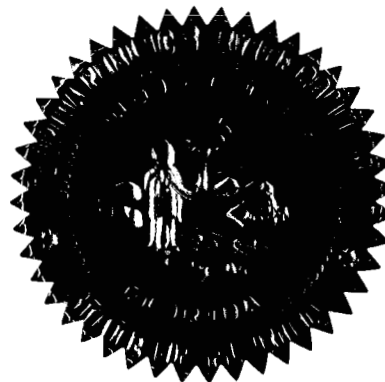


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060362-EI

In the Matter of:

PETITION TO RECOVER NATURAL GAS
STORAGE PROJECT COSTS THROUGH
FUEL COST RECOVERY CLAUSE, BY
FLORIDA POWER & LIGHT COMPANY.



ELECTRONIC VERSIONS OF THIS TRANSCRIPT ARE
A CONVENIENCE COPY ONLY AND ARE NOT
THE OFFICIAL TRANSCRIPT OF THE HEARING,
THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

PROCEEDINGS: AGENDA CONFERENCE
 ITEM NO. 13

BEFORE: CHAIRMAN LISA POLAK EDGAR
 COMMISSIONER J. TERRY DEASON
 COMMISSIONER ISILIO ARRIAGA
 COMMISSIONER MATTHEW M. CARTER, II
 COMMISSIONER KATRINA J. TEW

DATE: Tuesday, August 15, 2006

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

REPORTED BY: JANE FAUROT, RPR
 Chief, Hearing Reporter Services Section
 (850) 413-6732

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION

07601 AUG 22 06

FPSC-COMMISSION CLERK

1 PARTICIPATING:

2 JOHN T. BUTLER, ESQUIRE, representing
3 Florida Power & Light Company.

4 CHARLIE BECK, ESQUIRE, representing the Citizens of
5 the State of Florida.

6 JACK SHREVE, ESQUIRE, representing Attorney General
7 Charlie Crist.

8 SCHEF WRIGHT, ESQUIRE, representing the Florida
9 Retail Federation.

10 TIM PERRY, ESQUIRE, representing FIPUG.

11 MIKE TWOMEY, ESQUIRE, representing AARP.

12 LISA BENNETT, ESQUIRE, PETE LESTER, and BILL McNULTY,
13 representing the Florida Public Service Commission Staff.

14

15

16

17

18

19

20

21

22

23

24

25

P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CHAIRMAN EDGAR: Commissioners, that will bring us to Item 13.

Ms. Helton.

MS. HELTON: Good morning, Commissioners. I'd like to take this opportunity to introduce to you Lisa Bennett sitting here to my left. This is the first time that she has appeared before you at an agenda conference. She's the newest attorney in the GCL/ECR section, and she has very enthusiastically taken on the role as the lead lawyer for the fuel docket, so I know that she looks forward to working with you in the future.

COMMISSIONER DEASON: Oh, me. Should we question your sanity now?

Thank you for taking on that responsibility.

CHAIRMAN EDGAR: Yes.

Welcome, Ms. Bennett. And you are recognized.

COMMISSIONER ARRIAGA: Excuse me, Madam Chair. I was just wondering if that is the way staff treats the newcomers.

MS. BENNETT: Thank you, Commissioners. It is good to be here and to be before you. And I do look forward to the fuel clause, and I'm going to turn the recommendation over to Mr. Lester. Thank you.

MR. LESTER: Good morning, Commissioners. Item 13 is FPL's petition to recover natural gas storage costs through the

1 fuel adjustment clause, and staff has one modification to the
2 recommendation, and that would be on Page 2 of the
3 recommendation in the last paragraph. In the first sentence of
4 the last paragraph the phrase, "approval of its natural gas
5 storage agreement with MoBay," should be removed, and the
6 sentence would read, "FPL is requesting approval of its
7 cost-recovery methodology for storage costs through the fuel
8 clause." And with that modification, there are a number of
9 parties here to speak, and we can proceed as you please.

10 CHAIRMAN EDGAR: Thank you, Mr. Lester. We will
11 proceed with hearing first from the petitioner.

12 MR. BUTLER: Thank you, Madam Chairman. Staff's
13 recommendation does a good job of summarizing FPL's gas storage
14 project and the reasons why it should be recovered through the
15 fuel adjustment clause, so I'll try to be very brief. I would
16 like to reserve some time to respond to the comments of others
17 at the end, if I may.

18 FPL's motivation for proposing the gas storage
19 project is straightforward, to help ensure that natural gas is
20 available at a reasonable cost to run our power plants in storm
21 events and other supply disruptions. More than half of all
22 FPL's generated megawatt hours were produced with natural gas
23 in 2005, so ensuring a dependable supply of gas is extremely
24 important to FPL and our customers.

25 The gas storage project is ideally located to help

1 ensure gas supplies. It is adjacent to the Gulf of Mexico
2 production fields which provide almost half of FPL's gas
3 requirements. The project ties directly into both pipelines
4 that supply gas to FPL's plants.

5 FPL will not profit from the gas storage project if
6 you approve our petition. We will simply recover the actual
7 costs of providing supply protection to our customers. None of
8 the project costs are currently recovered in FPL's base rates.

9 There are two basic types of hedging which this
10 project is being -- or the recovery of this project is being
11 sought as, these are physical and financial hedging. The gas
12 storage project is a physical hedge against the risks of supply
13 disruption and price volatility. It is better suited to its
14 purpose than financial hedges would be for two reasons. First,
15 FPL actually owns the gas rather than just having a contractual
16 promise that gas will be delivered at the time of need.
17 Second, FPL can withdraw the stored gas anytime we like,
18 whereas financial hedges typically apply only to a narrow
19 specified time frame. Because of the uncertainty as to when
20 storm events might disrupt gas supplies, this flexibility to
21 make withdrawals whenever the need arises could be very
22 beneficial to FPL and its customers.

23 In 2001, the Commission initiated a review of IOU
24 hedging practices following a period where fuel adjustment
25 charges had fluctuated widely as a result of high fuel price

1 volatility. In 2002, the Commission approved a resolution that
2 concluded the hedging review. The resolution was signed by all
3 four major IOUs, FIPUG, and Public Counsel. Its purpose was to
4 remove disincentives to the IOUs pursuing hedging aggressively
5 by allowing prudent hedging-related costs to be recovered
6 through the fuel clause. The resolution applied to both
7 physical and financial hedges.

8 Because the gas storage project is a physical hedge
9 against the risks of gas supply disruption and price
10 volatility, its costs are eligible for recovery through the
11 fuel adjustment clause pursuant to the hedging resolution and
12 this is what staff has recommended. I think what you will hear
13 today, that FPL cannot recover the gas storage project costs
14 through the fuel clause because of FPL's 2005 base rate
15 stipulation. Now this is simply incorrect. FPL's 2005 base
16 rate stipulation contains the following language: "During the
17 term of this stipulation and settlement, except as otherwise
18 provided for in this stipulation and settlement, or except for
19 unforeseen extraordinary costs imposed by government agencies
20 related to safety or matters of national security, FPL will not
21 petition for any new surcharges on an interim or permanent
22 basis to recover costs that are of a type that traditionally
23 and historically would be, or are presently recovered through
24 base rates."

25 FPL is not seeking any new surcharge here. We seek

1 to recover gas storage costs through the existing fuel clause
2 pursuant to the terms of the existing hedging resolution.
3 Furthermore, the gas storage project costs are not of a type
4 that traditionally and historically would be or are presently
5 recovered through base rates. In fact, FPL has never recovered
6 any gas storage costs through base rates historically. And, no
7 gas storage costs were projected for base rate recovery in the
8 2006 MFRs that were the subject of the 2005 rate case
9 stipulation.

10 Finally, the order approving the stipulation provided
11 even greater clarity that the recovery of hedging-related costs
12 through the fuel clause would continue during the period when
13 the stipulation is in effect. Order Number PSC-05-0902S-EI at
14 Page 6 states as follows, "The stipulation is silent on how
15 incremental hedging costs will be recovered. The parties
16 clarified that they intended for recovery of these costs to
17 continue through the fuel clause during the term of the
18 stipulation. Because the stipulation is silent in this regard,
19 the parties indicated that they would take action to
20 memorialize their intent in this year's fuel clause
21 proceedings." This year would have been 2005.

22 The parties followed through on that intent and
23 approved or entered into a stipulation of a resolution that did
24 exactly what I just described, that was approved in the final
25 order in Docket 050001, last year's fuel adjustment docket. So

1 the restriction in FPL's 2000 base rate stipulation on new
2 surcharges simply doesn't apply to FPL's hedging-related costs
3 such as the gas storage project.

4 To summarize, the gas storage project will benefit
5 FPL's customers by helping ensure that gas is available at a
6 reasonable cost to run FPL's power plants in periods of supply
7 disruption. FPL is simply seeking to recover its actual costs
8 of affording this protection to customers.

9 The Commission has a well-established policy to allow
10 recovery of these costs or these types of costs through the
11 fuel clause in order to remove disincentives for IOUs to incur
12 prudent hedging costs. Finally, nothing in FPL's base rate
13 stipulation is inconsistent with recovery of the gas storage
14 project costs through the fuel clause. In fact, the parties to
15 the stipulation clarified that hedging-related costs should
16 continue to be recovered through the fuel clause while the
17 stipulation is in effect.

18 Thank you. And I would, again, reserve some time to
19 respond to comments at the end.

20 CHAIRMAN EDGAR: Thank you. Mr. Beck.

21 MR. BECK: Thank you, Madam Chairman. My name is
22 Charlie Beck with the Office of Public Counsel.

23 Commissioners, part of the agreement we reached with
24 Florida Power and Light in March 2005 to settle the rate case
25 prohibited FPL from petitioning the Commission for any new

1 surcharges, as Mr. Butler said, to recover costs that are a
2 type that traditionally and historically would be or are
3 presently recovered through base rates. In the same vein, all
4 parties agreed that we would neither seek nor support any
5 reduction in FPL's base rates and charges that would take
6 effect during the term of the agreement.

7 This was a bargain that had benefit for both sides.
8 Florida Power and Light was assured of stability in its base
9 rates and customers were assured that Florida Power and Light
10 would not seek to recover items traditionally and historically
11 recovered through base rates through other charges. In other
12 words, the types of things in base rates couldn't be recovered
13 with surcharges somewhere else. If it were any other way, our
14 freeze on base rates would not have meaning. If Florida Power
15 and Light could shift items from base rates into the fuel
16 clause then there really is no freeze on base rates at all.

17 In this case, the staff has told you that fuel
18 inventory costs are types of costs that are traditionally and
19 historically recovered through base rates. Look at their
20 recommendation on Page 6. They state that fuel inventory,
21 whether it is coal, oil, or gas, is a normal component of
22 working capital that is included in rate base for ratemaking
23 purposes. Staff says that the appropriate long-term accounting
24 treatment for gas inventory is to include it in base rates, but
25 they then tell you to go ahead and let Florida Power and Light

1 charge these costs to the fuel clause now while our rate freeze
2 agreement is in effect and then switch these costs to base
3 rates where they belong after the agreement expires.

4 What explanation does staff give you for that? The
5 only rationale they provide is that given the beneficial
6 purpose and unique nature of the gas storage project, staff
7 believes that it is appropriate. That is it, that is their
8 rationale. We believe that's contrary to our agreement with
9 Florida Power and Light.

10 The agreement says no new surcharges to recover costs
11 of a type that traditionally and historically would be
12 recovered through base rates or are presently recovered through
13 base rates. The or is important in that clause that is
14 contained in the agreement. Costs are recovered by the
15 agreement if they are in base rates or if they are the type
16 that are historically and traditionally recovered in base rates
17 like the fuel inventory carrying costs at issue here, even if
18 not specifically identifiable in the base rates.

19 Now, Mr. Butler has argued to you this morning that
20 the gas storage facility is a physical hedging transaction
21 which exempts it from the usual rules of what constitute base
22 rate items and fuel clause items. Their project is no more a
23 hedging transaction than is filling up a gas tank in your car.
24 It's simply a way to store fuel so that you will have it to
25 burn.

1 Now, the hedging order that Florida Power and Light
2 cites to, Order Number 011605, does not contemplate changing
3 normal base rate items into hedging transactions. The order
4 gives examples of the types of transactions contemplated, and
5 this is what it lists as examples. Transaction costs
6 associated with derivatives, for example, fees and commissions,
7 gains and losses on futures contracts, premiums on options
8 contracts, and net settlements from swaps transactions. That's
9 the examples listed in the order, and that is not in any way
10 similar to a gas storage facility that is at issue here.

11 We are not opposed to the MoBay agreement, and, in
12 fact, we think it is a good idea for Florida Power and Light to
13 procure gas fuel inventory in the manner that is proposed. The
14 issue isn't whether it is a good idea for Florida Power and
15 Light to have some inventory for its natural gas, the issue is
16 whether the carrying costs related to the gas are a base rate
17 item that is covered by our settlement agreement. At the time
18 when customers bills for electricity are going through the
19 roof, the Commission shouldn't be looking for ways to
20 circumvent the rate case agreement which freezes base rates.

21 The staff recommendation would allow Florida Power
22 and Light to collect through the fuel charge costs that are
23 base rate type items and that's simply not right. It's
24 contrary to our agreement which was approved by the Commission
25 and it would cost customers of Florida Power and Light

1 approximately \$10 million more per year. We are opposed to
2 that and ask you not to approve the portion of the staff
3 recommendation that would allow Florida Power and Light to
4 charge fuel inventory carrying costs through the fuel clause.
5 And that would apply both to the MoBay facility and the Bay Gas
6 facility.

7 Thank you.

8 CHAIRMAN EDGAR: Thank you, Mr. Beck. Mr. Shreve.

9 MR. SHREVE: Thank you, Madam Chairman.

10 I'm Jack Shreve. I'm appearing on behalf of Attorney
11 General Charlie Crist. I will try not to repeat. I accept Mr.
12 Beck's arguments all the way. I think he has covered
13 everything.

14 It is a very simple issue when you get right down to
15 it. We have an agreement, the agreement states that there
16 shall be no increase in base rates. We accept the staff's
17 analysis that these carrying charges would routinely be in base
18 rates. But a way around that agreement is to place them in the
19 fuel adjustment charge, even though the staff says at the time
20 that the agreement expires they would then put them in base
21 rates.

22 We think it is a prudent plan. We think it is a good
23 idea that they are carrying out on this. We think it is good.
24 But we do feel that this would be an unjustified increase in
25 base rates just called another name. Thank you.

1 CHAIRMAN EDGAR: Mr. Wright.

2 MR. WRIGHT: Thank you, Madam Chairman,
3 Commissioners. I am Schef Wright, and I have the privilege to
4 be here on behalf of the Florida Retail Federation to speak in
5 opposition to FPL's requests and staff's recommendation.

6 I completely agree. We, the Federation, completely
7 agree with the positions articulated by Mr. Beck on behalf of
8 the Public Counsel and Mr. Shreve on behalf of the Attorney
9 General. We thought we had a deal, and we believed that our
10 deal clearly articulates our agreement with FPL. Your staff's
11 recommendation on two components of FPL's request would not
12 respect, would not honor, and would contradict that deal.

13 Our agreement says that FPL can't petition for
14 recovery through surcharges of costs that are of a type that
15 would be recovered through base rates. Your staff's
16 recommendations to let FPL recover the carrying costs on
17 working gas inventory and to earn a return on the unamortized
18 balance of base gas even recognizes that those costs are
19 typically and historically base rate type costs. That's at
20 Page 3 and Page 6. There is no legitimate way you can permit
21 this and honor our stipulation.

22 Amortizing base gas is consistent with our agreement,
23 but allowing FPL to earn a return on the unamortized balance
24 during the term of the stipulation is not. We would agree that
25 assuming that the expenditure was determined to be reasonable

1 and prudent, FPL will be entitled to earn a return on the
2 unamortized balance in base rates set for a future test year,
3 but not now. Allowing this now during the term of the
4 stipulation would contradict the stipulation.

5 As my contracts professor used to say, and I will
6 even give you his accent, a contract is an allocation of risk.
7 We thought that we had negotiated a fair allocation of the
8 risks relative to future costs with FPL. FPL agreed to take
9 the risk that it would incur costs of a type normally recovered
10 through base rates without being allowed to recover those costs
11 during the term of the stipulation, and we agreed not to seek
12 reductions. We agreed to take the risk that they would earn
13 above normal profits.

14 If you allow them recovery as recommended by the
15 staff, you will be further absolving them from risk which we,
16 as we have said many times, believe is already extremely low,
17 and contradicting our agreement to the detriment of the Retail
18 Federation's members and to the detriment of all of FPL's
19 customers.

20 In summary, your staff's recommendation does not
21 honor, in fact, it contradicts the deal that we made and that
22 you approved. We join the Attorney General and the Public
23 Counsel and the Industrial Power Users Group and AARP in asking
24 you to deny the staff's recommendation on these two components.

25 Thank you.

1 CHAIRMAN EDGAR: Thank you. Mr. Perry.

2 MR. PERRY: Tim Perry for the Florida Industrial
3 Power Users Group. I would just echo the comments of the
4 Public Counsel, the Attorney General's Office, and the Florida
5 Retail Federation made before me, and we would also request
6 that the Commission deny cost-recovery in the way that we had
7 outlined before. Thank you.

8 CHAIRMAN EDGAR: Thank you. Mr. Twomey.

9 MR. TWOMEY: Madam Chair, thank you. Commissioners,
10 Mike Twomey on behalf of AARP. AARP adopts the comments and
11 rationale of the previous customer representatives. I want to
12 go just a tiny bit further, though, and suggest that while AARP
13 agrees with the others that the stipulation is particularly
14 controlling in this case, that Florida Power and Light should
15 not be allowed to have any base rate charges through a recovery
16 clause such as the fuel adjustment clause here. And while we
17 take the position that FPL's petition is a clear attempt on its
18 behalf to avoid its responsibilities and its commitments made
19 under the stipulation, we want to suggest to you that even
20 absent the stipulation, even absent the stipulation, that the
21 most basic precepts of rate regulation would require you to
22 deny the petition; that is, traditionally there are two major
23 ways that a company such as Florida Power and Light can recover
24 the cost of providing service. One, through base rates; two,
25 through a cost-recovery clause like the fuel adjustment clause.

1 Think of them as fish and fowl. They can't be both.
2 The company's claim and the staff's recognition that these
3 costs and the activity behind them is somehow unique,
4 beneficial, don't change the character of whether it is fish or
5 fowl, base rate or cost-recovery appropriate. And just like
6 fish doesn't change to fowl, or evolve over the passage of
7 time, neither can the nature of this charge.

8 As pointed out by the previous speakers for the
9 customers, your staff has repeatedly recognized in its
10 recommendation that the carrying charges are properly working
11 capital. Now, that is, of course, as you recognize, if you
12 deny the petition it doesn't mean that Florida Power and Light
13 loses the ability to recover these costs. It will come up in
14 the next rate case just as if they had built a new generating
15 plant that cost \$500 million and put it in service tomorrow.
16 If it is the prudent thing to do, the appropriate thing to do,
17 it still, typically, would not go in base rates until the next
18 rate case.

19 And it also doesn't mean that it is not being covered
20 by the customers' rates and revenues, and it doesn't
21 necessarily mean if they don't get it that the company isn't
22 earning a very reasonable fair rate of return which review of
23 their surveillance reports might suggest that they are.

24 Your staff has recognized that it is a base rate,
25 they say that when the stipulation, that is the term of the

1 agreement that protects the customers that they agreed to,
2 which you approved, which we have an expectation will be
3 honored, your staff says when the stipulation expires, its term
4 expires, put it back in base rates where it really belongs.
5 And we would say to you that's where it belongs then, that's
6 where it belongs now, and we would urge you to keep it that
7 way.

8 And lastly, again, as Mr. Beck and the others said,
9 the notion of hedging and storing the gas is no different than
10 having a large coal pile to meet volatility, to meet supply
11 disruptions and the like. And as you know, Commissioners, the
12 carrying cost of a base coal pile or any other fuel storage
13 goes in the working capital allowance.

14 So, again, we support the Office of Public Counsel,
15 the Attorney General's Office, and the others in urging that
16 you deny this petition. Thank you.

17 CHAIRMAN EDGAR: Thank you, Mr. Twomey.

18 Mr. Butler.

19 MR. BUTLER: May I respond briefly?

20 CHAIRMAN EDGAR: You may.

21 MR. BUTLER: Thank you.

22 Let me start with the comments that Mr. Twomey was
23 making. I'm not sure whether base rate or fuel adjustment
24 recovery are fish or fowl, but I will point out that one of the
25 elements that the hedging resolution specifically included for

1 recovery through the fuel adjustment clause are hedging-related
2 incremental operation and maintenance expenses. Operation and
3 maintenance expenses, what this is referring to were exactly
4 the sort of thing that would normally be recovered through base
5 rates. The point of the resolution and the point of what the
6 resolution was intending to do was to remove disincentives for
7 investor-owned utilities to engage in new activities,
8 incremental activities that they might otherwise have to wait
9 until a rate proceeding, base rate proceeding, to recover the
10 costs by allowing recovery of those sorts of costs in the
11 interim and thereby not disadvantaging them. That is exactly
12 the sort of thing that we are talking about here.

13 If FPL proceeds with its gas storage project, it will
14 end up incurring the carrying costs that these gentlemen have
15 been referring to. There will be no opportunity to recover
16 those unless the Commission authorize their recovery through
17 the fuel clause. There is no such thing as going back and
18 making those up in 2009 or 2010 at the end of the stipulation
19 period, and that is a substantial disincentive. I mean, there
20 are several million dollars a year of those costs that FPL will
21 end up just simply having to absorb in order to make this form
22 of hedging available to its customers.

23 I would like to comment next on the observation that,
24 you know, what we're talking about is inventory carrying costs.
25 Inventory is something that utilities traditionally maintain.

1 They traditionally include the costs of that in working
2 capital, earn a return in base rates, et cetera. All of that
3 is true. But what it is missing is the fact that there is
4 really no analog or counterpart for gas traditionally.
5 Utilities don't store gas. They have not traditionally had any
6 significant amount of storage of natural gas. You buy it when
7 it goes in the pipeline and comes out the other end. It's just
8 a realtime delivered fuel.

9 There is a lot of benefit to that. You don't end up
10 having to pay these carrying charges. But the detriment to it
11 and what this project is intended to address is the concern
12 that if it gets disrupted at the upstream end of the pipeline,
13 nothing comes out at the downstream end of the pipeline. You
14 can't run the plants during periods of storms or other
15 disruptions where you would really want to have those plants
16 available.

17 So what we are undertaking is an activity that is
18 distinct to natural gas. It is not done as part of some sort
19 of normal business as usual storage arrangement, but rather is
20 sort of salting away fuel, natural gas for the rainy and very
21 windy day of a storm arriving where that fuel is needed. You
22 know, it serves a distinct purpose. We have not been doing it,
23 we have not been recovering water for, it is different.

24 Finally, I would like to comment on the observations
25 about this not being hedging. The gas storage project not

1 being hedging, because all it is is like a big gas tank or like
2 a storage project. And I go back to the comments I made
3 initially that may have seemed a little abstruse and down a
4 deadend or down a rabbit trail about financial versus physical
5 hedging, but I want to make it clear that the Commission in
6 approving the hedging resolution recognized both types of
7 mechanisms, and actually the resolution in each instance where
8 it refers to recovering hedging-related costs it makes a point
9 of talking about financial and/or physical hedges, and they are
10 very different.

11 And a lot of the direction that the resolution was or
12 a lot of the focus of the resolution was on the more
13 traditional financial hedges, and so, for example, the types of
14 references that Mr. Beck had read to derivatives, fees and
15 commissions, gains and losses on futures contracts, premiums on
16 options contracts, net settlements and swap transactions, those
17 are all the sorts of costs you incur for financial hedges.

18 But as I tried to make clear at the outset, for the
19 purpose that this gas storage project is serving, it is much
20 better suited as a physical hedge than it would be as a
21 financial hedge. FPL actually has its hands on the gas. It
22 has this gas in storage, it is entitled to it, it owns that gas
23 and gets it in a period where perhaps not everybody can get the
24 gas they want and you have problems enforcing contracts that
25 might otherwise be in place to require delivery of gas. So it

1 has that advantage over a financial hedge. And as I mentioned,
2 financial hedges tend to be placed for very narrow time
3 windows. That you get the benefit of the hedge if you take
4 delivery on a day or a week or maybe occasionally a month, but
5 it has got to be specified.

6 If you don't get it in that period or you don't use
7 it in that period, the hedge is simply unavailable to you
8 earlier or later. The huge advantage of the gas storage
9 project for these purposes is that it's not time dependent. We
10 have the gas in there. We can take it out whenever we want it.
11 And for the purpose that this is intended to serve, which is to
12 make gas available in periods of supply disruption like a
13 hurricane that would disrupt things in the Gulf of Mexico --
14 excuse me -- then this would be hugely beneficial in comparison
15 with what you would have with a financial hedge, because we
16 have no idea of knowing when that storm is going to arrive or
17 when some other disruption event is going to occur.

18 If we have to try to cover that with financial
19 hedges, the hedges have to be all over the place. Whereas with
20 this we simply put the gas into the storage, keep it there, use
21 it when the time is right to take advantage of it. You know,
22 it is the right solution to this problem. It is a hedge. You
23 know, we are not asking to profit from this. We are simply
24 asking to be made whole so that as the hedging resolution
25 intended, there will not be a disincentive to our pursuing this

1 project.

2 Thank you.

3 CHAIRMAN EDGAR: Thank you, Mr. Butler.

4 And I'm not singling you out, because we have all
5 done it, but since it's three, let's just take a moment and ask
6 everybody in the room to turn their ringers to quiet, please.

7 Okay. Commissioners?

8 Commissioner Tew.

9 COMMISSIONER TEW: I have some questions for staff
10 and probably several. I guess, first, I will start off with
11 some discussion that I had yesterday with some staff members
12 about the Bay Gas storage project, and I will probably be a
13 little repetitive of what I asked you yesterday. I guess I
14 will start off with saying was that item's inclusion in the
15 fuel clause an issue that was taken up in the course of a fuel
16 hearing? Or better yet, how did that item get included in the
17 fuel charge?

18 MR. LESTER: They are currently passing the cost of
19 Bay Gas through the fuel clause. It was not taken up in the
20 '05 hearing specifically. It is not of the same magnitude as
21 this project, MoBay.

22 COMMISSIONER TEW: But that would have been included
23 in the utility filings somehow at least in that -- at least
24 could have been raised before, it is basically something we
25 just haven't considered in light of, definitely the settlement,

1 and even about -- we haven't even taken up the rationale behind
2 whether or not that type of project should be in the fuel
3 clause until this point, correct?

4 MR. LESTER: That's correct, yes, ma'am.

5 COMMISSIONER TEW: We talked a lot about the items on
6 Page 4, the A through E that were enumerated as far as the
7 types of charges that FPL was seeking recovery for here, and
8 you gave a brief description of things, and we talked about
9 yesterday whether or not those types of charges were in fuel
10 for the Bay Gas project. And I was wondering if you could go
11 through that with me again for the benefit of everyone,
12 starting with the monthly storage reservation charge. Is that
13 a charge that is already in fuel with regard to the Bay Gas?

14 MR. LESTER: Yes, ma'am, I believe so. The charges,
15 the direct cost of Bay Gas are in the fuel clause currently as
16 a gas transportation charge. The carrying cost is not.

17 COMMISSIONER TEW: And I should probably add on each
18 of these, and I don't think we got into this yesterday, but
19 whether or not it is staff's opinion that on each of these, if
20 they should be recovered through fuel? And I guess that would
21 incorporate sort of the history of the fuel clause and the
22 types of charges that would be recovered through fuel. And if
23 other people need to jump in, I see Bill McNulty back there,
24 then that's fine with me. But I really want to get my arms
25 around what types of costs are in fuel now for this type of

1 transaction and which ones are new to us.

2 MR. McNULTY: Yes, Commissioner. As was stated,
3 these costs have not been recovered in base rates heretofore
4 and recovery of these are fairly new. Each of the utilities
5 that would be recovering the types of costs we are talking
6 about here, natural gas and storage, is a fairly new vintage
7 type of recovery because we haven't really been dealing in a
8 lot of gas storage heretofore.

9 But I believe that if you were to look at the
10 recovery of these types of costs, costs related to gas storage,
11 you would look to the A schedules and in particular Schedule A3
12 which show you the total cost of gas and within that would be
13 the recovery of not only gas that is delivered on a contractual
14 basis on sort of an instantaneous way, but also gas storage
15 contracts, and the costs of those contracts within the Schedule
16 A3. And then, of course, rolling up to Schedule A1 so that
17 it's reflected in the total cost of fuel.

18 COMMISSIONER TEW: Well, in picking apart the charge
19 that's going through fuel now, and that's what I'm attempting
20 to do with this A through E, with the monthly storage
21 reservation charge, assuming that's a part of the fuel
22 cost-recovery now for Bay Gas, do you believe that that is
23 consistent with the methodology of recovery through fuel? And
24 I'm just going from memory here a little bit, but about sort of
25 your principles of whether something is tied to the amount of

1 fuel burned and also the fuel savings aspect. I know that a
2 lot of times that's used to determine whether something would
3 be recovered through the fuel clause, so if you could speak to
4 that, as well.

5 MR. McNULTY: Well, I'm not certain that I would
6 describe it as fuel savings. In fact, even this project isn't
7 being proposed under the guise of fuel savings, per se. It's
8 not clear whether fuel savings would occur or not. But, the
9 types of charges you see here may not be necessarily reflective
10 of all the other fuels that are recovered in the fuel clause
11 simply because they may not exist.

12 Things like the monthly storage reservation charge, I
13 guess to some extent you could say that those types of costs
14 would be analogous to maybe some coal storage costs that may be
15 happening in other facilities other than exactly at the power
16 plants themselves. There could be certain analogies that you
17 could make, but I think each one of these first costs that are
18 listed, which include the reservation charge, and the base gas
19 and the injection and withdrawal charges are kind of unique to
20 the recovery process that we have.

21 COMMISSIONER TEW: Even though they are unique to
22 this type of fuel, I guess what I'm saying -- I guess my
23 underlying concern is we have a project already recovered
24 through fuel that is similar to this type of project. I don't
25 think we are necessarily wed to doing it the same way, and I

1 guess I want to get to the rationale for why that is included
2 in fuel now. And I realize that hasn't been debated until this
3 point. And I think that staff and the parties, I think -- from
4 what I heard, I think they were all saying that it should be
5 similar treatment for both, whatever the decision is. And so
6 I'm trying to understand the rationale for Bay Gas and its
7 inclusion in the fuel clause now and what types of charges are
8 in the fuel clause that match up to these types of charges that
9 are included here in A through E.

10 MR. McNULTY: I think you could certainly interpret
11 it as a transportation cost, a cost of getting the fuel to the
12 power plant. And there are a variety of charges. You can look
13 to almost any fuel and you can see that there are a variety of
14 charges, the costs and how they arrived to the power plant.
15 And those costs, transportation costs are typically recoverable
16 in the fuel clause. And I guess I can point you to an earlier
17 order relating to that. Order 12645 specifically identifies
18 recovery of fuel transportation costs through the fuel clause,
19 and that has historically been what we have done.

20 COMMISSIONER TEW: I guess I'll go back to going
21 through these one-by-one. On monthly storage -- on the monthly
22 storage reservation charge, do we believe that is being
23 recovered for the Bay Gas project through the fuel clause? And
24 I think Pete said that it was, but --

25 MR. DEVLIN: Madam Chair.

1 CHAIRMAN EDGAR: Mr. Devlin.

2 MR. DEVLIN: Could we TP this for some period of time
3 to we make sure you are getting the right information.

4 CHAIRMAN EDGAR: I tell you, I could use a stretch
5 myself. So how about we take a ten-minute break. My clock,
6 which is a little different than the one on the wall, says
7 10:51. So let's go ahead and say ten after by the clock on the
8 wall, and we'll come back and see where we are.

9 MR. DEVLIN: Madam Chair.

10 CHAIRMAN EDGAR: Yes, Mr. Devlin.

11 MR. DEVLIN: I think there was a commitment of a time
12 certain at eleven o'clock.

13 CHAIRMAN EDGAR: Mr. Devlin, and I appreciate you
14 bringing that to my attention, but the commitment was to not
15 take it up before 11:00, but at some point after 11:00. So we
16 can stay on track with where we are for the time being. We
17 will come back at about ten after and begin our discussions
18 then. Thank you. We're on break.

19 (Recess.)

20 CHAIRMAN EDGAR: We will go back on the record.

21 Thank you all. And I think when we went on break we had some
22 questions that we had directed to our staff.

23 Mr. McNulty.

24 MR. McNULTY: Thank you, Madam Chairman. And thank
25 you for the opportunity to kind of circle the wagons on this

1 subject that was brought forward by Commissioner Tew.

2 I think the question was basically of the five
3 different types of charges that are listed here for the MoBay
4 contract if we could respond to whether or not they are
5 currently recovered under the Bay Gas Storage Agreement, and I
6 would like to go item one-by-one and give you our understanding
7 of it.

8 Items A and C are the monthly storage reservation
9 charge and the injection/withdrawal charges. And we believe
10 that those charges are currently being assessed and charged to
11 the fuel clause for the Bay Gas Storage Agreement. The Bay
12 Gas, Item B, the Bay Gas -- excuse me, the base gas charge, we
13 believe is not a specific charge that is charged out under the
14 Bay Gas agreement, but those types of costs may be reflected in
15 the other charges we just mentioned, either the reservation
16 charge or the injection/withdrawal charge. So it's not to say
17 that it is not recovered in the fuel clause, it may just not be
18 broken out as a separate item and it may not be as substantial
19 as we may be looking at here with this larger volume of gas
20 that are we are considering for MoBay.

21 Item D we are not certain of. We are not certain
22 whether or not the insurance charge is recovered for Bay Gas.
23 You see here that for this MoBay charge it would be \$112,000
24 per month, we are not certain of that as to whether or not it
25 is recovered for Bay Gas. And then, finally, E, the carrying

1 costs to compensate FPL for investment in working gas stored in
2 inventory, that item was specifically referenced in the
3 petition as something that is not being recovered for Bay Gas
4 and is being sought, as you know, as Issue 2 in this
5 recommendation. So that's the breakdown of the costs and the
6 recoverability for that for Bay Gas.

7 CHAIRMAN EDGAR: Commissioner Tew.

8 COMMISSIONER TEW: Then the follow up was -- and I
9 appreciate you breaking it into that question first. And I
10 guess the follow up would be about the rationale for those
11 types of items and keeping with the A through E breakout there.
12 I realize that they have all been characterized as hedging
13 costs, but absent that, with each of the A through E, do you
14 think they would be consistent with fuel cost-recovery under
15 the general principles of fuel cost-recovery?

16 MR. McNULTY: I do believe that A and C are
17 recoverable in that way, and most likely D. So, A, C, and D
18 would seem to me to be recoverable both because of the hedging
19 docket and also because of the earlier order that I quoted on
20 fuel transportation charges. I think both of those kind of
21 qualify in those areas as recoverable through the fuel clause.
22 Yes, A, C, and D.

23 Item E, which is the carrying cost to compensate FPL,
24 I believe has historically been recovered. Carrying costs for
25 at least coal and oil have historically been recovered through

1 base rates, and that would appear, as we have stated in our
2 recommendation, that on a going-forward basis that would be the
3 normal place for recovery for natural gas inventory. The
4 carrying costs would be in base rates. However, we do also
5 note that we have never -- this is sort of a case of first
6 impression. We have never had carrying costs for natural gas
7 before, and as it being a separate fuel we could look at it
8 separately at this time.

9 And if you look at the hedging order, the hedging
10 order does talk about the recoverability for physical hedges.
11 And one of the important things to kind of remember here, I
12 think, is what is the definition of a physical hedge, which is
13 basically it does provide -- let me start with an example. A
14 physical hedge would be, for instance, purchasing gas at a
15 fixed price going forward for a number of months. That's not a
16 financial hedge, yet it would provide lower price volatility
17 for the company, and so in that sense it is in keeping with the
18 order on hedging. It can work to minimize price volatility.

19 Likewise, the type of inventory that we're talking
20 about here can reduce to a certain level the volatility of the
21 price of fuel. If gas is put in storage at a certain rate and
22 then taken out at that same rate because that is what it cost
23 to purchase it, while the market rate has gone up because of
24 events such as hurricanes in the Gulf of Mexico disrupting fuel
25 lines and so forth, then you could see an advantage price-wise.

1 Again, the company doesn't make its argument, as far
2 as we can see from the petition and from our discovery in this
3 case, does not make its argument in terms of fuel savings, but
4 it does mention that this is a physical hedge, and we do agree
5 it is a physical hedge, and the physical hedge recoverability
6 is incorporated into the stipulation which was approved by our
7 order.

8 COMMISSIONER TEW: Another follow-up.

9 CHAIRMAN EDGAR: Commissioner Tew.

10 COMMISSIONER TEW: I understand your rationale about
11 these being hedging costs, but I guess where I'm having trouble
12 is if they were hedging costs and those are normally recovered
13 through fuel, then why are we recommending to move them out of
14 fuel into base rates? And is there a difference with certain
15 parts of the costs where you think -- I'm not asking you to
16 change your recommendation, I'm just trying to talk through.
17 On some of these it may be that it is more appropriate one
18 place or the other, I just want to get my arms around whether
19 everything should be shifted one way or the other or not.

20 MR. McNULTY: I think this does get back to the
21 referenced case of fish or fowl, and is it fish or fowl. Is it
22 clearly one thing or another. And I think that this is kind of
23 a gray area. We really have historically always put inventory
24 of fuel in base rates. However, we have an additional order
25 that says, you know, that hedging costs would be recoverable

1 through the fuel clause. What is compelling to staff in this
2 case is that we basically having looked at the financials of
3 this project see it as a good project. Because we agree with
4 the precept that we have to keep the availability of fuel
5 coming to Florida, and that we see this as a project that will
6 assist in that. It is not the total solution, but we see it as
7 one that will assist in that. That was our perception of it in
8 reviewing this, and we thought of it as something that we would
9 not want to create a disincentive from a recovery standpoint.

10 And in that regard, because there was this gray area
11 of recoverability of the carrying costs, we looked at, you
12 know, the hedging docket. We also looked at the historical
13 recovery of these types of fuel inventories. We said, well,
14 what makes good sense for making a recommendation to the
15 Commission in a case like this, and it would be that there is
16 the advantage of having the security of fuel supply available
17 when it's needed.

18 CHAIRMAN EDGAR: Commissioner Carter.

19 COMMISSIONER CARTER: Thank you, Madam Chair.

20 Staff, you heard the Office of Public Counsel, the
21 Attorney General, Retail Federation, Independent Power Group,
22 AARP. Did I misunderstand the perspective that they laid out
23 in this as saying that basically what the staff's
24 recommendation is asking the consumers to pay at least twice
25 for this gas? I mean, I'm trying to get to the bottom line.

1 Is that your interpretation of what they were saying? I mean,
2 that is what I thought they said, paying at least twice for it,
3 once in the context of now and then later on to come back and
4 get paid for the same again. Did I misread it? Just trying to
5 get to the bottom line.

6 MR. McNULTY: I don't recall the comment well enough
7 to be able to respond to it. I have an opinion on it.

8 COMMISSIONER CARTER: Give me your opinion.

9 MR. McNULTY: Well, I don't believe that a question
10 of double recovery comes into play here. I think it's quite
11 clear that -- especially when you are talking about these types
12 of charges, these types of costs, it is clear that they are not
13 being recovered in base rates today. So if we are talking
14 about putting the recovery of these types of costs into any
15 type of mechanism, then we don't have a double recovery issue.
16 I don't see that.

17 And then if we are also talking about how they would
18 be recovered at a different point in time, such as at the end
19 of the stipulation, we are talking about a transfer of specific
20 costs from one location to the other. I don't see double
21 recovery there either. So, I'm frankly -- I would have to hear
22 more about that double recovery issue to have a concern. I
23 just don't have it at this time.

24 COMMISSIONER CARTER: Madam Chair.

25 CHAIRMAN EDGAR: Commissioner Carter.

1 COMMISSIONER CARTER: They didn't use the term double
2 recovery, that was just my interpretation of what they were
3 saying. But getting back to your fish or fowl, and you said it
4 wasn't fish or it wasn't fowl, it was fishowl, I guess. The
5 gray area.

6 MR. McNULTY: Good luck transcribing that.

7 COMMISSIONER CARTER: What I'm saying is that as a
8 Commission we are trying to make the best possible decision
9 based upon the information presented and we are trying to get a
10 clear perspective on your recommendations here. So exactly
11 what are you -- you say it is in the gray area, it's not fish,
12 not fowl, I think those were Mr. Twomey's words. But you said
13 it is neither one, it's in the gray area. But we really are
14 talking about the bottom line, though, are we not? We are
15 talking about money.

16 I remember, I think it was Mr. Beck said that we are
17 talking about this will cost customers \$10 million a year. Is
18 that right, Mr. Beck, did you say that?

19 MR. BECK: Yes.

20 MR. McNULTY: Absolutely these would be costs that if
21 not recovered pursuant to the company's petition would not be
22 recovered from FPL ratepayers, so it is a real cost and it is
23 real dollars that would flow through the fuel clause that would
24 not otherwise be recovered. The other side of that is that the
25 disincentive argument as to -- if you're asking the company to

1 do a project without full cost-recovery, will the project be
2 done, and I don't have the answer to that.

3 CHAIRMAN EDGAR: Commissioner Arriaga.

4 COMMISSIONER ARRIAGA: Madam Chairman, I have a
5 couple of questions for Mr. Beck.

6 I try to do my homework, Mr. Beck, and I guess you do
7 understand that most of us, all of us do our homework as much
8 as possible. And I try to keep informed about what is going on
9 in the different dockets that are open at the Commission and
10 what is happening so that when I come here, I have the biggest
11 amount of information at hand.

12 When I was reviewing this case with staff, I
13 specifically asked where is the Office of Public Counsel. And
14 I was informed that at that moment, which was a week ago, there
15 was no motion on your part or no intervention on the part of
16 the Office of Public Counsel on such a very complicated case.
17 I only found out that you had something to say this morning
18 through the media, which concerns me, because I really want to
19 give the Office of Public Counsel the benefit of the doubt, and
20 I really want to analyze the difference points of view that you
21 have in a specific matter. So my question would be why did you
22 not participate so we would have both sides of the story with
23 ample time?

24 MR. BECK: Commissioner Arriaga, we have participated
25 in this docket and we participated in a conference call that

1 staff had with the company shortly before filing its
2 recommendation. And at that time we were asked about the
3 agreement and our position was we ought to follow the
4 agreement. We did not know at that time what the staff was
5 going to recommend. So when we saw what the staff recommended,
6 we see it as being inconsistent with our agreement. And that
7 is what we brought forth. But we have been participating and
8 have expressed our views throughout the docket. This is not
9 the first time we've been involved.

10 COMMISSIONER ARRIAGA: With staff now. Every time
11 that I see different intervenors in a case, I see that staff
12 takes the time to analyze the different positions. If OPC has
13 intervened as they have stated, why isn't OPC's opinion
14 analyzed in this recommendation to the Commission?

15 MR. BECK: Commissioner, if I could, we haven't
16 intervened in the case, we participated in the conference call.

17 COMMISSIONER ARRIAGA: The question still stands.

18 MS. BENNETT: There is no formal intervention by OPC,
19 as Mr. Beck stated. They did appear. We had two informal
20 conference and they did appear at both informal conferences. I
21 don't believe they stated a position at either one of those
22 conferences.

23 COMMISSIONER ARRIAGA: So you found that it was not
24 necessary to include that information in this recommendation to
25 the Commission?

1 MS. BENNETT: Because they have not intervened.

2 COMMISSIONER ARRIAGA: Okay. I'm going to continue,
3 Madam Chair.

4 Madam Chairman?

5 CHAIRMAN EDGAR: Commissioner Arriaga.

6 COMMISSIONER ARRIAGA: If you have something to say,
7 please.

8 CHAIRMAN EDGAR: I'm going to wait. Go right ahead.

9 COMMISSIONER ARRIAGA: Thank you. The issue of
10 physical hedging, and it was compared like to having a big huge
11 tank which you fill up with gas and then go away. Wouldn't it
12 be nice to have during a storm period a big tank full of gas
13 at, lets say, two dollars a gallon instead of waiting until it
14 raises to four or five dollars after the storm?

15 MR. BECK: Absolutely. We think it is a good idea
16 for Florida Power and Light to have a storage facility for
17 natural gas. I think that is a prudent thing to do and it
18 makes good sense, particularly with the history from
19 hurricanes. Like I said in my opening statement, that's not
20 the issue. The issue is whether this is a rate covered by our
21 agreement or not. We are certainly not against the facility.

22 COMMISSIONER ARRIAGA: I always try to be consistent
23 with my previous statements, and I remember during the
24 storm-recovery cost that I mentioned the fact that we will
25 probably be sending a really strong message to the company not

1 to act prudently, to do the things that they need to do
2 because of a specific cost at the moment. By delaying this, by
3 not approving it, or whatever the process is going to be,
4 aren't we like pushing the wrinkle in the carpet until it
5 finally reaches the wall and you just can't move it anymore?

6 MR. BECK: No, Commissioner. Our agreement covers a
7 four-year period, and I think all parties agree, Florida Power
8 and Light as well as the others, that costs are going to change
9 over the period of four years. You know, things are going to
10 be different. There are going to be different facilities,
11 different salary costs. I mean, things are going to change
12 over a four-year period.

13 So we created a bargain. And one of the things
14 Florida Power and Light got was stability. You know, we are
15 not going to try to come in and try to reduce their base rates.
16 And one of the things we thought we got was likewise stability,
17 and that there wouldn't be things that should be normally in
18 base rates being recovered elsewhere. And that is what we see
19 going on here.

20 You know, our deal is that we get base rates for four
21 years and they can't take things that should be in base rates
22 and get them somewhere else, because then you don't have a
23 freeze, you don't have that stability if you can get things
24 that should be in base rates elsewhere. So it is a balancing.
25 There is a lot of give and take, and that is part of the

1 bargain.

2 COMMISSIONER ARRIAGA: Madam Chair, I'm sensing that
3 this is a very complicated issue and that the information here
4 is not readily available. I don't know what to do at this
5 time.

6 CHAIRMAN EDGAR: Thank you, Commissioner Arriaga.
7 Are there further questions at the moment? Seeing none, I have
8 a question then. And, Commissioner Arriaga, I think I'm going
9 to follow through a little bit more on the point that you just
10 raised. I know that I have made comments, and each of us, I
11 think, have made comments in the past about not wanting to
12 unintentionally or because of a lack of information make a
13 decision that puts in place unintentionally either an
14 incentive or a disincentive that is a few steps further out
15 than we had the ability to analyze. And that is a concern I
16 have with some of the discussion that we have had this morning.

17 It also is weighing heavily on me that I do believe
18 this is a case of first impression on a couple of different
19 points that will be whatever our decision is a further
20 refinement of past policy or even a change in policy, I don't
21 know yet. And because I do think it is precedent setting and
22 will impact other policies that we have as we continue to look
23 at fuel costs and other cost-recovery mechanisms, I'm just
24 wondering if there is the opportunity to get some additional
25 analysis on some of these points. And I'm going to look to our

1 legal staff.

2 Mr. Cooke.

3 MR. COOKE: Commissioner, this is a proposed agency
4 action. So if the Commission pleases, it can make a decision
5 on this and probably expect a protest from one side or the
6 other. But, alternatively, in my opinion it is a complicated
7 issue, and if it would inform the Commission, it is certainly
8 reasonable for the Commission to decide to ask for additional
9 information in writing, perhaps in the form of briefs that
10 might address, for example, the parties' interpretation of the
11 language in the stipulation. I think that is one issue that
12 has been raised.

13 But also along the lines of questions that
14 Commissioner Tew and Commissioner Arriaga and Commissioner
15 Carter have been asking in terms of what is the history, what
16 is the precedent here with these types of fuels and whether
17 they actually have been recovered through the hedge ruling
18 and/or fuel, if we got additional briefing on that, then the
19 staff could review that and bring it back as a revised
20 recommendation at a future agenda conference.

21 CHAIRMAN EDGAR: Thank you, Mr. Cooke.

22 Commissioners, I welcome your comments. I know that
23 to have some additional in-writing discussion of some of these
24 points is of interest to me. I do think that we will be
25 setting precedent, and I do think that potentially our decision

1 on this item has the ability to impact other decisions for some
2 other items. And I know, I would like to feel that I've got
3 all the information in front of me. We would need to talk time
4 frame. And I'm open, of course, to comments from the parties
5 who have addressed us. Before I look to them, do you have any
6 thoughts?

7 Commissioner Carter.

8 COMMISSIONER CARTER: Madam Chairman, thank you. I
9 had some questions. I sincerely appreciate Commissioner Tew
10 and yourself and Commissioner Arriaga and the line of
11 questioning as I was trying to get my hands around it, too,
12 exactly what we are saying here. And I think that if it is
13 something significant, that is something new that we have not
14 done then we need to be more deliberate on that. If it is
15 something where we are saying the parties have not had an
16 opportunity to avail themselves to an agreement that they are
17 parties to, then they have the opportunity and the right to do
18 so.

19 If staff needs to look at the perspective, and I
20 think that by briefing this more fully as a case this will help
21 us to arrive at the best conclusion, and I think that is very
22 helpful to us. I would feel more comfortable if we had the
23 opportunity to look at in writing and contemplate this.
24 Because this is significant. And we want to be fair, but we
25 also want to be rational in our decision. So I would

1 appreciate if we could do that, Madam Chair.

2 CHAIRMAN EDGAR: Thank you, Commissioner Carter.

3 One additional thought. This Commission did accept
4 and approve the settlement agreement, but, of course, we are
5 not a party to it nor were we a part of the discussions. And
6 so the ability to -- we are somewhat limited in our ability to
7 know what the meeting of the minds was and the intent, and that
8 is one reason why I think some additional in-writing analysis
9 or briefing from the parties may be useful to me and
10 potentially I would hope to each of us.

11 I will look to the parties to see if you have any
12 comment. I am interested, I think, in asking that we consider
13 a motion to defer and ask for additional information. Are
14 there concerns with that?

15 MR. BUTLER: Madam Chairman, on behalf of FPL, we
16 obviously want you to have the information you need to make an
17 appropriate decision, and would therefore certainly not have a
18 concern about a short extension of time to get to that decision
19 point. A couple of things I do need to mention, though. One
20 is the fact that we have already sought and received one
21 extension from the counter-party we are negotiating with for
22 this storage facility on the deadline for our committing to the
23 project, which is tied to what your decision is on approving
24 the project. And we are probably not going to be able to get
25 much additional time without some impact on what we have to pay

1 for the storage. So, if you do defer, we would ask that you
2 defer for a short period and move fairly quickly to a decision
3 thereafter.

4 And, secondly, I really do have to say that we filed
5 this petition in April, and what we are asking for and what
6 staff is approving is exactly what was said in April. So we
7 are a little dismayed and a little frustrated that we are here
8 at the agenda conference to decide on it with these issues just
9 coming up for the first time this morning. It's true that
10 Public Counsel participated in conference calls, but did not
11 express these concerns, certainly not at the level that we are
12 hearing them here. And if you defer, we hope that you do so in
13 a way that gets all the information anybody has that they
14 consider relevant out on the table quickly so that we can move
15 to a decision on it.

16 CHAIRMAN EDGAR: Thank you, Mr. Butler. Just
17 speaking for myself, I am not interested in undue or lengthy
18 delay, but would, of course, want to allow time for information
19 to be prepared, analyzed and digested. Are there other
20 comments from our speakers?

21 MR. BECK: We would be happy to provide you whatever
22 you would like.

23 CHAIRMAN EDGAR: Thank you, Mr. Beck. Mr. Shreve.

24 MR. SHREVE: Yes, Commissioner. As to the input,
25 maybe some of us appear to be coming in late, but we are going

1 along and following this Commission's rules, and it has been
2 this way for many, many, many years as to proposed agency
3 actions. In a great many times a party cannot make a decision
4 until they see what the staff recommendation is. If everybody
5 is in agreement with the staff recommendation there would be no
6 need to come here at all.

7 Our feeling is the staff recommendation made it very
8 clear as to what the staff position was. One, it has
9 historically been held as a part of the rate base which is
10 shown by that statement as well as the fact that the staff
11 would move into base rates or allow it to be moved into base
12 rates after the stipulation was gone. It is very clear. Those
13 two items show where the staff would be on that. The only
14 difference, of course, is at this point they would allow it to
15 be put through fuel adjustment charges. I think it is a fairly
16 simple issue.

17 CHAIRMAN EDGAR: Thank you, Mr. Shreve.

18 MR. TWOMEY: Madam Chair, briefly.

19 CHAIRMAN EDGAR: Mr. Twomey, if I may first.

20 MR. TWOMEY: I'm sorry.

21 CHAIRMAN EDGAR: Thank you.

22 Mr. Shreve, I absolutely agree and recognize your
23 comment about under a proposed agency action interested parties
24 being able to participate, and I think I have shown that I will
25 always give an opportunity for interested persons to

1 participate in our deliberations. I do just feel that I would
2 appreciate if it is workable the opportunity to be thoughtful
3 and thorough in my own deliberations.

4 Commissioner Arriaga.

5 COMMISSIONER ARRIAGA: Thank you so much.

6 Please understand, all intervenors, please understand
7 my comments with a positive tone. I may have expressed myself
8 wrong, but what I'm trying to say, and I said it at the
9 beginning, I want always to give you the benefit of the doubt.
10 I want you to have the opportunity to let me know in advance
11 what you are thinking so that I can make an informed, an honest
12 and just decision.

13 This time we only have one side of the story. I only
14 learned about your concerns this morning through the media.
15 And I think that there has to be a better communication between
16 us so that we don't have to learn what you are thinking through
17 the media. That was basically my concern.

18 So I would really want this deferral because I will
19 learn a little better what you are thinking. I will learn your
20 technical and financial arguments, and I will be able to make a
21 decision compared to what staff is saying.

22 At the same time, since this is probably the second
23 or third time that this settlement agreement has been
24 questioned, I would ask you to, in your briefings, to please
25 enlighten me as to why you think this is being violated.

1 Because I know the Attorney General has on two opportunities
2 indicated directly that this agreement may be violated, and I
3 would like to hear those legal arguments. So understand my
4 point of view, please. Thank you.

5 CHAIRMAN EDGAR: Mr. Twomey.

6 MR. TWOMEY: Yes, ma'am, thank you. And I wanted to
7 say just briefly, I appreciate Commissioner Arriaga's concerns
8 and maybe his frustrations with the process, but that is the
9 way it is. That is the way it has been for years. As
10 suggested, I think, by Mr. Shreve, many of us may have had a
11 reasonable expectation that your staff would recommend to you
12 to deny the petition. But it is PAA, and we could come forward
13 now and make our presentation. And hopefully that if you
14 had -- and you listened to what we say here, it is not as
15 thorough, obviously, and you are not as capable of being
16 prepared as if we had submitted pleadings and that kind of
17 thing.

18 And if you had granted the petition today, then I
19 think what you might have expected to see is that we would have
20 protested it and you would have had a hearing and there would
21 have been a broader development of both the issues of fact and
22 the issues of law. And the AARP is happy, Madam Chair, to
23 accommodate the Commission in doing what it can in providing
24 additional information to everyone's advantage.

25 Lastly, I would like to say, in response to a comment

1 Mr. Butler made, is that it strikes me in terms of the delay
2 engendered here and what it might do to their contract that
3 they helped draw, presumably, that they are in now, my
4 suggestion would be that if Florida Power and Light thinks as
5 it believes, as it has said in its petitions, and has said
6 today, that entering into this contract for gas storage is
7 beneficial, has all the beneficial results that it has, that it
8 is the prudent thing to do, they should do it irrespective of
9 whether you grant them cost recovery today or after this length
10 in process.

11 There was a time, I would suggest to you, at this
12 Commission that some would take the view that if a company came
13 in and said that it was going to do something, wanted to do
14 something because it was the prudent thing to do for its
15 operation as a regulated monopoly and didn't do it, they might
16 be subject to later sanction. Thank you.

17 CHAIRMAN EDGAR: Thank you, Mr. Twomey.

18 Commissioner Deason.

19 COMMISSIONER DEASON: Yes, thank you. I am not
20 opposed to deferring this item and getting more information.
21 I'm sure it would be helpful. The concern that I have is what
22 Mr. Twomey alluded to and Mr. Butler said earlier was that
23 there was some time considerations as far as contracting, and I
24 suppose that there is the potential for there to be a decision
25 by FPL management simply to scrap the plan if there is not cost

1 recovery. Is that correct, Mr. Butler?

2 MR. BUTLER: We would have to reevaluate it. I don't
3 think that -- I know I don't have and I don't think that FPL's
4 management has an answer at this point whether it would go
5 forward or not, but certainly it has to be reevaluated.

6 COMMISSIONER DEASON: Given that, and the fact that
7 even if we get additional information and whatever decision we
8 make, if it is going to be protested, and obviously that is
9 just something the parties would have to weigh, are we going to
10 find ourselves in a situation where we are up against those
11 time constraints and jeopardizing the initiative simply because
12 of contracting time periods involved?

13 Let me reiterate. I'm not against the deferral and
14 getting more information. The question I have is would it be a
15 better utilization of time simply to just set the matter for
16 hearing. And that way we take out the two or three weeks of
17 getting more information, we just set it for hearing. If we
18 are going to go to hearing anyway, and that's a question that
19 only the parties can answer. And I think all the parties have
20 indicated that they think it is a worthwhile proposal, it is a
21 good initiative. There are -- in fact, Mr. Twomey even
22 indicated it's perhaps the prudent thing to do. Would we be
23 jeopardizing a prudent thing to do by the time constraints?
24 Perhaps it would be better to just take it to hearing. And
25 that is question. I'm not saying we should or should not. I'm

1 am just wanting more feedback on perhaps the best procedure.

2 CHAIRMAN EDGAR: Okay. Commissioner Deason, I
3 appreciate those comments and that question. And while we give
4 the parties a moment perhaps to think about it, we will come
5 back to them and I'm going to turn to Commissioner Carter for a
6 comment.

7 COMMISSIONER CARTER: Thank you, Madam Chair. I
8 mean, I hate to be the spoilsport, but when somebody says \$10
9 million, that gets my attention. Because when you are talking
10 about \$10 million, the consumer has got to pay that \$10
11 million. I don't care how you slice it or dice it. So, I
12 mean, I want to see where did the \$10 million come from, where
13 is it going to go, what is it going to go for.

14 I mean, that is just a number that I heard this
15 morning. It is not in the documents here anywhere. So when
16 you are talking about \$10 million, I mean, maybe that may be
17 pocket change to some people, but to me \$10 million is
18 \$10 million. And I do think that when you are putting out
19 numbers like that, any number like that, and we are talking
20 about an agency action, we are talking about providing
21 information, we are talking about providing stability. We are
22 talking about letting the industry know what we are doing, too,
23 as well as providing a stable marketplace. So when we start
24 talking about numbers and dollars and cents and all like that,
25 I'm not an accountant, but I sit next to one, and I certainly

1 would like to see how the numbers fall out, you know. I just
2 would like to see the numbers, Madam Chair.

3 CHAIRMAN EDGAR: Okay. To risk overstating my sense
4 here, and correct me if I get it off a little bit, but is it
5 that we have a desire across the bench to perhaps have some
6 additional information, but yet we want to, of course, proceed
7 in a manner that, again, does not have an unintended impact.
8 And as I said earlier and I have said often, I will make two
9 comments, and you will hear me say them over and over and over.
10 It is my goal for our proceedings to be thoughtful, thorough,
11 and timely. And I also do believe that our proceedings are
12 best when we have full and diverse participation. So I'm going
13 to look to, I guess, our staff.

14 Mr. Cooke.

15 MR. COOKE: As Commissioner Deason suggested, at the
16 end of this process there may well be a protest anyway. My
17 only concern is if we set this for hearing, I think we probably
18 would have to set it for a full-blown evidentiary hearing, in
19 that I'm not sure if there are issues of fact involved,
20 et cetera. I would assume that we have to probably take
21 testimony, et cetera. And then afterwards there would be
22 briefings on this and a decision by the Commission. I'm not
23 sure which would expedite, I guess is what I'm saying.

24 CHAIRMAN EDGAR: Commissioner Tew.

25 COMMISSIONER TEW: Mr. Cooke raises an important

1 point, particularly for me, because -- and I'm probably going
2 to get glares from a lot of angles with this. I'm not
3 absolutely convinced that to resolve this issue we have to
4 interpret the contract. I want more facts. I want more
5 factual information, too. And I don't have a preference
6 getting that through a hearing, setting it straight for
7 hearing, or deferring it and coming back on PAA. But I do
8 recognize that we might be right back here with a hearing no
9 matter what we do.

10 And I also throw out that I don't think it would hurt
11 if the parties would all get together and discuss what they
12 think their contract means and perhaps look at a way to resolve
13 this issue among themselves. I mean, it doesn't look possible
14 right now, but it seems like everyone agrees that there is some
15 value in this project, and maybe there is a way to come to some
16 agreement there. But that's just where I am.

17 CHAIRMAN EDGAR: Commissioner Deason, did you put a
18 question to the parties that I inadvertently rolled right past?

19 COMMISSIONER DEASON: Well, I guess if they are
20 willing to give some feedback, it may be helpful. I think this
21 is something that deserves a decision based upon its merits and
22 what is good regulatory policy and consistent with prior
23 decisions, and that it just not go away because we have taken
24 so long to decide that whatever contract opportunities and
25 whatever market forces are out there, if the opportunity goes

1 away just by the lapse of time that would be a shame. And that
2 is what my concern is. And maybe I'm overstating what Mr.
3 Butler said earlier about his concerns about the time.

4 CHAIRMAN EDGAR: Mr. Butler.

5 MR. BUTLER: I don't think you are overstating it,
6 certainly not by much. I mean, there is a deadline that will
7 come and go without fairly prompt actions basically toward the
8 end of September for us currently to make a decision under the
9 framework of what is called a precedent agreement that is sort
10 of the precursor to the final agreement on proceeding with the
11 project.

12 I think there is probably the potential to
13 renegotiate a later date for making a final decision, but the
14 pushback from the other side, as I understand it, has been that
15 they may want to reevaluate the rates for the various elements
16 of the project costs if we want more time, that they are not
17 prepared to give additional time for us to make a decision
18 while still continuing to lock in the relatively favorable rate
19 terms that they had offered us in the first place.

20 So that is so sort of the trade-off, and we would
21 obviously have to look at what we could negotiate with them.
22 Whether it still made sense if we were going to be forced to
23 accept some sort of higher costs for the storage, the elements
24 of the storage and just evaluate it at that point. But, yes,
25 there is definitely a time problem.

1 Now, of course, a concern that has also come to
2 light, Mr. Cooke is kind of alluding to it and others here, is
3 that if there is going to be a challenge, if there is going to
4 be a hearing, a briefing decision after that, we may very well
5 be in the position where we are having to have that
6 renegotiation anyway. So, you know, it's an important
7 consideration, we want to move this forward as quickly as
8 possible.

9 I think that whichever approach you choose to take,
10 if you think you can get better information and closer to the
11 likelihood of some sort of decision that will not require a
12 hearing by seeking additional information, we certainly would
13 support that. If it just seems like that is adding a step and
14 we are going to end up on the same track of going to hearing
15 anyway, then I guess our feeling would be kind of go in the
16 direction you were suggesting of making a decision now and
17 moving forward to the hearing.

18 CHAIRMAN EDGAR: Commissioner Arriaga.

19 COMMISSIONER ARRIAGA: Madam Chairman, we cannot
20 control the actions of the company or the intervenors. If they
21 want to protest, if they are going to come back and do that,
22 renegotiate, it is out of our hands. I personally do not feel
23 that I can make a decision today whichever the case may be. So
24 if it is your pleasure, I'm ready to make a motion.

25 CHAIRMAN EDGAR: Commissioners, any further comments?

1 Commissioner Carter.

2 COMMISSIONER CARTER: Once again, Madam Chairman, I
3 may be the only person talking about the money, but, you know,
4 it's all about the money. You know, I don't see where it comes
5 from, so I can't intelligently make a decision on it today, not
6 when I see \$10 million. It could be \$20 million for all I
7 know.

8 CHAIRMAN EDGAR: Commissioner Carter, almost
9 everything we do is about money.

10 COMMISSIONER CARTER: Exactly. It is about the money
11 and also about the little old grandmas back home in Palatka.

12 CHAIRMAN EDGAR: Commissioner Arriaga.

13 COMMISSIONER ARRIAGA: I would like to move that we
14 defer this item to the next agenda conference if possible, or
15 whenever the legal department indicates it is the best time to
16 defer it to. I don't know, I just need a motion to defer.

17 MR. COOKE: In looking at the calendar, I believe we
18 would have to defer it to the first September conference.

19 CHAIRMAN EDGAR: Which is the 19th.

20 MR. COOKE: The 19th of September. We would need to
21 get -- if what I am hearing is asking for additional
22 information, we would need to get that information, give these
23 parties to the contract time to put that together, give it to
24 us, let us have a little bit of time with it, and then file an
25 additional recommendation. So I think we would be talking

1 about September 19th as opposed to the end of this month.

2 We also looked at the calendar and in terms of a full
3 evidentiary hearing, we are just not comfortable that that is
4 going to be possible reasonably before when the fuel docket
5 comes up anyway, which is in November, so if that helps shed
6 any light on our thinking here.

7 CHAIRMAN EDGAR: Thank you, Mr. Cooke.

8 Commissioner Carter.

9 COMMISSIONER CARTER: Madam Chairman, I feel
10 comfortable seconding the motion, but I would suggest that we
11 are asking for complete information. I mean, don't try to
12 sucker punch us. Whatever information that is out there, get
13 it to us so we can go ahead and make a decision. We are ready
14 to make a decision, but we want to make a decision based upon
15 all the available evidence. We want to make sure that we are
16 fair to the companies, we want to make sure that we are fair to
17 the consumers, we want to make sure that we make the right
18 decision. So, I mean, don't sucker punch us, like we feel this
19 and then try to submit a motion for more clarification.

20 Look, when you file the information, file the
21 complete information so we can make a decision. We are not
22 just saying we want to just get more information, but we want
23 it in the context of making the best evidence. Because the
24 next time we get here we want to go ahead on and make a
25 decision. So that is the spirit of seconding the motion, Madam

1 Chairman.

2 CHAIRMAN EDGAR: Commissioner Tew.

3 COMMISSIONER TEW: I'm still where I'm at before,
4 where I said I want the additional information and it doesn't
5 make a difference to me if we get it through a hearing route or
6 not. I will support the motion, but I guess I would throw out
7 the idea of leaving it open that if parties get together and
8 they believe that we are going to end up in a hearing
9 regardless, that they at least come back to us and tell us so.
10 It doesn't have to wait until September 19th for them to tell
11 us we think we are going to hearing either way.

12 And so maybe they go back and they talk to everyone
13 they need to talk to, and let us know in the form of a motion
14 or something if they think it is going to end up in a hearing
15 regardless. Then we can go ahead and get a date on the
16 calendar rather than waiting until September 19th to find one.
17 That's just a suggestion, but I can support the motion.

18 CHAIRMAN EDGAR: I appreciate your comments,
19 Commissioner Tew.

20 MR. COOKE: Chairman Edgar.

21 CHAIRMAN EDGAR: Mr. Cooke.

22 MR. COOKE: Just for additional information, I think
23 if we could ask -- if it goes in this direction, if we could
24 ask for briefs by two weeks from today, which would be the
25 29th, our recommendation is due on the 7th of September for the

1 September 19th meeting.

2 CHAIRMAN EDGAR: Mr. Cooke, that sounds reasonable to
3 me.

4 Commissioner Arriaga, is that in keeping with your
5 motion? I think that it is. Okay. And Commissioner Carter
6 had a second.

7 Commissioners, any further discussion? We have a
8 motion -- Commissioner Tew.

9 COMMISSIONER TEW: I would like to make sure that
10 those briefs, comments, whatever we call them, do include more
11 than the contract interpretation aspect. Some of the questions
12 that were raised here today, and probably others as people
13 delve into it that arise, if those are appropriate things to
14 address in the form of a brief, I would like to see that, too.
15 And I think as Commissioner Carter mentioned, the cost aspects,
16 as well, would be helpful to us.

17 CHAIRMAN EDGAR: Commissioners, further discussion?

18 COMMISSIONER DEASON: A quick question, Madam
19 Chairman.

20 CHAIRMAN EDGAR: Commissioner Deason.

21 COMMISSIONER DEASON: Here again, I'm not opposed to
22 a deferral and getting more information. However, if we take
23 this up on the 19th, and I think Mr. Butler just indicated that
24 there are some options, or contractual terms, or something that
25 perhaps may expire towards the end of September, if that

1 happens, and if they are fortunate enough to renegotiate some
2 terms, we may be looking at -- and, Commissioner, you keep
3 talking about the cost, we may be looking at different costs.
4 And so we may be getting briefs based upon one project, and
5 when we actually get around to making a decision, it may be a
6 similar project, but with different cost parameters. And that
7 may be a difficulty. I guess we'll just deal with it when the
8 time comes.

9 CHAIRMAN EDGAR: I, of course, always prefer to
10 address every possible circumstance that can come up. I'm not
11 sure that we can in this instance. I also have some confidence
12 in the negotiators and dealmakers with our utility that they
13 can continue to put forth a proposal that is in the best
14 interest of the state and the ratepayers.

15 Commissioners, further discussion?

16 Okay. Seeing none, all in favor of the motion say
17 aye.

18 (Unanimous affirmative vote.)

19 CHAIRMAN EDGAR: Opposed?

20 Show the motion carried. Thank you all.

21 MR. TWOMEY: Thank you.

22 MR. SHREVE: Thank you, Commissioner.

23 * * * * *

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF FLORIDA)

:

CERTIFICATE OF REPORTER

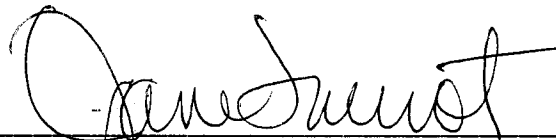
COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 21st day of August, 2006.



JANE FAUROT, RPR

Official FPSC Hearings Reporter
FPSC Division of Commission Clerk and
Administrative Services
(850) 413-6732