  
7 to make about why they are going to come up with a different  
8 amount than we have.

9 The first adjustment that they propose to make is to  
10 reduce revenues by an additional \$41.625 million in the  
11 agreement for 2002. There is nothing whatsoever in the  
12 agreement that allows them to do that. They are going to have  
13 to come up with that item somewhere else because the agreement  
14 simply doesn't allow it. The agreement itself contains a  
15 specific provision dealing with 2002 that made it different  
16 from the other years, and it recognized the starting point for  
17 the 2002 agreement. And that is we took the 67.1 percent of  
18 the two-thirds share. If the parties had --

19 COMMISSIONER BRADLEY: Mr. Beck, while we are on this  
20 point, you said there is nothing in the agreement that allows  
21 them to do that.

22 MR. BECK: Yes.

23 COMMISSIONER BRADLEY: Is there anything in the  
24 agreement that disallows them from doing that?

25 MR. BECK: Well, to the extent they have to follow

1 the calculation that is in there, yes. They are not allowed to  
2 change the calculation that is in there. Again, the agreement  
3 calculation is on Page 16 of the order. It tells you exactly  
4 what to do. So I can't say there is language that says you  
5 shall not make an adjustment of \$41 million, but it is not  
6 there. In other words, they do have to follow what the  
7 agreement says, and the agreement doesn't contain anything that  
8 allows that. Am I clear?

9 COMMISSIONER BRADLEY: Uh-huh.

10 MR. BECK: Okay. I have a couple of comments about  
11 the agreement other than the fact that there is nothing in  
12 there that allows them to make that subtraction. I point out  
13 if we had intended a different revenue threshold for 2002, it  
14 would have said that. In other words, we have a threshold for  
15 2002 of \$1.296 million. If the intent of the parties had been  
16 to make it \$41.6 million less, that is what the number would  
17 have been. I mean, it would have been very easy for us to have  
18 put in a different threshold to do what Progress Energy wants  
19 you to make it do, but that is not what we have done. The  
20 threshold is what it says. It is not \$41 million less. There  
21 is simply no evidence and no basis for them to make that  
22 adjustment. It just isn't there.

23 I mean, there are other ways we could have handled  
24 that adjustment, as well. We could have had an eight-month  
25 sharing provision for 2002. We could have had a threshold for

1 2002 and a revenue figure for eight months of 2002 and a  
2 threshold. We could have done it that way. That is not what  
3 we did. You know, what we did is we looked at the revenues for  
4 2002, had a yearly threshold, and to adjust for the starting  
5 point of 2002 we had a special provision that allowed a 67.1  
6 percent factor to be applied.

7           There is another adjustment Progress Energy wants to  
8 make and it relates to lighting and other rate design matters.  
9 And we would simply like to go over the record matters that  
10 discuss that. The order on Page 6, on the order there is a  
11 section about midway down where it cites Paragraph 16. And  
12 that is, again, Paragraph 16 of the agreement. It says this  
13 provision addresses certain rate design and cost of service  
14 matters that were agreed to as a part of the proposed  
15 stipulation, and it refers to an Exhibit A of the agreement.  
16 It says OPC and the Florida Retail Federation took no position  
17 on these matters and thus they do not oppose or support them.

18           Typically, in rate cases our office does not take  
19 issues on rate design issues because they have the effect of  
20 shifting responsibility from one set of customers to the other,  
21 and we represent all customers. The provisions of the  
22 agreement itself concerning that are on Page 20 of the order,  
23 which was the agreement, and that is Paragraph 16 of the  
24 agreement which the order just referred to. It says the cost  
25 of service and rate design matters identified in Exhibit 8 to

1 the stipulation and settlement will be treated in the manner  
2 described therein. And it says the Office of Public Counsel  
3 and the Florida Retail Federation take no position, neither  
4 support nor oppose the cost of service and rate design  
5 provisions.

6 A couple of things I would like to point out. You  
7 know, Public Counsel and the Retail Federation are two of many  
8 parties who signed this agreement. There are others. FIPUG,  
9 Publix, Sugarmill Woods, all that went completely and did take  
10 positions on that. The second thing is the cost of service and  
11 rate design matters wasn't optional for the Commission to make  
12 those changes. It says they will be treated in the manner  
13 described in Exhibit A, the agreement. So if the Commission  
14 had rejected those things, the agreement wouldn't have been  
15 effective, because the agreement required those items to be  
16 into effect.

17 The items on Exhibit A cover a variety of items, not  
18 just the ones Progress Energy is going to point to. Exhibit A  
19 talked about the inverted rate design which was an energy  
20 efficiency design and conservation design where the charge for  
21 the first 1,000 kilowatt hours was less than the amounts above  
22 that. It dealt with minimum demand provisions for certain rate  
23 schedules and billing demand credits. It discussed CIAC  
24 payments for meters, time of day meters. It included changes  
25 to the service, and had lighting fixtures, maintenance and

1 poles as described therein. There is a brief mention of this  
2 in the transcript of the agenda. And, again, I have to change  
3 the transcript pages that I have to one that has been handed  
4 out by Progress Energy. If you will give me a moment.

5 MR. SASSO: Page 18, I believe.

6 MR. BECK: On Page 18, Line 18, Chairman Jaber asked  
7 a little bit about that to Staff. It says there is an increase  
8 in lighting fixtures and pole lighting, and that is because we  
9 have not looked at that charge in quite sometime, is that  
10 correct, addressing the Staff. And the Staff says yes, it is  
11 my understanding from talking to Power Corp that in their  
12 initial filing they did propose increases to certain lighting  
13 fixtures because of the relative costs between the older and  
14 newer offerings. It was kind of out of whack and they kind of  
15 wanted to fix that problem.

16 Chairman Jaber, "Are these new charges in line with  
17 what other companies are assessing?" Mr. Wheeler, "Yes." And  
18 it goes on, but Staff agrees that by raising the rates they are  
19 raising the rates will make more sense across the various  
20 offerings. That is the discussion concerning the lighting  
21 fixtures. And there is absolutely nothing that would support  
22 the contention of Progress Energy that there is an intention to  
23 exclude those revenues from the revenue sharing provisions. It  
24 is simply not there. The agreement requires those provisions  
25 to be made. There is nothing that excludes them from the

1 sharing provisions. Had that been the intent we would have  
2 said that in the agreement, but it doesn't say that. The  
3 agreement says that those charges will be made and it says  
4 nothing about the ability to exclude those items from the base  
5 rate revenues.

6 COMMISSIONER BRADLEY: Mr. Beck.

7 MR. BECK: Yes.

8 COMMISSIONER BRADLEY: Just one other question. Is  
9 there anything that includes them in the agreement?

10 MR. BECK: Yes, by requiring base rate revenues for  
11 the period. I mean, there is no dispute on whether those  
12 revenues are base rate revenues. You know, Progress Energy, I  
13 believe, will agree that they are those sorts of revenues that  
14 are included in the threshold. So I think the answer is yes,  
15 the agreement requires them to look at their -- or include  
16 their base rate revenues in looking at the threshold. Those  
17 are base rate revenues that need to be included. And there is  
18 certainly nothing that says that they can exclude them as they  
19 are contending.

20 Commissioners, that's about it. We have handed out  
21 an agreement that shows the \$23 million calculation for the  
22 agreement. It is straight forward, and the calculation is  
23 reflected in our handout to you. And it is now up to the  
24 Commission to make Progress Energy refund the amount that they  
25 are required to by the terms of their written agreement. That

1 is all I have at the moment. Thank you.

2 CHAIRMAN JABER: Thank you, Mr. Beck. Who is next on  
3 the consumer advocates before we move on to Progress?

4 General Crist, welcome.

5 ATTORNEY GENERAL CRIST: Good morning, Madam Chair,  
6 it is good to be with you. I think Chris Kise, who is our  
7 Solicitor General, might have a few comments. And then if I  
8 could, after him, I would be grateful.

9 CHAIRMAN JABER: That's fine. Mr. Kise.

10 MR. KISE: Thank you. Christopher Kise, Solicitor  
11 General on behalf of Attorney General Charlie Crist and the  
12 people of the State of Florida. Thank you, Chairman Jaber.

13 Just briefly, we want to adopt, of course, the  
14 position of co-counsel both as stated already and as will be  
15 stated. And we would also like to make an initial objection,  
16 respectfully. This issue was litigated on the 30th, and the  
17 Commission entered its order which we do we respect, but for  
18 purpose of the record we would like to object to the  
19 consideration by this Commission of anything other than the  
20 contract and the order. We still maintain that anything beyond  
21 that would be inappropriate.

22 That being said, we do not want the references that  
23 are made to the transcript, whether by adoption from other  
24 counsel's arguments or whether by our own argument in reference  
25 of that April 23rd transcript to constitute a waiver. We are

1 referring to it out of necessity, simply because the Commission  
2 has made its ruling, but we still would object to that  
3 consideration.

4           We are here today to consider, as the Commission  
5 knows, limited items. There is no ambiguity in this agreement.  
6 I believe it was Commissioner Davidson last time that asked a  
7 specific question on the 30th, at the hearing, a specific  
8 question to Progress Energy and Progress Energy's counsel about  
9 whether or not there was a specific provision in this agreement  
10 that was ambiguous. And the answer given by Ms. Bowman was our  
11 argument is not that the Commission has to find an ambiguity in  
12 the contract.

13           They have conceded that there is no ambiguity in this  
14 contract, and we would submit to you that because there is no  
15 ambiguity in this contract this Commission is bound then to  
16 follow contract law principles which would require the  
17 construction of the contract based on its four corners and  
18 based on its plain meaning.

19           Another brief procedural item. I would submit to the  
20 Commission a general objection to Florida Power's memorandum in  
21 opposition. The memorandum in opposition effectively quotes,  
22 if you will, the position of Mr. Portuondo. If you read Mr.  
23 Portuondo's affidavit, which has been withdrawn according to  
24 Progress Energy, and you read the argument of Florida Power,  
25 the argument is essentially quoting -- at least the salient

1 points of the argument are essentially quoting from Mr.  
2 Portuondo's affidavit. And we would submit a general objection  
3 that you cannot simply back door Mr. Portuondo's position by  
4 now calling it argument of counsel.

5 Those matters that were in that affidavit have been  
6 withdrawn voluntarily. They are not before the Commission.  
7 And to the extent that the memorandum quotes from Mr.  
8 Portuondo's affidavit not by specific reference, but simply by  
9 verbiage, we will object to that being considered.

10 Just a few brief points to follow up now  
11 substantively. One other thing that was puzzling to the  
12 Attorney General at the last hearing was Progress Energy  
13 counsel's position that we were not here, are not here to  
14 interpret a contract agreed to by private parties, and we would  
15 take issue with that. The parties negotiated and reached a  
16 settlement. That settlement is a contract and that contract  
17 was approved by this Commission.

18 The parties proffered this settlement for approval.  
19 And to demonstrate that that is, in fact, what this Commission  
20 did was approve a settlement proffered by the parties, if we  
21 look at the order on Page 2, which is -- and I appreciate  
22 counsel providing this convenient handout. It does make things  
23 a little easier other than the transcript pages. But the order  
24 itself at Page 2, down at the bottom third of the page, Roman  
25 Numeral II, stipulation and settlement, it states rather

1 unequivocally that all parties to the docket proffered the  
2 stipulation and settlement as a complete resolution of all  
3 matters pending in that docket.

4 I think that is a fairly unequivocal statement that  
5 the parties proffered this settlement contract and that it was  
6 intended to integrate and incorporate all discussions, all  
7 MFRs, all materials, all depositions, everything that took  
8 place up until the time that this settlement agreement was  
9 reached between the parties and proffered for this Commission's  
10 approval.

11 I will also point out that the Chairman, or the  
12 president of the company, Mr. Habermeyer, at the transcript,  
13 Page 4, Lines 2 and 3, characterized this settlement as a,  
14 quote, "Very, very fair settlement." And it is rather puzzling  
15 to the Attorney General that we are now back here debating a  
16 very, very fair settlement. It appears more to us that  
17 Progress Energy is interested in rewriting the contract,  
18 rewriting a contract now with the benefit of hindsight.

19 Addressing briefly Commissioner Bradley's question  
20 about is there anything in the contract that would prohibit the  
21 current construction by Florida Power. And I would point to  
22 contract Paragraph 4, which is at Page 15 of the order.  
23 Contract Paragraph 4, like most of the contract paragraphs, is  
24 rather unequivocal. No stipulating party -- that would include  
25 Progress Energy -- will request, support, or seek to impose a

1 change in the application of any provision hereof. That would  
2 seem to preclude the position that is being taken by Florida  
3 Power today.

4 Addressing, sort of in advance, what we would  
5 anticipate to be some of Progress Energy's argument, and  
6 reviewing the materials that they have submitted, I would also  
7 direct the Commission's attention to contract Paragraph 5,  
8 which also states rather unequivocally, and it is on that same  
9 page, Page 15 of the order, during the term of this stipulation  
10 and settlement, revenues which are above the level stated  
11 herein, and that is the threshold cap that is rather plain,  
12 will be shared between FPC and its retail electric utility  
13 customers.

14 And then this statement that I think is very  
15 important for our purposes today, it being expressly understood  
16 and agreed that the mechanism for revenue sharing herein  
17 established is not intended to be a vehicle for rate case type  
18 inquiries concerning expenses, investment, and financial  
19 results of operation.

20 It would appear as though that is exactly what  
21 Progress Energy wants this Commission to do is reopen this  
22 inquiry and make a determination that, well, they would never  
23 have agreed, for example, on the lighting and service fees,  
24 they would never have agreed to include that in base rate  
25 revenues because of certain principles that are applicable to

1 how they calculate their revenues and expenses. And, frankly,  
2 that is not before this Commission today.

3           It would appear as though Paragraphs 4 and 5 preclude  
4 specifically the arguments that are being advanced by the  
5 company. And we would submit that the case law is quite clear  
6 in the State of Florida, that this Commission cannot rewrite  
7 the contract for the parties, and that the contract language  
8 itself is the best evidence of the intent of these parties.

9           It was obviously at the outset, by way of example --  
10 and I will point to the order again at Page 8. It was obvious  
11 from the outset that the modifications to the lighting and  
12 service would result in some revenue increase. I mean, it is  
13 stated in a rather straightforward manner on Page 8 where it  
14 deals with service charges and lighting service charges. Both  
15 paragraphs indicate the new charges will result in an annual  
16 increase in revenues to FPC of approximately 11 million for  
17 service and 3 million for lighting. That was obvious to them  
18 at the time. If they wanted to negotiate that out, if they  
19 wanted an adjustment to the revenues that they are now arguing  
20 for, that they are trying to rewrite the contract, they could  
21 have done that at the time.

22           They certainly had no difficulty discussing that with  
23 respect to what Mr. Beck referenced in Paragraph 14. Paragraph  
24 14 of the contract is the only mention anywhere of an  
25 adjustment to revenues. And now they want to argue that, well,

1 if you adjusted it there, then it is obvious that we always  
2 intended to make other adjustments. And, frankly, we just  
3 don't think that is so.

4 That was a specific item that was addressed in this  
5 contract by the parties. It was addressed through Chairman  
6 Jaber's question. It is rather ironic now that even though Mr.  
7 Dolan agreed specifically with Chairman Jaber with respect to  
8 that adjustment that they have now come along for some strange  
9 reason and tried to modify even that. I don't know what could  
10 be more explicit than an agreement that was set forth in  
11 Paragraph 14, nor more explicit than Mr. Dolan's response to a  
12 very direct question. And now, here we are today, debating  
13 something that has already been decided.

14 Again, to sum up, the case law is clear. They have  
15 not demonstrated nor alleged any ambiguity in this contract.  
16 We are not here to rewrite the contract, we are here to follow  
17 its terms and provide their ratepayers with the refund to which  
18 they are entitled. Thank you.

19 CHAIRMAN JABER: Thank you, Mr. Kise.

20 General Crist, you wanted to address the Commission?

21 ATTORNEY GENERAL CRIST: Yes. Thank you, Madam  
22 Chair, Commissioners, I appreciate the opportunity to be here.  
23 And first I want to thank you for granting our motion to  
24 intervene in this case. We obviously think it is important to  
25 the people of Florida, and we appreciate your allowing us to be

1 here.

2 I wanted to start off, and my comments will be brief,  
3 I can assure you, because I think Public Counsel Beck and  
4 Solicitor General Kise have laid out the arguments very, very  
5 well and very effectively. And I think the case is enormously  
6 clear. There is a contract here. There is a settlement that  
7 was entered into by this company with the Office of Public  
8 Counsel and approved by this Commission. And all we are asking  
9 for today is that that contract be honored, that it be  
10 enforced, and that that is done by this Commission.

11 And I was looking over, you know, the mission  
12 statement of the Public Service Commission, and it states in  
13 part, to provide appropriate regulatory oversight to protect  
14 consumers. It also says to ensure that all entities providing  
15 utility services to consumers comply with all appropriate  
16 requirements subject to the Commission's, your jurisdiction.

17 Well, I don't think there is any question that this  
18 is subject to your jurisdiction. That is apparent and that is  
19 obvious, I think. It is clear to me that it is an appropriate  
20 requirement, being this settlement that we are here talking  
21 about today, and that the parties adhere to the requirements  
22 laid out in that settlement agreement. What we are talking  
23 about here is averaging out \$23 million versus a \$5 million  
24 argument that the company makes that they should refund to the  
25 people. And it is our argument that the people deserve \$23

1 million. What, in fact, the settlement called for.

2 And so with all due respect, you have an awesome  
3 task, and we are very respectful of your task and you do it  
4 well. And we would ask that you do it well today. And that  
5 you rule for the settlement, the enforcement thereof, and that  
6 the people deserve to have refunded to them what the company  
7 agreed to themselves they would refund to them. Thank you very  
8 much.

9 CHAIRMAN JABER: Thank you, General Crist. Mr.  
10 McWhirter.

11 MR. McWHIRTER: Madam Chairman, my name is John  
12 McWhirter representing one of the signatories to the settlement  
13 agreement and one of the signatories to the motion to enforce  
14 that settlement agreement.

15 In the course of human communication, culture cannot  
16 survive unless we understand what words mean. What this case  
17 and what this hearing today is about is the meaning of the  
18 phrase retail base rate revenues. Does that have some meaning  
19 that you can put your arms around, or is it an etherial term  
20 that is subject to interpretation?

21 The settlement agreement did not come about because  
22 everybody thought it was a good idea when we started. It took  
23 nearly two years to achieve, and as Mr. Deason pointed out in  
24 that transcript that you have got in your record, there was a  
25 lot of information that was forthcoming. There were 135 issues

1 or so in the case. And we finally resolved it down to this  
2 contract. And the issue we are debating today is what does  
3 retail base rate revenues mean.

4 Well, I think there is a very clear and precise  
5 understanding of that term that has been used by this  
6 Commission for years. However, in this case Florida Power, now  
7 known as Progress Energy of Florida, says that \$41 million,  
8 \$41.6 million in retail base rate revenues doesn't count. It  
9 doesn't tell you why it doesn't count, it doesn't tell you that  
10 there is anything in the settlement agreement that says that it  
11 won't count, it just says that doesn't count. And then it says  
12 \$14 million collected from lighting customers doesn't count.

13 So we have agreed that when Progress Energy's  
14 earnings exceeded a nice growth of 1,296,000,000, they could  
15 keep in the first year 56 percent of that money and the  
16 customers would only get 45 percent. I calculate that 67 times  
17 67. But they want to encroach upon that number even further.

18 And it is reminiscent of the circumstances that  
19 existed in the world of accounting and finance at the time this  
20 case began. If you will recall back in 2000, March of 2000,  
21 Enron and Worldcom were high flying companies. We had big  
22 eight accounting firms. The stock market had reached a new  
23 peak. And today circumstances are dramatically changed. The  
24 stock market has tumbled substantially. Enron and Worldcom  
25 went down the tubes. The big eight accounting firms have

1 reckoned themselves into the final four accounting firms.

2           And what was the cause of all of this? And the cause  
3 of it was managed earnings. What happened was stockholders of  
4 the general public were led to believe that earnings meant  
5 something that the company said they didn't mean. And they  
6 used the phrase managed earnings. And they projected the  
7 growth in earnings. And they were based on fictional terms.

8           I would suggest to you that if we start down the  
9 slippery path of now moving into managed revenues as opposed to  
10 managed earnings, we are in for a lot of trouble. And your  
11 responsibility as Commissioners is to bring certainty into  
12 regulation when you are regulating a monopoly, and to show that  
13 financial terms follow generally accepted accounting practices.  
14 Financial terms must follow regulatory policy established by  
15 this Commission. And this Commission has long determined what  
16 the term retail base rate revenues mean.

17           And we know in the year 2002, that Florida Power --  
18 and there is no dispute about it -- Progress Energy of Florida  
19 collected \$1,322,000,000. And we know that that was after 35  
20 million had been refunded. And the Commission in its order  
21 dealt with that 35 million, as Mr. Beck pointed out to you, and  
22 he said that is a very important number. How do we treat that  
23 \$35 million? And the Commission order said this is an  
24 important consideration in determining the appropriate level of  
25 revenues that will be subject to the revenue threshold for the

1 cap of 2002. There is no question that we are dealing with the  
2 entire calendar year of 2002.

3 And there was some question about this money that was  
4 given back, this \$35 million that was given back to customers.  
5 Do you count that? Does the utility get to tell its  
6 shareholders and the world that it really collected 35 million  
7 more and was forced to give it to the customers? Or do you not  
8 count it. And the Commission staff and the Commission itself  
9 said it is important to count that number. And that is the  
10 only number that was counted with respect to determining retail  
11 base rate revenues.

12 And I would suggest to you that it is an unambiguous  
13 term. It hasn't been a problem for Florida Power and Light to  
14 have a similar term. It hadn't been a problem for Gulf Power.  
15 But it's a problem, apparently, in this case. And we hope that  
16 you will not let that problem grow into a much greater problem  
17 because of shifty definitions. Thank you very much.

18 CHAIRMAN JABER: Thank you, Mr. McWhirter.

19 Mr. Twomey.

20 MR. TWOMEY: Madam Chairman, Commissioners, Mike  
21 Twomey on behalf of Buddy Hansen and the Sugarmill Woods Civic  
22 Association. I want to start my comments by recognizing the  
23 beauty of this settlement agreement for the customers. And I  
24 want to thank publicly Jack Shreve and Charlie Beck in  
25 particular for the bulk of the negotiations, as well as John

1 McWhirter, who is obviously a hard man to follow on these  
2 things.

3           They were responsible for negotiating this agreement  
4 with the utility, and they did an outstanding job. In fact, I  
5 will tell that you since I had very little to do with the  
6 negotiations, I was gratified on behalf of my clients to find  
7 that they had done so well. And it is true, the customers did  
8 exceptionally well through this settlement. Aside from the  
9 expense of the rate case and so forth, they did exceptionally  
10 well, and it is due to the people that negotiated it on the  
11 customers' behalf.

12           At the time I had to wonder why the company wanted  
13 out of the rate case so badly to have given up so much. But  
14 they did give it up, and it is contained in a settlement  
15 agreement that you have been told earlier was presented to you  
16 for your consideration. You didn't have to approve it, but you  
17 did. And in the process of examining it, your Staff raised to  
18 you in their recommendation and in their comments at the agenda  
19 conference areas that they thought required clarification.

20           Additionally, some of the Commissioners raised  
21 questions on their own, some did not. But there was a give and  
22 take, questions were asked, clarifications were made,  
23 clarifications were included in the order, clarifications are  
24 obviously stated in the transcripts. In the end the Commission  
25 accepted the agreement and published its order doing so.

1           The document is a contract. It is your obligation to  
2 construe it when there is differences of opinion on what it  
3 means. I am somewhat dumbfounded that we are here arguing  
4 about the issue of base revenues. You either understand what  
5 base revenues are or you don't. I mean, it is a fairly easy  
6 process when you have done a number of cases. But the numbers  
7 there, I think the amount as Mr. Beck and the others have said  
8 is uncontroverted.

9           The adjustments that are proposed, have been proposed  
10 by the utility have been addressed by the previous speakers.  
11 They have also been addressed by your Staff, who have said on  
12 occasion that there is no support whatsoever for any of the  
13 adjustments sought by this utility. Your Staff, as you are  
14 aware, you can ask them, of course, later, I encourage you to  
15 do so, have said that the document itself is clear and  
16 unambiguous as well as not supporting the adjustments sought by  
17 the utility.

18           This case or your decision in this case is larger and  
19 affects more people than just the customers of Progress Energy  
20 Florida. As suggested by Mr. McWhirter, there are other  
21 utilities that have accepted settlement agreements with the  
22 Office of Public Counsel and various customer groups, which  
23 settlements have been approved by and orders entered approving  
24 those settlements, as well. Those other utilities haven't  
25 sought to try and make these stretch type adjustments to

1 revenues.

2 If you approve these far-reaching unsupportable  
3 adjustments by this utility, then you are going to encourage  
4 Florida Power and Light, which to date has admirably observed  
5 their agreement, I maintain you are going to encourage them to  
6 come in and seek the same kind of adjustments.

7 So it is your obligation to construe the contract.  
8 The contract is clear. It is unambiguous. And as your Staff  
9 has said and the other parties have said and demonstrated to  
10 you through this very simple calculation, the bottom line is  
11 clear that the customers are due \$23.109 million plus interest.  
12 Thank you.

13 CHAIRMAN JABER: Thank you, Mr. Twomey.

14 Are there other signatories to the settlement  
15 agreement that wish to speak, other than Progress? Okay.  
16 Progress Energy.

17 MR. SASSO: Chairman Jaber, Commissioners, I'm Gary  
18 Sasso for Progress Energy. With me today is Jim McGee. I  
19 would like to begin by discussing some controlling legal  
20 principles. First, it is important to understand that we are  
21 interpreting not only an agreement reached between private  
22 parties, but we are also considering an order that was entered  
23 by this Commission after review and acceptance of a stipulation  
24 between the parties. And for this reason, we must consider the  
25 action taken by the Commission and the direction provided by

1 the Commission in its order.

2 Now, it is in this connection that the transcript of  
3 the agenda conference is pertinent to the Commission's decision  
4 of the stipulation and entry of its order, but I would like to  
5 emphasize that the argument that we will make today does not  
6 depend upon what is in the transcript. The transcript merely  
7 confirms what we believe is in the agreement and in the order.  
8 So our argument today does not stand or fall in any way on what  
9 is in the transcript.

10 Now, insofar as we are interpreting here today the  
11 intent of an agreement among the parties, it is important to  
12 keep in mind certain controlling principles of contract  
13 construction. We have discussed these in our memorandum  
14 beginning at Page 18, and I would like to discuss some  
15 quotations from cases that we believe are particularly  
16 instructive of the matters to be addressed today.

17 The cases hold, among other things, that courts  
18 should read provisions of a contract harmoniously in order to  
19 give effect to all portions thereof. To ascertain the  
20 intention of the parties to a contract, the trial court must  
21 examine the whole instrument, not just particular portions, and  
22 reach an interpretation consistent with reason, probability,  
23 and the practical aspects of the transaction between the  
24 parties.

25 Looking at all the provisions of the contract and its

1 general scope, if one construction would lead to an absurd  
2 conclusion such interpretation must be abandoned and that  
3 adopted which would will be more consistent with reason and  
4 probability. The court should try to place itself in the  
5 situation of the parties to determine the meaning and intent of  
6 the language itself.

7 So the overarching objective here today is to  
8 determine the intent of the parties as manifested in the  
9 agreement, and as discussed by the Commission, and approved by  
10 the Commission in its order. And we are not to look only at  
11 isolated provisions, and we must use reason and consider the  
12 practical aspects of the transaction.

13 Now, it is true in the case of contracts that parties  
14 often agree to certain basic principles that govern their  
15 affairs and they lay them down in writing, but they don't spell  
16 out all the mechanics. And that is what has occurred here  
17 today, and that is the reason we are here today. Now, there  
18 are a couple of threshold questions that I would like to  
19 address that have already been put on the table.

20 And I don't intend to reargue anything that was  
21 discussed at the last agenda, but the first is is the  
22 settlement agreement ambiguous and do we intend to contend  
23 today that it is. We do not. We agree with the moving parties  
24 that the agreement is not ambiguous, but we disagree about how  
25 the contract must be read. We disagree about the implications

1 of how all of the provisions taken as a whole together with the  
2 Commission's order lead us to a result here today.

3           It is our view that the agreement as a whole,  
4 together with the Commission's order, must reasonably be read  
5 in the manner that the company urges. Now, just because the  
6 moving parties have urged the Commission to adopt a different  
7 construction does not mean that a true ambiguity exists. The  
8 court in American Medical International, Inc. versus Shellar  
9 (phonetic) at 462 So.2d 1, for the benefit of Staff, held that  
10 a true ambiguity does not exist merely because a contract can  
11 possibly be interpreted in more than one manner. Indeed,  
12 fanciful or inconsistent interpretations of plain language are  
13 always possible. It is the duty of the trial court to prevent  
14 such interpretations.

15           The court in that case said that the hardship of one  
16 interpretation of a contract or its contradiction of the  
17 general purpose of the contract, of the general purpose of the  
18 contract is weighty evidence that such meaning was not intended  
19 when the language is open to an interpretation which is neither  
20 absurd nor frivolous and is in agreement with the general  
21 purpose of the parties.

22           Likewise, in Kip versus Kip (phonetic) at  
23 844 So.2d 691, the court held where the contract is susceptible  
24 to an interpretation that gives effect to all of its  
25 provisions, the court should select that interpretation over an

1 alternative interpretation that relies on negation of some of  
2 the contractual provisions. Now, in that case both sides had  
3 ascribed different meanings to the contract in dispute, but  
4 they both submitted the dispute to the trial court and asked  
5 for a ruling as a matter of law. They both argued that the  
6 contract was unambiguous, and the trial court resolved that  
7 dispute based on the agreement before it. And that is the  
8 situation we find ourselves in here today. As we will explain,  
9 the moving parties in our view focus on one isolated provision  
10 of the settlement agreement to the negation of other important  
11 provisions of the agreement, and that leads to what is an  
12 unreasonable interpretation, in our view.

13           Now, second, there was a discussion last time about  
14 it being incumbent upon the company, it being the company's  
15 burden to identify some ambiguity if the company were going to  
16 prevail, but we don't think that that view can be reconciled  
17 with the procedural posture of this case. The moving parties  
18 have filed a motion to enforce the settlement agreement. The  
19 parties have entered into a settlement agreement, it was  
20 incumbent upon the company to implement that agreement, the  
21 company did so, and now the moving parties have filed a  
22 petition with the Commission asking for affirmative relief.  
23 And it follows from that that it is the burden of the moving  
24 parties to justify to the Commission the interpretation they  
25 urge to disturb the company's interpretation of this agreement.

1 and we don't believe that they can do that.

2 Now, turning to the merits. If we are charged today  
3 with the responsibility of interpreting the settlement  
4 agreement within its four corners, we have to decide initially  
5 what is the agreement. And we would submit that there are  
6 really two agreements before you today, not one. The first  
7 agreement is set forth in Paragraphs 1 through 15 of what is  
8 called the settlement stipulation. The second agreement is in  
9 the exhibits to the agreement, and the two cannot be mixed and  
10 matched. They were very purposefully segregated.

11 If one turns to the order itself -- I'm sorry, the  
12 stipulation and settlement, which is at Page 14 of the order,  
13 Paragraph 2 of the stipulation and settlement says Florida  
14 Power Corporation will reduce its revenues from the sale of  
15 electricity by a permanent annual amount of \$125 million. This  
16 reduction will be reflected on FPC's customer bills by reducing  
17 all base rate charges for each rate schedule by 9.25 percent.  
18 This addresses a reduction, an agreed-upon reduction in  
19 revenues from the sale of electricity.

20 Paragraph 2 goes on to say all other cost of service  
21 and rate design matters will be determined in accordance with  
22 Section 16, which Mr. Beck discussed earlier. Now, Section 16  
23 at Page 20 of the order says the cost of service and rate  
24 design matters identified in Exhibit A to this stipulation and  
25 settlement will be treated in the manner described therein.

1 The Office of Public Counsel and Florida Retail Federation have  
2 taken no position on the cost of service and rate design issues  
3 in this proceeding, and, therefore, neither support nor oppose  
4 these matters.

5 Now, in Exhibit A, the company proposed an increase  
6 in lighting and service charges which was apart from the  
7 agreement set forth in Paragraphs 1 through 15 which contained  
8 the revenue sharing provision. And OPC and Florida Retail  
9 Federation were not signatories to or not endorsing the  
10 increase that the company sought. It is a separate agreement.

11 Mr. Beck stated earlier during his presentation that  
12 these were integrally related and that the Commission did not  
13 have the option of accepting the revenue sharing part of the  
14 agreement and rejecting Exhibit A. That is not correct. That  
15 contravenes the express terms of this agreement. Paragraph 17  
16 expressly says the provisions of Sections 1 through 15 of this  
17 stipulation and settlement are contingent on approval of these  
18 sections in their entirety by the Commission.

19 The treatment of cost of service and rate design  
20 matters identified in Exhibit A in accordance with 16 of this  
21 stipulation and settlement is contingent on approval of these  
22 matters in their entirety by the Commission. These were  
23 segregated matters for purposes of review and approval by this  
24 Commission. The company ran the risk that this Commission  
25 would approve Paragraphs 1 through 15 and that would become a

1 binding agreement, including revenue sharing, but that the  
2 Commission would reject Exhibit A.

3 CHAIRMAN JABER: Mr. Sasso, remind me when the  
4 lighting service rate schedule tariffs went into effect. Was  
5 that also May 1st, 2002?

6 MR. SASSO: Yes, ma'am. So these were intended to  
7 be, and they were presented as separate agreements. They were  
8 not linked together. The company ran the risk that the  
9 Commission would approve the rate cut without approving the  
10 increase in lighting and service charges which were not  
11 affected by the agreed-upon rate cut.

12 And it is our submission that if Exhibit A falls  
13 outside of Paragraphs 1 through 15 for purpose of review and  
14 approval by this Commission, it falls outside for all purposes,  
15 and that we cannot mix, and match, and commingle revenues from  
16 one to the other. In fact, Paragraph 2 you will recall  
17 expressly says that the rate reduction governed by 1 through 15  
18 is taken care of by 1 through 15 and all other cost of service  
19 and rate design matters will be determined in accordance with  
20 Section 16, not Paragraphs 1 through 15. They were segregated  
21 items.

22 And that only makes sense. Because as Mr. Beck  
23 discussed, the rate design issues reflected a correction. They  
24 had to be independently justified to this Commission before the  
25 Commission would accept them. And in colloquy with Staff, and,

1 again, this only confirms our interpretation, it is not a  
2 crucial fact, the Commission was satisfied that the Commission  
3 had looked at these charges for some time and they needed to be  
4 adjusted upwards. That was independent of any resolution of  
5 the disputed issues that resulted in the \$125 million rate  
6 conception. And it makes no sense for the Commission to  
7 approve a needed increase merely to require the company to  
8 disgorge that increase through revenue sharing. That is not  
9 the purpose of revenue sharing, which I will next address.

10 COMMISSIONER DEASON: Mr. Sasso, I'm sorry, you were  
11 about to leave that particular subject matter --

12 MR. SASSO: Yes, sir.

13 COMMISSIONER DEASON: -- earlier in your argument you  
14 made the observation and put forward the legal principle that  
15 contracts, or an agreement, or whatever we have here must be  
16 read as a whole and that we should not focus on isolated  
17 provisions, that we must give meaning to the agreement as a  
18 whole. But that sounds like it is in contrast to your argument  
19 here that we need to separate this agreement into two parts.  
20 How do you reconcile the two?

21 MR. SASSO: Yes, sir. That is why I said the  
22 threshold question is to ask what is the agreement that we have  
23 to interpret within its four corners and to give it integrity.  
24 And we have really two different agreements here. We have  
25 different parties and we have different provisions and they

1 were presented separately for approval, so we actually have two  
2 different agreements. And the provisions that I have discussed  
3 with respect to the settlement stipulation establishes that  
4 they need to be segregated. That is giving full force and  
5 effect to the words that the parties used in this stipulation,  
6 to all of the provisions.

7 Now, that leaves two other adjustments. The first  
8 adjustment concerns the refund that Mr. Beck discussed. Now,  
9 we can characterize the remaining adjustments, an adjustment  
10 reflecting the refund and the adjustment of \$41 million taking  
11 into account the date of implementation of the rate cut as  
12 normalizing adjustments. And as Mr. McWhirter argued, in  
13 looking at this agreement, which was concededly entered into in  
14 a context of a rate case, to settle a rate case, that it is  
15 appropriate to use regulatory policies to construe the  
16 agreement.

17 And Mr. McWhirter says that base rate revenues have a  
18 well established regulatory meaning. Well, likewise, does the  
19 concept of normalizing revenues in appropriate circumstances.  
20 The question is is there reason to believe that that type of  
21 adjustment is appropriate in this agreement given the order of  
22 this Commission. And the answer is yes. How do we know that?  
23 Well, we turn to the Commission's order itself, where the  
24 Commission discusses the refund issue as Mr. Beck described at  
25 Page 14. I'm sorry, Page 5 of the order, Paragraph 14. It

1 discusses Paragraph 14 of the agreement, the second half of  
2 Page 5 of the order.

3           And let's look at the entire paragraph. It says this  
4 provision provides for a \$35 million refund of the interim  
5 revenues collected subject to refund since March 13, 2001. So  
6 what the Commission is addressing here is the agreement to  
7 provide an interim refund out of interim revenues capped at \$35  
8 million. The Commission isn't directly addressing the revenue  
9 sharing provisions themselves, but this becomes very important  
10 to this issue.

11           The order goes on to say, this represents a 13 and a  
12 half month period from the beginning of the interim until its  
13 conclusion on April 30th, 2002. The stipulation however, is  
14 silent regarding the apportionment of the refund during the  
15 interim period. The Commission significantly goes on to  
16 resolve this by discussing ratemaking principles. The  
17 Commission says unless there is specific evidence to the  
18 contrary, it is normally assumed that the amount to be refunded  
19 has been accumulated on an even monthly basis during the  
20 interim period. This is a standard ratemaking assumption.

21           The order goes on to say this is an important  
22 consideration in determining the appropriate level of revenues  
23 that will be subject to the revenue threshold and cap for 2002.  
24 Now, that is very significant. Why is it significant? It is  
25 significant because the Commission assumed that the company

1 would be making normalizing adjustments to revenues. Note that  
2 the order doesn't say that the agreement is silent on whether  
3 such adjustments will be made, nor does the Commission direct  
4 the company to make those adjustments. The Commission says the  
5 agreement is silent on how to allocate the refund between two  
6 years, and it was silent on that.

7           Now, the Commission talks about doing the allocation  
8 and the company has undertaken to do that allocation for  
9 purposes of surveillance report. But the company has taken an  
10 adjustment of the full \$35 million for reasons I will explain  
11 in fairness to the customer and consistent with our  
12 interpretation of all of the provisions of the agreement, and I  
13 will get to that. But the important point here is that the  
14 Commission has now recognized that a ratemaking principle is  
15 appropriate during this transition year to identify and capture  
16 matters that have nothing to do with how the company performs  
17 through the sales of electricity. This simply is a transition  
18 year issue that grows out of some of the provisions of the  
19 agreement itself.

20           This is like the Commission saying we have to decide  
21 which part of this continent is in the northern hemisphere and  
22 in the southern hemisphere because this is an important  
23 consideration in determining how to navigate the globe. Now,  
24 the Commission may only address in that hypothetical the  
25 location of the continent in the northern or southern

1 hemisphere, but it has now established a principle, or  
2 identified or acknowledged a principle that is important. We  
3 can't forget the world is round. And we have to observe that  
4 in our interpretation of other parts of this agreement to be  
5 internally consistent.

6 Now, Mr. Beck acknowledges that even though the  
7 agreement doesn't specifically provide for an adjustment for  
8 the refund that it should be made. Well, why does he  
9 acknowledge that. Because it is mentioned in the order. Why  
10 did the Commission and its Staff assume that this adjustment  
11 would be made? It makes sense given the stated intent of the  
12 revenue sharing agreement of the stipulation. How do we know  
13 what that intent was? We don't have to have evidence on that.  
14 It is set forth expressly in the settlement stipulation itself.  
15 Paragraph 3 of the agreement itself states, "Effective on the  
16 implementation date, FPC will no longer have an authorized  
17 return on equity, ROE range, for the purpose of addressing  
18 earnings levels, and the revenue sharing mechanism herein will  
19 be the appropriate and exclusive mechanism to address earnings  
20 levels."

21 Now, this is crucial because this states the parties'  
22 intent as manifested expressly in the agreement itself of what  
23 the revenue sharing agreement is all about. And what the  
24 parties said is we are not going to use the tried and true test  
25 of establishing a range to limit earnings through ROE. We are

1 going to substitute as a proxy for that revenue sharing. And  
2 what this signals to all parties involved, and signaled to the  
3 Commission, we would submit, and informed its comment that this  
4 type of adjustment was appropriate, that the purpose of revenue  
5 sharing mechanism is to identify and capture dollars that might  
6 be deemed to be excess revenues that would otherwise trigger a  
7 rate case. That happens when the company projects a certain  
8 level of earnings, it enjoys better than expected sales, it  
9 performs better, maybe the weather is such that it generates  
10 more revenues, or the economy is stronger, and it earns more.

11 Now, we substituted for an earnings test a revenue  
12 test. And as Mr. Kise pointed out, we don't have to get into  
13 issues of cost, and expenses, and ratemaking inquires of the  
14 financial performance. We have a strict revenue test. We  
15 substitute that for earnings, but that is the purpose of it, to  
16 identify and capture dollars that would otherwise initiate a  
17 rate case. So it makes sense knowing the stated purpose of the  
18 revenue sharing agreement to say we have to make an adjustment  
19 for the refund. And why is that? Because \$35 million was paid  
20 out of 2002 revenues. And if we didn't make an adjustment to  
21 reflect that fact in 2002 base rate revenues, we run the risk  
22 of understating 2002 revenues for purposes of revenue sharing.

23 Let's suppose, for example, to take a hypothetical  
24 that the company shot by its projected sales of electricity by  
25 \$20 million in 2002 due to weather, due to economic

1 performance, what have you. That would normally trigger a rate  
2 case, or an inquiry, or some question, and it would be an  
3 appropriate basis for sharing that upside benefit with  
4 customers under revenue sharing. It blew by its projected  
5 revenues through sales of electricity by \$20 million. But we  
6 said out of 2002 revenues \$35 million for the refund. So even  
7 though the company exceeded its expected performance, it looks  
8 like the company has suffered a shortfall in revenues in 2002.

9 Hence, to respect and implement the general stated  
10 purpose of the revenue sharing agreement, it is important to  
11 make that adjustment. But once you have let that genie out of  
12 the bottle, you can't put it back in for other purposes.  
13 Because if we are going to go down that road of making these  
14 normalizing adjustments it has been to be done in an  
15 even-handed fashion. And we can't just make the adjustments  
16 that benefit the customer and not offsetting adjustments in  
17 fairness to the company.

18 And the reason we made the \$35 million adjustment  
19 rather than 24 is because that was the full amount paid out of  
20 2002 revenues. Now, we could have used just the amount in the  
21 surveillance report of 24 million consistent with the  
22 allocation that the Commission suggested. That allocation was  
23 observed for surveillance reporting, but that would not reflect  
24 the true revenue impact of the refund in 2002.

25 CHAIRMAN JABER: Mr. Sasso.

1 MR. SASSO: Yes, ma'am.

2 CHAIRMAN JABER: You knew I was going to ask you  
3 this. I specifically asked at that agenda your president about  
4 the \$24 million out-of-period adjustment versus the \$35 million  
5 adjustment. I wanted to know if he agreed with Staff's  
6 interpretation of that specific adjustment and how I believed  
7 it should be handled. I don't know how to take your remarks.  
8 Was your Chairman confused, or he gave me his word that he  
9 agreed with the interpretation and then he changed his mind?

10 MR. SASSO: No, ma'am.

11 CHAIRMAN JABER: I mean, I really can't reconcile  
12 what you are saying versus what your Chairman said to me at a  
13 public noticed agenda on a very specific direct question.

14 MR. SASSO: I understand. And we can make a \$24  
15 million adjustment provided that there be a complete  
16 recognition of the revenue impact of the rate reductions, and  
17 rate increases, and so on called for by this agreement. As we  
18 discussed in our papers --

19 CHAIRMAN JABER: So you don't deny --

20 MR. SASSO: We can do it that way, it really doesn't  
21 make all of that much difference. We can do it with 24  
22 million, and we agree, and our Chairman agreed that it is true  
23 that under the well-established principle the allocation would  
24 be 24 and 10 based on the months in which this was accrued.  
25 And that is the way the figures were reported for surveillance

1 purposes. And the calculation could be done that way.

2 CHAIRMAN JABER: Thank you.

3 MR. SASSO: It is not a pivotal issue in terms of the  
4 bottom line result. But the main point is the reason why the  
5 adjustment is appropriate for purposes of revenue sharing as  
6 recognized in the Commission's order is for the reasons I have  
7 stated, to respect the stated intention of trying to identify  
8 true occasions of over performance as opposed to giving the  
9 company credit, if you will, for a perceived shortfall in  
10 revenues that is true only because of the refund.

11 There is an exact mirror image adjustment that the  
12 company makes, which is the third adjustment of \$41 million,  
13 and it is the exact mirror image of that adjustment. If we go  
14 back to Page 5 of the order, this provides a summary at the top  
15 of the page of the thresholds and caps used for purposes of  
16 revenue sharing. These caps and thresholds are actually set  
17 forth in the agreement itself, but this just pulls them out in  
18 summary fashion, and I think it is convenient to look at them  
19 in this manner.

20 You can see at a glance that these thresholds proceed  
21 in lock-step through each year of the agreement by \$37 million,  
22 which is a proxy or a factor for load growth. You can call it  
23 whatever you want, but it is a proxy for reasonable growth from  
24 one year to the next. It is easy to see at a glance that there  
25 is no distinction in the 2002 threshold from the others in that

1 respect. It is an annualized number.

2 Now, again, inferring from the stated intention of  
3 the revenue sharing agreement, to identify and capture dollars  
4 that would otherwise initiate a rate case, there is a concern  
5 that arises out of these numbers. And that is we know from  
6 other provisions of the agreement that the year 2002 and the  
7 year 2003 are not the same, or 2004 with respect to authorized  
8 rates. Why do we know that? Because the agreement expressly  
9 says that the company agreed to a \$125 million rate reduction  
10 which is effective on May 1.

11 So for 2002, the company's authorized rate level was  
12 actually substantially higher on an annual basis than for '03,  
13 '04, or '05, because for a number of months the company was  
14 collecting at a higher authorized rate of return. The  
15 threshold serves as a proxy for an authorized rate of return.  
16 If you add \$125 million, the amount of the deduction to the  
17 threshold, you will happen to get the company's projection. We  
18 don't need to know that, but, in fact, you can infer from the  
19 agreement that the threshold serves as a proxy for the  
20 authorized level of rate recovery.

21 And, again, we know that in '02 the company actually  
22 had a greater authorized rate of recovery for the first several  
23 months. So the threshold does not capture that. That means,  
24 using the same logic that we used to make the adjustment in  
25 favor of the customers, that we run the risk unless we

1 recognize this factor of overstating 2002 revenues, making the  
2 company look like it had a blowout year, blowing by all  
3 expectations of sales of electricity, merely by dint of the  
4 fact that the company was, in fact, collecting at a higher  
5 authorized rate through May 1 of '02.

6           And, in fact, an agreement ought to have a certain  
7 amount of internal logic. And, again, remember the courts  
8 talks about interpreting a contract to ensure consistency among  
9 the provisions. We ought to see the same principles at work  
10 from year to year in this agreement. But if we didn't make an  
11 adjustment to take into account the fact that this threshold  
12 does not reflect the actual authorized rates through May 1, we  
13 wind up with a different impact in '02 and '03. We would have  
14 a refund -- all other things being equal, we would have a  
15 refund in '02 that we would not have in '03. Why would we have  
16 that refund? For the sole reason that the company was  
17 authorized to collect at a higher rate from January 1 through  
18 May 1. And that sounds like a rebate of authorized rates  
19 collected from January 1 through May 1. That is not  
20 permissible.

21           Why isn't it permissible? First, because there is a  
22 well-established principle that we do not do retroactive rate  
23 cuts. Second, that is embodied in the settlement agreement  
24 which says the rate cut takes effect on May 1. And, third, the  
25 only statutory vehicle for going back to make refunds during

1 that interim period is revenues subject to refund. And the  
2 parties expressly agreed to cap that refund at \$35 million.  
3 And it would be inconsistent with that to require the company  
4 to make a further refund through revenue sharing. So that is  
5 the basis for our adjustments.

6 Now, significantly --

7 COMMISSIONER DEASON: Mr. Sasso, I'm sorry, let me  
8 interrupt for just a moment. There is a provision -- looking  
9 at Page 16 of the order, and it discusses the sharing  
10 threshold. Middle ways of that paragraph it states for 2002  
11 only, the refund to the customers will be limited to 67.1  
12 percent of the two-thirds customer share. Did this adjustment  
13 recognize the fact that for the period that the reduction  
14 only -- there was a change in rates at the May time period.

15 MR. SASSO: Yes, sir.

16 COMMISSIONER DEASON: And I'm trying to reconcile the  
17 argument you just made with this provision in the agreement.

18 MR. SASSO: Yes, sir, it is confusing. The answer is  
19 that this provision actually confirms that the parties did not  
20 intend to go back and require disgorgement of revenues  
21 collected before May 1. It solves part of the problem, but not  
22 all of the problem. First, it is important to identify the  
23 correct pot, if you will, of revenues that would be subject to  
24 refund for any given year. And, again, looking at the stated  
25 principle in Paragraph 3, the intent is to identify and capture

1 those revenues that would trigger a rate case, a rate review.  
2 Excessive revenues. So we have to identify so-called excessive  
3 revenues for the entire year.

4 We have to make the adjustments that the company has  
5 made in order to get the right pot for the entire year.  
6 Because otherwise we understate revenues because of the refund,  
7 or we overstate revenues because of the annualization of the  
8 threshold, which is an artificial device. Those are not real  
9 factors in terms of the company's performance, and so we have  
10 to make adjustments for those things. When we make those  
11 adjustments, then we have the right pot for the whole year, and  
12 we have identified what are truly excess revenues for the whole  
13 year, neutralizing for some of the provisions in the agreement  
14 itself.

15 Once we have got the right pot of so-called excess  
16 revenues for the whole year, we have to recognize that the  
17 parties have agreed that the customers would share in only that  
18 portion of that pot attributable to May 1 through the end of  
19 December. And the .67 comes into play at that part of the  
20 analysis. So, the company's calculation uses .67, it just uses  
21 it after making adjustments to get the right pot for the whole  
22 year.

23 CHAIRMAN JABER: Mr. Sasso, I have just a couple of  
24 questions and follow-up to make sure I understand the point you  
25 are trying to make. If we assume just for the moment for the

1 purpose of this question that year 2002 did require some sort  
2 of normalization, you have got an out-of-period adjustment in  
3 your calculations of -- I guess that is \$41,625,000?

4 MR. SASSO: 41 million is in 2002.

5 CHAIRMAN JABER: So the difference being what you  
6 believe is relevant for May through December out of the 125?

7 MR. SASSO: Yes, ma'am. In fact, to go back to your  
8 earlier question, if we use the \$24 million refund adjustment  
9 rather than 35, we would simply make an offsetting adjustment  
10 to the 41, so we would end up at the same place.

11 CHAIRMAN JABER: Okay. Now, that difference for  
12 2002, I am assuming plus the 125 for each year thereafter, do  
13 you have a total number for me? Can you give me a number? For  
14 the entire term of the contract, what do you believe the  
15 permanent annual rate reduction would have been?

16 MR. SASSO: The permanent annual rate reduction per  
17 year on an annualized basis is \$125 million. Now, we have to  
18 take a pro rata portion of that for 2002. You would multiply  
19 that times .67 to get the amount of the \$125 million rate  
20 reduction for '02.

21 CHAIRMAN JABER: Will one of your folks do that for  
22 me? I am interested in the total number through the year of  
23 the agreement. And I will ask you the second question, but  
24 just to be clear, I want to know -- take into account what you  
25 believe it should be for 2002 through December 31st, 2005. I

1 want to know what the annual amount -- what is the permanent  
2 annual amount for the entire period.

3 MR. SASSO: Of that rate cut?

4 CHAIRMAN JABER: Switching gears on you. The second  
5 question I have, first of all, I absolutely agree with you, we  
6 need to look at the whole of the agreement, and I need to  
7 consider what I thought when I approved the settlement  
8 agreement. But setting that aside, it seems to me that the  
9 other provisions of the agreement we should look at, consistent  
10 with your argument, relate to the depreciation expense and how  
11 we allowed you to cease accruals for the dismantlement. And I  
12 am interested in exploring with you how you reconcile your  
13 argument that the 125 -- is it billion?

14 MR. SASSO: Million.

15 CHAIRMAN JABER: The 125 million should only be  
16 prorated for the May through December period with the fact that  
17 we allowed you to book depreciation expense back in January,  
18 starting in January 2002. Reconcile that for me, and then tell  
19 me what the dollar amount is for the depreciation expense.

20 MR. MCGEE: Madam Chairman, let me take a shot at  
21 that, if I may. The Commission -- as a matter of fact, there  
22 was case law established 10 or 15 years ago concerning the  
23 issue of retroactive ratemaking that established the principle  
24 that changes in depreciation rates while they may border on  
25 that area, and lead to some concern that it involves

1 retroactive ratemaking, in fact, does not.

2           So from the standpoint of the controlling principles  
3 Mr. Sasso discussed earlier, one being the prohibition against  
4 retroactive ratemaking, the establishment and agreement by the  
5 parties to an accounting treatment as to how the depreciation  
6 expenses, fossil nuclear dismantlement, those book entries,  
7 while that change -- has a change that is significant from the  
8 company's financial standpoint, it does not involve retroactive  
9 ratemaking.

10           The concern that Mr. Sasso expressed regarding the  
11 treatment of the \$125 million rate reduction, being that it is  
12 actually the rates charged to customers, carries that  
13 implication, that prohibition that raises the retroactive  
14 ratemaking concern. And why going back to the revenues that  
15 were properly received in January through April can't through  
16 the back door be refunded to customers through an  
17 interpretation of revenue sharing when it is clear that there  
18 was nothing improper about receiving that higher level of  
19 revenues during those first four months of the year. So I  
20 think we are talking about matters that while they are in the  
21 ratemaking sphere, are controlled by different principles.

22           CHAIRMAN JABER: I'm sure we will explore that more  
23 with respect to the legal argument. Now, from a monetary  
24 standpoint, the amount of depreciation expense that we allowed  
25 you to account for, what was that total amount annually?

1           MR. McGEE: That amount from a mathematical  
2 standpoint is half of the \$125 million reduction. I think it  
3 is stated at the top of 18 as \$62.5 million.

4           CHAIRMAN JABER: Okay. Now, do you know how much on  
5 an annual basis that expense reduction would be attributable to  
6 the depreciation, to the decommissioning and dismantlement?  
7 What I'm trying to do is look at the period January through  
8 April and see what amount you were able to account for related  
9 to depreciation expense. And I am comparing it, frankly, to  
10 the amount of money that Public Counsel thinks should be  
11 refunded. It's that simple.

12           MR. McGEE: And if we can have a chance to confer  
13 with the people --

14           CHAIRMAN JABER: Go right ahead.

15           MR. McGEE: -- who understand these accounting  
16 principles better than I.

17           CHAIRMAN JABER: Go right ahead. And, Mr. Sasso, if  
18 you wanted to continue on with your presentation while we do  
19 that, that's great.

20           MR. SASSO: Yes, ma'am. And I do have an answer to  
21 the question you asked now. The total through '05 of an  
22 agreed-upon rate reduction is \$459 million.

23           CHAIRMAN JABER: 459 million?

24           MR. SASSO: Yes, ma'am.

25           CHAIRMAN JABER: And that is with your suggested

1 reduction in 2002?

2 MR. SASSO: Yes, ma'am. Now, a few additional  
3 points. First, the question is do these adjustments reflect a  
4 modification of the agreement? And we would submit they do  
5 not. In fact, Mr. Shreve acknowledged at the last agenda  
6 conference that what the Commission accomplished in its order  
7 was a clarification of the parties' intent. The moving parties  
8 argue for what they call a plain language interpretation,  
9 looking in isolation at a couple of the provisions in the  
10 agreement.

11 And we would suggest that if we were going to go down  
12 that road, we would end up at two other destinations, but not  
13 the one that the moving parties suggest. First, if we were  
14 going to read the revenue sharing paragraph in isolation from  
15 the rest of the agreement, go to Paragraph 6, we would end up  
16 potentially with a zero refund. Paragraph 6 says commencing on  
17 the implementation date, and for the remainder of the agreement  
18 FPC will be under a revenue sharing incentive plan. If we  
19 discuss that counsel at this table would be sharing their  
20 paychecks on and after May 1, there would be unanimity that all  
21 of our paychecks prior to May 1 would be off the table.

22 And if we mechanically apply this provision without  
23 regard to the stated overarching intent of the agreement, we  
24 would be looking at only revenues collected on or after May 1  
25 and we would be comparing that to the threshold. And we

1 provided a calculation in our handout on that. I believe it is  
2 Tab 3, which shows that that would put us in a deficiency  
3 position and there would be no excess revenues and there would  
4 be no refund. So that is one demonstration of why we cannot  
5 construe Paragraph 6 mechanically.

6 Now, there is another way to look at the agreement  
7 from a so-called plain language point of view. There has been  
8 much comment that we need to stick with the deal that was inked  
9 among the parties, and there has also been argument that we  
10 can't find these adjustments in the agreement. Well, we can't  
11 find the refund adjustment in the agreement. The only way we  
12 get to the refund adjustment, which benefits the customer, is  
13 if we recognize and embrace the stated principle of revenue  
14 sharing as I have described in Paragraph 3 of the agreement.

15 And it is interesting, too, that if you read the  
16 Commission's order it does not direct the company to make an  
17 adjustment for the refund. As I mentioned, the order discusses  
18 the refund issue and how it should be allocated which the  
19 company has observed for purposes of surveillance reporting,  
20 but the Commission does not go on to say that the agreement is  
21 silent on these adjustments, and the adjustment should be made,  
22 and we direct the company to make this adjustment. It simply  
23 says that the allocation is an important consideration for an  
24 adjustment that the Commission evidently assumed the company  
25 would make.

1           So if we are going to take a stingy reading, we will  
2 call it, of this agreement and not look at all the provisions  
3 and how they tie together and try to implement the overarching  
4 intent, we would not make the adjustment for the refund. We  
5 would not make the adjustment for the \$41 million item. We  
6 believe we could still segregate out, consistent with  
7 everything that is in the agreement, the increase for lighting  
8 and services, because we believe that is a separate part of the  
9 proposal and the agreement. But if we made only that  
10 adjustment and not the other two, including the refund as we  
11 have indicated in Tab 4, you would end up with a \$7.9 million  
12 refund, not a \$23 million refund.

13           The only reason we are talking about a refund in the  
14 magnitude of \$23 million is because the moving parties are  
15 happy to accept the adjustment for the refund even though the  
16 logic of their argument would suggest it not be made. So this  
17 drives us back to the company's interpretation, which is in Tab  
18 5 of our handout, which we believe best effectuates all of the  
19 provisions of the agreement and the stated intent of the  
20 parties with respect to revenue sharing.

21           Now, I would like to address one other matter, and I  
22 am hesitant to do this, because I'm not quite sure where we  
23 stand on this, frankly. There has been discussion about the  
24 Florida Power and Light and Gulf agreements. I had understood  
25 that the Commission's decision on June 30 was that matters of

1 that nature involving the intention of other parties and  
2 actions by other parties were off the table, but there has been  
3 some reliance on that today, and I have a concern about  
4 allowing that to go unrebutted. If the Commission is going to  
5 give no weight to those other agreements, then so be it. But  
6 if the Commission is going to give any consideration to those,  
7 we would submit that those other agreements and the experiences  
8 of those other companies actually support our interpretation,  
9 they do not detract from our interpretation.

10 CHAIRMAN JABER: Mr. Sasso, I don't really know how  
11 to address your concern without coming out just as one  
12 Commissioner and telling you that I told you the three things  
13 I'm looking at. I am looking at the order, I am looking at the  
14 settlement agreement itself, and I am looking at the  
15 transcript.

16 We are big people. We know this is an agreement --  
17 speaking for myself, this is an agreement that is to be  
18 considered today on its own, so I don't know if that will help  
19 you guide your presentation along or, Commissioners, if you  
20 have separate feelings about that, feel free to comment.

21 MR. SASSO: Well, I will omit any comments on those  
22 agreements, but I would ask the Commission's indulgence if  
23 during your discussions or debate about how to dispose of this  
24 dispute that becomes important, we would appreciate the  
25 opportunity in fairness to address those concerns.

1           And that leaves only one matter remaining that I  
2 would like to address, and that is the concern has been  
3 expressed that why wasn't this addressed at the agenda where  
4 the settlement agreement was reviewed and approved. And that  
5 the company had every opportunity to lay concerns about  
6 conflicting interpretations on the table at that time. Well,  
7 we would respond by saying that that can be said in the case of  
8 every contract dispute. Regrettably, the parties don't realize  
9 they have a dispute until they have walked out of the room and  
10 the agreement is signed, sealed, and delivered. And they  
11 realize only later during the implementation that they have a  
12 disagreement among themselves about what deal they have signed.

13           We fully support the encouragement given to the  
14 Commission to enforce the parties' agreement, and the company  
15 has every intention of honoring this agreement, but we do have  
16 a fairly serious dispute about what the agreement is. And that  
17 is the reason we are here today. The company frankly did not  
18 recognize that there would be this disagreement or there was  
19 this disagreement until much after the agreement was resolved  
20 and the Commission did its work when during some calculations  
21 and discussions with Staff and the OPC it became evident that  
22 there was a disagreement and that leads us here today.

23           But had the company anticipated this, obviously the  
24 proper occasion to work this out would have been at agenda, but  
25 it simply was not anticipated. So we find ourselves here today

1 with a dispute that we respectfully submit to your  
2 consideration to resolve. We certainly respect our colleagues  
3 at the other end of the table and understand that they are in  
4 complete good faith in the argument they are making to you, as  
5 we are, too. We do believe, however, that if controlling  
6 principles of contract construction are applied here, and the  
7 agreement is viewed in its entirety and an effort is made to  
8 harmonize all the provisions of the agreement, and use all of  
9 them and reconcile all of them, that this leads us inevitably  
10 to one conclusion, and it is the company's conclusion.

11 Thank you.

12 CHAIRMAN JABER: Thank you, Mr. Sasso.

13 I want to open it up to questions by asking, Mr.  
14 McGee, have you had an opportunity to look at the depreciation  
15 expense issue? And then, Mr. Sasso, I have a follow-up  
16 question for you. Mr. McGee, we are going to give you a few  
17 more minutes. We are going to take a break. But, Mr. Sasso,  
18 my question to you I think can be answered quickly. In  
19 response to the total permanent rate reduction amount for 2002  
20 through 2005, including your adjustment, you said 459 million?

21 MR. SASSO: That is correct.

22 CHAIRMAN JABER: You all are sure that that is your  
23 position?

24 MR. SASSO: I'm afraid of the way you have asked  
25 that.

1 CHAIRMAN JABER: Well, you should be.

2 COMMISSIONER DEASON: Madam Chairman, could you  
3 repeat your question?

4 CHAIRMAN JABER: Sure. I want to know, based on the  
5 company's calculation of the 2002 annual rate reduction and  
6 then add the 2003, add the 2004, add the 2005, what they  
7 believe the total number is. And it's okay if according to  
8 your position it is 459 million.

9 COMMISSIONER DAVIDSON: Could I ask a question, also,  
10 Chairman?

11 CHAIRMAN JABER: Hang on, Commissioner Davidson.

12 MR. SASSO: I have just been advised that there have  
13 been some characterizations of this as 500 million on an  
14 annualized basis, it was done on an annualized basis.

15 CHAIRMAN JABER: So walk me through the difference.  
16 Let me, again, because there is no hidden agenda. Your  
17 chairman in presenting the settlement at a very public agenda  
18 where everyone was touting the settlement and we were all  
19 applauding everyone's efforts, these were the exact words. "I  
20 believe it to be a very important benefit to the customers, a  
21 \$125 million per year rate reduction, and that equates over the  
22 term of this agreement to more than \$500 million worth of  
23 savings to our customers." I am going to come back and let you  
24 address that. We are going to take a 15-minute break.

25 (Recess.)

1           CHAIRMAN JABER: Let's get back on the record. Mr.  
2 Sasso, I wanted you to have an opportunity to address those  
3 questions, and then open it up for other Commissioner  
4 questions.

5           MR. SASSO: Yes, ma'am. With respect to the amount  
6 of the rate reduction, there was a \$125 million per year base  
7 rate reduction expressed in terms of dollars on an annualized  
8 basis over five years. That is 500. It is implemented through  
9 a percentage of 9.25 percent times sales revenues which will  
10 actually yield, in all likelihood, more than 125 in the out  
11 years of the agreement, so we don't know exactly what the  
12 amount may be.

13           In addition, there was a \$50 million midcourse fuel  
14 adjustment correction agreed to in the settlement downward in  
15 favor of the customer. And there was a \$35 million one-time  
16 refund out of the revenues collected subject to refund, so that  
17 was the intent of that statement. Now, I understand there is  
18 another question?

19           CHAIRMAN JABER: Yes. Mr. McGee, you were going to  
20 think about the depreciation expense. And I understand the  
21 legal principle, that is not really what I'm after. I'm just  
22 looking at the amount you had available to you during that  
23 January through May time period associated with the expenses,  
24 the depreciation expenses being booked.

25           MR. MCGEE: The annual total of those three expense

1 items, depreciation, decommissioning, and dismantlement is \$77  
2 million. So simply by multiplying that by one-third you would  
3 come up with \$25.67 million that would be attributable to the  
4 first four months of the year.

5 CHAIRMAN JABER: Thank you. Commissioners, I do have  
6 other questions, but I would like to wait and give others an  
7 opportunity. So if you have questions, feel free. Okay. I'll  
8 keep going.

9 As I said earlier, I only looked at the settlement  
10 order and the agenda transcript, Staff, so if we could focus on  
11 the settlement. And for the benefit of all the parties, I will  
12 try to tell you what I'm looking at and page. But if I don't,  
13 just speak up. Mr. Twomey, could I trouble you to let Tim  
14 Devlin sit there?

15 MR. TWOMEY: Sure.

16 CHAIRMAN JABER: John or Tim, it doesn't really  
17 matter to me who answers this. My question related to the \$500  
18 million and the annual rate reductions for the entire contract  
19 period. In the interest of disclosure, I really thought that  
20 was as simple as 125 times four, and that was further  
21 reinforced when I heard the president of the company say --  
22 directly linked in the transcript, he said it is \$125 million  
23 of a permanent rate reduction for 2002, and that would result  
24 in a total amount of savings to the customers of 500 million.  
25 To the degree that interpretation is wrong, I need you to walk

1 me through that.

2 MR. SLEMKEWICZ: Okay. Well, that \$500 million would  
3 be based on annualizing it for the whole four years. If you  
4 look at the implementation date, then you would subtract that  
5 \$41 million. So for 2002 the actual rate reduction would only  
6 be 85 million, or 84 million. So that is where you would get  
7 the \$459 million. And they are correct that given sales, the  
8 \$125 million could be more or could be less. But based on, you  
9 know, just the rates that were set, it is \$125 million.

10 CHAIRMAN JABER: Okay. If that is correct, then  
11 option one, which seems to support the movants' argument under  
12 the schedule found on Page 12 of the recommendation, for rate  
13 reduction you show a zero out-of-period adjustment, and I need  
14 to understand why.

15 MR. SLEMKEWICZ: I'm sorry, you're saying in option  
16 one?

17 CHAIRMAN JABER: Yes. I'm looking at Page 12 of your  
18 recommendation.

19 MR. SLEMKEWICZ: Okay. On the rate reduction line?

20 CHAIRMAN JABER: Yes.

21 MR. SLEMKEWICZ: Again, there is nothing that I can  
22 see in the settlement that allows for that. To me, the 67.1  
23 percent covers that period from January 1 through April 30th  
24 that was not subject to the rate reduction itself.

25 CHAIRMAN JABER: Okay. Let me see if I understand

1 the distinction you are trying to make. You recognize  
2 Progress's argument that if they annualized the 125 million for  
3 year 2002, it would be appropriate to have the adjustment they  
4 have made. What you are saying is the contract doesn't  
5 specifically address that?

6 MR. SLEMKEWICZ: That is correct. The implementation  
7 date was May 1st. And, again, I believe that 67.1 percent for  
8 that time period was supposed to compensate them for the time  
9 period that the rate reduction was not in effect. Now, the  
10 company, you know, may in hindsight have wanted some other  
11 provision in there, or have wanted to maybe start with a  
12 different period, but they didn't. And when I look at the  
13 stipulation, that is what I read, and there is nothing in there  
14 that would allow them to reduce it by that \$41 million.

15 CHAIRMAN JABER: Okay. Mr. Devlin, do you agree with  
16 all of that so far?

17 MR. DEVLIN: Right. I mean, we have three options.  
18 And option one is essentially Public Counsel's option. And,  
19 again, looking at the strict wording of the stipulation, retail  
20 base rate revenues are just those, without annualization of any  
21 rate changes, et cetera. The one change that was agreed upon  
22 at the agenda a year ago with respect to the interim.

23 CHAIRMAN JABER: Mr. Slemkewicz, you said that based  
24 on what was said you recognize the \$500 million was an  
25 annualized amount. Point me to where I would have known that

1 from the contract, from our order, or from what was said at  
2 agenda.

3 MR. SLEMKEWICZ: You really wouldn't. I mean, they  
4 just said \$125 million a year times four is \$500 million.

5 CHAIRMAN JABER: Did it give you all -- obviously it  
6 didn't give you concern when we were entertaining the approval  
7 of the settlement, because it is not my recollection that you  
8 pointed out to us that that total amount would need to be  
9 annualized for 2002.

10 MR. SLEMKEWICZ: Well, that wasn't part of it. The  
11 contract or the stipulation doesn't say it is a \$500 million  
12 rate reduction over the term of the contract. That was, you  
13 know, just something that they had said. Again, if you viewed  
14 it as an annualization, then that is not an incorrect number.

15 CHAIRMAN JABER: I'm looking at Page 15 now of the  
16 settlement, Paragraph 5. Again, the terms of the settlement in  
17 Paragraph 5 appear real clear to me that the parties understood  
18 that the revenue sharing mechanism would not be intended as a  
19 rate case type inquiry looking at expenses, investment, and  
20 financial results of the operation. The company in the  
21 pleadings and I think in their calculations take the view that  
22 you have to normalize the revenues from their budgeted year.  
23 That sounds like rate case, looking at expenses and  
24 adjustments. Mr. Devlin, and my question is does that argument  
25 fly in the face of Paragraph 5?

1           MR. DEVLIN: I was looking at Paragraph 5 when that  
2 was discussed, and I think Paragraph 5 addresses other than  
3 revenue. It addresses investment, expenses, and the cost of  
4 capital. It doesn't address what you do with revenue by a  
5 strict reading of it. The nature of the settlement is it is a  
6 revenue sharing plan as opposed to an expense -- or earnings  
7 sharing plan like we had in some other cases. That's how I  
8 read Paragraph 5. So I don't know if there is really a  
9 conflict in what the company said when they proffered  
10 normalizing adjustments in revenue for Paragraph 5.

11           CHAIRMAN JABER: Mr. Sasso, I would like for you to  
12 address that. I looked at my bare reading of Paragraph 5 and  
13 what I thought it meant, and it seems inconsistent with the  
14 argument you proffer related to normalizing the revenues for  
15 2002.

16           MR. SASSO: We would give the same response. I  
17 believe I said that earlier that when we went from essentially  
18 a limitation on earnings to a revenue sharing arrangement, we  
19 have been able to get past getting into expenses and  
20 investments and financial operations. The adjustment is in the  
21 nature of a normalizing adjustment for the transition year only  
22 because that is consistent with the stated intent of Paragraph  
23 3 to use revenue sharing as a limitation on earnings, using  
24 revenues as a proxy.

25           We can't get completely past the use of some rate

1 principles. Even the moving parties want to use some type of  
2 understanding from rate cases in talking about base rate  
3 revenues which is not defined in the agreement. This was a  
4 settlement that was reached in the context of a rate case. The  
5 use of an annualized threshold, for example, is a ratemaking  
6 convention to annualize numbers. But having annualized that  
7 threshold, we have to recognize the reality that that was done  
8 and make appropriate adjustments as necessary in implementing  
9 the mechanics of some of the other provisions.

10 CHAIRMAN JABER: Okay. And on that note, help me  
11 reconcile your treatment of the lighting expenses. You  
12 implemented that tariff May 1st, 2002, which meant that your  
13 revenues would have increased associated with implementation of  
14 that tariff. In your calculation you don't account for that  
15 increase.

16 MR. SASSO: The increase is taken out of the revenues  
17 used for revenue sharing on the ground that that was outside  
18 the agreement, it fell outside for all purposes. Again, from  
19 our point of view it would not make sense to come before the  
20 Commission and ask for an increase as justified to match the  
21 charges with actual costs and then simply disgorge that in the  
22 form of revenue sharing. The purpose of revenue sharing is not  
23 to give back increases sought to cover costs, it is to give  
24 back the upside of the company exceeding its expected  
25 performance.

1           CHAIRMAN JABER: But help me understand. If it was  
2 implemented in 2002, if you wanted a complete picture of  
3 calendar year 2002, would you not have accounted for the  
4 increase in revenues in lighting? I understand your legal  
5 argument is it is outside of the scope of what you thought  
6 should have come into revenue sharing. But I just -- I can't  
7 accept -- it looks like a mismatch.

8           MR. SASSO: Well, if we get into the logic of it, the  
9 company projects a certain level of revenues based on forecasts  
10 of the economy and based on the authorized rate level and  
11 weather assumptions. And if the company meets its performance  
12 objectives it realizes that level of revenue. The increase in  
13 lighting and services fell outside of any of that.

14           So when we are talking about projecting performance  
15 and agreeing to share with the customer the upside benefit of  
16 exceeding that performance, the increase in lighting and  
17 services is really not part of that discussion. That doesn't  
18 reflect some superior performance by the company. It's an  
19 authorized rate increase. The Commission has acknowledged and  
20 approved that the company should be able to collect those  
21 additional revenues, not for the purposes of refunding them to  
22 the customer.

23           COMMISSIONER DEASON: May I follow-up?

24           CHAIRMAN JABER: Commissioner Deason.

25           COMMISSIONER DEASON: So, Mr. Sasso, then, the way

1 you read Paragraph 16 and the accompanying Exhibit A is that  
2 this provision provides for a revenue enhancement to the  
3 company as opposed to getting costs and rates for a particular  
4 class of customer in line with contributions from other classes  
5 of customers, or which is it?

6 MR. SASSO: The two occurred together. The alignment  
7 occurs by virtue of the revenue enhancement of the increase.  
8 There was an express increase reflected in the schedules in  
9 Exhibit A, and it does have the impact of both enhancing  
10 revenues and bringing about that alignment.

11 MR. KISE: Chairman Jaber, could I address your  
12 question? Might I address your question to Mr. Sasso on --

13 CHAIRMAN JABER: Yes. And just so you all know, at  
14 the very end I fully intend to allow all parties to address my  
15 questions. But go ahead.

16 MR. KISE: And I don't mean to interrupt --

17 CHAIRMAN JABER: You're not, go ahead.

18 MR. KISE: -- but you were on that point. I mean, it  
19 is curious that this argument about the separate contract has  
20 now come up, that Paragraph 16 is somehow separate. I mean,  
21 that is, I believe, the third argument we have now heard from  
22 Florida Power. The first argument is at Page 8 and 9 of their  
23 memorandum where they talk about the exhibit to the settlement  
24 agreement is an integral part of the agreement, and somehow the  
25 lighting and service is some sort of offset to the 125 million.

1 Now we are hearing it is not really an offset and it is not an  
2 integral part, it is a totally separate agreement. And I  
3 believe Ms. Bowman last week said something about the real  
4 issue is to determine the forecast from which the threshold  
5 amount was derived.

6 And I'm frankly a little puzzled, but be that as it  
7 may, the separation that they are talking about is frankly  
8 irrelevant for purposes of determining retail base rate  
9 revenues. The issue was whether or not you were going to  
10 approve the refund and whether or not you were going to give  
11 them the ability to increase their lighting and service fees as  
12 a separate matter. In other words, would you give them that.

13 If you didn't give them the ability to increase their  
14 revenues for lighting and service, you still could have given  
15 them the refund. And those are separate for that purpose, but  
16 they are not separate for purposes of determining retail base  
17 rate revenues. If they wanted that exclusion they could have  
18 asked for it at the time. What they are basically telling you  
19 is they didn't negotiate that term properly. That is  
20 effectively the import of their argument is that they  
21 overlooked the fact that we are going to have an increase over  
22 here. Hey, we better get in front of the Commission and  
23 indicate that that is not supposed to be part of retail base  
24 rate revenues.

25 And the idea that because OPC or the other parties

1 didn't comment on this issue somehow supports their position,  
2 frankly, I think -- and this is somewhat speculation, and  
3 counsel can speak for themselves, but they probably didn't  
4 comment on the issue of the increase because they knew it was  
5 going to be included in the revenue sharing. They knew that  
6 they were going to get the benefit of that increase based on  
7 the terms of the agreement that was in front of them.

8           And so if they saw that, just like if I were  
9 negotiating a contract, I'm not going to bring it up to Florida  
10 Power and say, hey, by the way, you overlooked the fact that  
11 there is a \$14 million increase right under your nose that you  
12 are not paying attention to. But the bottom line is they want  
13 you to look at ratemaking principles and what they should have  
14 done and what logically they might have done as opposed to what  
15 they did.

16           This is what they did. They agreed to this. And now  
17 they want to undo it. Undo what Mr. Habermeyer called a very,  
18 very fair settlement, because now here we are realizing, uh-oh,  
19 we've got 14 million in there that shouldn't have been in it.  
20 And maybe it is obvious now, but it obviously wasn't then. So,  
21 frankly, I think despite the fact that they have given you  
22 three separate arguments on this, none of them carry the  
23 weight, because the agreement itself is very straightforward.

24           And briefly on your Paragraph 5 question, if I may,  
25 Chairman Jaber, I would disagree respectfully with counsel and

1 with Staff. I think that financial results of operations does  
2 include revenue generally. And, you know, having an accounting  
3 degree, but not being a CPA, I still would understand financial  
4 results of operations to include all sorts of things, like  
5 revenues, expenses. I don't share their -- the Attorney  
6 General does not share that position that expenses, investment,  
7 and financial results doesn't include the idea of including  
8 revenues. I just wanted to clarify that. Thank you.

9 CHAIRMAN JABER: Thank you, Mr. Kise.

10 Mr. Devlin, just to follow up, two questions to you.  
11 I have to tell you, again, I can only fall back on what I  
12 thought as I voted to accept the settlement, and it never  
13 occurred to me that they were two separate settlements. What  
14 was obvious to me was that there were certain issues Public  
15 Counsel because of the apparent conflict of interest as it  
16 relates to cost shifting and where customers fall out in a rate  
17 structure were not going to participate in certain issues.

18 And, additionally, as I look at Option 3 and remember  
19 the purpose of what we were going to look at today, which was  
20 the settlement, the order, and the transcript, I have two  
21 problems I need you to address. The first is I can't reconcile  
22 the argument that we should look at the entire contract and  
23 reach a decision, but yet separate certain paragraphs. And the  
24 second concern I have that I need you to address is I no longer  
25 think Option 3 meets the spirit of looking at only the order,

1 the settlement agreement, and the transcript. So, Staff, let  
2 me give you an opportunity to address that.

3 MR. DEVLIN: Well, your second question I can answer  
4 very clearly. I agree this recommendation was written before  
5 that decision was made last Monday. And I think it does fall  
6 outside, this particular option does fall outside of the three  
7 things that you look at as part of your decision-making  
8 process, that being the transcript, the order, and the  
9 settlement itself. So I would agree with you on that count,  
10 Madam Chairman. I can't remember what your first question was,  
11 I'm sorry.

12 CHAIRMAN JABER: The first one related to whether you  
13 thought, because I did not think that this agreement was, in  
14 fact, two different agreements that the Commission approved  
15 separately, that being Paragraphs 1 through 15 and then Exhibit  
16 A.

17 MR. DEVLIN: It is also news to me. I mean, I know  
18 that they are two different documents, but, you know, the  
19 discussion of the rate increases was part and parcel of the  
20 discussion of the rate reduction.

21 CHAIRMAN JABER: And in that regard, again, because I  
22 agree with Mr. Sasso, we should look at the entirety of the  
23 contract and understand the whole piece and not just look at  
24 specific pieces. Staff in the recommendation originally, and  
25 we agreed with and it was memorialized in an order, you had

1 concerns related to cost allocations if we accepted the revenue  
2 sharing plan. But you said, and I am speaking off of memory,  
3 but the order makes clear that you recognize this is a  
4 negotiated document, that it was the spirit of the entire  
5 agreement you are recommending that we accept.

6 And, in fact, that is exactly the way I looked at it.  
7 It was a compromise negotiated. There were expenses that were  
8 specifically included in the agreement. I remember  
9 specifically the company and all the consumer advocates not  
10 wanting us to consider anything outside the agreement, because  
11 after all, the agreement was supposed to substitute for a rate  
12 case hearing. And, in fact, it was a proposal that under our  
13 ratemaking authority we were to accept as the ultimate approval  
14 of rates. Am I correct in understanding that to be the case?

15 MR. DEVLIN: I agree with you 100 percent. I would  
16 like the opportunity to correct myself. I think I agreed with  
17 counsel for Attorney General that with respect to adjustments,  
18 normalizing adjustments. In Paragraph 5, when you look at the  
19 words there, it does -- I think the financial results of the  
20 operations does capture revenues. So I change my answer, I  
21 think there is a conflict between the normalizing adjustments  
22 that the company was talking about and Paragraph 5.

23 CHAIRMAN JABER: So what is the significance of that?  
24 Tell me the significance of what you just said.

25 MR. DEVLIN: Well, again, I didn't write these words,

1 but I would say this particular paragraph would tell one that  
2 those kind of adjustments are not appropriate.

3 CHAIRMAN JABER: Commissioner Davidson, you had a  
4 question? I saw the light go on.

5 COMMISSIONER DAVIDSON: Well, I have a few questions,  
6 Madam Chair, but I was going to wait until you are completed  
7 with yours.

8 CHAIRMAN JABER: I need a break. Go ahead.

9 COMMISSIONER DAVIDSON: Thanks. This question goes  
10 to Mr. Sasso, then to Mr. Kise, Mr. Beck, and finally to Mr.  
11 McLean, who is leaning back there. If you take a look at  
12 Paragraph 17 of the settlement agreement, which is at Page 20  
13 of the order, it reads, "The provisions of Sections 1 through  
14 15 of this agreement are contingent upon approval of these  
15 sections in their entirety by the Commission."

16 Next sentence, "The treatment of the cost of service  
17 and rate design matters identified in Exhibit A in accordance  
18 with Section 16 of the stipulation settlement agreement is  
19 contingent upon approval of these matters in their entirety."

20 For counsel, how do those two sentences impact the  
21 argument that there are two separate agreements here? And, Mr.  
22 Sasso, the answer for you will, I think, be easy. You will use  
23 that to support your argument. I agree with the chair that we  
24 need to look at the entire agreement and understand what the  
25 parties intended. It is a basic matter of contract law that an

1 agreement can incorporate within other documents and agreements  
2 and those become part of that agreement. But I am wondering  
3 why we have got two sentences addressing different provisions  
4 in Paragraph 17. So if all counsel could address that, that  
5 would be appreciated. Thank you.

6 MR. SASSO: Yes. Commissioner, this is in part the  
7 basis for our argument that we have two separate agreements or  
8 pieces of the agreement that need to be viewed as segregated.  
9 One involves a decrease, the other involves an increase. We  
10 have one set of parties on one, we have a different set of  
11 parties on another. Yes, they were presented as a package to  
12 this Commission, there is no question about that. But if we  
13 are now in a dispute about this agreement and we are parsing  
14 the agreement and we are trying to untangle it and get into the  
15 details of it, this is an important detail in terms of  
16 interpreting the integrity of Exhibit A versus the Paragraphs 1  
17 through 15.

18 Yes, we have made more than one argument. We think  
19 they are all internally consistent. We think the adjustment we  
20 suggest on this item is consistent with the fact that it was  
21 segregated out for purposes of presentation and approval to the  
22 Commission. We also believe the adjustment is consistent with  
23 the spirit of what the revenue sharing agreement was stated to  
24 accomplish in Paragraph 3. I also have some comments about  
25 Paragraph 5, but I don't want to interrupt.

1 MR. KISE: Thank you, Commissioner Davidson. It kind  
2 of goes back to what I was saying in response to Chairman  
3 Jaber's question. I mean, I don't see that Paragraph 17 in and  
4 of itself changes the analysis. All that is saying is that if  
5 you don't approve the increase for lighting and service, the  
6 customers, the people are still going to get their refund, they  
7 are still going to get their revenue sharing.

8 And if you do, then there is no exception made in  
9 terms of computing retail base rate revenues. I mean, once you  
10 have approved the Section 16 increase in base rate revenues for  
11 lighting and service fees, then those are subsumed by the  
12 overall agreement for revenue sharing. But I think that the  
13 manifest purpose of separating them is so that the public  
14 wouldn't be deprived of its refund, if you will. And I think  
15 Mr. Beck and the parties down the table can speak far better to  
16 this than the intervenors.

17 But, again, the separation is irrelevant for purposes  
18 of determining retail base rate revenues. It is the third  
19 argument we have heard and it is very creative, commendably,  
20 but it is irrelevant for purposes of determining retail base  
21 rate revenues. Once you have approved this increase, it is  
22 there. And at the time that this was approved, and this was  
23 discussed, Florida Power had every opportunity in the world to  
24 notice that they were going to be getting a \$14 million  
25 increase in retail base rate revenues by the increase in

1 lighting and service. And by definition, their subtraction  
2 from the formula admits that that is normally considered retail  
3 base rate revenues, they are taking it out.

4 They want to take it out of what we would consider  
5 retail base rate revenues, because they are arguing somehow we  
6 would never have agreed to that. We would never have been so  
7 foolish as to have agreed to an increase that would have been  
8 shared. And I respectfully dissent. I think that that is, in  
9 fact, what happened. They did agree to it, that is what the  
10 terms of the contract are, and we can't rewrite them now. So I  
11 don't see that -- with respect to your question, I don't see  
12 that it changes anything, frankly, regarding the analysis of  
13 retail base rate revenue computation.

14 MR. BECK: Commissioner Davidson, there is but one  
15 agreement and one order approving that one agreement. And,  
16 again, Paragraph 16 tells you that the matters in Exhibit A  
17 will be treated in the manner described. If you look at  
18 Paragraph 17 where your question was, and you read the first  
19 two sentences, read the next one as part of my answer. It says  
20 approval of this stipulation and settlement in its entirety  
21 will resolve all matters in this docket. Again, it took the  
22 approval of the entire single agreement, because there is only  
23 one agreement, and it took the approval of the entire agreement  
24 to resolve all matters in the docket.

25 There was a difference. You know, we have

1 traditionally in cases had a conflict on rate design issues  
2 where we don't want to favor one group over the other, so there  
3 were separate provisions. So I would reiterate also what I  
4 said in the first argument, you know, that Public Counsel and  
5 the Retail Federation are only a few of the parties that signed  
6 this agreement. There are a lot of other parties that signed  
7 this agreement where none of that applied to them.

8 COMMISSIONER DAVIDSON: Mr. McLean, I am just curious  
9 as to your understanding of the legal import of Paragraph 17  
10 from a contract interpretation drafting standpoint.

11 MR. McLEAN: My interpretation is the same as Mr.  
12 Beck's. I believe that the structure of that agreement is to  
13 accommodate Public Counsel's conflict on the rate design issue  
14 and doesn't suggest anything to you about the way the rest of  
15 that agreement should be construed.

16 COMMISSIONER DAVIDSON: Madam Chair, I've got a  
17 couple of other questions. Thank you, Madam Chair.

18 I would like the parties to consider Pages 14 and 15  
19 of the order approving the settlement. Specifically, three  
20 paragraphs; Paragraph 1, Paragraph 2, and Paragraph 6. My  
21 comments, and then questions will go to Mr. Sasso and Mr. Kise,  
22 and Mr. Beck for Office of Public Counsel.

23 The initial paragraph of the stipulation and  
24 settlement is the effective date. The stipulation and  
25 settlement will become effective on May 1st, 2002. As a matter

1 of contract interpretation, I view the placement of that  
2 effective date as materially important to this settlement  
3 agreement. It makes clear that for the year 2002 we are  
4 looking only at the period May 1st, 2002, through December  
5 31st, 2002.

6           With regard to Paragraph 2 and Paragraph 6, I would  
7 like the parties to elaborate on how that initial paragraph  
8 with the effective date modifies Paragraph 2 and Paragraph 5.  
9 I understand the arguments of Progress that as a result of that  
10 effective date, we are really looking at an annualized rate  
11 reduction for 2002 of \$84 million, reading Paragraphs 1 and 2  
12 together. However, Paragraph 6 provides that for 2002 the  
13 refund to the customers will be limited to 67.1 percent. If  
14 you apply that 67.1 percent multiplier to the \$125 million  
15 amount in Paragraph 2, I believe you get to an amount of \$84  
16 million. And my question is, for everyone, how do we read  
17 Paragraphs 1, 2, and 6 together? Thank you.

18           MR. SASSO: My answer is that all of these provisions  
19 together make clear that any rate reduction and any revenue  
20 sharing is to commence on and after May 1. Again, if we apply  
21 this mechanically we would look at only revenues collected  
22 after May 1 and we would have a zero refund. The modification  
23 occurs, because as Commissioner Davidson pointed out, you apply  
24 a factor of .67 and you have a two-thirds sharing, one-third  
25 sharing from the 125 base rate reduction. But we still have an

1 implementation date on May 1. There is no agreement to a  
2 retroactive rate cut. There is no agreement to any refund of  
3 interim revenues collected up to May 1 other than the \$35  
4 million amount. In fact, the settlement specifically says that  
5 there shall be no further refunds attributable to that period.

6 MR. KISE: I would read the two somewhat -- well,  
7 first, let me point out that with respect to Paragraph 6,  
8 Paragraph 1 makes at the end there, except as otherwise  
9 provided in Section 6, 7, and 15 hereof. So it makes a  
10 specific reference that Paragraph 6 is going to treat things a  
11 little bit differently, and indeed it does. The 67.1 percent  
12 multiplier takes care of the problem with respect to the prior  
13 to May 1 with respect to revenue sharing. I mean, it deals  
14 with it in that way as pursuant to its terms. It basically  
15 takes all base rate revenues and then eliminates by operation  
16 of that paragraph anything that came in before May 1st.

17 The 125 million -- and, again, I would defer to  
18 Public Counsel on this, but it seems to me it is a separate  
19 issue. The 125 million is going to be paid one way or the  
20 other, and the calculation of that is not really what we are  
21 debating here today. We are debating revenue sharing and how  
22 it --

23 COMMISSIONER DAVIDSON: Let me follow up on that. I  
24 apologize for interpreting. Is it the position of the Attorney  
25 General that the \$125 million, all of the 125 million will be

1 paid for 2002? And the follow-up question is unlike the except  
2 as otherwise provided for Paragraph 6, 7, and 15, there is not  
3 an exception for Paragraph 2.

4 MR. KISE: With respect to your question, not to  
5 deflect them down the table, but that is -- I mean, as  
6 intervenors, frankly that is not our -- I don't want to say  
7 anything that is not our issue, because we are really here  
8 effectively intervening on the revenue sharing issue. We don't  
9 view them as the same, and that may be something more  
10 appropriately for Mr. Beck. I mean, I can allow Mr. Beck to  
11 respond and perhaps that would be better.

12 COMMISSIONER DAVIDSON: That's fine. And if you have  
13 any follow-up questions, jump back in.

14 Mr. Beck.

15 MR. BECK: Commissioner, let me back up a little and  
16 tell you something about why settlement agreements are very  
17 attractive to us. This is applicable to your question about  
18 the implementation date. We have been able to accomplish many  
19 things through settlements that can't be done by the Commission  
20 itself. This is one of the things that makes it very  
21 attractive. The refunds themselves are not something the  
22 Commissioner could order on an ongoing basis. In other words,  
23 there is a thing for interim revenues during the pendency of a  
24 case, but the Commission has no power to do the refunds that we  
25 were able to agree to with the company.

1           And we have done this in many cases, other cases,  
2 other refunds. With the telephone companies we have been able  
3 to negotiate agreements where they pay refunds to customers who  
4 don't get service in a timely manner. These are things the  
5 Commission can't do. But if we can do it with an agreement  
6 with a company, it is very attractive to us to get those sorts  
7 of things that benefit customers.

8           The implementation date on this is simply when the  
9 agreement becomes effective, that is all it is. When it is  
10 effective on this and certain things happen. Reviewing  
11 Paragraph 10, it says beginning on the implementation date and  
12 it talks about accruals for reserves and possible  
13 dismantlement. And then we go into calendar years for  
14 depreciation. You know, there is no issue about retroactive  
15 ratemaking on depreciation or in any of the other matters in  
16 this case. The company is free to agree to matters, and as are  
17 we as long as they don't violate some fundamental public  
18 policy, we can go back and go to the beginning of the year. We  
19 did that with the depreciation.

20           Likewise, on the refund we calculated it on 2002 and  
21 put year 2002 revenues and we had a factor in there that  
22 applied only to 2002, the 67.1 percent. That is what we agreed  
23 to. The implementation date is simply the date it is all  
24 effective as of. That doesn't mean you can't go back and do  
25 things for the whole calendar year.

1           COMMISSIONER DAVIDSON: Thank you, Counsel. A follow  
2 up on that, Madam Chair. Back to the initial question, is it  
3 OPC's position that for 2002 Progress is responsible for \$125  
4 million refund for 2002?

5           MR. BECK: Refund?

6           COMMISSIONER DAVIDSON: I apologize for the  
7 terminology. A rate reduction for all of 2002, a \$125 million  
8 rate reduction.

9           MR. BECK: It was an annual \$125 million rate  
10 reduction effective May 1st. It is that amount for the last  
11 eight months of the year. That was the yearly -- that is the  
12 yearly amount of refund, and it was effective beginning May  
13 1st.

14           COMMISSIONER DAVIDSON: So effectively they would  
15 be -- is it then your position that Progress would be  
16 responsible for an \$84 million rate reduction for 2002?

17           MR. BECK: That is the rate reduction. Again, it is  
18 the difference in the refund. But, yes, that would be the  
19 amount of the rate reduction. It is also 9.25 percent is  
20 another way of describing Paragraph 2 of the agreement. So on  
21 a going-forward basis they are required to reduce base rates by  
22 9.25 percent, which is equivalent to \$125 million per year, but  
23 it is effective for eight months of 2002. I don't think there  
24 is any dispute about that.

25           MR. McWHIRTER: Could I throw in a thought here?

1           COMMISSIONER DAVIDSON: Certainly.

2           MR. McWHIRTER: When I deal with a problem of this  
3 kind, I've got to get elemental, so please excuse me if I am  
4 insulting you because it is too basic, but it is fundamental  
5 and basic. In ratemaking you make rates for the future. You  
6 look at history, but your rates don't -- you don't get the  
7 money back. For instance, when this case started the Staff  
8 concluded that in the year 2000 the company had collected \$115  
9 million more than it was authorized to. The surveillance  
10 reports show that. So it said for 2001 we are going to hold  
11 some money subject to refund, okay.

12           The case goes on and on. And finally in 2002 we  
13 reach a settlement, and the settlement has two components. One  
14 is that for rates in the future they will be 9.25 percent less,  
15 and that amounts to about \$125 million a year. All we got in  
16 2002 from the going-forward part was the \$84 million reduction.  
17 We didn't bargain for nor did we ask for 125 million. Maybe  
18 I'm arguing against our case, but we looked at that for the  
19 future.

20           Then the other part of this case that Charlie  
21 mentioned which is so significant, and why we are here today  
22 because it is so important, and Jack Shreve was the architect  
23 of this concept. The problem with ratemaking in Florida is  
24 timing. And you have cured that by cost-recovery mechanisms  
25 for the benefit of utilities. They are guaranteed certain

1 costs.

2 COMMISSIONER DAVIDSON: Was it your comment that Mr.  
3 Shreve was the architect of that timing problem? Just kidding.

4 MR. McWHIRTER: He has created some small problems,  
5 but he has done a lot to help the general public for which we  
6 are very proud and honor him. But his idea of revenue sharing  
7 for the future comes up with a -- and cures a loophole in the  
8 existing law. What happens under existing law is you look at  
9 surveillance reports. And if a utility is earning too much, as  
10 your Staff found that Florida Power was earning \$115 million  
11 too much, what you can do is initiate a rate case, and that  
12 takes the better part of a year to prosecute. And you can't do  
13 anything about the overearnings that have come up.

14 So what the settlement did was said, look, you can  
15 grow your revenues a certain amount, but when you get beyond  
16 that amount, we want to share with you, the customers, without  
17 having to come in for a rate case that takes too long, is too  
18 expensive to prosecute. So we will make it automatic. And the  
19 automatic component is that in the year 2002 for that year, if  
20 the revenues exceeded \$1,296,000,000, then of the amount to be  
21 shared, the threshold would start at that point. And I'm not  
22 going to get into the \$35 million aspect because it just tends  
23 to confuse it.

24 But now we are sharing, and instead of looking at the  
25 future for setting rates, you are looking at what actually

1 happened. And we say, look, we thought something was going to  
2 happen, but actually you did much better. And we agree that  
3 when you do much better than you thought you were going to do,  
4 then we will share that revenue. And you get to keep a third  
5 of it and customers get two-thirds of it. And we thought that  
6 was a pretty good deal, and that is what the refund mechanism  
7 is all about.

8           In this particular case, we said we will only get 67  
9 percent of the amount because the case didn't start until May,  
10 so we are not asking for a refund for the whole year, just 67  
11 percent. But PEFI has come in and they want to double dip.  
12 They want to apply that 67 percent and then they don't want to  
13 count the revenues for the first four months. And we think  
14 that is a little on the greedy side. So we would suggest to  
15 you that those paragraphs have two ratemaking concepts for the  
16 future and historic look back.

17           COMMISSIONER DAVIDSON: I've got one follow-up  
18 question for Progress. Public Counsel has -- and correct me if  
19 I mischaracterize the statement, but has represented that  
20 indeed for 2002, we are only looking at an \$84 million rate  
21 reduction, and that in effect was what was applied to Progress.  
22 In essence, it says if -- there is an additional sentence in  
23 Paragraph 2 that would state for the period May 1st, 2002  
24 through December 31st, 2002, the rate reduction shall be \$84  
25 million. Reconcile that with your argument that there should

1 be a \$41 million adjustment. Because it seems to me, based on  
2 what Public Counsel has said, that 41 million, in effect,  
3 actually applies because we are looking at only 84 million for  
4 2002 as opposed to the full 125.

5 MR. SASSO: Actually, the 84/41 breakdown is the  
6 basis for the adjustment that we urge. To agree with Mr.  
7 McWhirter, the basis for this revenue sharing is to say how are  
8 we going to do, how do we expect to do, and if we do much  
9 better then there will be a refund. That is the basis for  
10 refund sharing.

11 Now, in this instance, let's take a hypothetical.  
12 Let's suppose that the company did exactly as expected, had  
13 exactly the level of sales, all of its weather forecasts,  
14 economic forecasts, everything panned out exactly on the money  
15 and it achieved its projections and everybody understood going  
16 into the settlement to the penny. Under the moving parties'  
17 interpretation of the agreement, the company would still be  
18 obliged to provide a refund in 2002. And why is that? That is  
19 because of the \$41 million/\$84 million issue. The threshold  
20 does not reflect the fact that there wasn't a \$125 million rate  
21 cut in 2002, only an \$84 million actual rate cut, and the  
22 company was authorized up until May 1 to collect an additional  
23 \$41 million in revenues. That is what the company expected to  
24 achieve, that is what the Commission authorized it to achieve,  
25 and so that was part of its assumptions about how it would do

1 for 2002.

2 So under the moving parties' interpretation of this  
3 agreement, the company is in a surplusage situation by virtue  
4 solely of the fact that it was collecting authorized rates up  
5 until May 1 at levels permitted by the Commission. And that is  
6 not consistent with the stated intent of revenue sharing. That  
7 would not be the basis to initiate a rate case.

8 MR. BECK: Let me, for the record, object to Mr.  
9 Sasso's argument. He is now stepping over the line of what you  
10 ruled on last Monday, and that is you weren't going to allow  
11 the company to go into what our MFRs, what our projections are.  
12 You prohibited them from going into anything other than the  
13 agreement, the order, and the transcript, and he is no stepping  
14 over that by starting to talk about what their projections and  
15 weather-related items are. We did that last Monday.

16 MR. SASSO: If I can clarify, I did not --

17 CHAIRMAN JABER: Hang on.

18 MR. SASSO: I did not mean --

19 CHAIRMAN JABER: Hang on.

20 MR. SASSO: I'm sorry.

21 MR. BECK: That is my objection.

22 CHAIRMAN JABER: The objection, Mr. Sasso, is that  
23 you have gone outside the scope of the ruling, which was to  
24 limit the discussion to the order, the agenda transcript, and  
25 the settlement agreement. With regard to your comment, maybe

1 you can point me to where in those three things the discussion  
2 can be found.

3 MR. SASSO: Absolutely. I very purposefully did not  
4 stray outside of those instruments. I used a hypothetical. I  
5 said assume that the company achieved its projections.  
6 Embracing Mr. McWhirter's stated concept of what revenue  
7 sharing is all about, we don't even have to know what the  
8 numbers are. Let's just assume that the company achieve its  
9 expected level of performance and the parties' expected level  
10 of performance, whatever that might be. A refund would still  
11 be due under the moving party's interpretation.

12 CHAIRMAN JABER: Commissioner Davidson, Mr. Shreve  
13 has come to the table and wants to address your question. And  
14 do you mind if I follow up on something you asked quickly?

15 COMMISSIONER DAVIDSON: Absolutely not. And the  
16 thoughts of Mr. Shreve on this are very welcome.

17 Thank you, sir.

18 MR. SHREVE: Thank you.

19 CHAIRMAN JABER: Hang on, Mr. Shreve. Mr. Beck, I  
20 think I heard a concession on a very direct question that  
21 Commissioner Davidson asked you, and I need to get you to  
22 clarify that for me. The direct question was what is the  
23 amount of annual rate reduction you are expecting for 2002.  
24 And you acknowledged that you were expecting, you know, the  
25 nearly \$84 million rate reduction. With that answer, then

1 explain what is wrong with Progress taking out the difference  
2 for calendar year 2002.

3 MR. BECK: The agreement on Paragraph 2 talks about  
4 an annual -- the annual amount of \$125 million, the rate  
5 reduction going forward. It is no different than any  
6 Commission order when you order rate increases or decreases.  
7 If it is in the middle of the year, you say here is the annual  
8 amount that is happening. But you don't say for seven months  
9 it is going to be so forth and 12 months so forth. We simply  
10 put forth the annual rate reduction that would occur, and it  
11 occurred effective May 1st.

12 CHAIRMAN JABER: So was your response to Commissioner  
13 Davidson wrong?

14 MR. BECK: I think that is what I told him.

15 CHAIRMAN JABER: I don't think so. I thought your  
16 response -- it's a very important point that we need to get  
17 clarified. I thought that your response was it was -- you  
18 acknowledged that it was an \$84 million rate reduction for  
19 2002, and if that response is wrong, fine, you just need to  
20 tell us.

21 COMMISSIONER BRADLEY: Madam Chair.

22 CHAIRMAN JABER: Hang on, Commissioner Bradley.

23 Mr. Beck, answer the question. We will go to  
24 Commissioner Bradley --

25 COMMISSIONER BRADLEY: My question is the same as

1 yours, but to help me out I would appreciate a yes or no answer  
2 and then you can explain.

3 CHAIRMAN JABER: That's good.

4 MR. BECK: If the question is what was the annual  
5 rate reduction, it is 125 million. That is what the agreement  
6 says.

7 COMMISSIONER BRADLEY: (Inaudible. Microphone off.)

8 MR. BECK: If you could repeat the question I will  
9 answer it.

10 COMMISSIONER BRADLEY: Well, answer the question yes  
11 or no and then you can give the explanation.

12 MR. BECK: The answer is no to 84 million, yes to 125  
13 million as the annual amount of rate reduction.

14 CHAIRMAN JABER: For 2002?

15 MR. BECK: Yes. Well, annualized, yes.

16 CHAIRMAN JABER: But the question is limited for  
17 2002, do you believe it is \$125 million?

18 MR. BECK: We are just playing semantics.

19 COMMISSIONER DAVIDSON: Well, if I could follow up  
20 there, also.

21 CHAIRMAN JABER: It is not semantics, Mr. Beck. I  
22 mean, it is important for you to hear that the Commissioners  
23 believe it is not semantics.

24 MR. BECK: Okay.

25 COMMISSIONER DAVIDSON: I mean, it is an issue that I

1 am struggling with here, and so the input of sort of all the  
2 parties on this issue is important. But I believe I followed  
3 up -- that was the very direct question, and then I followed up  
4 with implicit in Paragraph 2 is the additional sentence that  
5 for the period May 1st, 2002 through December 31st, 2002, the  
6 annual rate reduction is 84 million. And I believe I got your  
7 agreement on that, which then posed some follow-up questions to  
8 Mr. Sasso.

9 MR. BECK: The annual rate reduction annualized, 125  
10 million. It is also the same as the 9.25 percent rate  
11 reduction. I don't know how to tell you --

12 CHAIRMAN JABER: And what does that equate to in  
13 dollars for 2002?

14 MR. BECK: For the annualized rate reduction?

15 CHAIRMAN JABER: Uh-huh.

16 MR. BECK: Well, of course, it would depend on the  
17 volume, you know, because you have a rate that is applied to a  
18 volume to come up with the actual dollars, so it would depend.  
19 But it is 125 million per year effective May 1st.

20 COMMISSIONER DAVIDSON: Which to the Chairman's  
21 question is how much in dollars? I mean, this isn't a tough  
22 exercise. We are talking May 1st through December. Are we  
23 talking -- does that effective date mean we are talking 125  
24 million for 2002, 84 million, 95 million? And before we have  
25 anyone else jump in, I would like a direct answer from Mr. Beck

1 on this. We have had three Commissioners ask you, and I  
2 thought I had a direct answer with my initial questions, and  
3 now I'm seeing some waffling.

4 MR. BECK: The rate reduction is 9.25 percent. The  
5 annual amount is \$125 million. It is effective for May 1st  
6 through December 31st. So I guess if you wanted to get the  
7 actual dollars, you know, for 2002, you would take .671, you  
8 see elsewhere in the agreement, times the annualized amount to  
9 come up with the amount that is effective for 2002. I will  
10 also tell you in the same concept, we expect the amount of the  
11 sharing to be as it said, too, as it said in Paragraph 6, where  
12 it tells you amounts. It sets the sharing threshold and sets  
13 how it is going to be calculated. We expected that, as well.

14 MR. TWOMEY: Madam Chair. Madam Chair.

15 CHAIRMAN JABER: Hang on a second. I promised Mr.  
16 Shreve to be able to address this issue. So we will do that,  
17 and then Staff, as Commissioner Bradley has requested, and then  
18 I will come back to you, Mr. Twomey.

19 MR. TWOMEY: Okay. Thank you.

20 CHAIRMAN JABER: And you all remind me I said that.  
21 Mr. Shreve, the question I hope is real simple. I hope we are  
22 not overly complicating it. I'm just looking for the dollar  
23 amount for what you expected the rate reduction to be for 2002.

24 MR. SHREVE: It's not anything you can answer yes or  
25 no. If you make a \$125 million annual rate reduction, you

1 really probably don't even get 125 million. You may get 130 or  
2 you may get 120. It depends on the sales, it depends on the  
3 temperature, whatever, there are any number of things it could  
4 be. But we made -- what we agreed to was a \$125 million rate  
5 reduction. I don't think -- you can take a percentage if you  
6 want to. We adjusted for the annual income by putting the  
7 percentage in there.

8           Mr. Sasso said they knew they had collected the  
9 earlier part of the year without the rate reduction, that is  
10 exactly right. They did know that. And we agreed that the  
11 entire annual revenue would be used, then we made the  
12 adjustment for the period of time. So everybody knew exactly,  
13 as Mr. Sasso says, they knew what was in there.

14           CHAIRMAN JABER: Is it possible that applying  
15 everything you just said that with the 9.25 percent base rate  
16 reduction annually, and for 2002 applying the 67.1 percent  
17 threshold cap, that that would equate to nearly \$84 million, is  
18 that possible?

19           MR. SHREVE: It could be, but I don't think it makes  
20 any difference. Because what we did, we said we are going to  
21 take the annual revenue for 2002, we are going to subtract the  
22 annual threshold, and then we are going to take that percentage  
23 related to the time that it was in place, then take two-thirds  
24 and one-third. Nobody had exact figures until we got out of  
25 the year and knew what the annual amount was. The company knew

1 at the time we entered this agreement that they had been  
2 charging more the first part of the year.

3 Now, the agreement could have cut against us.  
4 Suppose the first part of the year it had been a very, very  
5 warm winter and there were very low sales, then we would have  
6 gotten hurt and there might not be any refund at all, but they  
7 wouldn't be in here arguing that. We could have come in and  
8 said, okay, we are going to take all of the revenue from this  
9 date forward, from May forward, but we are also going to make  
10 an adjustment on the threshold because you have to put the  
11 percentage there.

12 We didn't do that. We agreed with the company that  
13 we would take the annual revenue, which is a very easy thing to  
14 calculate. We take their figures on that. They talk about  
15 their projections and what they would expect, that is the  
16 reason we had the incentive agreement. This Commission has  
17 been very good about encouraging agreements and encouraging  
18 incentive agreements. We got totally away from return on  
19 equity regulation with this agreement.

20 In the earlier agreements with Bell and some of the  
21 other companies which had return on equity regulation, we would  
22 sometimes argue about what the expenses were, but it always  
23 pretty well worked out. But the reason we went to revenue  
24 sharing primarily for the electric companies, and they were the  
25 ones that wanted it, and Power Corp was the one that wanted it,

1 was to move to the revenue sharing. And the reason for that  
2 was that they could then go ahead and manage and cut expenses  
3 and have a higher return, and all of us and you wouldn't be  
4 coming after the money because they were earning more profits  
5 at that time. Yet the customers would be protected because we  
6 were dealing with revenue sharing.

7 CHAIRMAN JABER: Is that where the depreciation  
8 expense provision also came in?

9 MR. SHREVE: The depreciation allowed them to  
10 manipulate their earnings the way they wanted to. I am not  
11 saying that is a bad thing. We agreed to it. It put them in a  
12 position to properly manage their company to come up with the  
13 earnings they wanted to. The problem we are running into now,  
14 we entered the agreement, we gave them the ability and the  
15 protection to go away from rate of return regulation and  
16 protected the customers on the revenue side, and that is  
17 exactly where they wanted to be. That is what Power Corp  
18 wanted.

19 The only problem we have now, they are taking  
20 advantage of the deal where they are away from regulation on  
21 rate of return, they are able to manipulate their profits the  
22 way they want to, they are able to take depreciation the way  
23 they want to, but they are renegeing on the customer side of the  
24 deal on the revenue sharing.

25 COMMISSIONER BRADLEY: Mr. Shreve.

1 MR. SHREVE: Yes, sir.

2 COMMISSIONER BRADLEY: Which question are you  
3 answering? I thought we were --

4 MR. SHREVE: I am answering what Mr. Sasso said  
5 earlier.

6 COMMISSIONER BRADLEY: Well, but you are kind of  
7 wandering on me.

8 MR. SHREVE: I try to, yes, sir.

9 COMMISSIONER BRADLEY: We are trying to get an answer  
10 to that yes or no question, the one that you said was not a yes  
11 or no question.

12 MR. SHREVE: Yes, sir.

13 COMMISSIONER BRADLEY: That is the 125 million -- was  
14 it 125 or was it 84?

15 MR. SHREVE: It was a 125 million annual rate  
16 reduction. If the Commission gives a 500 million or gives a  
17 \$100 million rate increase, and they give it in June, you don't  
18 say there was a \$50 million rate increase. You say there is a  
19 \$100 million annualized rate increase. You can't take 1/12th  
20 and say it is going to represent 1/12th of any particular  
21 increase for any particular revenue, because it doesn't.

22 COMMISSIONER BRADLEY: Okay. Well, one other  
23 question.

24 MR. SHREVE: Yes, sir.

25 COMMISSIONER BRADLEY: Was it a \$500,000 figure or

1 was it a \$459 million figure? The total amount for the  
2 duration of the agreement, what is the refund due to the  
3 customers? The threshold, I think that is probably the  
4 question.

5 CHAIRMAN JABER: I think what Commissioner Bradley is  
6 referring to is I asked early on about the total amount of  
7 annual rate reductions from 2002 through the end of 2005. Not  
8 refunds, it's the annual rate reduction. Assuming all else  
9 equal, initially the company responded that it was 459 million.  
10 So, Commissioner Bradley's question is is it your position that  
11 it is 459 million or is it 500 million? Is that correct?

12 COMMISSIONER BRADLEY: Yes. Thank you, Madam Chair.

13 CHAIRMAN JABER: No problem.

14 MR. SHREVE: If the 125 million annual rate reduction  
15 started in May, then whatever that calculation is, if it is  
16 459. And I think the point that Mr. Bradley, Commissioner  
17 Bradley is making is probably that Power Corp, in fact, did end  
18 up with that money in their revenue for the first part of that  
19 year which went to their total revenue for the year. So that  
20 was there, they didn't have the rate cut until May.

21 COMMISSIONER BRADLEY: You know, Madam Chair --

22 CHAIRMAN JABER: You asked me earlier to have Staff  
23 address it.

24 COMMISSIONER BRADLEY: Yes, the Staff.

25 CHAIRMAN JABER: Commissioner Bradley has asked that

1 you address the issue of 84 million versus 125.

2 COMMISSIONER BRADLEY: Versus 125 for the year 2002.

3 MR. DEVLIN: For the year 2002 the effect of the rate  
4 deduction is \$84 million to the customers. It is a separate  
5 issue about revenue sharing, but I don't know what really is so  
6 complicated about the question.

7 CHAIRMAN JABER: Here is what has been complicated  
8 just for me speaking for myself. If we recognize that it could  
9 be 84 million, then what is wrong with taking out the \$41  
10 million difference as you have articulated in Option 2?

11 MR. DEVLIN: Because it wasn't accommodated for in  
12 the settlement with regards to defining what revenues would be  
13 subject to sharing. And I guess I would have to turn to  
14 Provision Number 6.

15 CHAIRMAN JABER: Okay. So it sort of brings us back  
16 to what I was asking Mr. Slemkewicz early on. You recognize  
17 that that is what annualization means. Ratemaking contemplates  
18 that that sort of adjustment gets made. Your problem and the  
19 consumer advocate's problem as it relates to taking out the \$41  
20 million difference is it wasn't specifically accounted for in  
21 the written agreement that we accepted.

22 MR. DEVLIN: Correct.

23 CHAIRMAN JABER: It's that simple? Mr. Shreve, is it  
24 that simple?

25 COMMISSIONER BAEZ: Yes, I would like that cleared

1 up.

2 CHAIRMAN JABER: Yes. Mr. Twomey, is that the  
3 distinction you all want us to understand?

4 MR. TWOMEY: Say it again. I apologize.

5 COMMISSIONER BAEZ: I don't think the Chairman can,  
6 Mr. Twomey.

7 CHAIRMAN JABER: Here is the point --

8 COMMISSIONER DAVIDSON: A simple yes or no. Just  
9 kidding.

10 CHAIRMAN JABER: Let me try it again. From a  
11 ratemaking standpoint, we all understand that annualization  
12 means that if it is effective May 1st through December that  
13 there is a portion of the \$125 million that will be reduced by  
14 the company. And that might be nearly \$84 million. If that is  
15 the case, the company has accounted for the difference in year  
16 2002. The problem with that is not that you recognize that is  
17 appropriate -- that you don't recognize that that is  
18 appropriate from a ratemaking standpoint, but that the  
19 adjustment was not specifically included or allowed for in the  
20 settlement agreement.

21 MR. TWOMEY: Their adjustment was not allowed for in  
22 the agreement. May I address something --

23 CHAIRMAN JABER: Yes, and then Commissioner Baez has  
24 a question.

25 MR. TWOMEY: -- because I have been sitting out the

1 back row there. I wanted to just point out a couple of things,  
2 Madam Chair and Commissioners. Mr. Shreve addressed this in  
3 some detail, as did Mr. McWhirter, but I think it is important  
4 to understand on behalf of all that you cannot -- if you had a  
5 rate case, if we went through this hearing process and didn't  
6 have a settlement last year, you could not under Florida law --  
7 and maybe all Commissioners don't understand this -- enter an  
8 incentive ratemaking order that allowed them to earn as they  
9 are earning now. You can't do that under current law is our  
10 position.

11 But you could accept the Public Counsel and the other  
12 parties, customer parties entering into that agreement with the  
13 company. And it benefits the company because effectively it  
14 allows them to earn more than what this Commission would find  
15 is a fair and reasonable return on equity. They get more and  
16 the customers get to share in it, okay?

17 COMMISSIONER BRADLEY: A question. You said that is  
18 Florida law or that is your position?

19 MR. TWOMEY: It is the law, yes, sir.

20 COMMISSIONER BRADLEY: Okay. I thought I heard you  
21 say that is your position.

22 MR. TWOMEY: It is my position, but it is also the  
23 law.

24 COMMISSIONER BRADLEY: Is that -- excuse me, for an  
25 interpretation from General Counsel?

1 MR. McLEAN: Yes, sir, it is.

2 COMMISSIONER BRADLEY: Okay.

3 MR. TWOMEY: Now, I would urge you all,

4 Commissioners, to separate, because I think it is extremely  
5 important, the notion of rate reduction, which was a separate  
6 issue in this settlement, and the refund which was entirely  
7 separate, as well. You could have one without the other.

8 Okay.

9 Now, on this issue of the 125 million, I would ask  
10 you to consider it this way. When you look at this agreement,  
11 it says in there by an annual amount of \$125 million, which  
12 when they say annual we read that or most of us read that as  
13 annualization, if there is less than a full year involved. If  
14 there is a full year involved, then that number speaks to each  
15 year. If there is less than a full year, you have to -- we, of  
16 course, call it annualization. You count it by months, or  
17 days, or however you want to do it.

18 I would maintain to you that that figure of \$125  
19 million is unessential to this agreement. I see it honestly,  
20 as political fluff, surplusage, okay? The kind of thing that  
21 you could enter into when you talk to the press and say we are  
22 saving them \$125 million a year from the customers' side, or if  
23 the utility wants to come in and magnanimously say we're  
24 lowering our rates by \$125 million a year. It doesn't mean  
25 anything. And this has been pointed out to you. Whether you

1 get that number or not depends upon sales volume in each  
2 classification.

3           The number you need to focus on in my estimation is  
4 when it goes on and says this reduction, speaking about the 125  
5 million, you get to a precise number that you all approved.  
6 You didn't really approve 125 million. What you approved is in  
7 the next sentence that says this reduction will be reflected on  
8 FPC's customer bills by reducing all base rate charges for each  
9 rate schedule by 9.25 percent. That is something you can put  
10 your arms around and get a grasp on, okay. The 125 million is  
11 not real. But 9.25 percent, if the residential rate was X per  
12 kilowatt hour, you reduce it by 9.25 cents. If the industrial  
13 rate was 2X, you reduce it by 9.25 percent.

14           That is a precise factual number. That is what your  
15 order approved doing when they filed their new tariffs. The  
16 tariffs they filed didn't say anything about reducing rates by  
17 \$125 million. What you approved and what they agreed to was  
18 reflected in those rate tariffs by a mathematically precise  
19 reduction of 9.25 percent per rate classification. Now that is  
20 the rate reduction part they agreed to. Okay.

21           Now, separate and apart from that, they agreed that  
22 under the revenue sharing process, separate and apart from  
23 this, they would give back certain amounts of money. And it is  
24 dealt with specifically in Paragraph 6. It has nothing to do  
25 with this 125 million. It says if they earned X over the base

1 rate revenues, then you look at it year after year with certain  
2 specifications particular to the first year because of the  
3 eight months versus four months, and you go from there.

4 CHAIRMAN JABER: Commissioner Baez.

5 COMMISSIONER BAEZ: Yes. Because I don't want to get  
6 off this distinction that was raised now. Mr. Devlin, I need  
7 you to clear up for me from an accounting standpoint, all  
8 right, and I think in light of something that Mr. Twomey said,  
9 the numbers may be different, but for our purposes here we have  
10 been concentrating on the 125 million rate reduction, and what  
11 the proration or what the prorated amount would be for the year  
12 2002, and then what becomes of the remainder of that annualized  
13 number.

14 From an accounting standpoint, let's put aside for a  
15 moment the statement that you made and that Mr. Slemkewicz has  
16 also made that it wasn't in the agreement. Let's put that  
17 aside for a moment. From an accounting standpoint, when you  
18 deal -- when you deal with these annualized or portions of an  
19 annualized number, from an accounting standpoint is there an  
20 appropriate treatment for the remainder of the annualized  
21 number?

22 Coming from the standpoint of a scenario that Mr.  
23 Sasso created, or mentioned, that that remainder of the number  
24 if it is as being suggested would be counted towards -- counted  
25 in that pot of money, that would be then used to establish

1 revenue sharing.

2 MR. DEVLIN: Well, from an accounting standpoint, we  
3 are just talking about -- and we are talking about 2002, the  
4 rate impact is not the full effect, or not the 9.25 percent  
5 effect, it is a partial effect, approximately \$84 million.

6 COMMISSIONER BAEZ: Right.

7 MR. DEVLIN: From a ratemaking viewpoint, if we were  
8 in a rate case and we were trying to figure out what test  
9 period revenues should be, then what the company is talking  
10 about makes perfect sense to me. You would annualize the rate  
11 reduction. You would also annualize the rate increase. And  
12 you would remove anything that was not occurring, like an  
13 interim effect. That is basically Staff's Option 3. That is  
14 what you would do -- I think that is what the Commission  
15 normally would do when they want to normalize revenues for  
16 ratemaking purposes. If that is your question, Commissioner  
17 Baez.

18 COMMISSIONER BAEZ: Well, I am just interested,  
19 absent a legal argument of contractual interpretation, is that  
20 what would happen? I mean, would you have to deal --

21 MR. DEVLIN: In a rate case that is what would  
22 happen, but this is not really a rate case.

23 COMMISSIONER BAEZ: I understand that. That's why if  
24 we could find another word for -- I mean, you keep saying from  
25 a ratemaking standpoint. I'm trying to understand it in

1 another sense altogether.

2 CHAIRMAN JABER: (Inaudible. Microphone off.)

3 COMMISSIONER BAEZ: Well, let's get it way from  
4 common sense for a moment. This sense isn't very common at  
5 this point.

6 MR. SLEMKEWICZ: Well, we wouldn't just be looking at  
7 revenues in isolation if we were trying to do ratemaking type  
8 adjustments. We would also be looking at, you know, the effect  
9 on expenses, and the effect on investment, and their rate base,  
10 and look at what rolls out as a return on equity that they  
11 would earn.

12 COMMISSIONER BAEZ: Well, John, I don't want you to  
13 get -- I don't want you to drill down that deep. Believe me,  
14 for me that is deep. I guess what I'm trying to nail down is  
15 when you have got an annualized number, or what everyone is  
16 assuming is an annualized number, this 125 million, you have  
17 treated -- you have dealt with the portion of that annualized  
18 number that is, quote, in effect, or after the effective date,  
19 and that is a magic number of 84 for purposes of our  
20 discussion. You have dealt with that through a rate reduction.

21 The remainder of that annualized number, is there  
22 a -- is there a treatment that is appropriate, again, absent  
23 any legal, any legal interpretation of what is on paper, what  
24 is in writing. But is there a treatment -- of that remainder,  
25 is there an appropriate treatment of that remainder if a

1 subsequent calculation of revenues for purposes of meeting some  
2 threshold or so on were in the offing.

3           So take it this way, if you know that next year you  
4 have got to fix what the appropriate revenues were for the year  
5 before so that you are going to do something with the amount  
6 beyond a certain threshold, correct, is there an appropriate  
7 treatment for the remainder of that \$125 million?

8           MR. SLEMKEWICZ: I would have to agree with Mr.  
9 Devlin, you know, under certain circumstances that would be  
10 appropriate. But that would lead you to the next step, though,  
11 is that 67.1 percent adjustment still appropriate if you made  
12 that adjustment to the --

13           COMMISSIONER BAEZ: In my mind the 67.1 percent  
14 adjustment is just a mathematical representation of eight  
15 month's worth of effectiveness. Is that all it is? Isn't that  
16 all it is?

17           MR. DEVLIN: Is that correct.

18           COMMISSIONER BAEZ: So, you know, the 67, we get lost  
19 in that percentage number. All it is is May 1st on, correct?

20           MR. SLEMKEWICZ: That is correct. But to me it is to  
21 at least partially compensate for the fact that that rate  
22 reduction did not begin January 1st.

23           COMMISSIONER BAEZ: Fair enough. And, again, I was  
24 going to ask Mr. Sasso to explain it again, because I want to  
25 have it clear in my mind, because they have pointed out to the

1 fact that if you let it play out logically, or in one version  
2 of logic, you are, in fact, taking what would have normally --  
3 you know, had it been effective January 1st, for instance, you  
4 are, in fact, taking the remainder of that annualized number  
5 and adding it to revenues that are going to be subject to a  
6 refund. So, in essence, you are -- and I know there is a  
7 distinction to be made between refunds and rate reductions, but  
8 you are subjecting it to some kind of -- some kind of  
9 treatment.

10 MR. DEVLIN: I think I understand where you are  
11 coming from, Commissioner Baez, and I agree, that is what is  
12 happening. That flip side, that reciprocal amount, whatever it  
13 is, \$40-something million that they were able to achieve in  
14 revenue for the first four or five months of the year would be  
15 subject to revenue sharing. And that is how I see the  
16 settlement as --

17 COMMISSIONER BAEZ: Only because it wasn't treated in  
18 writing. It wasn't specifically treated in writing. And I  
19 guess what I'm trying to elicit from you is that absent -- if  
20 we were in another situation altogether, if we didn't have a  
21 piece of writing to rely on, a contract as has been referred  
22 to, there would be a treatment consistent with what we  
23 discussed. There could be a treatment.

24 MR. DEVLIN: Could be. I don't think it would be. I  
25 mean, there is --

1 COMMISSIONER BAEZ: All things being equal, it could  
2 be.

3 MR. DEVLIN: -- scenarios that could come out of  
4 this, but, you know, different ways we could have calculated  
5 revenues and different adjustments could have been recognized.  
6 I wasn't a party to the stipulation, but I don't see that here.

7 CHAIRMAN JABER: Is some of the difficulty that you  
8 are having in answering the question that this is asking you --  
9 here we are asking you to look at this one particular  
10 adjustment in isolation, and in true ratemaking that is not the  
11 case at all. You are looking at a snapshot in time that  
12 involves many, many possible adjustments up or down and  
13 annualization of many different expenses.

14 MR. DEVLIN: That is true.

15 COMMISSIONER BAEZ: And I understand that, and I know  
16 it is very difficult in a ratemaking sense to say, all right,  
17 just one adjustment. But I guess I'm trying to understand that  
18 those adjustments occur. I mean, generally speaking, that all  
19 things being equal that type of adjustment might be appropriate  
20 absent some other --

21 MR. DEVLIN: But I think Mr. Slemkewicz mentioned,  
22 and the parties can articulate this, as well, but that 67  
23 percent factor, I believe, roughly takes that into account.  
24 That the revenues would be higher than otherwise because rate  
25 reductions came into effect partially through the year.

1 Therefore, we will only subject 67 percent of the revenues to  
2 sharing.

3 COMMISSIONER BAEZ: Oh, I'm not -- I don't understand  
4 what you are saying. I'm not sure that is what the 67 percent  
5 means to me. Maybe you can explain it to me. Why is it -- why  
6 does the 67 percent represent more than just drawing a line  
7 beyond which --

8 MR. DEVLIN: I'm going to try to read --

9 COMMISSIONER BAEZ: And you not going to insult me if  
10 you get elemental.

11 MR. DEVLIN: I'm just looking at the words, again, in  
12 Provision Number 6, and maybe Mr. Beck can amplify. But that  
13 is how I read that, that 67.1 percent is to take into account  
14 -- let me stop a minute.

15 COMMISSIONER BRADLEY: I have a question.

16 CHAIRMAN JABER: Okay.

17 COMMISSIONER BRADLEY: If you take the -- if you use  
18 the figure of 67.1 percent for the first year, 2002, what is  
19 the annualized, the total annualized amount of the refund to  
20 the customers for the duration of the agreement? Does that  
21 come to 459 million?

22 MR. DEVLIN: Of course, the refunds would vary each  
23 year depending on the revenues, so we really don't know what  
24 the refunds would be for the duration of the agreement.

25 COMMISSIONER BRADLEY: So if the refund can vary

1 then, it could be more or it could be less.

2 MR. DEVLIN: Right.

3 COMMISSIONER BRADLEY: So we really don't --

4 MR. DEVLIN: We really don't know. We really don't  
5 have an idea what the refunds will ultimately be. It was  
6 discussed earlier, is what is the effect of the rate reduction.

7 CHAIRMAN JABER: For the record, I caused this and I  
8 apologize for it. The \$459 million is not a refund amount. I  
9 was asking about the total rate reduction amount. Just for  
10 purposes of the record we should clarify that.

11 COMMISSIONER BRADLEY: Okay. The rate reduction  
12 amount, then, okay.

13 COMMISSIONER DAVIDSON: And I think the follow-up was  
14 assuming all the --

15 COMMISSIONER BRADLEY: It affects the amount of the  
16 refund, though, the rate reduction amount.

17 MR. DEVLIN: Yes.

18 COMMISSIONER BRADLEY: Okay. If that can vary based  
19 upon certain weather conditions and other factors, what is  
20 there that is in the agreement that gives us an accurate amount  
21 of what the refund is going to be to the customers?

22 MR. DEVLIN: Well, it's really -- again, Provision  
23 Number 6 lays out a formula, but we won't know what the refunds  
24 will be for the next three years until the revenues come in,  
25 depending on whatever the customers spend for electricity.

1           COMMISSIONER BRADLEY: Okay. And since we don't  
2 know, is that something that this Commission would deal with on  
3 a yearly basis, to know actually what --

4           MR. DEVLIN: Once we resolve this issue today,  
5 hopefully it will be a mechanical thing and we will get a  
6 report every year like we do with other companies. And we  
7 wouldn't even bring it to the Commission's attention unless  
8 there was a dispute. You know, every year the company will  
9 make a calculation whether there would be a refund or not, and  
10 they will give us a report, and we would look at it, and that  
11 would be it. So we shouldn't have to deal with this issue  
12 again after today.

13           COMMISSIONER BRADLEY: You say we should or should  
14 not?

15           MR. DEVLIN: Should not.

16           COMMISSIONER BRADLEY: But if the refund amount is  
17 going to be determined by certain intervening variables, I  
18 don't see how we cannot deal with it if -- I mean, how are we  
19 going to approve the amount either as an increase or as a  
20 decrease without it coming back before this Commission?

21           COMMISSIONER BAEZ: Commissioner Bradley, I had that  
22 same question. And I guess maybe just for clarification, these  
23 adjustments that we are trying to get a handle on that  
24 certainly there is different opinions as to whether they are  
25 appropriate or not, they only apply to the year 2002, correct?

1 MR. SLEMKEWICZ: Two of them only apply to 2002.

2 COMMISSIONER BAEZ: Is that what you are --

3 Commissioner Bradley, I'm sorry to interrupt, but is that sort  
4 of along the lines of what you are trying to -- that you are  
5 worried about, that you may be arguing over these same kinds of  
6 adjustments?

7 COMMISSIONER BRADLEY: Right. Initially it was my  
8 understanding that there would be no adjustments in this  
9 agreement, but it sounds like I'm hearing that there can be  
10 adjustments based upon certain circumstances.

11 COMMISSIONER BAEZ: Just in the transitional year,  
12 correct?

13 COMMISSIONER DEASON: Let me interject. There are no  
14 future adjustments, it is just the facts become obvious. The  
15 facts become evident. Reality takes place and we have actual  
16 numbers we know as a result. After 2003 we will know what the  
17 sales were. Right now we don't know what they are. It is not  
18 in the sense of adjustments, the variability comes in in that  
19 there is a formula set out as to how it is going to be applied,  
20 but some of the factors that go into that formula are not known  
21 until after the fact.

22 COMMISSIONER DAVIDSON: I think there is a  
23 nomenclature issue, also variability in the amount, but it is  
24 not an adjustment, per se. The amount can differ. We have  
25 been in a sense, I think, assuming a refund amount of 125

1 million. Assuming sort of all else equal, everything stays the  
2 same. That amount may be adjusted up or down based on the  
3 variability of real life data. If that makes sense.

4 COMMISSIONER BRADLEY: You used that word adjustment  
5 again there, Commissioner.

6 COMMISSIONER DAVIDSON: Exactly. But I was using  
7 your word.

8 COMMISSIONER BRADLEY: I understand.

9 MR. TWOMEY: Madam Chair, may I just point out that I  
10 think Commissioner Davidson used the word refund again in  
11 connection with --

12 COMMISSIONER BAEZ: Rate reduction. Rate reduction.

13 COMMISSIONER DEASON: Madam Chairman, I think Mr.  
14 Slemkewicz wanted to clarify something maybe I said.

15 MR. SLEMKEWICZ: Yes, I just wanted to clarify that  
16 based on your decision on the lighting revenue, that could be a  
17 continuing adjustment. If you decide that it should not be  
18 included, then every year during the term of the stipulation  
19 they would --

20 COMMISSIONER DEASON: But we will decide that, then  
21 that will become part of the formula on a going-forward basis.  
22 We don't have to relitigate it again.

23 MR. SLEMKEWICZ: Right, we would not have to  
24 relitigate it, but it would be an adjustment that they would  
25 make to their --

1           COMMISSIONER DEASON: If we authorize it as an  
2 adjustment.

3           MR. SLEMKEWICZ: Right, that is correct.

4           CHAIRMAN JABER: Mr. Devlin, I wanted to follow up  
5 just very quickly on something Commissioner Baez asked you.  
6 And then, Commissioner Baez, you had a question?

7           COMMISSIONER BAEZ: Yes, I have a couple more.

8           CHAIRMAN JABER: Okay. We were talking about in  
9 normal something other than calling it ratemaking, but whether  
10 the accounting is something that traditionally is common here  
11 as it relates to the rate reduction, that still even just  
12 talking about it in hypothetical terms flies in the face of  
13 what is clearly articulated in Paragraph 5 of the settlement.

14           And I keep coming back to that, because it was always  
15 my intent, as it was the day I voted to accept the settlement,  
16 and as it is today, that this was not to be considered a normal  
17 rate case mechanism, a vehicle to a rate case. It was an  
18 acceptance of a proposed resolution of ultimate rates. So to  
19 some degree to even consider what is normally or traditionally  
20 accounted for seems to fly in the face of a very express term  
21 of the contract. Do you agree with that?

22           MR. DEVLIN: I agree with that. I know Paragraph 5,  
23 or at least I assume Paragraph 5 was written to articulate the  
24 difference between revenue sharing and earnings sharing plans,  
25 and this is a revenue sharing plan. But also I tried to

1 articulate that this settlement should lead to a simple way of  
2 dealing with the revenue sharing. And adjustments would be  
3 precluded based on the wording in Paragraph 5.

4 CHAIRMAN JABER: You have reminded me of something I  
5 meant to ask earlier. It seems to me to the degree we isolate  
6 the annualization of the 2002 rate reduction, if we allow  
7 lighting expenses up or down to be included in the calculation  
8 for revenue sharing that logic dictates we go back and revisit  
9 the depreciation expense provision, the dismantlement  
10 provision, the cessation of the accrual related to the  
11 decommissioning fund.

12 And I'm not interested in doing that, first and for  
13 most, but it seems to me that in viewing the contract as a  
14 whole, as Mr. Sasso very articulately laid out, you have to go  
15 back to all the provisions of the contract that may have been  
16 used to offset some of the things the company wasn't going to  
17 get.

18 MR. DEVLIN: I think that is a very fair statement,  
19 because the depreciation reversal applied going back to  
20 January. There was a lot of argument today that we don't want  
21 the rate reductions to effect the first four months, but yet  
22 the depreciation reversal did. So a sense of fair play would  
23 tell you maybe we ought to be looking at both.

24 CHAIRMAN JABER: And, Mr. Slemkewicz, on that point,  
25 I asked the company about their understanding of the provision

1 in the stipulation related to the 62.5 million reduction that  
2 was effective the calendar year January 1st going forward.

3 MR. SLEMKEWICZ: That is correct.

4 CHAIRMAN JABER: Based on that, was the company able  
5 to go back and reduce its depreciation expenses for January 1st  
6 through, what, April 30th?

7 MR. SLEMKEWICZ: April 30th. Yes, they were, and  
8 that would be approximately \$20.8 million.

9 CHAIRMAN JABER: What would be, the amount of  
10 depreciation expenses?

11 MR. SLEMKEWICZ: The amount of depreciation expense  
12 that they did not have to charge any longer, that they could  
13 reverse that expense.

14 CHAIRMAN JABER: And that is what amount?

15 MR. SLEMKEWICZ: \$20.8 million.

16 CHAIRMAN JABER: And what does that mean in laymen's  
17 terms?

18 MR. SLEMKEWICZ: Well, that is one-third of that  
19 \$62.5 million.

20 CHAIRMAN JABER: The ability to reduce the expenses  
21 by 20.8 --

22  
23 MR. SLEMKEWICZ: They could reduce their expenses  
24 by --

25 CHAIRMAN JABER: Hang on, Mr. Slemkewicz.

1 MR. SLEMKEWICZ: Sorry.

2 CHAIRMAN JABER: The ability to reduce their expenses  
3 by \$20.8 million, what does that mean, that the company has  
4 access to that money and can use it to offset any rate  
5 reduction and/or refund?

6 MR. SLEMKEWICZ: Well, it helps their earned return  
7 because it would reduce their expenses. Depreciation is a  
8 non-cash item, so it really would not free up cash for them to  
9 use, but it would, you know, increase their earnings.

10 COMMISSIONER DEASON: And it's not a revenue figure,  
11 so it would not calculate into the calculation of the amount of  
12 refund that is based upon revenue. It allows them -- it  
13 affects earnings, but not revenue subject to the refund  
14 potential.

15 MR. SLEMKEWICZ: That is correct.

16 CHAIRMAN JABER: Commissioner Davidson and then  
17 Commissioner Baez.

18 COMMISSIONER DAVIDSON: Thank you, Madam Chair, and  
19 this is a question for our General Counsel, Mr. McLean. What  
20 Progress is arguing is, according to OPC, not at all what it  
21 intended. What OPC is arguing is, according to Progress, not  
22 at all what it intended. And it is our job, of course, to try  
23 and reconcile those different understandings of the contract.

24 My question really goes to the doctrine of mutual  
25 assent. Under 201 of the restatement of contracts, and I cite

1 that just as basic Hornbook law, is a series of rules as to how  
2 we give meaning to a contract when people have different  
3 understandings. Section 3 provides that except as otherwise  
4 stated therein, neither party is bound by the meaning attached  
5 to the other, even though the result may be a failure of mutual  
6 assent. And that occurs in the event we just can't reconcile.

7 If that ultimately proved to be the case and we found  
8 that there was some failure of mutual assent, what would be the  
9 outcome and the significance of such a finding on this  
10 proceeding, this settlement agreement?

11 MR. McLEAN: Well, I think you have addressed that to  
12 some extent when you decided the motion in limine. You decided  
13 to look to the three documents and the language that was not  
14 explicitly set forth. It was not implied, not deduced, not  
15 surmised, explicit. So I don't know that the hypothetical that  
16 you explained -- that you dealt with when you went to Hornbook  
17 law precisely describes this situation. I think that is the  
18 best answer I can give.

19 It seems to me that you ought to look to the explicit  
20 language of those three documents and look no further. Now,  
21 whether there was mutual assent, I don't know. I don't know if  
22 there was a meeting of the minds on these two things. It could  
23 well be the two opposing parties were thinking of different  
24 things. But how are we supposed to sort that out, but what we  
25 look to the explicit language which they chose in the document.

1 I don't know if that is an answer, but that is the best I can  
2 do.

3 COMMISSIONER DAVIDSON: One follow-up question which  
4 goes back to the merits.

5 Mr. Sasso, is it the position of Progress that  
6 Progress is essentially entitled for the period January through  
7 April to keep anything and everything above the 9.25 percent  
8 threshold that would apply May forward?

9 MR. SASSO: No. What we are contending is that it is  
10 important to get the pot right to determine what amounts to  
11 excess revenues for 2002. But to determine truly what our  
12 excess revenue is for 2002, we have to recognize that the  
13 threshold being used is also annualized as a convention, and  
14 that is apparent from Page 5 of the Commission's order which  
15 sets out all of the thresholds and shows no discrepancy between  
16 2002 and subsequent years that would take into account the fact  
17 that for the first four months of 2002 we were operating under  
18 a different rate structure.

19 And that is the reason why we advocate an adjustment  
20 for that period of time. What that then gives us, that  
21 adjustment would then give us an appropriate measure of what  
22 revenues would be properly deemed excess for the year 2002.  
23 And we would then match those against the threshold using all  
24 the provisions of Paragraph 6, and we would then set aside .67  
25 of the pot for the entire year, .67 of that pot representing

1 the amount that we have agreed to subject to sharing. We apply  
2 the two-thirds/one-third formula to that amount set aside for  
3 sharing, and we get the appropriate amount of a refund. And I  
4 agree we don't know the exact number yet, but we have been  
5 using numbers for purposes of illustration.

6 Now, it is important to understand there has been a  
7 lot of comment about Paragraph 5, and I believe Mr. Slemkewicz  
8 and Mr. Shreve have articulated what Paragraph 5 really  
9 accomplishes, and that is did it intercept scrutiny of certain  
10 aspects that would normally be on the table in a rate case. It  
11 doesn't intercept looking at revenues, because it can't,  
12 because we have to look at revenues for purposes of revenue  
13 sharing.

14 And I would just submit this, that if the Commission  
15 accepts the strict construction of Paragraph 5 that has been  
16 suggested by some the parties today, then it would inevitably  
17 flow from that that the company should not make an adjustment  
18 for the refund. Because that, too, is not spelled out in the  
19 agreement. That, too, by the logic of that interpretation of  
20 Paragraph 5 would be in conflict with Paragraph 5, and it is  
21 not required by the Commission's order, because the  
22 Commission's order does not direct the company to make that  
23 adjustment. It simply assumes that it will be made. It  
24 assumes it.

25 What the Commission's order contemplates is that the

1 company will allocate the refund between two years, which we  
2 have done for purposes of surveillance reporting. So if we  
3 want to be strict, we have to be evenhanded in the  
4 interpretation of Paragraph 5, and we would not make the  
5 adjustment to the refund.

6 COMMISSIONER BAEZ: My question is really brief. It  
7 should be anyway. I'm trying to understand how it is that the  
8 LS-1 rate schedule, the one that was subject to an increase,  
9 survived the 9.25 percent rate reduction.

10 MR. SASSO: The 9.25 percent rate reduction is  
11 described in Paragraph 2 of the agreement, which explicitly  
12 says that Florida Power Corporation will reduce its revenues  
13 from the sale of electricity by a permanent annual amount of  
14 \$125 million. This reduction will be reflected on FPC's  
15 customer bills using 9.25 percent. All other costs of service  
16 and rate design matters will be determined in accordance with  
17 Section 16. So the increase being requested and represented in  
18 the schedule --

19 COMMISSIONER BAEZ: Is not for the sale of  
20 electricity.

21 MR. SASSO: -- is not from the sale and it is not  
22 subject to the rate reduction. This, again, is support for our  
23 proposition that you really have two pieces that have to stand  
24 alone. That is the way they were conceived, designed, that is  
25 just what they say. Now, of course, yes, they were presented

1 in an effort globally to resolve all issues, but they have two  
2 distinct analytical components.

3 COMMISSIONER BAEZ: Okay. Let me ask you this.

4 Again, absent the settlement, when time came to report to the  
5 Commission Staff or to the Commission on revenues, would the  
6 revenues from the LS-1 be included?

7 MR. SASSO: Yes, sir.

8 COMMISSIONER BAEZ: As retail revenues, base rate  
9 revenues?

10 MR. SASSO: Yes, sir. What we have done, what the  
11 company has done is segregated out the amount of the increase  
12 per our interpretation of what we have described today. The  
13 increase was specially requested and addressed in Exhibit A.  
14 Just to expand on that, and to give it another test or reality  
15 check, I think the issue starkly put is let's suppose that the  
16 company hit the threshold right on the nose, the threshold in  
17 the agreement, so we don't have any argument about any other  
18 adjustments, but hit the threshold in the agreement right on  
19 the nose. Except for the \$9 million in 2002, or the \$14  
20 million in later years attributable to the lighting increase,  
21 is it consistent with the stated intent of Paragraph 3 of this  
22 agreement that there should be a refund of that amount, the  
23 amount that the company came to the Commission and requested  
24 for purposes having nothing to do with this? Would it be  
25 consistent with the stated intent to treat those monies

1 authorized to be collected by the Commission as excess revenues  
2 that would otherwise reflect some windfall to the company if  
3 they weren't shared with the customers or that otherwise would  
4 be the basis to initiate a rate case?

5 COMMISSIONER DEASON: Mr. Sasso, all of your revenues  
6 are authorized by the Commission. They are subject to tariff.  
7 What is the difference?

8 MR. SASSO: The difference is that what we are  
9 talking about, again, is a proxy for a limit on ROE. Yes, the  
10 Commission authorizes certain rate structure and the company or  
11 any utility goes off and collects according to that authorized  
12 rate structure. But there comes a time when somebody contends  
13 that that rate structure is producing excess earnings. Now, we  
14 have substituted for earnings revenues. And so the inquiry is  
15 how do we identify excess revenues, and can it properly be  
16 deemed excess if it is expressly authorized by the Commission?

17 COMMISSIONER DEASON: When we agreed to a 9.25  
18 percent reduction in all base rate rates, that was a rate that  
19 we authorized, as well, right?

20 MR. SASSO: A reduction in revenues from the sale of  
21 electricity. The lighting, pole fixtures, and service charges  
22 aren't revenues from the sale of electricity.

23 COMMISSIONER BAEZ: And are there other rates for  
24 services that are not for the sale of electricity that will be  
25 subject to that exclusion?

1 MR. SASSO: The service charge and the lighting  
2 charges are what would be subject to that exclusion, service  
3 and lighting, the subject of Exhibit A.

4 COMMISSIONER BAEZ: So is that exclusion  
5 applicable -- and I'm not talking, you know, this LS-1 schedule  
6 is one in particular that is receiving attention because it was  
7 one that was raised. But are there other schedules, are there  
8 other rate schedules that will be subject to that same  
9 exclusion, in your opinion?

10 MR. SASSO: No, sir, no other increases were  
11 requested or approved and none were captured or addressed by  
12 Exhibit A.

13 CHAIRMAN JABER: Commissioner Bradley, you have a  
14 question, and then I want to encourage us to move along toward  
15 a motion. I don't think any of these parties can say that we  
16 haven't given them an opportunity to make their case. I think  
17 the Commissioners have had opportunities to ask questions. So,  
18 Commissioner Bradley, you are going to ask some questions and  
19 then maybe we could work on a motion?

20 COMMISSIONER BRADLEY: My question is this, who takes  
21 responsibility for actually drafting this language? Is it one  
22 party or is it both parties?

23 MR. SASSO: Well, with respect, we would suggest, I  
24 believe, that the Commission's ruling on the 30th has put that  
25 outside the ambit of this hearing today, but I believe the

1 accurate answer is both parties participated.

2 MR. SHREVE: Both parties, but the final draft was  
3 put together by Florida Power.

4 COMMISSIONER BRADLEY: And did you all discuss hard  
5 dollar amounts for each category within the contract, or did  
6 you all just use language and you actually didn't discuss  
7 dollar figures?

8 MR. SHREVE: Commissioner, we put specifically in the  
9 contract, in the agreement what we all agreed to. I can't tell  
10 from the discussion that we had about the 14 million exactly  
11 what was said about that, but the 14 million was even  
12 considered in the rate reduction. That was considered as  
13 revenue that was coming in and considered in the rate  
14 reduction.

15 If we were going to make some type of an adjustment  
16 in the revenue for 2002, then I would have insisted on there  
17 being an adjustment to the threshold. This agreement was laid  
18 out very specifically taking care of the timing with the  
19 percentage that was in there. We discussed very definitely the  
20 figures that were there and that we all agreed to. I'm not  
21 sure if I am answering your question, but that was very  
22 definite what we had there. And if there were any decisions  
23 made that go beyond the strict reading of the contract, the  
24 four corners of the contract, then we need extensive discovery  
25 to show that there was no different intent at the time of this

1 contract.

2 COMMISSIONER BRADLEY: Well, getting back to 2002,  
3 what was the dollar amount that you all agreed to? Was it \$84  
4 million or was it --

5 MR. SHREVE: We agreed to a \$125 million rate  
6 reduction on an annualized basis, or I believe it was a 9.2  
7 percent reduction in the rates. We agreed to a specific figure  
8 for the threshold, which is in the contract, and the revenues  
9 were a fallout number that we would not know until the end of  
10 the year.

11 All parties were aware of when the rate reduction  
12 would take place, all parties were aware that the rate  
13 reduction had not taken place earlier in the year. If there  
14 had been some other type of negotiation or some changes, it  
15 would have been reflected in the contract. There are other  
16 ways that this could have been set up. We could have said we  
17 will start in May and take 100 percent of the revenue, but we  
18 would also then have had to adjust the threshold. Then we  
19 would have subtracted that and taken two-thirds of the  
20 difference for the refund.

21 As it is we took 100 percent of the revenue and we  
22 agreed to the threshold, which will be the same threshold in  
23 the next three years. We didn't make an adjustment on the  
24 threshold. We didn't make an adjustment on the revenue. That  
25 is what we agreed to. And here again, if it goes beyond this,

1 I think we need extensive discovery and I believe we can show  
2 that that was exactly what the parties intended at the time.

3 COMMISSIONER BRADLEY: Okay. And the Chairman is  
4 about to call the question. Let me ask one more question  
5 before we get to that portion of this hearing. It is apparent  
6 to me that there is a major disagreement about a portion of  
7 this agreement, not about the total agreement. Have either of  
8 you given any consideration to maybe a point of compromise, or  
9 have you all discussed maybe how this can be resolved, or is  
10 that at all possible?

11 MR. SHREVE: I think it has been discussed. I  
12 haven't heard anything --

13 COMMISSIONER BRADLEY: And I said have you all. I  
14 mean, has that been a part of your negotiations?

15 MR. SHREVE: I have had some slight discussions.  
16 There have been discussions among the parties. I think I am  
17 aware of the discussions. There has been no meeting of the  
18 minds on anything. I think the general feeling is that we  
19 settled this case one time, and we shouldn't be in a position  
20 of coming back to settle it again.

21 MR. KISE: And, Commissioner Bradley, if I may on  
22 that, we have had some discussions, as I indicated, on June  
23 30th. The problem being, though, with resolving it along  
24 perhaps the lines you suggested, at least from the Attorney  
25 General's perspective, the compromise would be to compromise

1 the people's position. The contract language is so patently  
2 clear to us that we don't see a way, despite all of the  
3 creative arguments, and the double dip attempts on the 67  
4 percent, and some of the other things that have been proffered  
5 to you as if this is some confusing issue here that this  
6 contract has to be interpreted by looking this way and that way  
7 and turning and twisting, it is just not that complicated.

8           It is very straightforward. You take the real  
9 revenues, not what they thought they were going to earn, not  
10 the excess projected revenues, you just take what their  
11 revenues are and you subtract the number and you follow the  
12 formula almost in an elementary school fashion, not to be  
13 flippant. And so to compromise, if you will, in the  
14 discussion, frankly, would be to compromise some of the folks  
15 that used to be your former constituents down in St.  
16 Petersburg. I mean, those are the people that are going to get  
17 the benefit of this refund.

18           And from our perspective anyway, and I'm sure from  
19 the perspective of Public Counsel and the individuals  
20 representing individual clients, it is difficult to compromise  
21 when the contract is so straightforward. I'm sure you can turn  
22 it and twist it, but when you get right down to it, and I think  
23 the questions and answers have borne that out, that if you  
24 stick with the contract there is one view. If you go outside  
25 the contract there are all sorts of ways you could look at it.

1 But the whole purpose of this settlement was to settle it so  
2 that you wouldn't have a rate case and you wouldn't have this  
3 long extended process. Unfortunately, that appears to have  
4 failed a little bit. That has been, to be quite candid with  
5 the Commission, the roadblock in resolving this case.

6 CHAIRMAN JABER: More questions?

7 COMMISSIONER BRADLEY: Yes, just a statement. Mr.  
8 Kise, I agree with you, but I hope you can appreciate at least  
9 my dilemma. We entrusted two parties with the task of coming  
10 up with a compromise agreement that would benefit all of the  
11 parties that have a vested interest in the agreement. And now  
12 we have a situation where those individuals that we entrusted  
13 that responsibility to now are before us telling us that the  
14 agreement is off, and they are asking us to make a ruling.

15 And it is very difficult to make that ruling, in my  
16 opinion, because we were not privy to certain facts that would,  
17 in my opinion, allow us to -- in my opinion to make a ruling  
18 that is based upon factual evidence. And it is just a very  
19 difficult situation that I find myself in. And by all means I  
20 want to render a decision from this bench that benefits  
21 everyone. But it is a major dilemma, and I have to admit that  
22 I have had some very convincing -- it has been a very  
23 compelling argument from both parties as it relates to this  
24 discussion today, which makes it even more difficult.

25 CHAIRMAN JABER: Commissioner Bradley, I think the

1 General wanted to address some of your concerns.

2 ATTORNEY GENERAL CRIST: If I might. Thank you,  
3 Madam Chair, Commissioners. I get the sense that you are  
4 moving toward a motion and a decision shortly, and so --

5 CHAIRMAN JABER: I hope so.

6 ATTORNEY GENERAL CRIST: Astute, isn't it? I think,  
7 Commissioner, we feel that the agreement is on rather than the  
8 agreement is off. And we want to -- we are here to represent  
9 the people, and to support the Public Counsel that the  
10 agreement should be on, that a settlement was reached, that it  
11 is clear, that there have been presentations made to you  
12 earlier that agree with the number that we think is  
13 appropriate, \$23 million.

14 We think you ought to respect it. We think you ought  
15 to enforce it. And we feel that that is in the best interest  
16 of the public that all of us work for. I mean, the name of  
17 your Commission is the Public Service Commission. We are all  
18 public servants. And it is an important role, and it sometimes  
19 is a difficult role, no question about it. But without you  
20 performing your duty today, nobody represents the people that  
21 are serviced by Progress Energy.

22 And we would implore you to think about those people  
23 who are counting on you today, and to rule that the \$23 million  
24 that was agreed to as a refund for them be enforced. They have  
25 a right to get it. And I respect whatever decision you make

1 today, but I would implore you to please, please do that.

2 CHAIRMAN JABER: Thank you, General.

3 Legal, help us set the foundation for a possible  
4 motion. I have always viewed the resolution of this item to be  
5 one of a public interest standard in the sense that when we  
6 approved the settlement, we approved it under our ratemaking  
7 authority which was the authority to ultimately resolve what  
8 rates, service, and terms of conditions would be.

9 And it is my understanding that if this were to go up  
10 to the Supreme Court of Florida, which I really hope it  
11 doesn't, regardless of the outcome I hope we can move on and  
12 provide certainty to the company, to the consumers that the  
13 company serves, and to all the parties. But saying all of  
14 that, help me understand what the appellate standard is and  
15 what would be expected of us as the court reviews our order.

16 MS. BRUBAKER: I had some discussions with David  
17 Smith, with our appellate division yesterday about what the  
18 standard would be. He indicated to me that it would most  
19 likely be a clearly erroneous standard. I will certainly admit  
20 I'm not as knowledgeable about appellate standards as Mr. Smith  
21 is, but it is in line with whether there has been a clear abuse  
22 of discretion, is my understanding.

23 CHAIRMAN JABER: And if I looked at the resolution of  
24 this item today as one of what did I think I was voting on when  
25 I approved the settlement, that --

1 MS. BRUBAKER: I think that would be absolutely  
2 consistent with that standard.

3 CHAIRMAN JABER: Okay. Commissioners, I asked for a  
4 motion, and I would note that this is not -- I don't know,  
5 maybe I look at these things differently. This is not a harder  
6 decision for me than the ones I made last Tuesday or the  
7 Tuesday before. Every decision we make impacts 16 million  
8 people in the state. And it is our job to make these  
9 decisions. It is an awesome responsibility, but I don't find  
10 this decision harder than the last ones we made. So with that,  
11 I ask for a motion.

12 Commissioner Bradley.

13 COMMISSIONER BRADLEY: We have already previously  
14 approved the settlement, is that correct?

15 MS. BRUBAKER: Correct.

16 COMMISSIONER BRADLEY: So today what will we  
17 effectively be doing? Reapproving, reconfirming our  
18 approval?

19 MS. BRUBAKER: I think in essence that would be  
20 correct. Essentially you are interpreting a disagreement and  
21 what the outcome of that -- how that disagreement should be  
22 settled. I'm not sure if I --

23 COMMISSIONER BRADLEY: Well, if we -- I hate to use  
24 the word reapprove our previous approval, how effectively are  
25 we -- how are we effectively dealing with the disputes that are

1 before us as it relates to what the terms of the agreement are?  
2 Is it that we are going to rule separately on the disagreement  
3 or is it that we are just going to maybe entertain a motion to  
4 confirm our previous approval?

5 CHAIRMAN JABER: It's a fair question. Issue 2, we  
6 are ultimately here because Public Counsel filed a motion to  
7 enforce the settlement agreement. Commissioner Bradley's  
8 question is fair. We would be entertaining the motion to  
9 enforce the settlement agreement and our order by either  
10 accepting one of those three options or an option that we come  
11 up with on our own. I think that is Commissioner Bradley's  
12 question. What is it -- and in resolving all of those options  
13 or an option on our own, we would be addressing the three  
14 points of contention, that is Commissioner Bradley's question.

15 COMMISSIONER BRADLEY: Right.

16 COMMISSIONER DAVIDSON: And, Madam Chair, I had a --  
17 not to jump in with Legal, but in terms of process, my motion  
18 was going to be that we -- assuming we have agreement on actual  
19 2002 revenues, I know there is some difference between the  
20 parties, but let's take that out of the equation for a minute.  
21 My motion was going to be that we proceed  
22 adjustment-by-adjustment on the three adjustments. The interim  
23 revenue refund adjustment, the service fee lighting increase,  
24 and the rate reduction not in effect arguments, reach a  
25 determination on each one of those three, and then address the

1 specific options of the Staff's recommendation so that we sort  
2 of cover -- once we go through those three adjustments and  
3 reach a ruling on that, we ultimately then know what the  
4 decision is, and it makes it easier to articulate. That is  
5 what I am comfortable with, because I have different issues and  
6 concerns with each of those adjustments. I don't know if that  
7 makes sense to the rest of the Commission.

8           CHAIRMAN JABER: It does. Obviously I will defer to  
9 the will of the majority. I have to tell you that I may  
10 have -- I may have a problem with how I vote on a motion like  
11 that, because I don't -- I have not viewed it as  
12 adjustment-by-adjustment. But that is not to say that, you  
13 know, if it works for the majority, it is certainly something  
14 that I can try to accommodate.

15           COMMISSIONER BRADLEY: And I don't disagree with  
16 either of you, but I just want to, if possible, for our  
17 decision to be clear and concise and understandable to all of  
18 the parties.

19           CHAIRMAN JABER: Exactly. Let me throw some comments  
20 and see if one of you can make a motion consistent with it.  
21 It's fine if you can't, but just to get it started. I have  
22 never believed that settlements are perfect. They are not  
23 perfect. I see them as a compromise. I see the provisions of  
24 the settlement agreement that we entertained initially as a  
25 negotiated agreement that gave the company a little, and took a

1 little, that gave the consumers a little and took a little. It  
2 is not a perfect document. It was never my intent as I  
3 approved it that it would be a perfect document. What it was,  
4 frankly, and I still believe it is, an excellent resolution of  
5 a process that could have been very, very expensive. And that  
6 is not good for the consumer and it is not good for the  
7 company.

8           I have to tell you I'm not going to support Progress'  
9 position today regardless of how the Commissioners vote, but I  
10 want to explain why. I do not believe consumer advocates -- I  
11 don't know if you have made this accusation or not, but to the  
12 degree you believe Progress has acted in ill faith, I don't  
13 believe that. I really don't think this was malicious. I  
14 don't think it was something that they tricked us or they  
15 conspired with regard to what was presented to me and what I  
16 thought I was voting on. I think it was a very unfortunate  
17 situation.

18           But saying all of that, I know the questions I asked,  
19 I know what I voted on, I know what I heard, and I was entitled  
20 to rely on those statements. You know, and the other thing,  
21 frankly, from my own perspective, as a Commissioner that  
22 wholeheartedly supported your settlement, I bragged about it.  
23 At your invitation, at the consumer advocate's invitation, I  
24 remember Jack Shreve and I sitting at conferences talking about  
25 how wonderful the settlement is, and I still believe that. It

1 is a model of a settlement. In spite of how you may feel  
2 today, you have an excellent settlement and you were excellent  
3 in coming to the table.

4 And I think that I owe you today regulatory  
5 certainty. And I am comfortable with how I originally voted,  
6 and how I originally voted is consistent with Option 1 in  
7 Staff's recommendation.

8 Commissioners, does that generate any other comments  
9 or a motion? That's where I am.

10 COMMISSIONER DEASON: Madam Chairman, I am prepared  
11 to make a motion and have been for sometime.

12 CHAIRMAN JABER: Let's do it, Commissioner Deason.

13 COMMISSIONER DEASON: First of all, before I make the  
14 motion, let me make an observation and comment, and it probably  
15 reiterates something that you said earlier. This issue has  
16 gotten a great deal of attention, rightfully so. I want to  
17 commend the parties on their presentations and their  
18 participation. I think we have heard reasonable arguments from  
19 all sides. We have a difficult decision to make, but it is  
20 something that we are here to do, and we are prepared to go  
21 forward with that.

22 I think that the parties would have to agree that the  
23 Commission has been very open in wanting to hear from everyone,  
24 and that we have thoroughly heard the arguments and have given  
25 everyone ample opportunity. I hope the parties would agree

1 with that, because I feel strongly that this Commission has  
2 tried to provide all parties ample opportunity to adequately  
3 address these issues.

4           Having said that, I want to make a motion. And part  
5 of the reason to go ahead and get into the phase of a motion is  
6 that while the argument has been enlightening and entertaining,  
7 to some extent, I think it is time now for us to deliberate  
8 among ourselves and, of course, with our Staff, not to exclude  
9 them, but I think we have reached that level.

10           And, Commissioner Davidson, in response to your  
11 desire to address the adjustments one-by-one, I have no problem  
12 with that, but I'm going to put the motion out as one of the  
13 options. And then I would welcome the opportunity to discuss  
14 each one of these adjustments or nonadjustments as you want to  
15 characterize them in turn. But my motion would be to approve  
16 Staff's Option 1 on Issue 2. That is the motion.

17           COMMISSIONER BRADLEY: Madam Chair, before we second  
18 the motion --

19           CHAIRMAN JABER: Go ahead, Commissioner Bradley.

20           COMMISSIONER BRADLEY: Commissioner Deason, I don't  
21 have any disagreement with that, but I do think that in order  
22 for us to have clarity that we need to have some discussion or  
23 have some ruling as to what our motion really means, not just  
24 throwing it out. And maybe Commissioner -- maybe someone has  
25 some statements that can be made, or some motions, some

1 supplemental motions. I just want to be crystal clear as to  
2 what we are really saying here today and put this to bed.

3 CHAIRMAN JABER: Okay.

4 COMMISSIONER DEASON: What the motion is is to  
5 approve Staff on its recommended Option 1, which as I  
6 understand that it would be to grant the Public Counsel's  
7 request to enforce the agreement, that it would call for an  
8 additional refund subject to that agreement for a total refund  
9 of some \$24 million. I don't have the exact number. I'm  
10 sorry, a total refund excluding interest of \$23,034,000 would  
11 be the total refund.

12 And I can add additional clarifications. If you have  
13 specific questions, I will be glad to try to answer those.

14 COMMISSIONER BRADLEY: Okay. And I guess, you know,  
15 I think that today Staff made some reference to the fact that  
16 2002 should be -- it should be clear that 2002 represents 84  
17 million rather than 125 million, and I was just wondering how  
18 your motion might impact that statement of fact that comes from  
19 Staff. I would just like to hear what Commissioner Davidson  
20 has to say and then --

21 CHAIRMAN JABER: Well, Commissioner Davidson, you  
22 have been invited to speak. But just to address that, the  
23 second part of Staff's statement we also need to focus on,  
24 which is it is their recommendation that that annualization  
25 amount wasn't accounted for specifically in the --

1 COMMISSIONER BRADLEY: It was or was not?

2 CHAIRMAN JABER: Was not. But the other thing, you  
3 know, I agree with you we should be as clear as possible. And  
4 if you look at Option 1 -- can you tell, Commissioner Davidson,  
5 I'm buying you more time?

6 COMMISSIONER DAVIDSON: I'm ready whenever you are,  
7 Chair.

8 CHAIRMAN JABER: Okay.

9 COMMISSIONER BRADLEY: And I tell you, we voted on  
10 Option 1 the last time, and apparently it was unclear. So I am  
11 just wondering how we can be clearer and most concise this time  
12 around.

13 CHAIRMAN JABER: Commissioner Bradley, if you look at  
14 Option 1 and you look at those three adjustments -- and,  
15 Commissioner Deason, don't let me put words in your mouth --  
16 but that is your treatment of those three adjustments.

17 COMMISSIONER DEASON: As Staff has described, that is  
18 correct.

19 COMMISSIONER BAEZ: I will tell you what I think the  
20 motion means, and I will just go back to Staff's recommendation  
21 centers around whether adjustments are appropriate or not. And  
22 I think you heard Mr. Devlin and Mr. Slemkewicz both kind of  
23 couch their answers from a regulatory standpoint in the fact  
24 that there wasn't anything explicit in the agreement.  
25 Obviously that is consistent with what the movants are

1 proposing. So I think to the extent of being clear on  
2 certainly what the motion is, I think you are saying that, you  
3 know, if the adjustments are not explicit in the agreement,  
4 then they are inappropriate. Anything that is not contemplated  
5 explicitly in the agreement is inappropriate. And I think that  
6 is consistent with all the points of contention that Progress  
7 is supporting.

8           CHAIRMAN JABER: I tell you, we have a motion on the  
9 table. I guess from an efficiency standpoint, I should  
10 probably ask if there is a second, and then go from there.

11           Commissioner Davidson?

12           COMMISSIONER DAVIDSON: Well, I may very well be  
13 prepared to second the motion. However, I think it is -- from  
14 my standpoint it is critically important for me to go  
15 adjustment-by-adjustment for discussion purposes, not to table  
16 the motion, so that we can provide some additional certainty  
17 why it is that we are accepting or rejecting adjustments.

18           Three adjustments have been made, and I think those  
19 have been put at issue in this case. And I understand  
20 Commissioner Baez's point that Staff has said generally that  
21 adjustments are not proper. But I still, without tabling the  
22 motion at all, and perhaps being at a point to second it, would  
23 like to engage in a little bit of discussion on those. And if  
24 no one has objections, I can give you my thoughts on those.

25           CHAIRMAN JABER: I certainly don't.

1           Commissioners, I don't have any problem with that. I  
2 defer to the will of the majority. Recognizing there is a  
3 motion on the table, is there any problem with that?

4           COMMISSIONER DEASON: That's fine with me.

5           CHAIRMAN JABER: Go ahead, Commissioner Davidson.

6           COMMISSIONER DAVIDSON: And I would just like to  
7 start with a comment. One, to thank, sort of, all the parties  
8 and Staff here. From the outset I have been of the view that  
9 this matter came before us as a motion to enforce a settlement  
10 agreement. We did not have a hearing, we did not take  
11 evidence, it came before us. As I indicated to our General  
12 Counsel, I believed and will believe in all future cases of  
13 this nature that it is critically important for the arguments  
14 of all of the parties to be duly considered.

15           I believe Staff put forth a good recommendation here.  
16 If a majority of the Commissioners agree with Office of Public  
17 Counsel, that recommendation provides an alternative. If the  
18 majority of the Commissioners agree with Progress' position,  
19 that recommendation provides an alternative. If a majority of  
20 the Commissioners ultimately say, gosh, we can't resolve this,  
21 we don't know what to do, while we may or may not agree with  
22 the third option, it does provide a vehicle for consideration  
23 of an option.

24           Without at all trying to be critical, we have got  
25 great technical staff here. This dispute, in essence, is a

1 major breach of contract dispute. At issue really is \$18  
2 million. Progress has said we owe 5 million, Public Counsel  
3 and the Attorney General has claimed 23 million. At issue is  
4 \$18 million. That is a lot of money. It is a lot of money in  
5 a contract dispute. We have been tasked with considering and  
6 applying an array of contract law, including the parol evidence  
7 rule, which is itself a whole body of contract law, and also  
8 regulatory policy.

9           Despite that this is, in essence, a contractual  
10 dispute, a legal dispute, we assigned nonlegal staff as the  
11 lead on this case. And, again, I am not trying to be critical.  
12 Mr. Devlin and Mr. Slemkewicz are extremely bright. I have  
13 enjoyed and learned a lot from working with them. In my view,  
14 though, we should have had a legal staffer as the lead on this  
15 case, and there to consider all of the views and arguments of  
16 all the parties. That is sort of my public statement.

17           Moving toward the item that I raised, the actual  
18 adjustments, my --

19           CHAIRMAN JABER: Commissioner Davidson, do you mind  
20 if I respond one-by-one, because I know you have sort of  
21 invited us to. And it's really not --

22           COMMISSIONER DAVIDSON: Absolutely.

23           CHAIRMAN JABER: -- to respond to your comment  
24 necessarily, but to explain the process as it starts out from  
25 Legal. And perhaps I know this better than the rest, because I

1 started my career here at the PSC in our Legal Department, and  
2 a department that was very busy processing rate cases. I was  
3 in the water department.

4 And as Harold and Jennifer can tell you, because I  
5 hired Jennifer years ago, Legal is a very integral part of the  
6 process. And I started to correct you on June 30th, Harold,  
7 and I decided it wasn't worth it. My bet is, and this is an  
8 opportunity for you to clarify it, my bet is Jennifer Brubaker  
9 rewrote a significant part of that recommendation, and that  
10 Legal was a vital part of the team. And we shouldn't be misled  
11 by which part of our team is designated OPR. The last I heard,  
12 Legal was a very vital part of the team. And I think that is  
13 something that should be clarified. Harold?

14 COMMISSIONER DAVIDSON: If I can jump in before you  
15 clarify, Harold. My understanding from senior staff here is  
16 that Mr. Slemkewicz was the lead draftsman of the  
17 recommendation. I understand Ms. Brubaker was identified. My  
18 preference on matters such as this would be that Legal be a  
19 lead draftsman of purely legal matters like this, and then  
20 to the extent there is a call for technical expertise, that is  
21 fine.

22 Again, my intent is not to be critical. And the  
23 chair and I may just differ on this, but that is a very grave  
24 concern that I have had from the outset. Again, I want to  
25 commend, I think all Staff in this case have done a commendable

1 job.

2 COMMISSIONER BRADLEY: And I think we need to be  
3 clear that Mr. Slemkewicz was the lead draftsman on a draft  
4 recommendation, not a recommendation. On the draft of a  
5 recommendation.

6 MR. McLEAN: All the drafts and all of those final  
7 and so forth was pretty much a team effort. You three  
8 Commissioners are talking about a very similar remedy. The  
9 only area in which I think you differ is who is actually going  
10 to provide the lead draftsmanship. And I think it is probably  
11 true in the majority of the orders that Legal is actually  
12 responsible for the lead draftsmanship.

13 There is a distinction between OPR, the office of  
14 primary and the office of support. It is not a distinction  
15 without a difference. Each team needs a leader. But this is  
16 most assuredly a team. Each of those drafts were team efforts.

17 I hope that answers your concern. We will make  
18 adjustments to ensure that when the primary tenor of the  
19 recommendation is to be legal, that the primary person -- the  
20 primary draftsman is a lawyer.

21 COMMISSIONER DAVIDSON: Thank you, Harold.

22 Going though the actual adjustments, I was not the  
23 beneficiary of the agenda and the agenda conference at which  
24 these different adjustments were made, but starting with the  
25 first one, the interim refund adjustment and applying basically

1 principles of res judicata and collateral estoppel. If you  
2 look at Page 5 of the order, Paragraph 14 seems to me as  
3 someone who is reading this, not for the first time here, but  
4 as a new member of the Commission, that Paragraph 14 seems to  
5 make pretty clear that the appropriate interim refund  
6 adjustment is that asserted by OPC, \$24,630,000. That seems to  
7 be the intent of the Commission there. So I disagree with Mr.  
8 Sasso's assertion that the Commission didn't address that item,  
9 because to me it seems that it did. That is my position on the  
10 first adjustment.

11           With regard to the second adjustment, I have reviewed  
12 this contract and the -- I have reviewed the contract I would  
13 say tens of times. I have reviewed the attachment quite a few  
14 times, but not nearly to the extent I have reviewed the  
15 contract. But I think it is a basic principle of contract law  
16 that -- I think the basic principle of contract law that a  
17 document as an integrated whole would apply here, and even  
18 though we have matters attached in an exhibit, those matters  
19 are part of the settlement agreement.

20           And I have taken note of Progress's arguments, and I  
21 have studied this and I have actually looked through the  
22 contract for a supporting basis by which the service fee  
23 lighting increase adjustment could be expressly made, and I  
24 keep coming back to the same conclusion that however the tariff  
25 and the exhibits as you deal with those items, the items are

1 still revenue, no matter how they are dealt with. So my  
2 position on the service fee lighting increase is that that  
3 adjustment, based on the record before us, is not strongly  
4 supported. I don't see a basis for addressing that.

5           The \$41 million adjustment has caused me greater  
6 concern. And I take note of the fact that in the contract the  
7 effective date of the agreement is May 1st. Paragraph 1 of the  
8 agreement, which is a matter of principles of contract law,  
9 seems to indicate its high priority and importance in the  
10 agreement. The placement of that provision seems to indicate  
11 that unless otherwise provided for, the subsequent text of the  
12 agreement is modified by that agreement.

13           The last sentence of Paragraph 1, however, says that  
14 it does not apply to -- I believe Paragraph 2 -- or 5, 6, and  
15 -- 6, 7 and 15, the parties specifically articulate a revenue  
16 sharing plan in Paragraph 6, Provisions 1 and 2. That  
17 paragraph is not subject to the effective date provision in  
18 Paragraph 1.

19           That said, I am also cognizant of the argument that  
20 41 million of that 125 million permanent annual rate reduction  
21 doesn't apply in the year 2002. And that is really sort of the  
22 issue that I have been struggling with here. And I put that on  
23 the table, and I've got different thoughts on it, but I would  
24 like, if possible, before we actually second the motion, to get  
25 other Commissioners' thoughts on that \$41 million adjustment.

1 CHAIRMAN JABER: Who wants to start?

2 COMMISSIONER DEASON: I can share my thoughts.

3 CHAIRMAN JABER: Commissioner Deason.

4 COMMISSIONER DEASON: First of all, I am in agreement  
5 that we need to confine ourselves, as was the decision on June  
6 30th, to the order, the agreement, and the transcript of the  
7 agenda conference where we approved the stipulation. A strict  
8 reading of the agreement does not provide for there to be an  
9 adjustment. That enters into the calculation, into my  
10 determination.

11 Also, I think -- I agree with Mr. Sasso that we need  
12 to read this document as a whole. I believe that the 67.1  
13 percent factor which is a part of the settlement itself was the  
14 parties' means of recognizing that the rate reduction did not  
15 take place until May the 1st. So there was a factor of -- is  
16 it 61.7 or 67.1, whatever the factor is, we all know what it  
17 is, that it was applied.

18 So there is recognition within the actual mechanics  
19 of the calculation that the rate reduction did not take place  
20 until May the 1st. So for those reasons, I believe that we  
21 should not at this point make an adjustment to 2002 revenues to  
22 decrease those revenues by the 41 million.

23 CHAIRMAN JABER: Commissioner Davidson, the only  
24 thing I would add to what, so as not to repeat it, I should  
25 just say I wholeheartedly agree with that. But I also looked

1 at the other provisions of the contract, namely how we handled  
2 the depreciation expense and the time period we allowed, or  
3 agreed to allow them to go back and recover, and what  
4 flexibility that gave the company.

5 So to revisit the annualization as it relates to the  
6 rate reduction I think forces us to revisit many other things,  
7 and that is just not the spirit of looking at the --

8 COMMISSIONER DEASON: And may I add one quick thing,  
9 too. Just another thought. I also agree with what Mr. Twomey  
10 said, that while there is reference in the settlement to 125  
11 million, that the true effect of this settlement is a 9.25  
12 percent reduction in rates, and those are the tariffed rates.  
13 That is really what the essence of the agreement is. And it is  
14 the revenues that those rates generate, actual consumption and  
15 use of electricity that applied to those reduced rates, that is  
16 what generates the revenue. And once we get the actual revenue  
17 number, then that is what calculates whether there is to be an  
18 additional refund.

19 So the fact that there is reference to a \$125 million  
20 number, while I think it should be in the agreement, it is  
21 useful information, the real mechanics, the real essence is the  
22 9.25 percent rate reduction, the tariffed rate.

23 CHAIRMAN JABER: Commissioner Bradley, you wanted to  
24 comment, too?

25 COMMISSIONER BRADLEY: Well, yes. I agree that the

1 9.2 percent figure should be used, and that allows for, in my  
2 opinion, either an adjustment up or down. Is that understood  
3 by all the parties, rather than using the hard figure?

4 CHAIRMAN JABER: I think, Commissioner, we are at  
5 that stage where we wanted to limit the discussion to the  
6 Commissioners and staff.

7 COMMISSIONER BRADLEY: I know. I'm just letting it  
8 be known that I think that we need to support that and that  
9 that needs to be made crystal clear with the parties who have a  
10 vested interest in our decision-making today.

11 CHAIRMAN JABER: And what is it -- we need what?

12 COMMISSIONER BRADLEY: Well, I agree with  
13 Commissioner Deason, rather than use the \$41 million  
14 adjustment, I think we need to use the 9.2 figure, and then  
15 that allows us to have the -- well, it allows for the process  
16 to have the flexibility either to adjust up or to adjust down  
17 based upon certain conditions that might occur.

18 CHAIRMAN JABER: Okay. Any other comments?  
19 Commissioner Davidson.

20 COMMISSIONER DAVIDSON: Just for a point of  
21 clarification, is the issue that -- and I think this is a  
22 following up to Commissioner Deason's comment on Mr. Twomey's  
23 point that the 125 million is really marshmallow fluff, it --

24 COMMISSIONER DEASON: I didn't use those words.  
25 (Laughter.)

1 COMMISSIONER DAVIDSON: No, I think Mr. Twomey did.

2 CHAIRMAN JABER: He said --

3 COMMISSIONER DAVIDSON: I don't think he said  
4 marshmallow, I think he said political fluff.

5 COMMISSIONER BAEZ: Political fluff.

6 COMMISSIONER DAVIDSON: Is the question,  
7 Commissioner Bradley, that going forward we all understand that  
8 the focus is a permanent annual rate reduction of 9.25 percent.  
9 And whatever realtime true data come in, that we analyze that  
10 data, and that OPC analyze the amount of refund or no refund  
11 based on a 9.25 percent rate reduction instead of thinking  
12 about it in terms of 125 million?

13 COMMISSIONER BRADLEY: Precisely.

14 COMMISSIONER DAVIDSON: Okay.

15 CHAIRMAN JABER: As long as -- for me in terms of,  
16 because I'm going to support the motion, as long as it is  
17 understood that annualizing any amount for 2002 is not what I  
18 am supporting, because I don't think the contract was clear.  
19 You know, specifically allowed for that. As long as that is  
20 clear --

21 COMMISSIONER BAEZ: I'm sorry, I don't understand.

22 COMMISSIONER BRADLEY: But 2002 allows for the  
23 calculation to begin in April or May? How many months is it  
24 for?

25 CHAIRMAN JABER: What's your question?

1           COMMISSIONER BRADLEY: In 2002 the calculation is  
2 going to be different, the 9.2 is going to apply to a different  
3 number of months as compared to the years in the future. Are  
4 you saying for 12 months?

5           COMMISSIONER DEASON: For 2002 we have 12 months of  
6 revenue and 12 months of consumption. For the first four  
7 months it is at a higher rate than it is for the subsequent.  
8 But you add it all together at the end of the year and you come  
9 up with a total revenue number, and that is what you use to  
10 calculate whether there should be an additional refund. That  
11 is the way I understand. I think that is Staff's  
12 recommendation, and that is what I would want to be clear  
13 within the motion.

14           COMMISSIONER BRADLEY: Well, with that being the  
15 case, how do we deal with the percentage of 67.1?

16           CHAIRMAN JABER: It's in there. I guess I'm looking  
17 at you puzzled, because I don't understand what we need to  
18 further clarify. The 67.1 percent is still part of the  
19 settlement. It will be included, has been included in the 2002  
20 refund amount as provided for in the contract.

21           COMMISSIONER BRADLEY: Okay. Let me ask this  
22 question, maybe this will clear it up. If we use the figure of  
23 67.1 and word it to indicate that, what, 9.2 percent of 67.1  
24 gives us the figure that we are trying to get to for 2002, does  
25 that --

1           COMMISSIONER DEASON: The two are unrelated in the  
2 sense that the 9.25 percent reduction in rates, those became  
3 the new tariffed rates effective May 1, 2002, and those were  
4 the rates that were actually utilized by Florida Power in  
5 billing customers, and that generated the revenues which became  
6 part of the total revenue base of 2002 upon which we determined  
7 or the agreement determines whether there should be an  
8 additional refund.

9           In calculating that, the factor of 67.1 percent is  
10 applied. And I think that the parties contemplated that it  
11 would make the parties whole in the sense that the rate  
12 reduction did not take place until May the 1st. So, in  
13 essence, the 67.1 percent factor is a factor which helps or  
14 which goes to the benefit of Florida Power in that it reduces  
15 the amount of refund that otherwise would be required. And I  
16 think it recognizes the fact that the rate reduction did not  
17 take place until May the 1st.

18           COMMISSIONER DAVIDSON: Madam Chair?

19           CHAIRMAN JABER: Commissioner Davidson.

20           COMMISSIONER DAVIDSON: Following up on Commissioner  
21 Deason's question, I agree with you, Commissioner Deason. I  
22 also think that Progress has presented arguments that are  
23 credible and not unreasonable. The task for this Commission is  
24 to decide -- we have to make a choice, we have to make a  
25 decision in this case. And I don't want to leave anyone with

1 the impression that Progress has presented a baseless position,  
2 because I think they presented arguments that have some merit.

3 I think on balance, given all the facts and  
4 circumstances of this case, taking due note of our role in  
5 trying to uphold stipulations and settlements, and articulate  
6 sound public policy, reading into the contract some of the  
7 things that Progress would like us to do vis-a-vis their  
8 understanding, while reasonable is, in my view, somewhat less  
9 reasonable than Commissioner Deason's understanding.

10 So, again, I think both sides have presented  
11 arguments that have merit. This is a dispute. But I think on  
12 balance I would support Commissioner Deason's view on this last  
13 adjustment. And for that reason I would second his motion.

14 CHAIRMAN JABER: Okay, Commissioner Davidson. There  
15 is a motion and a second to address the motion to enforce the  
16 settlement by accepting Option 1 in Staff's recommendation  
17 found on Page 12 of the recommendation.

18 All those in favor say aye.

19 (Unanimous affirmative vote.)

20 CHAIRMAN JABER: Opposed, nay?

21 The motion carries unanimously.

22 Parties, thank you for being here.

23 MR. SHREVE: Commissioner, can I make one comment at  
24 this point?

25 CHAIRMAN JABER: Yes. Mr. Shreve, and then Mr.

1 Sasso.

2 MR. SHREVE: I'm off the case.

3 COMMISSIONER DEASON: We have Issue 3, also.

4 CHAIRMAN JABER: Yes.

5 MR. SASSO: With the Chair's indulgence, there is an  
6 issue of implementation that we would like to address.

7 CHAIRMAN JABER: Yes, absolutely.

8 MR. SASSO: Mr. Dolan would like an opportunity --

9 CHAIRMAN JABER: Absolutely. Thank you, Mr. Sasso.  
10 You reminded me one of the questions, Staff, I had  
11 for you is if we were to order what resulted in an additional  
12 refund, how would it be implemented.

13 Mr. Shreve, you wanted to make a comment?

14 MR. SHREVE: (Inaudible. Microphone off.)

15 CHAIRMAN JABER: Okay. But let me finish the  
16 thought. Parties, I want to thank you for being here. And I  
17 wholeheartedly agree with what Commissioner Davidson said. I  
18 could not have said that better myself. I think that all the  
19 arguments were very credible.

20 Now, Staff, my question to you is there has been a  
21 refund amount made, according to the recommendation. What we  
22 voted today will result in additional monies being refunded.  
23 There isn't a separate issue that addresses that. What did you  
24 envision, what would you recommend?

25 MR. DEVLIN: Well, we'll have to calculate the

1 interest, roughly 23,034,000 plus interest, and we will do  
2 that. And Jack can correct me if I'm wrong. No, I'm sorry, it  
3 would be the difference. I'm sorry, it is 18 million, whatever  
4 that number is plus interest, and we will calculate that  
5 amount, and then we will propose to get with the company. And  
6 normally these matters are handled through credit on the bill  
7 as opposed to a separate refund check.

8 CHAIRMAN JABER: But what time period?

9 COMMISSIONER BAEZ: Does that Paragraph 8 apply? Is  
10 that where we look to?

11 MR. DEVLIN: Yes, we would look to our rule on  
12 refunds.

13 COMMISSIONER BAEZ: Well, I'm looking at the last  
14 sentence that says all refunds with interest will be in the  
15 form of a credit.

16 CHAIRMAN JABER: Paragraph 8.

17 COMMISSIONER BAEZ: I mean, is that controlling here,  
18 or is there some -- I don't know what Mr. Sasso is going to say  
19 just yet, but I know that they have -- there is at least some  
20 filing out there that alludes to different or alternative  
21 implementation.

22 MR. DEVLIN: Yes, I think that provision is  
23 controlling here. Thank you for pointing that out.

24 COMMISSIONER BAEZ: Can we ask a -- I don't want to  
25 get Mr. Devlin into trouble.

1 MR. McLEAN: Yes, I agree. I agree with that, yes,  
2 sir. You know, it may well be --

3 COMMISSIONER BAEZ: I believe you, too, Mr. Devlin, I  
4 just --

5 MR. McLEAN: And I will look to correction from Mr.  
6 Devlin. Aren't we looking at a fallout number here?

7 CHAIRMAN JABER: I'm sorry, what?

8 MR. McLEAN: Isn't this likely to be a fallout  
9 number? Given the decision that you have made, I wonder if the  
10 actual number is to be controversial?

11 COMMISSIONER BAEZ: Well, Madam Chair, I know that  
12 Mr. Sasso is wanting to say something.

13 Did you have a comment, Mr. Sasso, on the  
14 implementation? Maybe we should -- if there is an issue, maybe  
15 we need to get it out there.

16 CHAIRMAN JABER: And, Mr. Sasso, would you also  
17 address -- in the recommendation movants argue that the refund  
18 should start September of 2003. As you address Commissioner  
19 Baez's question, would you also address for me what period you  
20 think the credit should be made, what month, when would they  
21 start?

22 MR. SASSO: Yes. Mr. Dolan will address those  
23 issues.

24 CHAIRMAN JABER: Mr. Dolan, go ahead.

25 MR. DOLAN: Chairman, Commissioners, I think now that

1 we know the outcome of the decision today, it is appropriate to  
2 talk about the implementation. We had a couple of thoughts on  
3 that. I think the Paragraph 8 that was referred to controls  
4 the year-by-year. We are obviously off calendar here, and  
5 there has been a suggestion made about when that might happen.

6 I think there is at least a couple of options, and  
7 there is another option that I would like to offer for  
8 consideration to the parties for maybe some follow-up  
9 discussion. One option would be to do it as soon as practical  
10 in the fall time frame, whether that be September or October, I  
11 mean, I think that is something that the sides can agree to.

12 Another option would be to do it together with  
13 whatever refund might occur in 2004. That might be more  
14 administratively efficient. Certainly either one of those two  
15 are workable and, you know, the money would be calculated with  
16 interest, so we are certainly not advocating for one or the  
17 other. I think there would be some administrative efficiency  
18 for perhaps doing the latter.

19 A third alternative which I did have an opportunity  
20 in the course of some conversations with Mr. Beck in attempts  
21 to settle, which we were unsuccessful at, we did talk to some  
22 extent about some other issues that are bubbling. And, you  
23 know, we filed a notice yesterday that we have some pressure on  
24 fuel prices with the escalating gas prices. One other  
25 alternative that we would at least like to get some

1 consideration on is whether or not it would be appropriate to  
2 refund the money through the fuel clause.

3           And I will tell you in addition to the roughly 18  
4 million that we talked about today, the effect of the decision  
5 would take into account potential monies, depending on actual  
6 revenues in '03, '04, and '05, that would be refunds, you know,  
7 more so than what the company has anticipated as far as this  
8 agreement. And we are willing to consider perhaps pulling  
9 those monies forward into today and perhaps packaging that all  
10 up in an effort to help offset the need to do something on a  
11 midcourse basis related to fuel.

12           I did have very, very preliminary conversations with  
13 Mr. Beck about this. I don't want to overstate the extent of  
14 those conversations. But we would welcome the opportunity  
15 perhaps to talk further with the parties about this concept. I  
16 think, you know, the end result is the money is going to end up  
17 in the same hands. It is going to end up in the hands of the  
18 consumers. So we have no intention to alter that outcome, what  
19 was decided here today. We are just talking about different  
20 methodologies on how the money might flow back.

21           And in the event that we could reach an agreement, as  
22 I proposed the third alternative, I think it would allow the  
23 company to maintain the overall price stability for the  
24 consumer through the balance of '03, even in the wake of the  
25 pressure that we are seeing on natural gas prices. So I just

1 offer that for consideration. And I would, you know, certainly  
2 welcome any comments from Mr. Beck or the other parties if they  
3 are willing to discuss that further. And I think ultimately,  
4 you know, we will live with whatever decision is appropriate on  
5 those three options.

6 CHAIRMAN JABER: Mr. Dolan, let me first thank you  
7 for all of those alternatives. And I will let all the parties  
8 address it and get feedback from the Commissioners. I think I  
9 need a little bit more detail on the last option you offered.  
10 The order, the order where we accepted the settlement very  
11 clearly concluded that one of the things that was attractive to  
12 the immediate rate reduction was providing immediate relief to  
13 the consumers for that 2002/2003 year period. And I don't know  
14 how making the refund tied, or, you know, waiting until the  
15 2004 period will accomplish that even in the name of  
16 administrative efficiency.

17 The other concern I have with respect to the  
18 midcourse correction and somehow tying it to that is we have  
19 taken great pains to make sure that the customers understand  
20 that that rate increase, potential rate increase is  
21 specifically tied to the cost of natural gas. And we have even  
22 rejected Staff's recommendation in the past to offset the  
23 increase in later years because we wanted to match the time  
24 period with the increase so that consumers could adjust their  
25 consumption.

1           Could you comment on both of those? I mean, how can  
2 we accommodate tying this to the midcourse correction and yet  
3 keeping within the spirit of not confusing the customer, giving  
4 them an opportunity to adjust consumption?

5           MR. DOLAN: Well, Chairman Jaber, I guess, you know,  
6 I would tend to agree with your statement that that may be an  
7 unintended consequence of that. However, it is uncertain what  
8 direction prices may take in the future. So to the extent that  
9 we can maintain stability in the short-term, there is the  
10 possibility that prices may trend in a more favorable  
11 direction. And it would not require perhaps the price  
12 volatility that we might experience with a midcourse  
13 correction. And we have seen this occur, you know, with other  
14 companies in the state.

15           So certainly that is the spirit in which we offer the  
16 proposal, understanding your concern. You know, our desire is  
17 to see if we can maintain the stability through the end of the  
18 year. That is where we start from. And to the extent that we  
19 can, and perhaps we see a different trend, you know, we can  
20 carry some of that forward into 2004. So that is the reason we  
21 offer it.

22           CHAIRMAN JABER: General Crist.

23           MR. BECK: Madam Chairman, if I might.

24           CHAIRMAN JABER: Mr. Beck, who? I saw both  
25 microphones go on. So, General Crist.

1           ATTORNEY GENERAL CRIST: Thanks. I think you made a  
2 great decision, number one, and I want to thank you for it.  
3 And I think the people have been waiting for a refund for  
4 awhile, and I think your line of inquiry indicates that. And I  
5 think, you know, back in the spring is when they were owed the  
6 refund. I think it is not something related to the price of  
7 gas, it is related to the price of power.

8           And a credit, as I think is illustrated in the  
9 original settlement, articulates that that is how it should be  
10 given back to the consumer. And so I think -- I hope that is  
11 not inconsistent with you, Charlie, but I think on behalf of  
12 the people the right thing to do would be to give it to them,  
13 give it to them now, because they have been delayed in getting  
14 it because of this process. And you made a good decision  
15 today, and I think that would honor it.

16           CHAIRMAN JABER: Thank you, General.

17           Mr. Beck.

18           MR. BECK: Thank you, Chairman Jaber. And, yes, I  
19 agree 100 percent with General Crist that Paragraph 8 of the  
20 agreement does set forth the way that the credit and refunds  
21 should be granted. Had the correct amount been given back in  
22 the spring, this would all be over. But according to the  
23 agreement it is given to the retail customers of record during  
24 the last three months of the refund period. That is what they  
25 ought to do. Just as soon as they can calculate it, the

1 refunds ought to go back to those customers who would have  
2 gotten it had the correct refund been given earlier. And it is  
3 credits to customers who currently are customers, and then I  
4 guess they have to mail a check to people who were past  
5 customers. And we think they ought to do that just as quickly  
6 as it can be done.

7 CHAIRMAN JABER: Commissioners? Commissioner Baez.

8 COMMISSIONER BAEZ: I just wanted to say, Mr. Dolan,  
9 I'm not sure I agree with your assessment that we are in an off  
10 year or that somehow the terms of this agreement don't apply.  
11 I will say outside of -- if we can peel away whatever the  
12 implementation is in this instance, but that I would certainly  
13 encourage the parties on a going-forward basis to discuss  
14 alternatives. I mean, I think price volatility and stability,  
15 bill stability are of any value to anyone here, I mean, the  
16 opportunity is there to do some creative things.

17 I'm not sure that in this instance, however, it is  
18 probably most appropriate. This has been a very taxing  
19 process. It has been a very grueling issue on many levels, and  
20 I think that closure is closure. Not to, you know, use a big  
21 cliché here, but I think we need to end this. We need to close  
22 this out now somehow.

23 COMMISSIONER BRADLEY: And I agree with Commission  
24 Baez. Why don't we bring closure to this issue. And we can  
25 address the issue, other issue that was put forth at the

1 appropriate time.

2 CHAIRMAN JABER: Okay. Mr. Twomey.

3 MR. TWOMEY: Madam Chair, I just wanted to say  
4 briefly in support of what the Attorney General and Public  
5 Counsel said, my clients would like to see their credit,  
6 individual credits per the agreement as soon as the company can  
7 calculate it without any confusion whatsoever with fuel  
8 adjustment proceedings. We are not talking about sending  
9 separate envelopes here, or stamps and that kind of thing, we  
10 are talking about a billing credit.

11 And it seems to me that the goal of having each  
12 person get back their proportionate refund based upon their  
13 volume usage is better addressed by individual credits. Also,  
14 if you confuse it, commingle it with the fuel adjustment, you  
15 confuse on how you are going to deal with prior customers. So  
16 if any of my clients had left the state, or whatever, you have  
17 to have them tracked down.

18 COMMISSIONER BAEZ: Well, can I just -- and, again, I  
19 want to clarify. I agree with you in this instance. But if  
20 you look at the terms of the agreement which we are beating  
21 each other about the head with, okay, the linkage between fuel,  
22 the fuel clause and any refunds and so forth, the linkage is in  
23 the agreement, as well. So I don't want to -- again, I  
24 repeat -- at the risk of repeating myself, I would encourage  
25 all the people here -- and, again, specifically in this

1 instance I couldn't support it. But I would encourage those  
2 types of solutions because that is not political fluff, Mr.  
3 Twomey. I think that goes a little bit beyond that.

4 MR. TWOMEY: Yes, sir, and I respect that. I just  
5 wanted to give you what my clients' perspective is.

6 COMMISSIONER BAEZ: And I appreciate it. And I am in  
7 agreement with you on this issue alone. But I think that going  
8 forward because of the circumstances and how long we have all  
9 had to wait for resolution of this issue, but I think that  
10 going forward it is a tremendous value for all of us to be able  
11 to pool all the resources available to us to really do some  
12 good public policy here, and really make the consumers --  
13 really reduce exposure for the consumers in any way that we can  
14 find possible. And if this happens to be a proper alternative,  
15 then so be it.

16 MR. TWOMEY: Yes, sir.

17 CHAIRMAN JABER: Okay. Commissioners, I hear  
18 consensus for a motion that the refunds be made in accordance  
19 with Paragraph 8. But, Staff, what I don't understand is how  
20 to deal with all refunds should be made with interest in the  
21 form of a credit beginning the first day of the first billing  
22 circle of the third month after the end of the applicable  
23 refund period. That is the part that I need you to help me  
24 with in terms of a motion.

25 COMMISSIONER BAEZ: My understanding of the language

1 is that it just -- the three prior months is just to fix the  
2 customer base, or the list. Is that correct? That is what  
3 fixes the population.

4 CHAIRMAN JABER: Is it sufficient for us to say that  
5 the refunds should start immediately? I mean, what language do  
6 you need in a motion such that it is clear?

7 COMMISSIONER BAEZ: I'm almost scared to say the  
8 parties should know what they meant.

9 MR. DEVLIN: I think that would be a fair  
10 representation of what is needed for the order.

11 CHAIRMAN JABER: Which is what, that the refund be  
12 made in accordance with Paragraph 8 of the settlement  
13 agreement?

14 MR. DEVLIN: Correct.

15 MR. WHEELER: I'm not sure --

16 COMMISSIONER BRADLEY: What is the original time  
17 frame in the original agreement?

18 CHAIRMAN JABER: Staff?

19 COMMISSIONER BRADLEY: How many months out, or how  
20 many days out, or how many weeks out?

21 MR. DEVLIN: I'm sorry, Commissioner, what was your  
22 question?

23 COMMISSIONER BRADLEY: What was the original time  
24 frame in the original agreement that we passed?

25 MR. DEVLIN: The agreement runs through the end of

1 2005.

2 COMMISSIONER BRADLEY: Okay. Now, that is not my  
3 question.

4 COMMISSIONER BAEZ: You have got 90 days.

5 COMMISSIONER BRADLEY: What was the time frame that  
6 was allotted for the refund in the original agreement after our  
7 ruling, after we rendered a decision?

8 COMMISSIONER DEASON: Paragraph 8 says the third  
9 month.

10 MR. WHEELER: Right. The first day of the billing  
11 cycle of the third month after the end of the applicable refund  
12 period.

13 COMMISSIONER BRADLEY: Okay. And how much time did  
14 that give them to administratively --

15 MR. WHEELER: I am assuming that that time frame was  
16 agreed upon in order to allow them to --

17 COMMISSIONER BRADLEY: But did that give them two  
18 weeks, three weeks, a month?

19 COMMISSIONER BAEZ: Madam Chair --

20 CHAIRMAN JABER: Was at 90 days? Were you able to  
21 make the refund within 90 days of the calculation, Mr. Dolan?

22 MR. DOLAN: Chairman, I think it is our belief we can  
23 do it by end of September.

24 CHAIRMAN JABER: End of September?

25 MR. DOLAN: The end of September. I think

1 September --

2 COMMISSIONER BAEZ: September 1st?

3 MR. DOLAN: You know, in an abundance of caution, if  
4 we said October 1st, I mean, certainly we wouldn't turn that  
5 down. I mean, it's just we have to go through the calculation  
6 again.

7 COMMISSIONER BAEZ: Madam Chair, I could be wrong,  
8 but that is probably less than is required under the -- and I  
9 would -- I don't -- you know, I think --

10 COMMISSIONER BRADLEY: But do you understand my  
11 question?

12 COMMISSIONER BAEZ: Yes. Because of the language of  
13 the agreement, I don't think it is enough to peg it to  
14 Paragraph 8. I think we need to --

15 COMMISSIONER DEASON: Is it a reasonable  
16 interpretation that the refund should be completed by October  
17 31st to all customers, except for maybe those you have to track  
18 down. But I'm talking about credits on the bill should be  
19 completed with --

20 MR. DOLAN: Commissioner Deason, I think the way the  
21 original agreement -- this was the mismatch I referred to  
22 earlier. I didn't mean to imply something different,  
23 Commission Baez. If we assume today was the last day of the  
24 calendar year, we know what the interpretation of Paragraph 8  
25 is in terms of when the refund starts. So if we want to apply

1 that consistently, you know, we could take today as the  
2 starting point, if you will, or the beginning of the month, or  
3 whatever is appropriate. You know, certainly we want to do  
4 this as quickly as is feasible.

5 COMMISSIONER DEASON: The way I would apply that, we  
6 are in July now, and at the end of this month then you would  
7 have at least three months to have everything completed, which  
8 would put all refunds, all credits should be on all the bills  
9 to all customers receiving a credit by the end of October. You  
10 can do it earlier, and the agreement says if you can do it  
11 earlier, do it.

12 MR. DOLAN: I believe that we can do what you have  
13 suggested.

14 COMMISSIONER BAEZ: And, Commissioners, I don't want  
15 to complicate it further, but I think we need to -- is it  
16 understood, and I would ask Public Counsel and the rest of the  
17 parties, is it understood what the billing period in question  
18 is? I know we are long past, but --

19 MR. SHREVE: I think we are past it. So I think the  
20 decision you are making now with Power Corp being willing to  
21 make it as soon as they can, give them a comfortable amount of  
22 time. So if you take the amount of time that is in here and go  
23 ahead and pinpoint it and start it running, I think just the  
24 way Vinnie talks about doing it is okay. If you take what  
25 Commissioner Deason says and go ahead and set a date, if it is

1 the end of this month, or the first of this month. Just take  
2 the three months. Because the refund period would have been  
3 the end of last year.

4 MR. DOLAN: Yes. And I guess a question perhaps,  
5 Jack, I want to be clear on is are we taking the customers that  
6 are in effect back from December 31st or from today? I mean,  
7 we just need to clarify that, as well.

8 COMMISSIONER BAEZ: That was my question that I  
9 inartfully posed.

10 CHAIRMAN JABER: Commissioners, let me ask you this.  
11 Do you mind if we take a ten-minute break. Let's let the  
12 parties just sit down and talk about this. Staff, help. Go  
13 help. And we will come back at 2:30.

14 (Recess.)

15 CHAIRMAN JABER: We're ready. Staff, we have one  
16 outstanding issue. It relates to the implementation for the  
17 additional refund amount. Parties, I'm hoping you have had an  
18 opportunity to discuss it. Do you need more time, Mr. Devlin?

19 MR. DEVLIN: Yes, Madam Chair. And, again, parties  
20 can correct me if I'm wrong, but I think we have agreement to  
21 use Provision Number 8 in the settlement. And that would mean  
22 we would use customers of record going back to the three-month  
23 period for 2002. And also the credits would commence in the  
24 first billing cycle, no longer than the first billing cycle in  
25 October of this year.

1           And one other feature we thought needed to be  
2 addressed is unclaimed refunds. And we haven't decided upon a  
3 time frame, but we could maybe right now. Any customer that  
4 could not be found after, let's say, 120 days, those monies  
5 could then be credited to the fuel clause. And if the  
6 Commission finds that acceptable, that approach could be used  
7 for not only this refund, but the past refund the company made  
8 in the spring and in any future refunds.

9           CHAIRMAN JABER: Let's make sure that the parties do  
10 agree with that characterization. Mr. McGee, from the company  
11 perspective, do you understand what Mr. Devlin is proposing?

12           MR. MCGEE: Yes, I do, and that is perfectly  
13 acceptable to us. We think we may have an opportunity to  
14 actually begin the refund in September. But because of the  
15 importance in beginning it on cycle one, it will be very close.  
16 And if we miss cycle one, then we need to wait until cycle one  
17 of the next month billing.

18           CHAIRMAN JABER: Mr. Beck?

19           MR. BECK: Yes, Madam Chairman. We agree that the  
20 people who received the refunds before will receive these  
21 refunds, as well. The company has said they are willing to do  
22 it as quickly as they can. The refunds for people who can't be  
23 found after reasonable effort would then go to the fuel  
24 adjustment clause.

25           MR. SHREVE: Commissioner, or if there is any left

1 over money there we might put it into a retired public  
2 counsel's fund.

3 CHAIRMAN JABER: That's what you are going to do.

4 COMMISSIONER DAVIDSON: Has the AG signed off on  
5 that?

6 COMMISSIONER BRADLEY: Madam Chair, and I am asking  
7 this question in earnest, because I know we have had a lot of  
8 discussion over a long period of time about this particular  
9 issue. And I know probably you all probably can't answer this,  
10 but I'm still going to ask it. Is there anything in this  
11 agreement that is ambiguous, or that either party does not --  
12 either party does not understand?

13 MR. SHREVE: No, sir.

14 MR. MCGEE: As of this moment that is true.

15 COMMISSIONER BRADLEY: As of this moment.

16 CHAIRMAN JABER: Mr. McGee, wrong answer.

17 MR. SHREVE: Mr. McGee wrote it.

18 COMMISSIONER DEASON: Madam Chairman, Issue 3 --

19 CHAIRMAN JABER: Commissioner Deason. We need to  
20 close this.

21 COMMISSIONER DEASON: I can move Staff's  
22 recommendation on the procedure to follow for conducting the  
23 refund.

24 COMMISSIONER BAEZ: Second.

25 CHAIRMAN JABER: And a second. All those in favor

1 say aye.

2 (Unanimous affirmative vote.)

3 CHAIRMAN JABER: That resolves the implementation of  
4 the additional refund.

5 Issue 3 is a close-the-docket issue.

6 COMMISSIONER DEASON: And my question is while I  
7 would like to close the docket, do we need to leave it open to  
8 monitor future refunds? Or if there is a future complaint,  
9 which we all hope there is not, will we just get another filing  
10 and open another docket?

11 CHAIRMAN JABER: Frankly, I would envision we open  
12 another docket, but I'm indifferent.

13 MS. BRUBAKER: It is at your discretion certainly,  
14 Commissioners, and your pleasure. It would be frankly my  
15 recommendation to go ahead and close this docket, open a docket  
16 on any ongoing future disputes.

17 CHAIRMAN JABER: Yes. I don't want to make it -- we  
18 don't want to send you all the wrong idea.

19 COMMISSIONER BRADLEY: I would be in favor of closing  
20 the docket.

21 COMMISSIONER DEASON: If that is a motion, I second  
22 it.

23 CHAIRMAN JABER: What was it?

24 COMMISSIONER DEASON: To close the docket.

25 CHAIRMAN JABER: Okay, great. There is a motion and

1 a second. All those in favor say aye.

2 (Unanimous affirmative vote.)

3 CHAIRMAN JABER: The docket will be closed upon  
4 issuance of the order.

5 COMMISSIONER DEASON: Did Mr. Shreve want to say  
6 something?

7 CHAIRMAN JABER: And Mr. Shreve wanted to say  
8 something.

9 (Off the record.)

10 (The Special Agenda concluded at 2:40 p.m.)

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1 STATE OF FLORIDA )  
2 :  
3 COUNTY OF LEON )

CERTIFICATE OF REPORTER

4  
5 I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter  
6 Services, FPSC Division of Commission Clerk and Administrative  
7 Services, do hereby certify that the foregoing proceeding was  
8 heard at the time and place herein stated.

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

14 I FURTHER CERTIFY that I am not a relative, employee,  
15 attorney or counsel of any of the parties, nor am I a relative  
16 or employee of any of the parties' attorney or counsel  
17 connected with the action, nor am I financially interested in  
18 the action.

19 DATED THIS 16th day of July, 2003.

20  
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22 \_\_\_\_\_  
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