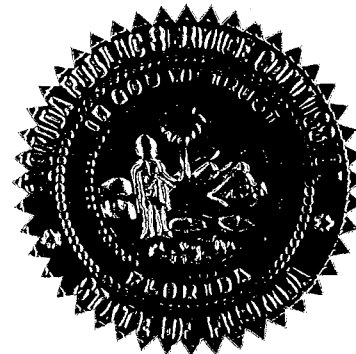


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 041291-EI

In the Matter of:

PETITION FOR AUTHORITY TO RECOVER  
PRUDENTLY INCURRED STORM RESTORATION  
COSTS RELATED TO 2004 STORM SEASON  
THAT EXCEED STORM RESERVE BALANCE,  
BY FLORIDA POWER & LIGHT COMPANY.



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PROCEEDINGS:           AGENDA CONFERENCE  
                              ITEM NO. 17

BEFORE:                 CHAIRMAN BRAULIO L. BAEZ  
                              COMMISSIONER J. TERRY DEASON  
                              COMMISSIONER RUDOLPH "RUDY" BRADLEY  
                              COMMISSIONER LISA POLAK EDGAR

DATE:                    Tuesday, July 19, 2005

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

REPORTED BY:            JANE FAUROT, RPR  
                              Official FPSC Hearings Reporter  
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FLORIDA PUBLIC SERVICE COMMISSION   07042 JUL 22 2

FPSC-COMMISSION CLERK

1 PARTICIPATING:

2 COCHRAN KEATING, ESQUIRE, JOHN SLEMKEWICZ,  
3 ELISABETH DRAPER, TIM DEVLIN, TIFFANY JOYCE, CHRISTINE ROMIG,  
4 DAVID WHEELER, LEE WILLIS, and KATHERINE FLEMING, ESQUIRE,  
5 representing the Florida Public Service Commission Staff.

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

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CHAIRMAN BAEZ: Commissioners, we are on Item 17.

MS. JOYCE: Good morning. Tiffany Joyce, Commission Staff.

Item 17 is staff's recommendation on Florida Power and Light Company's petition for authority to recover prudently incurred storm-restoration costs related to the 2004 storm season that exceed the storm reserve balance.

Staff has a modification to Florida Retail Federation's position on Issue 21. On Page 67, the second sentence --

CHAIRMAN BAEZ: Hold on, Ms. Joyce, let us get there.

MS. JOYCE: Sorry.

CHAIRMAN BAEZ: 67 you said?

MS. JOYCE: Yes.

CHAIRMAN BAEZ: Very well.

MS. JOYCE: We're striking 890 million and replacing with 533 million. And, also, the same position, last two sentences after the last comma should read, "The amount recoverable through surcharges would be zero, negative approximately 40 million to 50 million."

This is a post-hearing recommendation, and the participation is limited to Commissioners and staff. Staff is prepared to go issue-by-issue and answer any questions the Commission may have.

1           CHAIRMAN BAEZ: Ms. Joyce, I missed that last  
2 modification. Can you repeat that?

3           MS. JOYCE: Yes. It will be the last two sentences  
4 after the last comma, "The amount recoverable through  
5 surcharges would be zero, negative approximately 40 million to  
6 50 million."

7           COMMISSIONER BRADLEY: Excuse me. Is that the  
8 sentence that starts with for example?

9           MS. JOYCE: It is the last two sentences of that  
10 sentence.

11          CHAIRMAN BAEZ: Last two lines.

12          MS. JOYCE: Last two lines, I'm sorry. It starts  
13 with "the amount."

14          CHAIRMAN BAEZ: Thank you. Go ahead.

15          MS. JOYCE: This is a post-hearing recommendation.  
16 Participation is limited to Commissioners and staff. Staff is  
17 prepared to go issue-by-issue and answer any questions the  
18 Commission may have.

19          CHAIRMAN BAEZ: Are there any issues that staff is  
20 proposing to take out of order, or can we -- taking them in  
21 order all right?

22          MS. JOYCE: Yes.

23          CHAIRMAN BAEZ: Commissioners, issue-by-issue? What  
24 is your pleasure?

25          COMMISSIONER DEASON: Mr. Chairman, I suggest that we



1 just proceed issue-by-issue beginning with Issue 1 and work  
2 through. I don't think there is any need to take anything out  
3 of order.

4 CHAIRMAN BAEZ: Very well. Issue 1.

5 COMMISSIONER DEASON: Is staff going to introduce  
6 Issue 1? I mean, I'm not asking you to, I was just wondering  
7 if you were or not.

8 MR. KEATING: I wasn't planning on it, but I can  
9 address it briefly.

10 COMMISSIONER DEASON: We can go straight to  
11 questions, then. That's fine.

12 CHAIRMAN BAEZ: Commissioners, questions or a motion?

13 COMMISSIONER DEASON: Maybe I have, instead of a  
14 question, maybe more of a statement.

15 Mr. Chairman, Commissioners, this is a particularly  
16 difficult or thought-provoking issue for me because I was  
17 serving on the Commission at the time that this '93 docket was  
18 considered and at the time that this study was provided. And  
19 I'm a firm believer that when this Commission makes a decision  
20 that it should stand, and that we should abide by that until it  
21 is changed on a going-forward basis. And so it gave me great  
22 concern that it appeared there was a methodology that was  
23 proposed that was filed as a result of the '93 docket and that  
24 this Commission had approved that, that being the accounting  
25 for the storm reserve, the recovery of eligible costs, and how

1 that whole mechanism was going to take place.

2 But having reviewed that, to put it simply, I did not  
3 remember voting to approve that methodology as the only way of  
4 treating this. And so I took the liberty, Mr. Chairman, of  
5 going back and reviewing the transcript of the agenda  
6 conference, which led to the vote, which led to the order which  
7 everyone is referring to.

8 I just had a conversation with our General Counsel as  
9 to whether it would be permissible for me to refer to that  
10 transcript of that agenda conference. He gave me the  
11 affirmative that it would be okay. So I'm going to do that if  
12 that is permissible.

13 CHAIRMAN BAEZ: Well, if the General Counsel said it  
14 was. I just want to say that is the first time I have ever  
15 heard you freely admit that you were serving on a docket.  
16 Everybody has to remind you, but you never actually come out  
17 and --

18 COMMISSIONER DEASON: Well, when it is thrown in your  
19 face like this, you can't really ignore it.

20 CHAIRMAN BAEZ: They beat you down.

21 COMMISSIONER DEASON: Yes. Let me say that I think  
22 it is important for there to be what I refer to as regulatory  
23 certainty, that when we make a decision we abide by it. But  
24 I'm not so sure that we made a firm decision in that regard.  
25 And if you will bear with me, there are several, probably two

1 and a half pages of transcript that I need to recite. And if  
2 there is any question, this is Docket Number 930405-EI. This  
3 is a Special Commission Agenda Conference dated Tuesday, May  
4 25th, 1993. And on Page 20 of this transcript this is me  
5 speaking:

6 "I think it's important to see what the insurance  
7 situation was, but I don't think there is anything that says  
8 that we have to mimic that. One thing, the insurance is based  
9 upon replacement cost. I think that is a key question we are  
10 going to have to address, is whether the self-insurance is  
11 going to be based upon replacement cost or net book value of  
12 the assets which have to be replaced.

13 "Also we have some discussion at the hearing as to  
14 whether it is going to be all costs or whether it is just going  
15 to be incremental costs. I think that the testimony from the  
16 company indicated that it was their intent that it would be  
17 incremental costs. It would not -- it would not attempt to  
18 recover normal costs to the extent you have normal costs during  
19 a hurricane. But there are some level of normal costs. And if  
20 we are going away from insurance and to self-insurance, I think  
21 we are going to be able to participate and determine what we  
22 think are going to be the legitimate costs that are going to be  
23 covered under the self-insurance program. And it doesn't  
24 necessarily have to be the same as an insurance policy. It may  
25 very well end up being the same, it doesn't have to be the

1 same."

2 And this is Commissioner Clark speaking.

3 "I think to the extent that we may want to implement  
4 a recovery mechanism, I think we do want to make sort of a  
5 distinction between what is a normal cost that should be  
6 recovered in the same way other expenses are providing utility  
7 services in what is eligible for an extraordinary treatment."

8 And then this is me speaking.

9 "I think it is relevant, even if there is not a  
10 cost-recovery mechanism, because you would be allowing  
11 authorizations, you know, to have amounts taken away from the  
12 fund."

13 Commissioner Clark says, "Right."

14 And then I continue, "And you want to make sure that  
15 only prudent incremental costs are taken away from the fund  
16 because the ratepayers are the ones that are funding the fund."

17 Commissioner Clark agrees by saying, "Yes."

18 And then I say, "So it is critical either way. I  
19 agree, it is critical."

20 And, Commissioners, to put this in context, and as  
21 you probably recall from reviewing the '93 order and the  
22 discussions at the hearing, at that time we were in the  
23 situation post-Andrew, and we were dealing with the fact that  
24 continuation of insurance policies on storm, catastrophic  
25 storms was not a viable option, and we were looking for

1 alternatives. And to FPL's credit, they came forward with a  
2 plan and some proposals, and one was a cost-recovery mechanism.

3 The Commission was debating that. And there were  
4 issues as to whether we continue a process which mimics the  
5 insurance situation, or whether we go to some other formula.

6 As you know, the Commission decided not to approve  
7 the recovery mechanism, and we ordered a study to be filed. To  
8 some regret, I think that the Commission at that time, and  
9 perhaps I'm to some extent responsible, perhaps we were not as  
10 clear as we could have been in precisely describing the  
11 accounting mechanism that we wanted to go forward with.

12 I think that by -- I think the vote was to maintain  
13 our discretion to look at it on a case-by-case basis in the  
14 future as particular storms occur and the events unravel and we  
15 look at the level of the reserve and the impact on customers  
16 and what is the best to do. I think that was the vote, and I  
17 don't think we locked ourselves in.

18 To the extent that post the 1993 time period, that  
19 there were subsequent storms and there was an accounting  
20 mechanism that was followed, and FPL and perhaps other  
21 utilities relied upon that, and I don't blame them for doing  
22 that. I mean, they need certainty as well. Perhaps the  
23 Commission acquiesced to that, and perhaps it became, for lack  
24 of a better term, a general understanding of the procedure that  
25 would be followed, and it was not questioned by -- to my

1 knowledge it was not questioned by our staff, it was not  
2 questioned by any of the consumer advocates.

3 But at the same time, those were, while significant  
4 storms, they were not catastrophic storms and not to the extent  
5 of the storms that we experienced in 2004. And as a result of  
6 the 2004 storm season, we have had a very thorough review by  
7 our staff and all of the intervenors and the company as to what  
8 is the appropriate accounting mechanism.

9 I apologize for taking so long and in a round-about  
10 way of getting to the conclusion that while I think it would  
11 have been preferable to have had a very specific determination  
12 made in the '93/'94 time frame, I don't think we made that  
13 determination, I don't think the Commission locked itself in.  
14 I think the Commission voted to retain its discretion, and in  
15 that discussion period it was very evident to me that the  
16 treatment of total replacement costs versus incremental costs  
17 was an issue, and that there was a concern expressed by the  
18 Commission as to how we were going to treat that. And that  
19 incremental costs may be the best approach to take, but that we  
20 would review that on a case-by-case basis.

21 So what I'm saying is I agree with staff's position  
22 on Issue 1, that we have the discretion and the latitude, that  
23 we are not locked in. And while that gives me some pause and  
24 some concern because I'm a firm believer in providing  
25 regulatory certainty and having the rules of the game, so to

1 speak, out there and everybody understands it and follows it,  
2 the Commission just didn't do that in that vote.

3 And while I wish we had, maybe, taken the time and  
4 gone through that exercise so that we would not be having the  
5 debate now, for whatever reason I believe the Commission's vote  
6 was to retain the discretion and review that on a case-by-case  
7 basis. And so that is why we find ourselves here, and I don't  
8 think that we are locked into the methodology in this case that  
9 has been followed for storms between Andrew and 2004.

10 CHAIRMAN BAEZ: Thank you, Commissioner.

11 And that begs the question, is there any part of our  
12 decision today that actually -- I detect a level of lament in  
13 your statement, and perhaps my question would be does our  
14 decision today remedy that by saying this is the methodology  
15 that we are going to be using, or is it still, or does it still  
16 continue with the flexibility that I think forms the basis of  
17 the recommendation? I don't know if it is an appropriate  
18 question to be asking on this issue necessarily, but --

19 COMMISSIONER DEASON: No, I think it is an  
20 appropriate question, and I will be glad to share my views on  
21 that. I think until this Commission sets out a policy,  
22 preferably in a rulemaking as to what the specific accounting  
23 treatment is going to be, we retain our case-by-case  
24 flexibility. And that whatever decisions we make on the  
25 subsequent issues that follow Issue 1, that that is

1 case-specific, based upon the facts of this record, and that we  
2 are not in the process of trying to establish an in-concrete  
3 procedure, accounting mechanisms, or whatever you want to call  
4 it that are going to be adhered to in the future. I think that  
5 really needs to be done in a rulemaking docket.

6 And I think at the time of the '93 docket, I think  
7 that was actually contemplated that the Commission would  
8 ultimately do that. For whatever reason it never happened.  
9 And, maybe I'm partly to blame for that. But it never  
10 happened. And I think that we -- to answer your question, the  
11 vote is case specific, facts here, we are not establishing an  
12 in-concrete mechanism to be adhered to on a going-forward  
13 basis, in my opinion.

14 CHAIRMAN BAEZ: Commissioners, other questions or a  
15 motion?

16 COMMISSIONER DEASON: I move staff on Issue 1.

17 COMMISSIONER BRADLEY: Second.

18 CHAIRMAN BAEZ: Moved and seconded. All those in  
19 favor say aye.

20 (Unanimous affirmative vote.)

21 CHAIRMAN BAEZ: Issue 2, Commissioners.

22 COMMISSIONER DEASON: Issue 2 is really kind of an  
23 adjunct to Issue 1. I would move staff on Issue 2, as well.

24 COMMISSIONER BRADLEY: Second.

25 CHAIRMAN BAEZ: Moved and seconded. All those in



1 favor say aye.

2 (Unanimous affirmative vote.)

3 CHAIRMAN BAEZ: Issue 3.

4 COMMISSIONER DEASON: Move staff on Issue 3.

5 COMMISSIONER BRADLEY: Second.

6 CHAIRMAN BAEZ: Moved and seconded. All those in  
7 favor say aye.

8 (Unanimous affirmative vote.)

9 CHAIRMAN BAEZ: Issue 4.

10 COMMISSIONER DEASON: Move staff on Issue 4.

11 COMMISSIONER BRADLEY: Second.

12 CHAIRMAN BAEZ: Moved and seconded. All those in  
13 favor say aye.

14 (Unanimous affirmative vote.)

15 CHAIRMAN BAEZ: Issue 5.

16 COMMISSIONER DEASON: Mr. Chairman, give me a second.  
17 I may have a question on Issue 5, or it may have been resolved  
18 by now, if you will just give me a moment.

19 CHAIRMAN BAEZ: Okay.

20 COMMISSIONER DEASON: Yes, I have a question, and it  
21 pertains to a statement on Page 20 of the recommendation. The  
22 first full paragraph of Page 20 there, at the last half of that  
23 paragraph, it refers to an assertion made by Witness Majoros  
24 concerning the adjustment and his concern that approximately 6  
25 percent of regular payroll and approximately 22 percent of --

1 I'm sorry, 6 percent that is charged to adjustment clauses and  
2 about 22 percent of these amounts are charged to capital. And  
3 obviously staff has considered these assertions and, I think,  
4 rejected them. I need some further clarification as to, first  
5 of all, further understanding as to exactly what Mr. Majoros'  
6 concern is and how staff resolved that concern in making its  
7 recommendation. So whoever is the appropriate person.

8 MS. JOYCE: Yes, that was Mr. Majoros' concern.

9 COMMISSIONER DEASON: Actually let me clarify for a  
10 moment. This is FPL's assertions concerning Mr. Majoros'  
11 assertion, so it is one of those situations where he said/she  
12 said, or whatever. And I think it was Mr. Majoros'  
13 adjustments, and it was FPL's assertion they were overstated  
14 because part of these payroll costs get allocated to capital  
15 and part get allocated to adjustment clauses.

16 And I think staff's recommendation is to adopt the  
17 entire adjustment as proposed by Mr. Majoros. And I think I'm  
18 following it correctly at this point. So if you can just give  
19 me some further explanation as to why that is staff's position,  
20 given these concerns of the allocations.

21 MS. JOYCE: Well, really the recommendation was based  
22 on that is the amount that was over, or that was the  
23 incremental to what they would already have been spending.

24 COMMISSIONER DEASON: Let me ask this question: Did  
25 FPL book this entire amount as a debit to the storm reserve,

1 and staff's recommendation is simply to reverse out the  
2 incremental amount?

3 MS. JOYCE: Right.

4 COMMISSIONER DEASON: Okay. So staff has made a  
5 determination as to what the appropriate incremental amount is,  
6 and is only allowing the incremental amount to be debited to  
7 the storm reserve.

8 MS. JOYCE: Correct.

9 COMMISSIONER DEASON: And then at the bottom of Page  
10 20 there is a statement concerning Mr. Majoros' testimony, and  
11 this is middle ways of the last paragraph. It says, "Witness  
12 Majoros further testified that these arguments are without  
13 merit because FPL can still charge the salaries attributable to  
14 the clause through the clause proceeding."

15 Does staff agree with that, that these costs are  
16 legitimate costs. And to the extent that they are attributable  
17 to a clause, just because we are disallowing it for  
18 consideration in the storm recovery, they are still eligible  
19 for consideration in the other recovery mechanisms, is that  
20 true?

21 MS. JOYCE: Yes.

22 COMMISSIONER DEASON: Mr. Chairman, I can move staff  
23 on Issue 5.

24 CHAIRMAN BAEZ: Commissioners, further questions or a  
25 second.

1 COMMISSIONER BRADLEY: Second.

2 CHAIRMAN BAEZ: Moved and seconded. All those in  
3 favor say aye.

4 (Unanimous affirmative vote.)

5 CHAIRMAN BAEZ: Issue 6.

6 COMMISSIONER DEASON: Move staff.

7 COMMISSIONER BRADLEY: Second.

8 CHAIRMAN BAEZ: All those in favor say aye.

9 (Unanimous affirmative vote.)

10 CHAIRMAN BAEZ: Show Issue 6 approved.

11 Issue 7.

12 COMMISSIONER DEASON: I move staff on Issue 7.

13 COMMISSIONER BRADLEY: Second.

14 CHAIRMAN BAEZ: Moved and seconded. All those in  
15 favor say aye.

16 (Unanimous affirmative vote.)

17 CHAIRMAN BAEZ: Issue 8.

18 COMMISSIONER DEASON: Move staff on Issue 8.

19 COMMISSIONER BRADLEY: Second.

20 CHAIRMAN BAEZ: Moved and seconded. All those in  
21 favor say aye.

22 (Unanimous affirmative vote.)

23 CHAIRMAN BAEZ: Issue 9.

24 COMMISSIONER DEASON: Mr. Chairman, I may have a  
25 question on Issue 9.

1 CHAIRMAN BAEZ: You can take a moment.

2 COMMISSIONER DEASON: Mr. Chairman, I don't have a  
3 question. I can move staff on Issue 9.

4 COMMISSIONER BRADLEY: Second.

5 CHAIRMAN BAEZ: Moved and seconded. All those in  
6 favor say aye.

7 (Unanimous affirmative vote.)

8 CHAIRMAN BAEZ: Issue 10.

9 COMMISSIONER DEASON: Move staff on Issue 10.

10 COMMISSIONER BRADLEY: Second.

11 CHAIRMAN BAEZ: All those in favor say aye.

12 (Unanimous affirmative vote.)

13 CHAIRMAN BAEZ: Issue 11.

14 COMMISSIONER DEASON: Move staff on Issue 11.

15 COMMISSIONER BRADLEY: Second.

16 CHAIRMAN BAEZ: Moved and seconded. All those in  
17 favor say aye.

18 (Unanimous affirmative vote.)

19 CHAIRMAN BAEZ: Issue 12.

20 COMMISSIONER DEASON: Mr. Chairman, I may have  
21 misspoke earlier. I think that maybe Issue 12 is kind of  
22 related to Issue 15, so maybe it would be better to take Issue  
23 15 before we do 12.

24 CHAIRMAN BAEZ: We can take that one out of order, I  
25 agree. Commissioners, without objection we'll skip ahead to

1 Issue 15.

2 COMMISSIONER DEASON: Is it your desire to go ahead  
3 to 15 now, or proceed to 13? It doesn't matter.

4 CHAIRMAN BAEZ: Well, why don't we -- unless staff  
5 can point out any other issues that may be impacted by 15, we  
6 can take that one up or --

7 MS. ROMIG: I believe there are other issues that are  
8 impacted by Issue 15.

9 CHAIRMAN BAEZ: I'm sorry, Ms. Romig?

10 MS. ROMIG: I believe there are other issues.

11 CHAIRMAN BAEZ: There are?

12 MS. ROMIG: Yes.

13 CHAIRMAN BAEZ: Then, let's -- Commissioners, I  
14 apologize, let's pass over Issue 12 for the moment and take  
15 Issue 13.

16 COMMISSIONER BRADLEY: 13?

17 CHAIRMAN BAEZ: Yes.

18 COMMISSIONER DEASON: Mr. Chairman, Issue 13 is a  
19 fairly involved issue concerning the appropriate accounting  
20 treatment and, the flow of the accounts, and what debits and  
21 credits were made, and what reversals are necessary to get the  
22 reserve stated correctly.

23 CHAIRMAN BAEZ: Do you want to save that one, too,  
24 Commissioner?

25 COMMISSIONER DEASON: I'm sorry.

1 CHAIRMAN BAEZ: Do you want to save that one, too?

2 COMMISSIONER DEASON: We can go ahead and take it up.  
3 I probably do have some questions for staff. So if now is the  
4 appropriate time, I'm willing to try to engage them.

5 CHAIRMAN BAEZ: Well, my concern is only whether  
6 there are fallout issues from 13, which I don't believe any  
7 have been identified.

8 COMMISSIONER DEASON: I think 13 is pretty much a  
9 stand-alone issue.

10 CHAIRMAN BAEZ: If you want to save your discussion  
11 for last, then we can take some of the less controversial items  
12 or less complex items.

13 COMMISSIONER DEASON: That's fine.

14 CHAIRMAN BAEZ: Commissioners, without objection,  
15 we'll skip over 13 and move to Issue 14.

16 COMMISSIONER DEASON: I may have a question on 14,  
17 Mr. Chairman, or I may not.

18 I do have a question on Item 14, Mr. Chairman. And  
19 I'm looking at the bottom of Page 39 and the top of Page 40.  
20 And apparently there is a question of \$1.5 million which, as I  
21 understand it, represents an amount between the budgeted and  
22 actual. And to staff's credit, the comparison of budgeted to  
23 actual is a mechanism that is in the record and is utilized by  
24 staff in trying to determine what is the incremental impacts of  
25 the storm.

1           And it seems to me that perhaps, for whatever reason,  
2 staff may be deviating from that, to some extent, in this  
3 issue, and that we are not considering the difference between  
4 budgeted and actual. And if I'm mischaracterizing or  
5 misunderstanding staff's recommendation, I would certainly  
6 request that they clarify that for me. But that is the  
7 question. What is the significance of the 1.5 million? Not in  
8 terms of the dollar impact. I mean, 1.5 million is 1.5  
9 million, but I'm trying to understand how this issue arose and  
10 how staff came to the conclusion that the 1.5 million  
11 difference between actual and budgeted is not something that we  
12 need to give consideration to.

13           MS. JOYCE: Well, the 1.5 million that OPC brought up  
14 was the difference between the budget and what they actually  
15 incurred. From what staff saw, I saw that what they incurred  
16 was less than what they budgeted. And then at the hearing, OPC  
17 Witness Majoros acknowledged that he didn't have any evidence  
18 that FPL didn't book the costs appropriate to what OPC -- their  
19 approach. So that is why it pretty much, they said that it  
20 wasn't an issue.

21           COMMISSIONER DEASON: Well, as I understand Public  
22 Counsel's position, that is that, you know, only the  
23 incremental materials and supplies should be charged to the  
24 reserve.

25           MS. JOYCE: Right.



1           COMMISSIONER DEASON:  And that they did a comparison  
2 between budgeted and actual costs, and they came up with a  
3 difference of 1.5 million.  Well, let me ask this:  First of  
4 all, am I characterizing the 1.5 million correctly, is that  
5 your understanding of what it represents?  And Public Counsel  
6 is advocating that there be an additional adjustment of 1.5  
7 million, is that also correct?

8           MS. JOYCE:  Yes.

9           COMMISSIONER DEASON:  And staff has rejected Public  
10 Counsel's position of an additional 1.5 million adjustment.  
11 And the reason you are rejecting that position is what?

12           MS. JOYCE:  Mainly because OPC agreed that FPL didn't  
13 have any evidence -- or, I'm sorry, OPC agreed that FPL didn't  
14 charge any costs to the storm reserve that was inconsistent  
15 with their approach.  So that was mainly the reason.

16           MR. WILLIS:  Commissioner Deason, if I could add  
17 something here.  The issue really, I believe, goes to whether  
18 or not FPL actually made charges to the storm reserve to  
19 replenish the material and supplies, and that is where the  
20 disagreement came.  And Witness Majoros --

21           COMMISSIONER DEASON:  So there is a disagreement as  
22 to whether FPL actually made the debit to the reserve, the  
23 charge to the reserve?

24           MR. WILLIS:  To replenish the material and supplies,  
25 yes.

1           COMMISSIONER DEASON: And there is not evidence that  
2 they did?

3           MR. WILLIS: That's correct. Witness Majoros  
4 admitted at the hearing that he had no evidence that FPL did do  
5 that. And I believe FPL did put on sufficient evidence to say  
6 that they have not.

7           COMMISSIONER DEASON: And staff's review indicates  
8 that there is no evidence that there was an adjustment, a debit  
9 made to the storm reserve for materials and supplies in this  
10 amount?

11          MR. WILLIS: From the record, that's correct.

12          COMMISSIONER DEASON: So it's not that you are  
13 abandoning your mechanism of comparing actual and budgeted, it  
14 is just that there is a question on this specific issue as to  
15 whether there was ever a debit to the storm reserve to begin  
16 with.

17          MR. WILLIS: That's correct.

18          COMMISSIONER DEASON: Thank you for that  
19 clarification.

20          Mr. Chairman, I can move staff on Issue 14.

21          COMMISSIONER BRADLEY: Second.

22          CHAIRMAN BAEZ: Moved and seconded. All those in  
23 favor say aye.

24          (Unanimous affirmative vote.)

25          CHAIRMAN BAEZ: Issue 15.

1 MR. DEVLIN: Mr. Chairman, Issue 15 has five  
2 subparts. I don't know what your pleasure is, but the first  
3 subpart regards lost revenue. And also the staff has two  
4 recommendations on that particular issue. And then the other  
5 four we have just one recommendation on. Page 41, A through E.  
6 So whatever your pleasure is. We can talk about the lost  
7 revenue issue first, and then the others after, or --

8 CHAIRMAN BAEZ: Let's take them in order.

9 MR. DEVLIN: Primary staff recommends that lost  
10 revenues not be recognized as a cost, but, rather, as a reason  
11 for recognizing normal O&M costs in the storm surcharge to the  
12 extent that base rates didn't recover adequate revenue to cover  
13 those O&M costs because of the outages. So that is the theory  
14 behind the primary staff recommendation, is to allow normal  
15 costs to be recovered in the storm surcharge because there  
16 weren't adequate revenues to cover those costs during that  
17 restoration period.

18 Mr. Willis has a contrary recommendation on lost  
19 revenue.

20 CHAIRMAN BAEZ: Mr. Willis.

21 MR. WILLIS: Commissioners, Marshall Willis with the  
22 Division of Economic Regulation. Alternate staff basically is  
23 taking the position that lost revenues are not a cost of  
24 restoring service, and that base rates were adequate to recover  
25 those costs and, therefore, lost revenues should not be

1 included.

2 CHAIRMAN BAEZ: Commissioners, questions? And I will  
3 remind you that we are discussing what is Subpart A of Issue 15  
4 at this point, which is the subject of the primary and  
5 alternate staff recommendations.

6 COMMISSIONER DEASON: Mr. Chairman, I've been  
7 monopolizing the discussion. I would like to hear from someone  
8 else for a change. I do have some thoughts at some point.

9 CHAIRMAN BAEZ: Well, I mainly had questions of  
10 staff, and I think it was clarified to me enough. But for my  
11 purposes, what I was mainly concerned, Commissioners, is that,  
12 you know, this is not the first storm-recovery docket and  
13 certainly recommendation that we have considered. And my  
14 concerns arose from whatever possible inconsistencies we may  
15 have.

16 Now, inconsistencies have either good reason or no  
17 reason. And I guess the thrust of my concerns and questions of  
18 staff would have, I guess, been directed at trying to find some  
19 good reason for any inconsistency. I believe that their  
20 explanation to me was sufficient to give me comfort. But to  
21 the extent that we can, at least, clarify where we have -- and  
22 I choose the word, I use them cautiously, because I don't want  
23 to give them too much meaning, but where we have stepped away  
24 from what we may have decided prior, I guess it was a couple of  
25 weeks ago now.

1           MR. DEVLIN: I will be glad to take a shot at it, Mr.  
2 Chairman, and Mr. Willis can chime in. But we have had three  
3 other storm cases. The one that we just had a couple of weeks  
4 ago was Progress Energy, and Progress Energy never really  
5 presented the lost revenue issue as an issue, at least a  
6 quantifiable issue. I think they mentioned it in some  
7 cross-examination at the hearing, but it was never presented as  
8 something they were asking for.

9           The other two cases were with respect to Gulf Power  
10 and TECO, and both of those were settlement cases. I mean,  
11 cases that resulted in settlements where there was give and  
12 take. And it is true in both of those cases lost revenue was  
13 not recognized as an item for recovery.

14           CHAIRMAN BAEZ: And you made a distinction, or you  
15 made a specific distinction as to what the rationale for this  
16 is. And I want to be clear that it isn't so much that you are  
17 recognizing, that staff is recommending any recognition for  
18 lost revenues which would be necessarily inconsistent or  
19 clearly inconsistent with our decisions, but rather that the  
20 fact that there were lost revenues forced recognition or  
21 require recognition of some lost recovery for costs. And to me  
22 those are two different things. And that's the way that you  
23 seem to have presented it, is that correct?

24           MR. DEVLIN: That is a correct characterization of  
25 the primary staff recommendation. We agree that lost revenue

1 is not a cost, but in our mind it is a reason to allow normal  
2 O&M costs to be recovered, because there wasn't revenues during  
3 that period of time to recover those normal O&M costs. And,  
4 therefore, our view is that those normal O&M costs should be  
5 eligible for recovery in the storm surcharge.

6 So it is more of a cost issue than a lost revenue  
7 issue. But, again, lost revenues is the reason that we would  
8 recommend allowing those costs be recovered in this case.

9 CHAIRMAN BAEZ: Very well. Commissioners, I don't  
10 have any other questions. If you have comments, or a motion,  
11 or other questions.

12 COMMISSIONER DEASON: Well, I think it is good that  
13 we clarified. I mean, staff's recommendation is quite clear  
14 when you look at it, that the primary recommendation is not  
15 necessarily to allow the recovery of lost revenue. The  
16 recommendation is to allow the recovery of the so-called normal  
17 costs of recovery, or the costs of recovery that were  
18 attributable to normal operations that would have otherwise  
19 been disallowed except for the fact that there were lost  
20 revenues. And the argument being that those costs, perhaps,  
21 were not recovered in rates because there was a certain amount  
22 of lost revenue. I hope I'm characterizing that correctly.

23 MR. DEVLIN: That's correct.

24 COMMISSIONER DEASON: And I understand that  
25 rationale. But, Mr. Chairman, it gives me some concern, a

1 moment to consider that. And, you know, I understand the  
2 rationale. And there is a very reasoned, and there is a sound  
3 basis for staff's primary recommendation, I'm not saying that  
4 there is something fundamentally wrong with it. I think a lot  
5 of it has to do with what one's regulatory philosophy is, and  
6 what one views as the goal of the storm-recovery mechanism that  
7 we have in place.

8           And the question is this: Is the goal to put Florida  
9 Power and Light -- or, really, any utility, but we are dealing  
10 with Florida Power and Light here, so let's be fact specific.  
11 Is the goal to put Florida Power and Light back into the exact  
12 same position, or as best we can, that they found themselves  
13 prior to the hurricane, post-hurricane, so that there are no  
14 adverse impacts. It is kind of a make-whole standard, for lack  
15 of a better word. We have used that term in the past in  
16 interim rate proceedings and things of that sort. So if it is  
17 all right, I will use that terminology. It is to make them  
18 whole, put them back where they were post-storm as they were  
19 pre-storm.

20           Mr. Devlin, do you agree with that characterization?

21           MR. DEVLIN: I do. Yes, Commissioner.

22           COMMISSIONER DEASON: So is that the goal? And  
23 inherent in that goal would be, I think, the principle that the  
24 ratepayers bear the risks of that. That we are shifting the  
25 risks away from the utility, in this case Florida Power and

1 Light, and putting it on the ratepayer. And there is a sound  
2 basis for that, too. I mean, the customers are the ultimate  
3 beneficiaries, the customers -- and we have substantial  
4 testimony in the record that customers want quality, reliable  
5 service. They want restoration to occur as quickly as possible  
6 to restore their lives, to get the economy going again, that  
7 the economic hurt to customers of a delayed recovery are much  
8 higher than the costs we are talking about in allowing  
9 recovery. So there is a sound basis for that. And that is why  
10 I'm torn on this issue, so I'm kind of speaking to kind of sort  
11 through it myself.

12 But then the other, perhaps, goal is not so much of a  
13 make-whole standard, but one of maintaining the operational and  
14 financial integrity of the company. Now, inherent in that goal  
15 would be maybe there is some risk that has to be absorbed by  
16 the utility. Maybe we can still maintain the operational and  
17 financial viability and strength of this company so that they  
18 can respond to storms, know that they have the resources, know  
19 that they are going to be treated fairly, that customer service  
20 is restored as quickly and safely as possible. That is still a  
21 very high standard, but it is probably not quite to the point  
22 of a make-whole standard.

23 And I think that gets to some of the analysis that  
24 Mr. Willis has in his recommendation, that if we are not really  
25 talking about lost revenue, per se, but we are using lost



1 revenue as a standard to determine if we should allow recovery  
2 of costs that would otherwise be disallowed because the  
3 assumption was that they are recovered through base rates.

4 Well, let's look at that. Let's look at that  
5 assumption that Mr. Devlin makes in saying that, well, since  
6 there is lost revenue, those costs weren't recovered. I think  
7 Mr. Willis doesn't necessarily agree with that. And he says,  
8 well, let's look at what this company is earning.

9 That is a slippery slope, too. I'm very hesitant to  
10 get into an earnings analysis because, first of all, this  
11 company is subject to a stipulation where there is -- which I  
12 agree is a great stipulation and it is one that has served  
13 customers extremely well, but is one that kind of divorces  
14 itself from an earnings standard, and it puts it into a  
15 revenue-sharing mechanism.

16 But Mr. Willis looks at that, and he has made an  
17 analysis of what the impact on the company's earned ROE would  
18 be with not making the adjustment that is proposed by Mr.  
19 Devlin. And there is some impact there. But, in my opinion,  
20 the impact is not such that it would put the company in a  
21 position where it would erode their financial viability and  
22 their operational viability to the extent that we are putting  
23 in jeopardy the ability of this company to continue to provide  
24 quality service to customers which they deserve and demand, and  
25 to be able to continue to respond to storms as they may occur.

1           And that is where I kind of come down on this issue,  
2 is what is the goal we are trying to accomplish here? And I  
3 would like to hear from other Commissioners. But, you know,  
4 right now I would have to say I think the goal is one of  
5 protection of the customer. And the best way we can protect  
6 the customer is to make sure that the company is financially  
7 and operationally sound so that it can provide the services.  
8 I'm not so sure that we have to go all the way to a make-whole  
9 standard to make sure the customers receive the protections and  
10 benefits that they deserve. And that is where I am, Mr.  
11 Chairman. I would like some feedback from others.

12           CHAIRMAN BAEZ: Commissioners, comments or questions?

13           COMMISSIONER BRADLEY: I think you asked a good  
14 question. And I -- well, just feedback, I guess my concern  
15 would be this: It's pretty evident that we are in a weather  
16 cycle that is going to be upon us for awhile, in my opinion. I  
17 mean, as I always say, no one has a crystal ball, but  
18 projecting out in the future, just the fact that this probably  
19 isn't the last time that we are going to have to deal with this  
20 issue. I think that probably what we are concerned about is  
21 being responsible in our decision-making to the extent that we  
22 keep the company in a position to recover fairly what should be  
23 recovered, but also to be in a position to respond in the  
24 future.

25           I don't know if that answers your question or not as

1 it relates to making them whole. But it would seem to me  
2 that -- well, you talked about the weather event earlier in  
3 another issue that occurred a few years ago. Well, I think  
4 things have changed radically since that weather event  
5 occurred. And to not be redundant, but to sum up whatever my  
6 thinking is, you know, we need to put the company in a position  
7 financially to recover a fair amount but also to be positioned  
8 to deal with future weather events. And, I just don't see how  
9 we can deliberate without giving thought to what might or what  
10 is going to occur in the future, just based on what we have  
11 seen up to this point right now during the current hurricane  
12 season.

13 We heard from the customers that they want  
14 reliable -- they want a reliable source of energy. They also  
15 want to have the company financially positioned so that that  
16 reliable service can be restored as quickly as possible for  
17 many different reasons. Not only convenience, but in some  
18 instances for life saving purposes, or life maintenance  
19 purposes. So, I think that what we decide today should be  
20 along those lines. Making the company whole, but making sure  
21 that the wholeness is fair to the ratepayers. But also  
22 positioning the company to be strong so that it can respond  
23 adequately in the future. I don't know if that answers your  
24 question, but that's pretty much what my thinking is.

25 COMMISSIONER DEASON: Commissioner, I agree with

1 everything you have said, and I guess it is really a judgment  
2 call as to -- I think we can all agree that we want the  
3 customers to be able to continue to rely on this utility as  
4 they have in the past, and this utility responded remarkably  
5 well under very severe circumstances. And, you know, they are  
6 to be congratulated for that. And we want them to continue to  
7 have the financial strength, the wherewithal, and the  
8 regulatory assurances that in future events they are going to  
9 continue to have the resources necessary.

10 I guess the question put more succinctly is does that  
11 mean that we isolate them totally from all risks? And we have  
12 a standard of maintaining financial integrity so they can  
13 continue to do their job, and there is some subjectivity to  
14 what that is. Or do we go to the standard of a make whole? We  
15 would put the company back in that position. And certainly if  
16 that is the standard we have, I think there is no question that  
17 the company experiences no adverse impact -- maybe that is an  
18 overstatement. I wouldn't say no adverse impact. But we are  
19 minimizing, to the extent that we can from a regulatory  
20 perspective, any adverse financial consequences of the storms.  
21 And I think that is more in line with what Mr. Devlin is  
22 recommending.

23 And I think Mr. Willis is indicating that if the  
24 issue is really recovery of costs, he is not so sure that these  
25 costs that are soon to be recovered in existing base rates have

1 not been recovered. Just because there is lost revenue, you  
2 can't necessarily jump to the conclusion because there was some  
3 lost revenue that these amount of costs were unrecovered.

4 I guess while I've got the microphone, let me also  
5 say that I do have some pause and some concern about the  
6 distinction between lost revenue and the costs. Costs are  
7 something that, I mean, from an accounting auditing standpoint,  
8 the costs are there. I mean, you can follow the trail. You  
9 can see where the invoice was submitted, you can see where the  
10 payment was made. The costs are there.

11 When you start trying to estimate lost revenue as a  
12 standard to apply to recovery of other costs, there is some  
13 subjectivity there. How do you quantify lost revenue? It  
14 doesn't mean they are not real. It is a very real concept and  
15 it is a consequence of a storm. And I don't try to say that it  
16 is some phantom amount out there. It is not, it is real. But  
17 how do you quantify it? There is some subjectivity as to how  
18 you quantify what is the lost revenue.

19 And we always deal with some weather-related events  
20 throughout a year. You know, I don't know what 2004 was prior  
21 to the storms. Was it an unusually warm year where people were  
22 using more air conditioning, and that there was more usage  
23 above what was projected such that the lost revenue that  
24 occurred as a result of the storms is negated out. And one  
25 could argue that, well, there might have been lost revenue from

1 the storm, but it was a mighty good year for other reasons  
2 revenue-wise and the company hasn't suffered.

3 I don't know that, and I don't even know if that is  
4 in the record. But these are the kind of questions that I  
5 would want more information about before I would automatically  
6 assume that -- agree with the calculation of lost revenue and  
7 assume because there was some lost revenue there were some  
8 costs that were not recovered.

9 And then there is even more arguments, and I don't  
10 know if we want to peel this onion down that many layers, but  
11 there is arguments that, well, there are some costs savings,  
12 because that generation actually didn't take place. Well, we  
13 know there were fuel savings, and that will be taken care of in  
14 the clause. But maybe there were -- and I don't know the  
15 answers to these questions, but these are questions that need  
16 to be asked.

17 Were there savings at the generating plants because  
18 maybe generating plants that didn't sustain damage and could  
19 otherwise generate, but there weren't customers out there that  
20 needed that, were there some savings associated with the  
21 non-generation of that electricity that should be an offset to  
22 the lost revenue? I don't know the answer to that question.  
23 And it's probably beyond the scope of this docket, I suppose.  
24 I don't know that we have that evidence in the record. But I  
25 guess I'm raising these questions to show the level of concern

1 I have with this concept of lost revenue.

2 Without a doubt, if the inclusion or exclusion of  
3 lost revenue, or that used as a standard to determine recovery  
4 of costs, if I felt that that would make a difference as to the  
5 financial viability of this company to continue to provide the  
6 extraordinary level of service to its customers and to do that  
7 even under new storms that arise, I would say by all means we  
8 need to make the adjustment and make sure that we sustain that.

9 I'm not so sure that this adjustment rises to that  
10 level, and that it should be applied such that we are going to  
11 the make-whole standard as opposed to the financial-integrity  
12 standard. Those are my concerns.

13 COMMISSIONER BRADLEY: Well, you're correct, we  
14 probably could schedule and have another docket that deals with  
15 this concept altogether. But the issue of prudence, and I was  
16 thinking as you were talking, and I was kind of going back to  
17 where we are right now as a result of this company not, and  
18 these companies not having available to them insurance to cover  
19 these events, which goes into the whole issue of  
20 self-insurance.

21 I guess what is before us is, philosophically, what  
22 would be recoverable under the insurance scenario, and what  
23 should, as a result, be recoverable under the concept of  
24 self-insurance. I think that there are some instances where  
25 insurance companies will replace your capital loss as well as,

1 in some instances, lost income. And there might be some  
2 instances where that is not the case. But as we apply the  
3 concept of self-insurance, the question is do we look at  
4 self-insurance as being purely an insurance model that's there  
5 and being dealt with by the company, or do we deviate -- what  
6 is the word I'm looking for, do we deviate conceptually from  
7 the whole concept of insurance and what an insurance company  
8 would deal with with this particular issue? I can't answer  
9 that question.

10 COMMISSIONER DEASON: I think that you raise a good  
11 issue. And, in fact, back when insurance was available at an  
12 economic rate, there actually may have been coverage for lost  
13 revenue. I don't recall. I think that there may have been.  
14 Maybe Mr. Devlin recalls. I don't recall. I don't know if  
15 FPL's coverage prior to Andrew actually recovered loss revenue  
16 or not.

17 MR. DEVLIN: This would be only a guess on my part,  
18 that it would not, but it covered replacement costs.

19 COMMISSIONER DEASON: It did recover replacement  
20 costs, I remember that. In fact --

21 MR. DEVLIN: Mr. Slemkewicz has been here as long as  
22 I have, he might recall.

23 MR. SLEMKEWICZ: I don't believe they got lost  
24 revenue in their insurance.

25 COMMISSIONER DEASON: But they got replacement costs.



1 MR. SLEMKEWICZ: But they got replacement costs.

2 COMMISSIONER DEASON: Not the net book value of the  
3 assets that were destroyed, it was replacement cost.

4 MR. SLEMKEWICZ: Right. To make it analogous, they  
5 would have collected the whole \$890 million.

6 COMMISSIONER DEASON: And the insurance policy, I  
7 know, didn't make a distinction between incremental cost and  
8 that sort of thing.

9 MR. SLEMKEWICZ: Right, there was no distinction.

10 COMMISSIONER BRADLEY: Let me see if I understood  
11 what you just said. You said they would have recovered the  
12 full amount?

13 MR. SLEMKEWICZ: That's correct.

14 COMMISSIONER BRADLEY: That makes it even more  
15 complicated. Well, what we discussed earlier is the fact that  
16 we, as a body, have a responsibility to make these tough  
17 decisions and to make the adjustments that are necessary in  
18 order to be fair with everyone who has a vested interest in  
19 what we are dealing with here, the ratepayers as well as the  
20 company and the investors.

21 COMMISSIONER DEASON: Let me make one thing clear. I  
22 think I may have said it. If I haven't, I need to reiterate  
23 it. I think there is merit in both arguments. I certainly  
24 understand Mr. Devlin's position and argument, and I think  
25 there is merit to that. I understand Mr. Willis' argument, I

1 think there is merit to that. I don't think this is a, you  
2 know, right or wrong issue that, you know, if you vote for one  
3 you are saying the other is wrong. I don't think it is that.  
4 I think it is a question of what is the goal we are trying to  
5 achieve here, and what are we comfortable --

6 COMMISSIONER BRADLEY: Well, I think the goal is to  
7 make everyone whole. And when I say everyone, to have an  
8 outcome that ensures that the customers themselves have what  
9 they need to have, also to have an outcome that ensures the  
10 company's position to be able to produce what the customers and  
11 the ratepayers need to have. How do we get there? Maybe we  
12 need to consider a compromise between what staff is  
13 recommending and what the alternative recommendation is. That  
14 is the only way I know, sometimes, to get out of these types of  
15 situations. But I don't know what the desire might be in  
16 relation to the other Commissioners.

17 COMMISSIONER DEASON: Well, if I can restate the  
18 issue, I think the issue is this. Do we deviate from the  
19 incremental cost standard to recognize the impacts of lost  
20 revenue? On all the other issues here, I think we have been  
21 fairly consistent that the philosophy is that we want to  
22 make -- we want Florida Power and Light to be able to charge to  
23 the reserve all of their prudently incurred, and I don't think  
24 there has been an issue as to whether anything was imprudently  
25 incurred, but to allow all of the prudently incurred

1 incremental costs associated with the storm season, allow that  
2 to be charged to the reserve, which makes it eligible for  
3 recovery either in terms of a surcharge or else recovery in  
4 terms of a higher accrual in a future rate proceeding, which is  
5 right around the corner, by the way.

6 That is the issue. And I'm not so sure we need to  
7 deviate from that incremental standard to recognize the impact  
8 of the lost revenue and still maintain the financial integrity  
9 of the company.

10 But let me also say this: If you want to be  
11 absolutely certain that you are not doing any harm to the  
12 company's ability to adequately respond to future storms, if  
13 you want that 100 percent certainty that you are doing no harm  
14 to that ability of the company, I think you need to vote for  
15 Mr. Devlin's position, and I would be the first to admit that.  
16 And so it is really where are you comfortable.

17 COMMISSIONER BRADLEY: I'm comfortable with or my  
18 position would be that the company needs to be positioned  
19 to provide reliable service and to be financially able to, in  
20 the future, respond very quickly to what is apparent to me that  
21 they are going to be dealing with.

22 You know, we heard a lot of testimony. And, you  
23 know, I think about what the intervenors have said, but, you  
24 know, the customers -- I don't know what the tally would be,  
25 but they said that they are interested in having reliable

1 service. And if there is a hurricane, they want that  
2 restoration to occur as quickly as possible.

3 COMMISSIONER DEASON: I agree with you, Commissioner,  
4 and I heard that message loud and clear. And I agree with you  
5 that it is -- I have no disagreement with that.

6 COMMISSIONER BRADLEY: Now, we have two concepts  
7 here. Well, Mr. Chairman, what do you --

8 CHAIRMAN BAEZ: Oh, hang on. The line is long and  
9 distinguished, and Commissioner Edgar has been waiting at the  
10 head of it.

11 COMMISSIONER EDGAR: I actually have been reaching a  
12 number of times to jump in, but I was enjoying the back and  
13 forth of the discussion. I would like to start off by saying  
14 that in this instance I appreciate very much having the two  
15 alternatives laid out before us. So I thank staff for that.  
16 And I find that they were both thoughtful and clear, and that  
17 there was good rationale for each of them. And the discussion  
18 in the written item was helpful, and I appreciated having that.  
19 And, Commissioner Deason, when we first started on this issue,  
20 I thought your elaboration on those two points was also very  
21 thoughtful and very helpful, so I thank you for that, as well.

22 We had some discussion on the first issue about  
23 regulatory certainty, and that being in part of our role as  
24 regulators and also, I think, in our opinion, in the best  
25 interest of a strong, viable, monopoly utility service in the

1 best interest of the customers, the best position to be able to  
2 provide that very necessary service.

3 And so when I look at this, that concept of  
4 regulatory certainty, and the way we have applied in the  
5 previous docket that was before us, and then also the issues  
6 that we have already voted on today, and then I couple that in  
7 my mind with I'm not certain that to be made whole is the  
8 regulatory goal that is always in the best interest of the  
9 customer or even this utility. So I'm grappling back and  
10 forth, but I'm not convinced as of now that to make an  
11 exception in this instance from the approach that we have been  
12 using is called for.

13 CHAIRMAN BAEZ: Well, I have a couple of questions  
14 before, I guess, I respond. First of all, with the primary  
15 recommendation, Mr. Devlin, is there any impact in terms of the  
16 operation of the sharing portions of the settlement that is in  
17 place now? How does all of that work together?

18 MR. DEVLIN: No, Mr. Chairman, I don't believe there  
19 is any affect on revenue with respect to the primary or  
20 alternate recommendation.

21 CHAIRMAN BAEZ: Meaning whatever --

22 MR. DEVLIN: The reserve level and the expense level  
23 of the company, depending on which way you go, but not  
24 revenues.

25 CHAIRMAN BAEZ: So there is no function of pushing up

1 revenues towards a sharing line or anything like that?

2 MR. DEVLIN: I don't believe so. I could stand  
3 corrected if somebody wants to say something to the contrary,  
4 but I don't think either recommendation will have an affect on  
5 revenue sharing.

6 CHAIRMAN BAEZ: All right.

7 COMMISSIONER DEASON: Mr. Chairman, can I follow up  
8 before you go to your next subject?

9 CHAIRMAN BAEZ: Yes, absolutely.

10 COMMISSIONER DEASON: I hesitate to do that, but I  
11 had a discussion with Mr. Devlin earlier about whether there  
12 was going to be an impact on sharing. And I think he is  
13 correct in that really the recommendation is not to recognize  
14 lost revenue, the recommendation is to use the lost revenue as  
15 a standard to determine the reasonableness of otherwise  
16 unrecoverable costs.

17 But let me ask this question. I didn't think to ask  
18 him this question when I was talking to him earlier. If we  
19 were just going to allow the recovery of lost revenue and not  
20 use it as a standard to allow recovery of costs, but just to  
21 say we are going allow the reserve to be debited by lost  
22 revenue, and then make the assumption that by doing that those  
23 revenues appear somehow because the customers are going to  
24 be -- if you debit the reserve, in the long-term customers are  
25 going to pay for that. Would that amount of lost revenue have

1 an impact on the sharing?

2 Do you understand the question?

3 MR. DEVLIN: I understand the question; I'm thinking  
4 about my answer. I think the answer is yes. Again, I could  
5 stand corrected, if it was phrased in that way that we would be  
6 recognizing revenue as opposed to a cost item for recovery, I  
7 believe you're correct.

8 COMMISSIONER DEASON: That there would be an impact  
9 on sharing.

10 MR. DEVLIN: I believe so.

11 CHAIRMAN BAEZ: If that were the treatment, that  
12 would get my vote. I would vote that, yes, it would be --

13 MR. DEVLIN: Mr. Willis and Mr. Slemkewicz may have  
14 some further --

15 COMMISSIONER DEASON: So that may be the compromise  
16 position, Mr. Chairman.

17 CHAIRMAN BAEZ: Hold that one in tow.

18 COMMISSIONER DEASON: Maybe.

19 CHAIRMAN BAEZ: I had another question, and it was  
20 based on Commissioner Deason's comments. He raised a question  
21 of what possible cost savings may have taken place in terms of  
22 not having to run -- because no revenue-creating activities  
23 were possible during that period, that there may have been some  
24 cost savings attached to that lack of activity.

25 Staff, when you were trying to come up with the

1 formula for recognizing the costs that you did recommend, Mr.  
2 Devlin, was any consideration given to that, the possibility of  
3 offsets of cost savings?

4 MR. DEVLIN: No, sir.

5 CHAIRMAN BAEZ: Is that a possible calculation?

6 MR. DEVLIN: I'm not sure we have a record basis for  
7 this.

8 MR. WILLIS: Let me just chime in there. I don't  
9 think there is record support for any kind of cost savings in  
10 the record. It was mentioned there might be, but it was never  
11 quantified in the record.

12 CHAIRMAN BAEZ: Very well. And I think the whole  
13 issue of what is in the record and what is not in the record  
14 probably has a lot to do with what kind of box we are sitting  
15 in in terms of our decisions.

16 Commissioner Deason, you started off by asking  
17 philosophical questions, and one of my pet delusions is that  
18 I'm always more comfortable speaking philosophically than  
19 getting to the details. I don't know how much that comes back  
20 to haunt me, but there it is.

21 And I will start off. I will take a couple of the  
22 issues. I will start off backwards. Here is my problem with  
23 the earnings approach that Mr. Willis has suggested. I don't  
24 know that I am comfortable using -- and I will put the terms  
25 simply, the reasoning that you are making too much as a



1 rationale or as a standard. Not because the words are not  
2 capable of coming out of my mouth given certain circumstances,  
3 I just didn't think that there is enough hearing, or the  
4 direction and the focus and the scope of the hearing hasn't  
5 opened it up to that, in my opinion, to that kind of  
6 consideration.

7           And it may sound a little simplistic, but those are  
8 my feelings on it. Which is why saying, aside from the fact  
9 that there are no earnings standards in place to really use,  
10 then that becomes a subjective determination that I don't think  
11 is appropriate in a docket of this nature.

12           Secondly, as to the question of whether it is a  
13 make-whole standard or not, and I will reserve my feelings on  
14 using the words "make whole" because I think there are no  
15 better words, but here is my philosophy as clearly as I can  
16 state it. Once upon a time, and I think I may have said this  
17 in a previous agenda. Once upon a time we had insurance for  
18 these things. I think you have heard Mr. Slemkewicz at least  
19 imply that the way that insurance policies would have worked  
20 was that there would have been no consideration as to the top  
21 number. The insurance limits are what they are, and there  
22 would be no subdiscussion of what is proper and what was  
23 prudent and so forth.

24           To me that was an all-or-nothing proposition. Now,  
25 unfortunately, we don't have that available as an option

1 nowadays, and second upon a time, we decided that the best  
2 thing to do in the best interest of Florida was to go to a  
3 self-insurance plan. And we didn't go all the way on that. I  
4 feel compelled to keep reminding those that are listening that  
5 we did not go all the way.

6 A true self-insurance plan would have maintained a  
7 magic number on hand at all times. It would have contained, I  
8 guess, just as an insurance policy theoretically maintains a  
9 magic number on hand at all times. So in the best interest of  
10 the ratepayers, ultimately, and all involved, we decided to  
11 choose a method that ramped up and that accrued a certain  
12 amount every year until we got to a particular level and so  
13 forth.

14 Any way you look at it and in any way it was done, it  
15 was decided to be done, one thing is true, we did not -- what  
16 we chose, what this Commission decided was in the best interest  
17 of Florida was that we were not going to bet on mother nature,  
18 and that is my guiding principal. We made a decision not to  
19 say, you know what, we are going to set rates at a certain  
20 level, we are going to, you know, decide how you protect  
21 against loss, but, I tell you what, if a big storm comes down  
22 or any other catastrophic event, you guys are on your own, and  
23 the risk is -- because to have done that, we would have had to,  
24 necessarily, let the company set its own rates to be able to  
25 say, you know what, in order for us to provide this service we

1 have got to charge this much because tomorrow the end may come,  
2 and we have got to guard against that, and those are things  
3 that businesses do all the time.

4 Now, regulation steps in and tries to keep order and  
5 take everybody's interest into play, but the fact remains that  
6 we decided not to take a gamble. And because we decided not to  
7 take a gamble, I think to me that implied, for lack of a better  
8 word, a hold harmless or a make-whole standard has to be the  
9 guiding principal here.

10 Because there are too many other controls on the top  
11 end, you know, we are deciding what is appropriate at every  
12 turn. I don't think there is any piece that we can say, you  
13 know what, with the rest you are on your own. That gives me  
14 pause to now say, you know, there are certain parts of your  
15 operations that no one has control over, but we are not going  
16 to allow you to decide what is best or in your best interest.  
17 So, when we decided not to gamble on mother nature, then we  
18 bought the whole responsibility for it. That is my feeling.

19 The only concern that I have over the primary  
20 recommendation, Commissioners, is what was -- the answer that I  
21 got to the last question I had to staff was that the accounting  
22 and the formula used, or the calculations used to come up with  
23 what kind of costs would be recoverable were not as complete as  
24 they could be. Because they did not, as Commissioner Deason  
25 suggested, they did not delve that far into what kind of

1 savings could have been. But I'm not convinced that they would  
2 have been -- that they would have been significant enough to  
3 cancel out whatever staff is recommending in the primary in  
4 terms of allowing certain costs for recovery.

5           So that makes me feel a little better. Again,  
6 keeping it on a philosophical level and, again, using the words  
7 make whole cautiously, I think that decision, in my mind, was  
8 made years ago when we decided, and appropriately, not to  
9 gamble on and not to create -- to try and harness risk, risks  
10 that no one has control over. That is why these storm funds  
11 exists. That is why insurance exists in other areas. You  
12 know, it is harsh, but we are either going to take it all or  
13 take none of it. And since taking none of it is irresponsible  
14 and not capable of being achieved within the law, then make  
15 whole it is.

16           You know, I agree with you, Commissioner Deason, it  
17 is not an easy decision, but that is where I feel most  
18 comfortable. And if there are -- are any other questions or  
19 comments, Commissioners, or we can take a motion?

20           COMMISSIONER DEASON: Well, Mr. Chairman, is there a  
21 way to get an answer to your previous question about whether  
22 there is -- if this had been an adjustment to actually  
23 recognize lost revenue as such and it affected the revenue  
24 accounts from an accounting perspective, if there would be an  
25 impact on sharing? Is that something we can get an answer to?

1 MR. DEVLIN: I think we can circle back, maybe take  
2 five minutes, because I need to work out in my mind whether we  
3 are talking about 2005 sharing or 2004 saving. And, of course,  
4 those would be different, and, perhaps, different answers,  
5 depending on what period of time we are looking at.

6 COMMISSIONER DEASON: Well, I would think you are  
7 probably talking 2004, the season in which the hurricanes  
8 occurred, it would seem to me, but --

9 CHAIRMAN BAEZ: And as a threshold question, and  
10 maybe I'm kind of flashing my ignorance here, I do have a  
11 concern about the record --

12 COMMISSIONER DEASON: As to whether that is in the  
13 record?

14 CHAIRMAN BAEZ: As to whether that resides in the  
15 confines of the record, and that is a consideration that we can  
16 have.

17 COMMISSIONER BRADLEY: And I would have one other  
18 request. In the primary recommendation, there was a request  
19 made by the company and there was an adjustment made by staff.  
20 Would you also, maybe, during your discussion, or your  
21 explanation, discuss how the adjustment by staff was arrived at  
22 in the primary? Take your five minutes.

23 MR. DEVLIN: Commissioner, John was whispering in my  
24 ear and I didn't catch your question. I apologize.

25 COMMISSIONER BRADLEY: On Page 42 under lost revenue,

1 up top in the box.

2 MR. DEVLIN: Okay.

3 COMMISSIONER BRADLEY: There was a request by the  
4 company and a staff-recommended adjustment, and let's just have  
5 a little bit of discussion as to what is involving in the staff  
6 adjustment, also.

7 MR. DEVLIN: Okay, sir. The staff adjustment  
8 really -- the company was looking at lost revenue of  
9 \$38.2 million, that is what they quantified as lost revenue.  
10 The staff would only recognize the part of lost revenue  
11 necessary to offset the normal operating costs that were  
12 claimed to have been recovered in base rates in other  
13 adjustments, and that is to the tune of 33.6. So it is really  
14 the normal costs that we were looking at in other issues as  
15 being recovered in base rates, that is the basis of our  
16 recommendation here that we would now recognize them because of  
17 lost revenues. The lost revenue figure is in excess of that.

18 COMMISSIONER BRADLEY: Okay. And my question -- I  
19 think I'm understanding this. So that wouldn't have -- the  
20 adjustment does not give any consideration to what Commission  
21 Baez' question is --

22 MR. DEVLIN: That's correct.

23 COMMISSIONER BRADLEY: -- relative to savings as a  
24 result of not operating?

25 MR. DEVLIN: That's correct.

1 COMMISSIONER BRADLEY: Okay.

2 CHAIRMAN BAEZ: Commissioners, I was going to suggest  
3 a ten-minute break. Staff has some questions and things to run  
4 down, and I have been drinking water most of the morning, so  
5 we'll recess for ten minutes.

6 (Recess.)

7 We are back on Item 17. It is Item 17, isn't it?  
8 Okay.

9 And, Commissioners, there were some questions posed  
10 to staff, and I'm hoping they have got some responses for us.

11 MR. DEVLIN: Mr. Slemkewicz has gathered the numbers  
12 for 2004, both the settlement threshold and the revenues they  
13 achieved.

14 CHAIRMAN BAEZ: Thank you. Mr. Slemkewicz.

15 MR. SLEMKEWICZ: Okay. The earning stipulation is  
16 attached to the staff's recommendation, and the threshold for  
17 sharing for 2004 for revenues was 3,780,000,000; and the actual  
18 for 2004, based on Exhibit 43, is 3,663,000,000; so they were  
19 117,000,000 under the sharing threshold for 2004.

20 CHAIRMAN BAEZ: And based on those numbers, the  
21 answer to the question in terms of whatever impact on the  
22 sharing would have taken place would be no?

23 MR. DEVLIN: No.

24 CHAIRMAN BAEZ: Okay. I guess there was one question  
25 that didn't get answered which I believe got answered. I think

1 Commissioner Deason had asked what the revenue levels had been,  
2 or that was part of the question.

3 COMMISSIONER DEASON: I think the question has been  
4 answered.

5 CHAIRMAN BAEZ: The question has been answered now.  
6 And I'm trying to recall, was there anything else that we --

7 MR. DEVLIN: The only other question that we had in  
8 our mind was the year that we were talking about, and I think  
9 you showed a preference, Mr. Chairman, of 2004. You can direct  
10 the revenue to either year. Normally, though, if there is a  
11 decision to increase revenue now in July of 2005, it would be  
12 booked in 2005, and then it would be subject to whatever  
13 sharing that would take place in 2005, which we wouldn't know  
14 that until after the year.

15 CHAIRMAN BAEZ: That is an option, again, within the  
16 context of the suggestion that was made, or has been proffered  
17 by Commissioner Deason, that's an option that is available to  
18 us if we were of a mind to do that?

19 MR. DEVLIN: That might be more of a legal question,  
20 but the normal accounting would be to book it in 2005, and then  
21 it would be eligible for whatever sharing that takes place in  
22 2005.

23 CHAIRMAN BAEZ: Okay. Commissioners, questions?

24 Commissioners, I'm interested whether -- I don't know  
25 if this is a fair question to ask you all, but I will ask it



1 anyway. I'm interested if your discussion or your  
2 consideration remains between the primary and the alternate, or  
3 if you are trying to get comfortable with one or the other.

4 I know that sounds like the same thing, but it's not  
5 the same thing to me.

6 COMMISSIONER EDGAR: Could you rephrase?

7 CHAIRMAN BAEZ: I sense, and I have been known to be  
8 wrong more often than right, but I sense that there may be some  
9 treatment of the primary, or of the philosophy behind the  
10 primary staff recommendation which might garner some support or  
11 raise a level of comfort. And I guess this is my ham-handed  
12 way of gauging whether that is true or whether we are, whether  
13 the body is still struggling between employing an earnings  
14 rationale in terms of the alternate or the primary, I guess.

15 COMMISSIONER EDGAR: Still struggling at the end down  
16 here.

17 CHAIRMAN BAEZ: I'm sorry?

18 COMMISSIONER EDGAR: Still struggling.

19 CHAIRMAN BAEZ: Okay.

20 COMMISSIONER DEASON: Let me clarify something, and  
21 it may be just a minor distinction. While Mr. Willis does put  
22 in some earnings levels in his analysis which are helpful, I'm  
23 not so sure that that is the real crux of his recommendation,  
24 and he can speak to that himself. It seems to me that the real  
25 issue is whether you believe -- we, as regulators, believe that

1 the cost of hurricane restoration that otherwise would have  
2 been recovered through base rates are somehow unrecovered  
3 because there have been lost revenues. Or do you believe that  
4 there has not been a showing that just because there was lost  
5 revenues that there is the nexus, or the assumption that there  
6 automatically has been unrecovery, if that is a correct term,  
7 there has been an unrecovery of otherwise legitimate costs just  
8 because of the fact that there is lost revenue.

9           CHAIRMAN BAEZ: And, I guess -- see, the trouble that  
10 I have with that approach is that either we are going to,  
11 either we are going to recognize that there is a period within  
12 which was the subject of whatever effect the storms had or we  
13 don't. And to say, you know what, whatever happened during  
14 those however many months are the subject of the analysis, but  
15 say, you know, during those four months, or those three months,  
16 or however many, it really doesn't matter because whatever  
17 happened later or whatever happened before was, you know, would  
18 have covered it.

19           To me, it starts defeating the purpose of the entire  
20 exercise. We go through, you know, we have an issue, we have  
21 an issue that fixes the date when recovery ended, we have an  
22 issue that fixes -- you know, I mean, if we are going through,  
23 if we are going through that kind of effort, and I'm not saying  
24 it was great, or less great, or what have you. But if we are  
25 thinking in terms of dates, and we are thinking of drawing a

1 line around periods that are the subject of the docket and are  
2 rightfully within our consideration of the effect of the  
3 storms, then, you know, we have to stick to that. And,  
4 philosophically, to reach outside that box and say, but you  
5 know what, you did so much better than expected here, and it  
6 could just as easily have been you did less than expected  
7 there, kind of gives me a little bit of heartburn.

8           COMMISSIONER DEASON: And I can respect that, Mr.  
9 Chairman. I guess, maybe, to put things into focus from the  
10 way I'm looking at them, and to try to do it as succinctly as  
11 possible, I think that the standard should be, and I think it  
12 is a standard that we have adhered to in our prior votes today,  
13 the standard is recognize and allow all prudently incurred  
14 incremental costs associated with the hurricane restoration in  
15 2004, allow those costs to be charged against the reserve which  
16 makes them eligible for recovery either through a surcharge or  
17 through subsequent increases in storm damage accruals for  
18 future periods. That is a standard I agree with. I think it  
19 is one that we have employed. The question is the costs that  
20 are the subject of Issue 15, whatever, is it 15A?

21           MR. WILLIS: Yes, Issue 15A.

22           COMMISSIONER DEASON: The question is has it been  
23 shown that those costs are truly incremental costs or otherwise  
24 unrecovered costs? And to me, you know, it has just not been  
25 shown to me that they are. Just because there are a certain

1 level of lost revenue that that means those costs have not  
2 otherwise been recovered.

3 And I can see the other side of the argument, as  
4 well, Mr. Chairman.

5 CHAIRMAN BAEZ: Fair enough.

6 COMMISSIONER DEASON: But that is just the way I view  
7 it. And if that means -- well, it just hasn't been proven to  
8 me that those costs, which are costs that normally are  
9 recovered through base rates, that they have not been recovered  
10 because there has been some lost revenue. And, the flip side  
11 of that coin is just as plausible. I would agree that you are  
12 making the assumption that anytime there is lost revenue that  
13 you are automatically tracing those funds from those lost  
14 revenues and saying those lost revenues means that this limited  
15 set of costs on the company's billion dollar budget, that these  
16 particular sets of costs were the ones that were unrecovered  
17 because of those lost revenues.

18 CHAIRMAN BAEZ: Commissioners, any additional  
19 questions or comments, or at this point a motion would be in  
20 order.

21 COMMISSIONER DEASON: Mr. Chairman, I think that we  
22 need to probably vote this thing up or down. And, you know, it  
23 possibly could be a split vote. I don't know. We won't know  
24 until somebody makes a motion and we have a vote, and then we  
25 can tell what we need to do after that.

1 CHAIRMAN BAEZ: Like the lotto says, you can't win if  
2 you don't play. So we will entertain a motion.

3 COMMISSIONER DEASON: I'm going to throw out a  
4 motion, and realize that if it doesn't get a majority, so be  
5 it, and we will try to work out something that does.

6 CHAIRMAN BAEZ: Try, try again.

7 COMMISSIONER DEASON: I'm going to move on Issue 15A  
8 staff's alternate position, which is -- Mr. Willis, you're  
9 alternative, right?

10 MR. WILLIS: That's correct, Commissioner.

11 COMMISSIONER DEASON: That's what I'm going to move.

12 CHAIRMAN BAEZ: There is a motion to accept on Issue  
13 15A staff's alternative recommendation. Is there a second?

14 COMMISSIONER EDGAR: I'll second the motion.

15 CHAIRMAN BAEZ: There is a motion and a second. All  
16 those in favor say aye.

17 COMMISSIONER DEASON: Aye.

18 COMMISSIONER EDGAR: Aye.

19 CHAIRMAN BAEZ: All those nay?

20 COMMISSIONER BRADLEY: Nay.

21 CHAIRMAN BAEZ: Nay.

22 COMMISSIONER DEASON: That one time I read the votes  
23 correctly.

24 CHAIRMAN BAEZ: That Davidson.

25 COMMISSIONER DEASON: Can we call up Chuck and see

1 what he --

2 CHAIRMAN BAEZ: Yeah. Let's find out if there are  
3 any ex-Commissioners out there. May we can, you know, one  
4 night only.

5 COMMISSIONER EDGAR: Mr. Chairman, may I?

6 CHAIRMAN BAEZ: Commissioner Edgar.

7 COMMISSIONER EDGAR: Again, I appreciated all of the  
8 discussion. And as I have in the past, and I will in the  
9 future, I also appreciate having a few-minute break to collect  
10 my thoughts prior to a vote, so thank you for that, as well.

11 I am still struggling. I said that a few moments  
12 ago. I'm comfortable with where we have been to this point,  
13 and I think I'm comfortable with where we are going. On this  
14 very, very narrow issue within this larger item, I have some  
15 discomfort with some of the precedent and some other factors  
16 that have been discussed with the primary recommendation.

17 However, I do think, as I said earlier, that there  
18 are very thoughtful good rationale on both sides, on both  
19 alternatives. A number of very valuable points have been  
20 brought out, and I'm still thinking it through. And with those  
21 comments, I will make a motion that we go with the primary  
22 staff recommendation on this issue.

23 CHAIRMAN BAEZ: There's a motion. Is there a second?

24 COMMISSIONER BRADLEY: Second.

25 CHAIRMAN BAEZ: A motion and a second. All those in

1 favor say aye.

2 COMMISSIONER BRADLEY: Aye.

3 CHAIRMAN BAEZ: Aye.

4 COMMISSIONER EDGAR: Aye.

5 CHAIRMAN BAEZ: All those nay?

6 COMMISSIONER DEASON: Nay.

7 CHAIRMAN BAEZ: Show the vote 3/1.

8 COMMISSIONER DEASON: But I certainly respect the  
9 position of the majority.

10 CHAIRMAN BAEZ: And, Commissioner Deason, I  
11 appreciate all of the comments. I have trouble not seeing it  
12 your way, as well. We are on 15B.

13 MS. ROMIG: Commissioners, 15B, C, and E all deal  
14 with overtime, incremental costs for outside professional  
15 services, they are known as three different categories,  
16 backfill, catch-up work, and incremental contractor and outside  
17 professional services.

18 Staff is recommending that they all be disallowed in  
19 that we do not believe that the record supports the regularly  
20 budgeted costs for those expenditures, and there is no  
21 calculations in support of the proposed amounts. We do not  
22 believe that they have proven that the catch-up and backfill  
23 work could not be performed by employees during regular  
24 business hours or contractors within the normal amount of  
25 budgeted contact work.

1           We believe that the burden is on the company to  
2 demonstrate and document that there was such overtime, and we  
3 believe that they failed to provide sufficient information.  
4 Therefore, we believe that they should be disallowed. The  
5 adjustments would be 7 million for contractors and outside  
6 professionals and 9 million for overtime.

7           CHAIRMAN BAEZ: Commissioners, questions or a motion.

8           COMMISSIONER DEASON: I have a few questions, Mr.  
9 Chairman.

10          CHAIRMAN BAEZ: Commissioner Deason.

11          COMMISSIONER DEASON: Are we addressing B, C, and D  
12 at this point?

13          CHAIRMAN BAEZ: I think it is B, C, and E, correct?

14          MS. ROMIG: B, C, and E.

15          COMMISSIONER DEASON: B, C, and E, because D is the  
16 uncollectibles, that is a separate --

17          MS. ROMIG: Exactly.

18          COMMISSIONER DEASON: I just want to make sure of  
19 that.

20          CHAIRMAN BAEZ: Hold on, Commissioner Deason. D did  
21 not fall out as a result of A? No?

22          MR. DEVLIN: (Indicating no.)

23          CHAIRMAN BAEZ: Okay. Go ahead. I'm sorry.

24          COMMISSIONER DEASON: All right. So, we are  
25 addressing B, C, and E, as in Edward?



1 MS. ROMIG: Correct.

2 COMMISSIONER BRADLEY: How is that labeled? How is  
3 B, C, and E labeled in the -- oh, okay. I see.

4 CHAIRMAN BAEZ: Are you there, Commissioner?

5 COMMISSIONER BRADLEY: Yes, I'm there now.

6 COMMISSIONER DEASON: And these amounts are  
7 quantified on Page 42, and this is in the columns entitled  
8 catch-up and backfill, and incremental contractor and outside  
9 services, is that correct?

10 MS. ROMIG: That is correct.

11 COMMISSIONER DEASON: I have some concern with this  
12 issue, and I need some further clarification from staff. It  
13 seems to me that to the extent that there is legitimate,  
14 prudently incurred catch-up and backfill overtime and  
15 incremental contractor and outside services that that meets the  
16 incremental cost standard that we have applied. Would you  
17 agree with that?

18 MS. ROMIG: I can agree with that, if you've got  
19 something to compare it to.

20 COMMISSIONER DEASON: The second part of the question  
21 is that you have problems with -- you are not dismissing the  
22 argument out of hand because it doesn't meet the standard of an  
23 incremental hurricane-related cost, it is that you don't have  
24 the assurance that the amounts that are represented have been  
25 substantiated by competent evidence in the record, is that --

1 MS. ROMIG: That is correct. And I don't have the  
2 budgeted figures in the record to see how much would be  
3 incremental, if all or any part of it. There may be some part  
4 that is incremental, and there may be some that is otherwise  
5 covered by the budget. But that is not in the record, the  
6 budgeted amounts, and it was not provided by the company.

7 COMMISSIONER DEASON: But I recall extensive  
8 testimony, at least from a philosophical basis, that these type  
9 expenditures are reasonable and necessary and are to be an  
10 expected result of the hurricanes that we experienced in 2004.

11 MS. ROMIG: I agree with you. I agree.

12 COMMISSIONER DEASON: But you don't have the  
13 substantive financial and accounting information to make an  
14 assessment as to whether the amounts claimed are reasonable?

15 MS. ROMIG: Yes, that's true.

16 COMMISSIONER DEASON: And what information would you  
17 require to make that assessment?

18 MS. ROMIG: I would like to have seen budget,  
19 side-by-side budget information from the company.

20 COMMISSIONER DEASON: And that was not provided?

21 MS. ROMIG: No.

22 COMMISSIONER DEASON: So how did the company  
23 substantiate their position? What was the basis for their  
24 calculations?

25 MS. ROMIG: We don't have that in the record. We

1 don't know.

2 MR. DEVLIN: Commissioner Deason, as I understand,  
3 these amounts were really never presented in their primary  
4 case. They weren't amounts charged to the storm reserve.

5 COMMISSIONER DEASON: These were amounts that they  
6 said would need to be recovered if we went to an incremental  
7 approach?

8 MR. DEVLIN: Correct.

9 COMMISSIONER DEASON: Which was not their primary  
10 position?

11 MR. DEVLIN: Correct.

12 COMMISSIONER DEASON: So you agree that the  
13 underlying accounting budget information is not there to make  
14 an assessment?

15 MR. DEVLIN: That's correct.

16 COMMISSIONER DEASON: But you also agree that if they  
17 had been substantiated, these are the type costs which would  
18 meet the incremental cost standard?

19 MR. DEVLIN: Yes, sir. It does appear to meet the  
20 incremental cost standard. They did not ask for them in their  
21 primary case and never were able to substantiate them in  
22 subsequent filings, as I understand.

23 COMMISSIONER DEASON: And there was nothing -- I  
24 mean, after testimony was filed by the consumer advocates  
25 basically presenting arguments for an incremental cost

1 approach, I mean, it was at issue. There was nothing in the  
2 rebuttal testimony from Florida Power and Light which  
3 substantiated these amounts?

4 I mean, I see these amounts. And, of course, they  
5 are nice round numbers. One is 9 million and one is 7 million.  
6 Were these just estimates from the company? Certainly they  
7 have cited some basis for representing these amounts.

8 MS. ROMIG: If they had a basis, they did not provide  
9 it. And I'm trying to think where it came up originally. It  
10 was either in the company's supplemental direct testimony, or  
11 it was quite far down the path of the different documents that  
12 were filed. It was not filed in the beginning. I can get that  
13 information for you. It might have it in here.

14 COMMISSIONER DEASON: I guess I'm just at a little  
15 bit of a -- I mean, you are the ones that have dealt with the  
16 intricacies of this docket and all of the discovery and the  
17 testimony and briefs and all of that and reviewed the record.  
18 You know, I have no basis to disagree that it is not in the  
19 record, the information that you need. I just felt as thorough  
20 as this docket was, and as much testimony and information that  
21 we took that it probably would have been there somewhere. But,  
22 you know, I can't point to it.

23 That's all the questions I have, Mr. Chairman.

24 CHAIRMAN BAEZ: Commissioners, questions?

25 And just to be clear, I don't know if you already

1 answered this question, but Commissioner Deason did allude to  
2 it. They are round numbers. Are they estimates that were  
3 provided by the company?

4 MS. ROMIG: I'm sorry, I couldn't catch that?

5 CHAIRMAN BAEZ: These numbers, those are estimates  
6 provided by the company?

7 MS. ROMIG: They were numbers provided by the company  
8 in estimates, yes.

9 CHAIRMAN BAEZ: We're assuming they are estimates?

10 MS. ROMIG: Yes.

11 CHAIRMAN BAEZ: Let's assume for a moment that we  
12 don't have any constraints, and that the only thing that you  
13 have to go by are your wits and what you may remember from  
14 other cases and so forth. Would you have the ability to say  
15 that there is some index, there are some benchmarks or  
16 standards as to what incremental overtime could be? I mean,  
17 would you have an independent basis of coming up with a number?

18 MS. ROMIG: No, I would not. Sorry.

19 I don't know whether it's possible that if you wanted  
20 to consider these further that they could be looked at in the  
21 true-up.

22 CHAIRMAN BAEZ: And there are -- I'm not sure I have  
23 a problem with the disallowances necessarily, but what troubles  
24 me is the all or nothing. And I guess at some point the  
25 company files things at their peril, or doesn't file things at

1 their peril. I mean, that's the way it --

2 COMMISSIONER DEASON: Mr. Chairman, I would be --

3 CHAIRMAN BAEZ: -- sort of the risk that is out  
4 there.

5 COMMISSIONER DEASON: The suggestion about a true-up,  
6 I would be hesitant to open up the true-up to more potential  
7 evidentiary proceedings. I think the true-up should be more  
8 of, hopefully, a clear noncontroversial mathematical  
9 calculation of the way the surcharge is being collected and how  
10 that relates to an ongoing recovery balance, but not new  
11 substantive issues.

12 CHAIRMAN BAEZ: Not things to be determined. I  
13 agree.

14 Commissioners, any other questions or a motion?

15 COMMISSIONER DEASON: Well, I'm going to make a  
16 motion, Mr. Chairman, unless there are further questions. I'm  
17 going to ask a question, and maybe it is obvious, and I will  
18 direct it to Mr. Melson. To the extent that there is evidence  
19 in the record that we are overlooking, I guess that would be a  
20 basis for a reconsideration?

21 MR. MELSON: It would be. And something you all have  
22 to deal with is the weight you are going to give to the  
23 evidence. As I understand it, there is testimony in the record  
24 that these are estimated numbers. What I don't know is whether  
25 there is any, you know, rebuttal to that in the record.

1           So one way of looking at it is there is unrebutted  
2 evidence in the record that these are the best estimates. What  
3 I hear staff saying is taking just that statement without  
4 support they don't believe is a sufficient basis for a  
5 decision.

6           COMMISSIONER DEASON: And I guess what I was alluding  
7 to is if somewhere in the thousands of pages of records in this  
8 proceeding, that including all exhibits and that sort of thing,  
9 that if there is some budget information that would  
10 substantiate the claims that staff feels comfortable with, and  
11 if that can be shown to exist in the record, I suppose that  
12 would be a legitimate reconsideration item.

13           MR. MELSON: Yes. Because, in essence, there would  
14 be evidence in the record that you had overlooked or failed to  
15 consider in making your vote on this issue.

16           COMMISSIONER DEASON: With that clarification, Mr.  
17 Chairman, I can move staff's recommendation on B, C, and E.

18           CHAIRMAN BAEZ: Commissioners, there is a motion. Is  
19 there a second?

20           COMMISSIONER BRADLEY: Second.

21           CHAIRMAN BAEZ: A motion and a second. All those in  
22 favor say aye.

23           (Unanimous affirmative vote.)

24           CHAIRMAN BAEZ: Thank you, Commissioners. What we  
25 have left is D.

1           COMMISSIONER DEASON: Now, isn't that related to --  
2 is it Issue 12 or --

3           CHAIRMAN BAEZ: Is that what we have? Okay. And it  
4 seems like a while now, and I have since forgotten. Do we need  
5 to take 12 first and then --

6           MS. ROMIG: 12 was the uncollectible, which I think  
7 you have already addressed.

8           CHAIRMAN BAEZ: No, we skipped over 12 because we  
9 were reminded that it had an impact on -- that there was a  
10 relationship to E. And I guess my question is which do we need  
11 to take first?

12          MR. WILLIS: Commissioners, if I could jump in here a  
13 little bit and explain Issue 12.

14          CHAIRMAN BAEZ: Go ahead, Mr. Willis.

15          MR. WILLIS: Issue 12 only relates to uncollectibles  
16 using the utility's actual restoration approach methodology.  
17 That is the only question that it asks. And your vote on Issue  
18 12, if you vote with staff doesn't --

19          COMMISSIONER DEASON: We skipped 12.

20          MR. WILLIS: I understand. I thought you were going  
21 back to Issue 12, I'm sorry.

22          COMMISSIONER DEASON: Okay.

23          CHAIRMAN BAEZ: Well --

24          COMMISSIONER DEASON: I'm just looking for guidance  
25 and the best way to get through it.



1 CHAIRMAN BAEZ: Yes, which is the best way to take  
2 it. Do we 12 first or E, 15E?

3 COMMISSIONER DEASON: Well, what is the difference  
4 between 12 and E, Mr. Chairman?

5 MR. KEATING: I think in 12 we have just recognized  
6 that FPL under its approach, it's original approach, did not  
7 charge uncollectibles to the storm reserve. And 15B -- I'm  
8 sorry, 15D, this is where we address their proposal that if we  
9 use an incremental cost approach that we consider  
10 uncollectibles.

11 COMMISSIONER DEASON: So we can vote out Issue 12 and  
12 still address the fundamental uncollectible expense issue in  
13 15D, correct?

14 MR. KEATING: Right. Or you can handle them together  
15 and just decide whether uncollectibles are appropriately  
16 charged to the reserve in this case, and what the amount should  
17 be, if so.

18 COMMISSIONER DEASON: And if we are going to an  
19 incremental approach, it seems to me that your position on 15D  
20 would be correct, is that right?

21 MR. WILLIS: That's correct.

22 CHAIRMAN BAEZ: Or that's the assumption, correct?

23 MR. KEATING: Well, that's where I will let the  
24 people sitting next to me speak.

25 CHAIRMAN BAEZ: I wish I could do that.

1 MR. WILLIS: Yes, you're correct.

2 CHAIRMAN BAEZ: Well, Commissioners, then as best I  
3 can tell, there is no direct impact on one from the other. If  
4 you take Issue 12, you are just making a statement of whether  
5 the company appropriately charged the uncollectible expenses  
6 using their approach. And Issue 15D, which is the remaining  
7 issue, or the remaining issue on 15, merely is a result of what  
8 I believe is already a decision that the Commission has made in  
9 using the incremental approach. Is that a fair representation?

10 MR. WILLIS: That's a fair representation.

11 CHAIRMAN BAEZ: We have already accepted the  
12 incremental approaches as what to employ?

13 MR. WILLIS: Yes.

14 CHAIRMAN BAEZ: Commissioners, is there a motion on  
15 Issue 12?

16 COMMISSIONER DEASON: One clarification question. To  
17 the extent that -- and this may not occur, but to the extent  
18 there are subsequent collections of amounts that were thought  
19 to be uncollectible, how are those going to be treated? Is  
20 there an ongoing true-up in regard to that, or not?

21 MR. WILLIS: There are going to be offset against the  
22 storm reserve. If they actually can go out and collect any of  
23 those uncollectibles, they will be offset against the storm  
24 reserve, the amount to be collected.

25 COMMISSIONER DEASON: And that would be part of the

1 normal true-up process we are going to go through?

2 MR. WILLIS: Yes.

3 COMMISSIONER DEASON: I see some nodding of heads,  
4 so --

5 MR. WILLIS: It's part of our recommendation,  
6 Commissioner.

7 COMMISSIONER DEASON: All right. I can move staff on  
8 15D.

9 CHAIRMAN BAEZ: And --

10 COMMISSIONER DEASON: And I can move staff on Issue  
11 12, as well.

12 CHAIRMAN BAEZ: All right. We have a motion on Issue  
13 15D to accept staff's recommendation, and we also have a motion  
14 on Issue 12 to accept staff's recommendation. We can unite  
15 them. Is there a second on both?

16 COMMISSIONER BRADLEY: Second.

17 CHAIRMAN BAEZ: A motion and a second. All those in  
18 favor say aye.

19 (Unanimous affirmative vote.)

20 CHAIRMAN BAEZ: Show Issue 12 and Issue 15D accepted.  
21 Commissioners, we are on Issue 16.

22 MR. WILLIS: Commissioner, before you reach Issue 16,  
23 you may need to go back to Issue 13.

24 CHAIRMAN BAEZ: I'm sorry?

25 MR. WILLIS: Issue 13 was previously skipped. You

1 may need to go back to 13 before you reach Issue 16.

2 CHAIRMAN BAEZ: Commissioners, Issue 13.

3 COMMISSIONER DEASON: Mr. Chairman, I indicated  
4 earlier I had some questions on 13. And I still have some  
5 questions, and if now is the right time I will try to lay it  
6 out.

7 CHAIRMAN BAEZ: I think now is the time,  
8 Commissioner.

9 COMMISSIONER DEASON: First of all, Mr. Devlin, will  
10 you just run through the accounting that FPL undertook as it  
11 relates to these capital items, and actually what is meant by  
12 the amount under the CIAC column, because I know it is not  
13 classical CIAC, but it is more of a balancing amount it looks  
14 to me like. So can you just explain to me what FPL did, and  
15 then we will get to any adjustments related to that.

16 MR. DEVLIN: I could speak to it more  
17 philosophically, I guess, because I think here there is some  
18 ambiguity in the record. And we still -- and I will get to  
19 your question, Commissioner Deason -- but we are still going to  
20 stand by our recommendation to remove \$91.9 million out of the  
21 storm surcharge case. But there is some ambiguity on what  
22 happens on the debit side, if you will, when you remove  
23 \$91.9 million.

24 We are reviewing the record. We think we can go  
25 forward with the case today, but I want to mention that staff

1 plans on coming back at a subsequent agenda very soon,  
2 preferably the next agenda, but probably more than likely two  
3 agendas down the road and to clarify what accounting  
4 adjustments are needed to reconcile what we are taking out of  
5 the storm reserve to what we are putting into rate base  
6 accounts which would include plant-in-service and accumulated  
7 depreciation.

8           So, to answer your question, I believe I understand  
9 what accounting took place. There is some ambiguity in the  
10 record with respect to that, so we were going to just bring  
11 that back at a future agenda.

12           COMMISSIONER DEASON: But you are looking for a vote  
13 on Issue 13 today, are you not?

14           MR. DEVLIN: We are looking for a vote to remove  
15 \$91.9 million out of the storm surcharge case, this particular  
16 case.

17           COMMISSIONER DEASON: And you are recommending a 91.9  
18 million adjustment. How do you accomplish that? Do you  
19 actually require there to be a credit to the storm reserve?  
20 There are capital accounts involved. But the ultimate entry or  
21 adjustment is a 91.9 million credit to the storm reserve?

22           MR. DEVLIN: That's correct. And where there is some  
23 uncertainty or ambiguity is where the debits are to offset that  
24 91.9 million.

25           COMMISSIONER DEASON: And part of that debit is going

1 to be the capital accounts, is it not?

2 MR. DEVLIN: Exactly. It would be plant-in-service,  
3 accumulated depreciation, those would be the primary two  
4 accounts.

5 COMMISSIONER DEASON: And the amount shown here of  
6 21.7 million with the label of CIAC, what does that represent?

7 MR. DEVLIN: That represents a charge to the storm  
8 reserve that Power and Light made, and that is in the record,  
9 for the purpose of offsetting the effect on plant-in-service.

10 In other words, they charged the storm reserve 21.7  
11 million and then credited plant-in-service 21.7, so  
12 plant-in-service would look like it did before the storms.

13 COMMISSIONER DEASON: It would put it back,  
14 basically, to its net book value or its depreciated level prior  
15 to the storm, is that correct?

16 MR. DEVLIN: That's correct. That was the theory.

17 COMMISSIONER DEASON: And do you agree with that or  
18 disagree with that?

19 MR. DEVLIN: No, we're disagreeing with that. We are  
20 taking the position that there should be a natural flow with  
21 the capital accounts. And if they grow, they should grow, but  
22 this particular charge to the reserve should be removed. And  
23 let net plant-in-service grow by 21.7 million, but --

24 COMMISSIONER DEASON: Which would be dealt with in a  
25 base rate proceeding?

1 MR. DEVLIN: Correct.

2 COMMISSIONER DEASON: But you also, before you  
3 answered my specific question, you alluded to the fact that  
4 there is some ambiguity and that there needs to be some  
5 clarification as to the offsetting debits associated with your  
6 91.9 million credit to the reserve account?

7 MR. DEVLIN: That's correct.

8 COMMISSIONER DEASON: And that is going to be the  
9 subject of a future recommendation?

10 MR. DEVLIN: Yes.

11 COMMISSIONER DEASON: So it is your position we can  
12 go ahead and vote out the 91.9 million credit, and we will deal  
13 with the offsetting debits at a future time?

14 MR. DEVLIN: Yes, sir.

15 COMMISSIONER DEASON: Okay.

16 CHAIRMAN BAEZ: Commissioners, any other questions?

17 COMMISSIONER DEASON: Mr. Chairman, I can move  
18 staff's recommendation with the understanding that, I mean,  
19 obviously we want the books to balance at the end of the day.

20 CHAIRMAN BAEZ: There are some things left to do with  
21 this. And I think I heard Mr. Devlin say a couple of agendas?

22 MR. DEVLIN: I think that is the likely time period.

23 CHAIRMAN BAEZ: That is the likely time period? Very  
24 well.

25 COMMISSIONER DEASON: Now, this recommendation, is it

1 something that is going to be -- I mean, are parties going to  
2 be allowed to participate in this item? Or is this considered  
3 post-hearing, and it is just -- it's just a procedural  
4 question, I'm just curious.

5 MR. DEVLIN: That's probably a question that I'm  
6 going to have to rely on counsel to advise me on.

7 CHAIRMAN BAEZ: That determination hasn't been  
8 discussed or determined -- hasn't been made yet?

9 MR. DEVLIN: Correct.

10 CHAIRMAN BAEZ: Very well. There is a motion on  
11 Issue 13.

12 COMMISSIONER BRADLEY: Second.

13 CHAIRMAN BAEZ: And there is a second. All those in  
14 favor say aye.

15 (Unanimous affirmative vote.)

16 CHAIRMAN BAEZ: And, Commissioners, we are back on  
17 16.

18 COMMISSIONER DEASON: Mr. Chairman, I may  
19 mischaracterize this, but it appears to me that Issue 16 is  
20 basically a fallout issue, is it not?

21 MR. SLEMKEWICZ: Yes, it is a fallout issue. And  
22 since you approved staff recommendation up to this point, these  
23 would be the numbers.

24 CHAIRMAN BAEZ: They are still good.

25 MR. SLEMKEWICZ: They are still valid numbers.



1 COMMISSIONER DEASON: And that is the 91.9 million  
2 that we were just talking about in Issue 13, as well?

3 MR. SLEMKEWICZ: That's correct.

4 COMMISSIONER DEASON: I can move staff on Issue 16.

5 COMMISSIONER BRADLEY: Second.

6 COMMISSIONER DEASON: Realizing there was a  
7 dissenting vote on a prior item, but this is a fallout, and  
8 this is the decision of the majority, and I respect that, so I  
9 can move staff.

10 COMMISSIONER BRADLEY: Second.

11 CHAIRMAN BAEZ: There is a motion and a second. All  
12 those in favor say aye.

13 (Unanimous affirmative vote.)

14 CHAIRMAN BAEZ: Commissioners, Item 17.

15 COMMISSIONER DEASON: I can move staff on Issue 17.

16 CHAIRMAN BAEZ: Is there a second?

17 COMMISSIONER BRADLEY: Second.

18 CHAIRMAN BAEZ: Moved and seconded. All those in  
19 favor say aye.

20 (Unanimous affirmative vote.)

21 CHAIRMAN BAEZ: Issue 18.

22 COMMISSIONER DEASON: Mr. Chairman, I note that staff  
23 makes the observation that perhaps we need not even address  
24 this issue, because it really wasn't in dispute, as I  
25 understand it. And I can appreciate that, but it seems to me

1 that this is something that we probably need to affirm. And I  
2 would be more inclined to recognize the objective for safe and  
3 rapid restoration of service and that FPL has been effective in  
4 achieving that.

5 CHAIRMAN BAEZ: And in great part because everyone  
6 involved in this docket has been quick to recognize the  
7 importance of that particular objective, my question would  
8 be -- and maybe this is not worth even asking, but even this  
9 Commission's acknowledgment doesn't create an exclusive list or  
10 a non-inclusive list -- I guess I'm not sure what legal effect  
11 this has going forward.

12 MR. KEATING: I really don't think it has much legal  
13 effect going forward. Essentially, if you recognize that the  
14 objective of safe and rapid restoration of service is  
15 appropriate, you are recognizing an objective that is existing.  
16 It's arguably a legal obligation already, but I don't know that  
17 it has much effect going forward.

18 CHAIRMAN BAEZ: Okay.

19 COMMISSIONER DEASON: Can we just vote out your  
20 recommendation and it is what it is? Is that sufficient?

21 CHAIRMAN BAEZ: That's fine.

22 COMMISSIONER DEASON: I move staff on 18.

23 CHAIRMAN BAEZ: Is there a second?

24 COMMISSIONER BRADLEY: Second.

25 CHAIRMAN BAEZ: Moved and seconded. All those in

1 favor say aye.

2 (Unanimous affirmative vote.)

3 CHAIRMAN BAEZ: Issue 19.

4 COMMISSIONER DEASON: Mr. Chairman, this is another  
5 issue that creates a great deal of thought and review. And I  
6 find myself agreeing with staff's recommendation. So if there  
7 is no other questions or discussion, I can move staff. But if  
8 there is, I certainly would welcome that, as well.

9 CHAIRMAN BAEZ: Commissioners, do you have any  
10 questions on Issue 19?

11 COMMISSIONER DEASON: To me the stipulation is clear  
12 that this is permissible. In fact, it is not only permissible,  
13 it is contemplated.

14 CHAIRMAN BAEZ: Yes. But we can entertain a motion.

15 COMMISSIONER DEASON: I will move staff on Issue 19.

16 COMMISSIONER BRADLEY: Second.

17 CHAIRMAN BAEZ: There is a motion and a second. All  
18 those in favor say aye.

19 (Unanimous affirmative vote.)

20 CHAIRMAN BAEZ: Issue 20.

21 COMMISSIONER DEASON: Move staff on Issue 20.

22 COMMISSIONER BRADLEY: Second.

23 CHAIRMAN BAEZ: A motion and a second. All those in  
24 favor say aye.

25 (Unanimous affirmative vote.)

1 MR. SLEMKEWICZ: Issue 21 is another fallout issue.  
2 And, again, these numbers are still valid.

3 COMMISSIONER DEASON: Move staff on Issue 21.

4 COMMISSIONER BRADLEY: Second.

5 CHAIRMAN BAEZ: Motion and a second. All those in  
6 favor say aye.

7 (Unanimous affirmative vote.)

8 CHAIRMAN BAEZ: Issue 22. Commissioners, questions?

9 COMMISSIONER DEASON: Issue 22 seems to be standard  
10 accounting treatment for this type item. I see nothing really  
11 out of the ordinary here, unless I'm missing something.

12 MR. SLEMKEWICZ: That's correct.

13 CHAIRMAN BAEZ: Very well. Is there a motion?

14 COMMISSIONER DEASON: Move staff.

15 CHAIRMAN BAEZ: Is there a second?

16 COMMISSIONER BRADLEY: Second.

17 CHAIRMAN BAEZ: All those in favor say aye.

18 (Unanimous affirmative vote.)

19 CHAIRMAN BAEZ: Issue 23.

20 COMMISSIONER DEASON: There's an adjustment to  
21 capture the non-rate based deferred taxes, which has the effect  
22 of minimizing the carrying costs associated with this. That is  
23 staff's recommendation, correct?

24 MR. WILLIS: That's correct, 5.1 million.

25 COMMISSIONER DEASON: And the 30-day commercial paper

1 rate would seem to be -- if there was going to be interest,  
2 that seemed to be the rate that was agreed upon.

3 MR. WILLIS: There was no disagreement on the  
4 30-day paper rate.

5 COMMISSIONER DEASON: I move staff on Issue 23.

6 CHAIRMAN BAEZ: A motion. Is there a second?

7 COMMISSIONER BRADLEY: Second.

8 CHAIRMAN BAEZ: All those in favor say aye.

9 (Unanimous affirmative vote.)

10 CHAIRMAN BAEZ: Issue 24 has been withdrawn.  
11 Issue 25.

12 COMMISSIONER DEASON: Mr. Chairman, I may have a  
13 question on 25. I don't believe I do, but -- the question  
14 relates to Page 76 of the recommendation. It may not have any  
15 substantive effect on the bottom-line recommendation, but I  
16 just had trouble with the total of the numbers there and the  
17 percentages. They just don't look correct to me.

18 I mean, if 27 million is 3 percent, 20 million cannot  
19 be 8 percent. And those numbers added together don't appear to  
20 add up to 890 million. So is this just a simple error that  
21 doesn't have an effect on the bottom line recommendation, or is  
22 it an error at all? Maybe I'm misunderstanding the purpose of  
23 this tabulation in the middle of Page 76.

24 MR. WHEELER: If you will give me a moment.

25 (Pause.)

1           COMMISSIONER DEASON: Mr. Chairman, we might could  
2 skip over this. I mean, unless there are other issues that are  
3 contingent upon this one.

4           MR. WHEELER: Yes, I see the problem now. I picked  
5 up the wrong numbers for -- other business units should have  
6 been \$73,892,000. The general should have been 120,938,000.  
7 And I believe --

8           COMMISSIONER DEASON: And your percentages would be  
9 correct?

10          MR. WHEELER: Yes. Let me confirm that.  
11 Yes.

12          COMMISSIONER DEASON: So the percentages are correct.  
13 It was just that first column, there was an error there with  
14 the numbers.

15          MR. WHEELER: Right. The final two numbers in that  
16 first column, I picked up the wrong column when I was copying.

17          COMMISSIONER DEASON: Your total is correct and your  
18 percentages are correct?

19          MR. WHEELER: Yes.

20          COMMISSIONER DEASON: Okay. I can move staff on  
21 Issue 25.

22          COMMISSIONER BRADLEY: Second.

23          CHAIRMAN BAEZ: Moved and seconded. All those in  
24 favor say aye.

25                 (Unanimous affirmative vote.)

1 CHAIRMAN BAEZ: Issue 26.

2 COMMISSIONER DEASON: Let me check this issue,  
3 Mr. Chairman.

4 Staff, if you could refer to Page 79 of the  
5 recommendation, and there is a scenario there laid out for  
6 overrecovery, and then there is a scenario laid out for  
7 underrecovery. Could you just contrast those for me as to the  
8 different treatment you are recommending?

9 MS. DRAPER: The final over or underrecovery amounts,  
10 we are going to deal with those in the final true-up, which FPL  
11 has proposed to file within 60 days after the recovery period.  
12 We are not really recommending a decision right now as to how  
13 to deal with those amounts. Staff is recommending to wait  
14 until the amounts are known. FPL has proposed if there is an  
15 overrecovery to refund those amounts as a one-time refund to  
16 the customers. That seems certainly reasonable, but I think we  
17 should wait until we know the magnitude of the amount.

18 COMMISSIONER DEASON: So your recommendation is to  
19 not make that determination now, but look at the facts as they  
20 exist. And as this recovery unfolds, we will make a  
21 recommendation at that time as to the methodology we will  
22 follow?

23 MS. DRAPER: Yes. And I think, basically, the amount  
24 would impact the methodology. In my mind, if the amount is too  
25 small, it wouldn't really make sense to calculate a meaningful

1 refund. As to an underrecovery, FPL has not really proposed a  
2 methodology, but has suggested that we address that at that  
3 time.

4 MR. WHEELER: And I would also mention that the  
5 overrecovery situation is only going to occur because we are  
6 recommending that the recovery end at cycle twelve billings.  
7 So the way the scenario plays out is FPL will monitor the  
8 amount of recovery. When it determines that the total amount  
9 has, in fact, been recovered, instead of stopping that date  
10 certain, they will continue through cycle twelve billings so  
11 that each customer is billed the same number of billing cycles  
12 under the surcharge. So, in fact, it's our belief that the  
13 overrecovery amount will likely be fairly small.

14 COMMISSIONER DEASON: So your recommendation is that  
15 all customers -- to be fair, all customers get the same number  
16 of billing cycles before there is a termination of the  
17 surcharge. And if that results in a overrecovery, we'll deal  
18 with the disposition of that overrecovery at that time, is that  
19 correct?

20 MR. WHEELER: Yes.

21 CHAIRMAN BAEZ: Commissioners, other questions?

22 COMMISSIONER DEASON: I can move staff, Mr. Chairman.

23 CHAIRMAN BAEZ: A motion. Is there a second?

24 COMMISSIONER BRADLEY: Second.

25 CHAIRMAN BAEZ: All those in favor say aye.



1 (Unanimous affirmative vote.)

2 CHAIRMAN BAEZ: Issue 27.

3 COMMISSIONER DEASON: Move staff on Issue 27.

4 COMMISSIONER BRADLEY: Second.

5 CHAIRMAN BAEZ: A motion and a second. All those in  
6 favor say aye.

7 (Unanimous affirmative vote.)

8 CHAIRMAN BAEZ: Issue 28.

9 COMMISSIONER DEASON: Let me look at something, Mr.  
10 Chairman.

11 I guess I'm a little unsure. And, staff, maybe you  
12 can help clarify something for me. I'm looking at page -- I'm  
13 sorry, which issue are we on, Mr. Chairman, 28, correct?

14 CHAIRMAN BAEZ: 28.

15 COMMISSIONER DEASON: I'm looking at Page 82 of the  
16 recommendation. And under your analysis, in the last paragraph  
17 there is a reference to our vote on Issue 25. That's the  
18 allocation methodology, correct, Issue 25?

19 MS. DRAPER: Yes.

20 COMMISSIONER DEASON: And so we have voted to  
21 revise the -- tell me exactly the effect of Issue 25 as it  
22 relates to Issue 28.

23 MS. DRAPER: FPL has proposed to continue charging  
24 the interim factors that you approved in February.

25 Issue 25 recommended that FPL revise those factors

1 based on the new total amount and staff's recommended  
2 allocation methodology. So in Issue 28, staff is recommending  
3 that FPL file revised tariffs with supporting documentation for  
4 staff's administrative approval, and then those new factors  
5 become effective for cycle thirteen billings in September.

6 COMMISSIONER DEASON: Okay. And I don't have a  
7 problem with that, I just want to clarify it. But we are not  
8 looking at any retroactive adjustment to amounts that have  
9 already been billed based upon an updated allocation  
10 methodology, correct?

11 MS. DRAPER: No. Any revenues that FPL has collected  
12 so far would be credited to the amount you are approving today.

13 COMMISSIONER DEASON: Okay. I can move staff on  
14 Issue 28.

15 CHAIRMAN BAEZ: Is there a second?

16 COMMISSIONER BRADLEY: Second.

17 CHAIRMAN BAEZ: A motion and a second. All those in  
18 favor say aye.

19 (Unanimous affirmative vote.)

20 CHAIRMAN BAEZ: Issue 29, which I think Ms. Draper  
21 alluded to in prior discussion, right?

22 COMMISSIONER DEASON: What is the essence of the  
23 recommendation on Issue 29?

24 MR. WHEELER: Issue 29 is simply saying that if the  
25 Commission votes to readjust the factors, that we will take

1 into account the actual and estimated amount that has already  
2 been recovered in establishing the new factors. It is as  
3 simple as that.

4 CHAIRMAN BAEZ: It is a credit against the amount  
5 that is approved.

6 MR. WHEELER: Right. A credit against the amount  
7 that has already been recovered. Not in terms of reallocating,  
8 but just in terms of what is our pot of dollars left after  
9 these initial seven months have gone by under the interim  
10 recovery factor.

11 COMMISSIONER DEASON: Just so I can get it clear in  
12 my own mind, obviously all of the interim collections are going  
13 to be accounted for in total and you will be given full credit  
14 for that, that is going to be recognized. You are going to  
15 take into account the adjustments that we have made here  
16 today --

17 MR. WHEELER: (Indicating yes.)

18 COMMISSIONER DEASON: -- in establishing a  
19 going-forward amount, correct?

20 MR. WHEELER: Correct.

21 COMMISSIONER DEASON: And when will that amount be  
22 determined?

23 MR. WHEELER: Well, our recommendation is that FPL  
24 immediately file revised factors based on the vote today and  
25 based on what they have already collected, so --

1           COMMISSIONER DEASON: We don't know that yet until  
2 that filing is made?

3           MR. WHEELER: Correct. And plus there is the  
4 interest that has to be taken into account, as well. So, yes,  
5 we don't know exactly what the factors are going to look like  
6 until FPL makes that filing pursuant to the vote that was made  
7 today.

8           COMMISSIONER DEASON: Okay. I can move staff on  
9 Issue 29.

10          CHAIRMAN BAEZ: Is there a second, Commissioners?

11          COMMISSIONER BRADLEY: Second.

12          CHAIRMAN BAEZ: A motion and a second. All those in  
13 favor say aye.

14          (Unanimous affirmative vote.)

15          CHAIRMAN BAEZ: Issue 30 is shown withdrawn.

16          Issue 31.

17          COMMISSIONER DEASON: Move staff.

18          MR. KEATING: Commissioners, on Issue 31, I might  
19 suggest instead of going with the staff recommendation to close  
20 the docket, that we keep it open to address the subsequent  
21 recommendation that Mr. Devlin had mentioned earlier with  
22 respect to the accounting.

23          CHAIRMAN BAEZ: Is there a motion as recommended?

24          COMMISSIONER DEASON: Mr. Chairman, I guess I was  
25 just wanting to close the docket too quickly.

1 I would move staff's modified recommendation.

2 COMMISSIONER BRADLEY: Second.

3 CHAIRMAN BAEZ: And there is a second. All those in  
4 favor say aye.

5 (Unanimous affirmative vote.)

6 CHAIRMAN BAEZ: Although the docket hasn't been  
7 officially closed, I do want to thank staff, and I want to  
8 commend Public Counsel and all the intervenors, as well as the  
9 company for their cooperation. It was a new style of docket.  
10 The circumstances under which it arose are hardly desirable,  
11 and I think it took a lot of effort from everyone involved to  
12 kind of pull together and get us here today with what I think  
13 is a fair decision for all concerned.

14 And my commendations, again, to all those involved.

15 COMMISSIONER DEASON: Mr. Chairman, you beat me to  
16 the punch on that.

17 CHAIRMAN BAEZ: I've got to do it. You're forcing me  
18 to get in --

19 COMMISSIONER DEASON: This is a little unusual, but I  
20 think it is warranted in this case. I just want to express  
21 some appreciation to the numerous, numerous people that  
22 attended our public hearings and brought such a diverse  
23 background of interests and some real life experiences as a  
24 result of the storms. It was very helpful to me, and I just  
25 appreciate all those people who took time out of their

1 schedules to come and share that with us.

2 CHAIRMAN BAEZ: And in spite of the fact that a lot  
3 of the people that went out there, we made it a point when we  
4 did the service hearings out in the field to go to the most  
5 heavily impacted areas where it was possible. So the fact that  
6 a lot of the people that came out, some of them didn't have  
7 homes, is just a testament to everyone's commitment to get  
8 things right. And I join you in that. And I do appreciate all  
9 the public coming out, as well.

10 Commissioners, with that said, I think we are  
11 adjourned. And judging by the hour, why don't we, if it is  
12 okay, we will convene Internal Affairs at 1:30. Thank you all.  
13 We are adjourned.

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1 STATE OF FLORIDA )

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON )

4

5 I, JANE FAUROT, RPR, Chief, Office of Hearing  
6 Reporter Services, FPSC Division of Commission Clerk and  
7 Administrative Services, do hereby certify that the foregoing  
8 proceeding was 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 22nd day of July, 2005.

20

21



22

JANE FAUROT, RPR  
Official FPSC Hearings Reporter  
FPSC Division of Commission Clerk and  
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