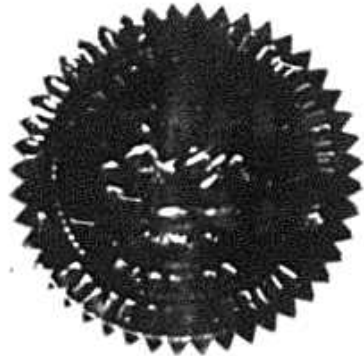


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of
Petition for expedited
approval of agreement with
Tiger Bay Limited Partnership:
to purchase Tiger Bay
cogeneration facility and
terminate related purchased
power contracts by Florida
Power Corporation.

: DOCKET NO. 970896-EQ
:
:



PROCEEDINGS: HEARING

BEFORE: CHAIRMAN JULIA L. JOHNSON
COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER DIANE K. KIESLING
COMMISSIONER JOE GARCIA

DATE: April 17, 1997

TIME: Commenced at 9:30 a.m.
Concluded at 10:40 a.m.

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

REPORTED BY: ROWENA NASH
Official Commission Reporter
(904) 413-6736

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1 **APPEARANCES:**

2 **JAMES A. MCGEE** and **JAMES P. FAMA**, Post
3 Office Box 14042, St. Petersburg, Florida 33733,
4 appearing on behalf of the Florida Power Corporation.

5 **PATRICK K. WIGGINS** and **DONNA L. CANEANO**,
6 Wiggins & Villacorta, P. A., Post Office Drawer 1657,
7 Tallahassee, Florida 32302, appearing on behalf of
8 Tiger Bay Limited Partnership.

9 **JOHN McWHIRTER, JR.** and **VICKI GORDON**
10 **KAUFMAN**, McWhirter, Reeves, McGlothlin, Davidson,
11 Rief & Bakas, 117 South Gadsden Street, Tallahassee,
12 Florida 32301, appearing on behalf of the Florida
13 Industrial Power Users Group.

14 **BRUCE MAY**, Holland & Knight, P. O.
15 Drawer 810, Tallahassee, Florida 32302, appearing on
16 behalf of Vastar Gas Marketing Incorporated.

17 **JACK SHERVE**, Public Counsel, and **JOHN ROGER**
18 **HOWE**, Deputy Public Counsel, Office of Public Counsel,
19 111 West Madison Street, Room 812, Tallahassee,
20 Florida 32399-1400, appearing on behalf of the
21 Citizens of the State of Florida.

22

23

24

25

1 **APPEARANCES CONTINUED:**

2 **WILLIAM COCERAN KEATING and LORNA WAGNER,**
3 **Florida Public Service Commission, Division of Legal**
4 **Services, 2540 Shumard Oak Boulevard, Tallahassee,**
5 **Florida 32399-0870, appearing on behalf of the**
6 **Commission Staff.**

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I N D E X**MISCELLANEOUS**

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P R O C E E D I N G S

(Hearing convened at 9:40 a.m.)

CHAIRMAN JOHNSON: We're going to go ahead and convene the hearing. Counsel, could you please read the notice?

MS. WAGNER: Pursuant to notice issued February 10, 1997, this time and place has been set for a hearing in Docket No. 970096-EQ, petition for expedited approval of agreement with Tiger Bay Limited Partnership to purchase Tiger Bay cogeneration facility and terminate related purchased power contracts by Florida Power Corporation.

CHAIRMAN JOHNSON: We will take appearances.

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

MR. MAY: Bruce May with the law firm of Holland & Knight. The address is P O. Drawer 810, Tallahassee, Florida 32302, appearing on behalf of Vastar.

MS. KAUFMAN: John McWhirter and V'oki Gordon Kaufman of the law firm McWhirter Reeves McGlothlin Davidson Rief & Bakas, on behalf of the Florida Industrial Power Users Group.

MR. WIGGINS: Patrick K. Wiggins and Donna

1 L. Canzano, the law firm of Wiggins and Villacorta,
2 Post Office Drawer 1657, Tallahassee 32302, on behalf
3 of Tiger Bay Limited Partnership.

4 MR. HOWE: Jack Shreve and Roger Howe on
5 behalf of the Office of Public Counsel.

6 MS. WAGNER: Lorna Wagner on behalf of
7 Florida Public Service Commission.

8 MR. KEATING: Cochran Keating on behalf of
9 the Florida Public Service Commission Staff.

10 CHAIRMAN JOHNSON: Are there any preliminary
11 matters, Counsel?

12 MS. WAGNER: Yes, there is, Chairman
13 Johnson. There's several. There's a couple of
14 outstanding motions and a stipulation.

15 Staff would recommend that the Commission
16 first address the motions filed by Vastar Gas
17 Marketing Incorporated for an Emergency Motion for
18 Reconsideration of Order No. PSC-97-0354-PCO-EQ in its
19 request for oral argument. I believe that you have
20 these motions in front of you. At least I passed them
21 out a couple of days ago.

22 Staff would recommend that the Commission
23 grant Vastar's request for oral argument. It is
24 within the Commission's discretion to do so and in
25 previous proceedings, such as JEA versus Florida Power

1 and Light, the Commission has granted the latitude to
2 interested persons in the proceeding to address the
3 Commission. Staff believes that by granting Vastar's
4 request for oral argument that it will be giving
5 Vastar its due process.

6 As to Vastar's request for reconsideration
7 of Order No. PSC-97-0354-PCO-EQ, staff recommends that
8 the Commission deny Vastar's motion. The proper
9 standard for review for a motion for reconsideration
10 is whether the motion identifies some material and
11 relevant point of fact or law which was overlooked, or
12 which the Commission failed to consider in rendering
13 its order. This is found in Diamond Cab Company
14 versus King.

15 In a motion for reconsideration, it is not
16 appropriate to reargue matters which have already been
17 considered or to raise immaterial issues that will not
18 affect the ultimate outcome. In its motion, Vastar
19 Gas Marketing Incorporated states several reasons why
20 the Commission should reconsider this decision in
21 Order No. PSC-97-0354 and allow Vastar to intervene in
22 this docket.

23 Staff recommends that Vastar's motion be
24 denied because Vastar in its motion raised points
25 which were either considered by the Prehearing Officer

1 in making her determination in this case or as not a
2 basis for reconsideration of the order. The
3 Commission should not reevaluate Vastar's motion to
4 intervene simply because Vastar's motion to intervene
5 was denied. The Prehearing Officer pursuant to Rule
6 25-22.039, Florida Administrative Code, determined
7 that Vastar did not have -- demonstrate that it was
8 entitled to participate as a matter of constitutional
9 or statutory right, nor did it show that it should be
10 able to participate pursuant to Commission rule.

11 The Prehearing Officer also used the test
12 articulated in Agrico Chemical Company versus the
13 Department of Environmental Regulation to determine
14 whether or not Vastar had a substantial interest in
15 this proceeding. The Prehearing Officer did not find
16 that Vastar's substantial interest would be affected
17 through the proceeding.

18 Vastar's belief that the Prehearing Officer
19 misinterpreted the standards used to determine a
20 substantial interest is not a basis for granting a
21 motion for reconsideration. Vastar's disagreement
22 with the Prehearing Officer's interpretation of its
23 substantial interest does not raise a point of fact or
24 law the Prehearing Officer has failed to consider.
25 Therefore, for these reasons, Staff recommends that

1 Vastar's emergency motion for reconsideration be
2 denied. Vastar is present today to address these
3 motions.

4 CHAIRMAN JOHNSON: Commissioners? There's a
5 motion for oral argument on the motion for
6 reconsideration?

7 MS. WAGNER: That is correct.

8 COMMISSIONER DEASON: I move we grant the
9 motion and allow oral argument.

10 CHAIRMAN JOHNSON: Is there a time
11 limitation?

12 COMMISSIONER DEASON: Five minutes.

13 CHAIRMAN JOHNSON: There's a motion. Is
14 there a second?

15 COMMISSIONER GARCIA: Second.

16 CHAIRMAN JOHNSON: There is a motion and a
17 second that we allow the oral argument limiting it to
18 five minutes. All those in favor signify by aye.

19 COMMISSIONER DEASON: Aye.

20 COMMISSIONER KIESLING: Aye.

21 COMMISSIONER GARCIA: Aye.

22 CHAIRMAN JOHNSON: Aye. Opposed?

23 COMMISSIONER CLARK: Madam Chair, you should
24 show me as aye, also. Sorry.

25 CHAIRMAN JOHNSON: Opposed? Show it

1 approved unanimously.

2 **MR. MAY:** Thank you, Madam Chairman.
3 Commissioners, my name is Bruce May appearing on
4 behalf of Vastar Gas Marketing. Thank you for the
5 opportunity to address you this morning. I understand
6 the limited scope of my presentation, and I also
7 understand the Diamond Cab case. I will not address
8 and I will limit my remarks only to those matters
9 which I think have not been considered in the past.

10 Counsel for the Commission stated that the
11 Prehearing Officer relied on the Agrico test. It is
12 not clear from the face of the order by whether the
13 Prehearing Officer did indeed rely on the Agrico test,
14 and I would like to address that issue.

15 But before we get to that point, I think it
16 would be helpful to understand some background.
17 First, Vastar is not seeking to intervene in this
18 proceeding for the purpose of opposing the stipulation
19 or the petition filed by Florida Power Corporation.
20 Vastar seeks to intervene in this proceeding to
21 protect and defend the reasonableness of its contract,
22 which is the subject of a specific issue in this
23 docket.

24 **COMMISSIONER DEASON:** Are you saying this
25 Commission has got jurisdiction over that contract?

1 MR. MAY: I'm saying that what Florida Power
2 Corporation, Commissioner Deason, has asked the
3 Commission is to approve the reasonableness of that
4 contract and to allow it to recover the cost of that
5 contract through the fuel and purchased power cost
6 recovery proceedings. We have a vital interest in the
7 Commission determining and finding that the contract
8 is --

9 COMMISSIONER DEASON: Are your interests in
10 any way altered or changed by a decision by this
11 Commission to deny cost recovery?

12 MR. MAY: I think they are,
13 Commissioner Deason.

14 COMMISSIONER DEASON: Is there a regulatory
15 out clause in your contract?

16 MR. MAY: We have a contract today with
17 Tiger Bay. We do not have a contract with the Florida
18 Power Corporation. Under the proposed acquisition
19 Tiger Bay's contractual rights and obligations would
20 be assigned to Florida Power Corporation. Under the
21 contract today -- the contract we have today with
22 Tiger Bay was not designed with any type of regulatory
23 approval in mind. As a result, the force majeure
24 clause of that contract could be interpreted as an
25 opportunity to avoid the obligation should the

1 Commission determine that the contract was not
2 reasonable and should not be recovered.

3 COMMISSIONER DEASON: And who would
4 determine if the force majeure obligations would be
5 trued?

6 MR. MAY: That would be determined by a
7 court of law.

8 COMMISSIONER DEASON: Not this Commission?

9 MR. MAY: That's right.

10 COMMISSIONER DEASON: Very well.

11 MR. MAY: Vastar supplies approximately 100%
12 of the natural gas that is used by the current
13 cogeneration facility in Tiger Bay. It entered into a
14 contract three years ago with Tiger Bay and has
15 operated under that contract since that time. Up
16 until this docket was filed, that fuel supply contract
17 was never subject to -- of a PSC proceeding or was
18 never the subject of an issue in a PSC proceeding and
19 was never brought before you for review. That all
20 changed in January of this year when Florida Power
21 Corporation filed its petition and requested, among
22 other things, that you approve its proposed
23 acquisition of the cogeneration plant, that you
24 approve of the authority of Florida Power Corporation
25 to assume the contractual rights of Tiger Bay and

1 enter into a contract with Vastar, and also, that you
2 approve the right of Florida Power Corporation to
3 recover the cost of those contracts through the fuel
4 cost recovery proceedings.

5 With that background in mind, I'd like to
6 make several points which I don't believe has been
7 considered thus far. The ability for Vastar to
8 intervene in this proceeding depends on the ability --
9 its ability to satisfy the definition of "party" under
10 the Administrative Procedure Act. I don't think
11 there's any doubt about that and no dispute about
12 that.

13 What has not been addressed thus far is that
14 the Administrative Procedures Act, specifically
15 Section 120.5212(a) defines a party, regardless of the
16 Agrico test. It defines a party to include, and I
17 quote, "specifically named persons whose substantial
18 interests are being determined in the proceeding."

19 The policy in allowing named persons to
20 participate as a party in an administrative
21 proceeding, I think, is clear. If a person is named
22 in a proceeding, the legislature has recognized that
23 that person's substantial interests are likely to be
24 implicated in that proceeding and, therefore, that
25 person should have an opportunity to participate in a

1 proceeding to defend those interests.

2 I respectfully submit that Vastar is a named
3 party in this proceeding. Florida Power Corporation's
4 initial petition specifically names Vastar. It
5 specifically names the Vastar contract. Florida Power
6 Corporation has filed the Vastar contract with this
7 Commission. The testimony of Florida Power and FIPUG
8 are replete with references to the Vastar contract and
9 to Vastar. In fact, some of the other testimony of
10 the other parties in this document would offer
11 qualitative opinions as to the reasonableness of that
12 contract. Perhaps most telling is that Issue No. 14
13 in this proceeding, a core issue, would call for this
14 Commission to make a determination as to the
15 reasonableness of this contract and Florida Power
16 Corporation's ability to recover the cost of the
17 contract from its ratepayers.

18 I think that demonstrates, Commissioners,
19 that Vastar has a vital interest in this proceeding.
20 And should the Commission in this proceeding determine
21 during the course of this proceeding or in some
22 subsequent fuel cost recovery proceeding that the
23 Vastar contract is not reasonable and would disallow
24 Florida Power Corporation from recovering the costs,
25 that could directly impair Florida Power Corporation's

1 ability to honor its contractual commitment with our
2 client.

3 In closing, Commissioners, this is not a
4 proceeding where Vastar's interest are remote or
5 tangential. This is fuel supply cost recovery
6 proceeding, and you are being asked to make a specific
7 determination as to the reasonableness of our
8 contract -- of Vastar's contract. Vastar is simply
9 asking to participate in the proceeding to defend its
10 contractual rights and to defend the reasonableness of
11 that contract.

12 There are a number of paradoxes in this
13 proceeding, and perhaps one of the most troubling is
14 if Tiger Bay is not a party to this proceeding --
15 excuse me, if Vastar is not a party to this
16 proceeding, why should Tiger Bay be a party.

17 Florida Power Corporation is asking the
18 Commission to do a number of things. One it's asking
19 the Commission to recognize that the contractual
20 rights or the contractual obligations between Florida
21 Power Corporation and Tiger Bay are being terminated.
22 In the same breath, Florida Power Corporation is
23 asking the Commission to recognize the creation of a
24 new contractual relationship between Florida Power
25 Corporation --

1 **CHAIRMAN JOHNSON:** Mr. May, I'll give you
2 one more minute to wrap it up.

3 **MR. MAY:** It's asking for the Commission
4 also to recognize the creation of a contractual
5 relationship between Vastar and Florida Power
6 Corporation.

7 Tiger Bay, when its contract rights have
8 been terminated -- or are being terminated, has been
9 granted party status. On the other hand Vastar, who
10 is entering into or may be entering into a new
11 contractual relationship with Florida Power
12 Corporation is left out of the proceeding. We think
13 that's unfair, it's inconsistent, and we would --

14 **COMMISSIONER DEASON:** Are you entering into
15 a new contractual relationship, or is it strictly an
16 assumption of the existing contractual relationship
17 you have presently with Tiger Bay?

18 **MR. MAY:** It would require a new contractual
19 relationship.

20 We would respectfully request that we be
21 allowed to participate in this proceeding as a party.
22 We are not opposing the stipulation, we are simply
23 asking to participate to defend the reasonableness of
24 our contract.

25 **COMMISSIONER DEASON:** Thank you.

1 **MR. MAY:** I'll be glad to answer any
2 questions.

3 **COMMISSIONER DEASON:** Is the reasonableness
4 of the contract an issue in this proceeding?

5 **MR. MAY:** Issue No. 14, yeah, it is an
6 issue. It's whether Florida Power Corporation should
7 be able to recover the cost of the Vastar contract
8 through the fuel and purchased power cost recovery
9 clause.

10 **CHAIRMAN JOHNSON:** Any further questions,
11 Commissioners? Susan, did you have a question?

12 **COMMISSIONER CLARK:** You did answer
13 Commissioner Deason that whether or not -- if for some
14 reason Florida Power or Tiger Bay no longer purchased
15 from Vastar, where would your remedy be? In the
16 court? It wouldn't be here, would it?

17 **MR. MAY:** It would be in a court. But I
18 think that there's been a lot of discussion about the
19 Agrico test. Again, I would remind the Commission
20 that the court in Agrico did not address the
21 definition of "party" in 12(A). It addressed the
22 definition of "party" in 12(B).

23 **COMMISSIONER CLARK:** Yes, but you still have
24 to meet the test of your substantial interest being
25 affected.

1 **MR. MAY:** Right. And I would again argue
2 that our contract is an issue in this proceeding. Our
3 contract rights will be implicated in this proceeding.

4 **COMMISSIONER CLARK:** Well, if we follow your
5 logic, anytime we have any costs at issue in any rate
6 case, the supplier of that service would be a party.

7 **MR. MAY:** If the utility is asking the
8 Commission to approve the reasonableness of that
9 contract in a proceeding, I think that the contracting
10 party to that document ought to be able to participate
11 and defend the reasonableness of that contract,
12 otherwise who would be there to defend the
13 reasonableness? Who would be there to defend the
14 interest of the other contracting party?

15 This is a fuel cost recovery proceeding, and
16 I would reflect back and note that you have allowed
17 the United Mine Workers of Florida to intervene in
18 fuel cost recovery proceedings, you've allowed
19 environmental groups, and neither one of those special
20 interest groups were in privity or would be in privity
21 with the regulated utility.

22 **CHAIRMAN JOHNSON:** Any further questions?

23 Staff, were there any objections filed? Do
24 we need to hear from any other parties on this?

25 **MS. WAGNER:** Florida Power Corporation filed

1 a response, but they didn't indicate whether or not
2 they opposed or approved or recommended that Vastar be
3 allowed to intervene.

4 But I feel it's important for me to point
5 out to you that Vastar Gas Marketing's rights may not
6 be infringed upon, because according to the purchase
7 agreement with Tiger Bay generating facility with
8 Florida Power Corporation, Vastar Gas Marketing has
9 the right to withhold its consent and thereby the
10 purchase agreement would not be allowed to continue on
11 or go through. So they do have an option, and they do
12 have a point of entry if they feel their rights are
13 being infringed upon.

14 Also, I'd like to point out something
15 else -- and Commissioner Clark picked up on this
16 immediately, or at least she brought it out to your
17 attention -- that when Mr. May spoke about
18 Section 120.572-A, that he said "specifically named
19 persons," and according to this they must indicate
20 that they have a substantial interest.

21 When looking at a substantial interest
22 according to International Jai Alai Players
23 Association, this Commission has determined that a
24 conjecture as to a future economic detriment is too
25 remote and too speculative to establish the ending.

1 And I believe it's important that I point that out to
2 you.

3 **CHAIRMAN JOHNSON:** Commissioners?

4 **COMMISSIONER KIESLING:** I just have one
5 question. Where in your original petition to
6 intervene did you cite to 120.5712(A), or whichever
7 one it was you were talking about?

8 **MR. MAY:** Commissioners, that was not cited
9 in our original petition. We simply argued that we
10 were a party under the Administrative Procedures Act.
11 We did not specify the specific Subparagraph A. We
12 did bring that to the Commission's attention in our
13 reconsideration.

14 **COMMISSIONER KIESLING:** Right.

15 **COMMISSIONER CLARK:** Is Florida Power
16 Corporation going to make a presentation? I, mean did
17 you oppose it, or not?

18 **MR. FAMA:** Commissioner, we did not oppose
19 or support the intervention at the time. We were in
20 contract negotiations with Vastar and thought that
21 that was an appropriate posture at the time. That
22 was, of course, prior to the ruling and now the
23 revisitation. We would like a minute to address it if
24 we could. We do oppose it at this point.

25 **COMMISSIONER CLARK:** Well, Madam Chair, in

1 the interest of moving this along, I move we deny the
2 reconsideration of the Prehearing Officer's order. I
3 don't think that Vastar has a substantial interest in
4 this proceeding.

5 COMMISSIONER DEASON: Second.

6 CHAIRMAN JOHNSON: There is a motion and a
7 second. Any further discussion? Seeing none, all
8 those in favor signify by saying aye.

9 COMMISSIONER DEASON: Aye.

10 COMMISSIONER CLARK: Aye.

11 COMMISSIONER KIESLING: Aye.

12 COMMISSIONER GARCIA: Aye.

13 CHAIRMAN JOHNSON: Aye. Show it approved
14 unanimously. Thank you, Mr. May.

15 Any other preliminary matters?

16 MS. WAGNER: Yes, Commissioners. On
17 April 14, 1997, Florida Power Corporation and the
18 Office of Public Counsel and Florida Industrial Power
19 Users Group collectively filed a joint motion for
20 approval of a stipulation. It is Staff's
21 understanding at this point in time that Tiger Bay
22 facility also supports this stipulation.

23 While this stipulation resolves the majority
24 of the issues outlaid in the pre -- in the order,
25 there still remains some outstanding accounting issues

1 whereupon on April 16, 1997, Florida Power Corporation
2 filed a supplemental stipulation. I believe that you
3 all should have both of those stipulations in front of
4 you.

5 This supplemental stipulation resolved all
6 the outstanding issues. It is Staff's understanding
7 that at this point in time that neither OPC, FIPUG or
8 Tiger Bay has said whether or not they also approve of
9 this additional stipulation, the supplemental
10 stipulation, or whether or not they oppose it.

11 Staff would recommend that the Commission
12 refrain at this point in time from making a bench
13 decision on whether or not to approve the stipulation.
14 Staff would request that you grant it time to consider
15 whether or not the stipulation is in the public
16 interest and whether or not -- and give you a thorough
17 recommendation. Staff would like you to direct it to
18 have file recommendation on May 7, 1997, and that the
19 Commission hear this on the May 19, 1997 regularly
20 scheduled agenda conference, whereupon Staff could
21 then issue a final agency action reflecting the
22 Commission's decision order in this proceeding.

23 Staff would defer to the parties at this
24 point in time if you have any questions regarding the
25 stipulation before you.

1 **CHAIRMAN JOHNSON:** Any questions,
2 Commissioners?

3 **COMMISSIONER KIESLING:** I just want to be
4 clear that all the parties are in agreement with this
5 stipulation to the extent that there is no reason to
6 go forward with the hearing, and then we can take up
7 whether or not we are going to approve the stipulation
8 at a regularly scheduled agenda.

9 **CHAIRMAN JOHNSON:** Starting then with
10 Florida Power Corp.

11 **MR. MCGEE:** Madam Chairman, Florida Power
12 has signed both the stipulation submitted with the
13 joint motion and the additional -- the supplemental
14 stipulation on the accounting issues, and we believe
15 that this resolves all outstanding issues amongst the
16 parties to the docket.

17 We have Mr. Dolan with us today in the event
18 that the Commission would desire to hear a summary of
19 the stipulation. But maybe as a matter right now we
20 should identify for the record the parties' position
21 on the supplemental stipulation.

22 **CHAIRMAN JOHNSON:** Certainly. Mr. McWhirter
23 or Ms. Kaufman.

24 **MR. MCWHIRTER:** Madam Chairman, I just got
25 the stipulation this morning, and it appears on

1 preliminary review to be satisfactory to our position.
2 I would frankly like to take a short recess and
3 discuss it with Public Counsel to be sure that they
4 are in concurrence. There might be some minor
5 phraseology changes, but the conceptual import of it
6 is satisfactory to FIPUG at this juncture subject to
7 further consultation with Public Counsel.

8 **CHAIRMAN JOHNSON:** Public Counsel.

9 **MR. SHERVE:** Madam Chairman, that would be
10 fine with us. As to -- maybe a part of the problem
11 is, generally speaking, all the parties would sign on
12 the stipulation. I think this probably is not really
13 in the nature of a stipulation, it's more of
14 accounting facts that after we talk to Mr. McWhirter,
15 I think possibly a good way to handle it was just let
16 Power Corp represent to the Commission that they have
17 no problem with these items being in the order. If
18 that would take care of it, so we don't -- then we
19 wouldn't be concerned about whether or not we really
20 have a stipulation or not.

21 If Mr. McWhirter would like to talk about
22 these items, I don't think we have any problem with
23 them, but I'd be happy to talk to him about it to see
24 if there may be something we haven't thought about.
25 But then that might be a way to handle it because it's

1 a little different than a normal stipulation, then
2 move on to the big -- the stipulation.

3 **COMMISSIONER CLARK:** Is that clear, Madam
4 Chairman? It wasn't to me.

5 **CHAIRMAN JOHNSON:** Yeah. Are you suggesting
6 that with respect to the supplemental information that
7 it be included in our order, or --

8 **MR. SHERVE:** Well, yes, I think the
9 stipulation would -- well, it's not really a
10 stipulation. These items, I don't think anyone is
11 going to have any problems with, and I think all of us
12 could agree that those items would be covered in the
13 order or added to the stipulation. I think that would
14 be the easiest way to do it.

15 Then, of course, I think the stipulation
16 that you want to spend most of the time discussing is
17 the stipulation that was entered into among the
18 parties.

19 **MR. McWHIRTER:** Ms. Johnson, I concur with
20 that. I believe the genesis of this document is
21 concerns the Staff expressed about accounting
22 procedures after it reviewed the stipulation. And
23 Florida Power has exceeded to these positions. We
24 haven't discussed it in a sufficient detail to say,
25 yes, we agree to it and we understand it; but FIPUG,

1 like the Public Counsel, would have no objection to
2 these items being included in your order approving the
3 stipulation, and in essence endorse what Mr. Shreve
4 just said. We don't argue with any of these
5 positions, in other words.

6 **CHAIRMAN JOHNSON:** Okay.

7 **COMMISSIONER KIESLING:** I'm confused. Could
8 I just try to get unconfused first?

9 **CHAIRMAN JOHNSON:** Sure.

10 **COMMISSIONER KIESLING:** Are we or are we not
11 going to hold the stipulation until Staff can do a
12 recommendation and reconsider it at an agenda
13 conference? Because if we are, it seems as though if
14 everyone has signed on the main body of the
15 stipulation, and there's just this one document, that
16 we don't need to be concerning ourselves with this
17 until we get to the agenda conference. That's what
18 I'm confused about.

19 **CHAIRMAN JOHNSON:** I think on the issue of
20 whether or not we are going to approve the stipulation
21 today, I think that's something we have to decide. It
22 would certainly be my preference that we not, but
23 that's something we have to decide jointly. And I
24 believe that what Public Counsel and Mr. McWhirter,
25 what they were suggesting was almost the same thing,

1 that we will have another opportunity and that this
2 would probably be combined with the stipulation and
3 Staff could analyze it to see if it was what they
4 actually suggested. And I would assume if there was a
5 problem at that agenda, the other parties could raise
6 it at that point in time if we were to decide not
7 approve all of this right now.

8 **COMMISSIONER GARCIA:** I think Diane's point
9 goes more to the heart of the matter. If I'm
10 mistaken -- I don't think we need to hear basically
11 anything if all the parties are in agreement today and
12 simply set it for agenda and let Staff make a
13 determination from its position what it thinks of
14 this.

15 **CHAIRMAN JOHNSON:** Yes. And I think
16 Commissioner Kiesling, just in an abundance of
17 caution, wanted to make sure that the parties said on
18 the record that there's no need to hold a hearing
19 because they were all in agreement with the joint
20 stipulation.

21 **COMMISSIONER KIESLING:** Right. That was my
22 only concern. I mean, we can iron out the details at
23 the agenda.

24 **CHAIRMAN JOHNSON:** Okay. Mr. Wiggins.

25 **MR. WIGGINS:** Yes, ma'am. Tiger Bay

1 supports the joint motion for the stipulation as well
2 as Florida Power Corporation's supplemental
3 stipulation and do not believe we need to have a
4 hearing today. Thank you.

5 **COMMISSIONER CLARK:** Madam Chair, I just
6 have a question. It seems to me that some of the
7 things the Staff has pointed out on the supplemental
8 stipulation -- for instance, for depreciation
9 purposes, average service life will equal 20 years and
10 that's going to affect -- well, let me ask.

11 Does it affect -- it says, one of the
12 stipulations, I have a summary of the stipulation.
13 When the regulatory asset balance is reduced to zero,
14 the level of the PPA revenues will be reduced to the
15 amount required by the natural gas contract. Is that
16 regulatory asset talking about the Tiger Bay facility?

17 **MR. DUDLEY:** Commissioner Clark, if I may?
18 The regulatory asset is considered the portion of the
19 net from the purchase price minus the value of what
20 they are assigning to the Tiger Bay generating
21 facility.

22 **COMMISSIONER CLARK:** Okay. By "regulatory
23 asset," you mean an asset we create by something we do
24 in regulation, not a piece of property.

25 **MR. DUDLEY:** Yes, ma'am. And the 20, the

1 service life, speaks to the portion which would be in
2 rate base, not the regulatory asset.

3 **COMMISSIONER CLARK:** Madam Chairman, the
4 only concern I have is whether or not the parties
5 would not agree to what is in their stipulation based
6 on what the Staff is recommending in terms of
7 accounting treatment. And I think it would be
8 worthwhile if -- have you looked at it from the
9 standpoint of how it affects the stipulation?
10 Mr. Howe.

11 **MR. McWHIRTER:** We don't see any problems
12 with the accounting procedures that are outlined in
13 this document. The problem we have is called a
14 stipulation which looks like a joint agreement and it
15 sort of got us all --

16 **COMMISSIONER CLARK:** Now, I understand. As
17 long as you are not going to raise an objection to it
18 as affecting your support of the joint stipulation.

19 **MR. McWHIRTER:** That's correct. Mr. Shreve
20 was in the background, and I think he confirms that.

21 **CHAIRMAN JOHNSON:** Okay.

22 **MR. SHEREVE:** Yes.

23 **CHAIRMAN JOHNSON:** Are there any other
24 issues or concerns as it relates to the supplemental
25 or the joint stipulation in the hearing today?

1 MS. WAGNER: No, Chairman Johnson. But
2 Staff would like some direction. Is it okay that we
3 go ahead and file the recommendation on May 6th and
4 take this up again on the May 20th agenda?

5 CHAIRMAN JOHNSON: I think you had framed
6 that in the form of a Staff recommendation --

7 MS. WAGNER: Yes.

8 CHAIRMAN JOHNSON: -- that we do that.

9 MS. WAGNER: That's correct.

10 CHAIRMAN JOHNSON: Is there a motion on
11 that?

12 COMMISSIONER KIESLING: Yes. I move that we
13 follow the procedure that Staff outlined taking this
14 to agenda.

15 COMMISSIONER GARCIA: Second.

16 COMMISSIONER DEASON: Before we do that, let
17 me ask. I have no opposition to doing that. My
18 question is that I have some questions about the
19 stipulation, and I'm sure we are going to explore it
20 in greater detail once we get Staff's recommendation.
21 But it seems to me it may be a prudent use of time
22 while we have got all the parties here, and if a
23 Commissioner has some questions, at least go ahead and
24 get those questions out on the table so to speak. It
25 may be useful then to have that when Staff formulates

1 their final recommendation.

2 **CHAIRMAN JOHNSON:** Okay.

3 **COMMISSIONER DEASON:** So I don't have a
4 problem going ahead and entertaining that motion and
5 disposing of that. But I just don't want us all to
6 jump up and leave as soon as we do that, because I
7 have some questions that I think may be useful to go
8 ahead and at least explore for a little bit while we
9 are here today.

10 **CHAIRMAN JOHNSON:** Okay, then. There's a
11 motion. Is there a second?

12 **COMMISSIONER GARCIA:** Second.

13 **CHAIRMAN JOHNSON:** There's a motion and a
14 second. All those in favor signify by saying aye.

15 **COMMISSIONER DEASON:** Aye.

16 **COMMISSIONER CLARK:** Aye.

17 **COMMISSIONER KIESLING:** Aye.

18 **COMMISSIONER GARCIA:** Aye.

19 **CHAIRMAN JOHNSON:** Aye. Show it approved
20 then unanimously. At this point in time we'll go
21 ahead and entertain any questions that Commissioners
22 might have with respect to the joint stipulation
23 and/or the supplemental accounting information.

24 **COMMISSIONER DEASON:** I have a question and
25 it deals with Page 2 of the stipulation, Paragraph B.

1 And as I understand, the revenue stream is going to be
2 based upon revenues that would have been collected had
3 there not been a termination of the contract. Is that
4 basically correct?

5 MR. MCGEE: That's correct.

6 COMMISSIONER DEASON: Now, is there any
7 controversy issue concerning what those revenues are,
8 or is that an amount that is unquestioned?

9 MR. MCGEE: If I might, Mr. Dolan is here to
10 describe some of the details. I think that would be a
11 question he would be best suited to answer.

12 MR. DOLAN: Yeah, we have the information --

13 COMMISSIONER DEASON: Let me ask a question
14 at this point. I don't mind Mr. Dolan answering that
15 question. I know that we are doing -- we're
16 considering a stipulation in lieu of hearing. I guess
17 his testimony is not sworn testimony, or should he be
18 sworn? Is this like an agenda that we are here?

19 That's fine with me. Go ahead.

20 MR. DOLAN: The information is available to
21 calculate the revenue stream that would have been
22 there if the PPAs were still alive. In the
23 stipulation the capacity payments are going to be at
24 their full level. And then the energy payment will be
25 for the energy delivered from the facility priced

1 under the contracts which is -- and there are a
2 variety of contracts. Four of them are Big Bend, four
3 coal contracts, and one of them is a Crystal River 1
4 and 2 contracts.

5 **COMMISSIONER DEASON:** But as we know, there
6 has been differences in interpretation of payment
7 streams under language in contracts. Is that at issue
8 in this proceeding?

9 **MR. DOLAN:** No, that's not an issue here.
10 Four of the contracts are the old lessor of language.
11 The lessor of Big Bend for coal or Florida Power's
12 marginal costs. The Crystal River 1 and 2 contract is
13 an 80% of the fuel at Crystal River 1 and 2. And
14 those contracts have not been an issue like the other
15 contracts that have been up here.

16 **COMMISSIONER DEASON:** Okay. I'm looking at
17 Page 3 of the stipulation, the very first line where
18 it references interest costs associated with
19 amortization. What interest rates are going to be
20 used?

21 **MR. DOLAN:** We have not finalized the
22 financing of this, but the interest rate is probably
23 going to be in the six-and-a-half percent range. We
24 are planning on doing medium term notes to finance
25 that, and currently they are in the six-and-a-half

1 percent range.

2 **COMMISSIONER DEASON:** So you are indicating
3 that there's going to be a specific source of capital
4 that's going to be acquired for this specific purpose,
5 and whatever that rate is, is what's going to be
6 applied?

7 **MR. DOLAN:** Yes, that's right.

8 **COMMISSIONER DEASON:** Are the parties aware
9 of that? All the parties aware of that?

10 **MR. HOWE:** Yes, we were aware of that. And
11 the term we used in the discussions was the medium
12 term notes. And we discussed the fact that they are
13 within a fluctuating range at present, and the
14 existing issuance costs will be what will control.

15 **COMMISSIONER DEASON:** What about -- I know
16 that there's some discussion in here on deferred taxes
17 and how they are going to be treated. Are there
18 deferred taxes associated with this transaction?

19 **MR. DOLAN:** Yes -- well, if the IRS does not
20 let us do a current deduction on the purchase price,
21 then there will be deferred taxes. We are going to
22 ask the IRS for a letter ruling because there has not
23 been an exact case like this that the IRS has done a
24 letter ruling on. So there may be the potential for
25 deferred taxes according to what happens with the

1 letter ruling.

2 **COMMISSIONER DEASON:** And how are those
3 deferred taxes going to be accounted for, if they
4 exist?

5 **MR. DOLAN:** They're going to be in the base
6 rate calculations.

7 **COMMISSIONER DEASON:** They'll be included in
8 your capital structure; is that correct?

9 **MR. DOLAN:** They'll be included in our costs
10 for Florida Power.

11 **COMMISSIONER DEASON:** The overall capital
12 structure?

13 **MR. DOLAN:** Well, they'll be included --

14 **COMMISSIONER DEASON:** The problem I'm having
15 is that you are identifying a specific source of
16 capital for this transaction and wanting to apply that
17 as the cost associated with the unamortized portion.
18 But then if there are deferred taxes associated with
19 it, as I understand it, that will just be put over
20 into the overall capital structure of the company.
21 And I'm trying to understand if that is what is being
22 proposed and why that's reasonable.

23 **MR. NOGEE:** If I can direct your attention
24 to item No. 2 in the supplemental stipulation, it does
25 provide that the deferred taxes that are associated

1 with the Tiger Bay acquisition will be included in the
2 capital structure.

3 **COMMISSIONER DEASON:** Well, my question is,
4 is that, that's fine, that's well and good -- first of
5 all, let me ask, are we talking about positive
6 deferred taxes or negative deferred taxes as a result
7 of this transaction?

8 **MR. DOLAN:** They are negative.

9 **COMMISSIONER DEASON:** I mean, is it debit
10 balance or credit balance deferred taxes as a result?

11 **MR. DOLAN:** They are a cost.

12 **COMMISSIONER DEASON:** It's a cost.

13 **MR. DOLAN:** Right.

14 **COMMISSIONER DEASON:** And that would result
15 and depending on whether the IRS would allow the
16 current deduction of these buy out costs?

17 **MR. DOLAN:** Right. Yeah, if they allow the
18 current deduction, then there won't be any costs
19 associated with the deferred taxes.

20 **COMMISSIONER DEASON:** The deferred taxes are
21 triggered, are created only if the IRS does not allow
22 a current deduction?

23 **MR. DOLAN:** That's correct.

24 **COMMISSIONER DEASON:** We have got somebody
25 else coming to the table, if they can confirm --

1 **MR. MCGEE:** We have Mr. Scardino, our vice
2 president and controller with us, and perhaps he might
3 be better able to answer these accounting questions.

4 **MR. SCARDINO:** Commissioner, the deferred
5 taxes associated with the transaction could be a
6 prepaid tax asset or a tax credit liability depending
7 on the deductibility of the buy out of the PPA
8 contracts.

9 Right now we are pursuing a posture by where
10 we can get a current deduction. If we're successful
11 in that, we'll have tax credits that will be
12 established, deferred tax credits, because a deduction
13 will be taken at the front end and, therefore, the
14 cost of capital will have the inclusion of cost free
15 sources of capital as a reduction in the overall cost
16 of capital.

17 If we are not successful with that position,
18 then we will have a prepaid tax asset that would be
19 included in the cost of capital.

20 **COMMISSIONER DEASON:** If you are successful
21 and are allowed a current deduction and thus the
22 creation of a deferred tax credit, that would be a
23 source -- that would be a cost free source of capital,
24 correct?

25 **MR. SCARDINO:** Yes, sir.

1 **COMMISSIONER DEASON:** Why then would you not
2 take that and apply that against the proceeds of the
3 loan to help offset the carrying cost of the
4 unamortized balance?

5 **MR. SCARDINO:** Probably for the purpose that
6 when we establish the loan, we are going to go with a
7 precise prepayment schedule that the creditor will
8 understand when the principal and interest is due back
9 to the creditor. The fluctuation of taxes due to
10 revenue stream changes, things that happened over the
11 forecast period, will cause what we actually get to
12 fluctuate, or potentially fluctuate, from month to
13 month or period to period. So creditors are not
14 normally comfortable with floating obligations in
15 terms of repayment.

16 **COMMISSIONER DEASON:** You are
17 misunderstanding the nature of my question. I am not
18 in any way suggesting that your actual debt instrument
19 that you sign with your creditor be affected by this,
20 especially a regulatory accounting or an allocation of
21 cost or benefits for purposes of this buy out
22 contract. If you are assigning specific capital costs
23 to this, why not also assign the specific tax credits
24 to this transaction in determining the overall cost of
25 capital applicable to the carrying cost of the

1 unamortized balance?

2 **MR. SCARDINO:** Commissioner, the reason we
3 didn't go that way is we were expecting to have a
4 prepaid tax asset, and our expectation is we would
5 absorb that through base rates and not seek to
6 increase the recovery from customers through the
7 continuation of the PPA for a longer period of time to
8 pick up that tax asset.

9 So the expectation was that it would be an
10 additional cost to the company that would occur, and
11 we would pick it up through base rates as we were
12 planning to pick up O&M taxes, properties taxes,
13 payroll taxes, things of that nature as well.

14 **COMMISSIONER DEASON:** Thank you for that.

15 I would like for Staff to take a further
16 look at this. When you bring your recommendation back
17 and give some further assurances one way or the other
18 as to how Staff feels, it should be accounted for.

19 I'm also looking at Page 3 of the
20 stipulation, I guess the fifth line from the top. The
21 reference there is made to the coal energy charge
22 specified in the purchased power agreements. Is this
23 a term that is defined within those agreements?

24 **MR. DOLAN:** It is not a defined term. It's
25 just the energy payments that are in the existing

1 power purchase agreements. And they are based on
2 coal.

3 COMMISSIONER DEASON: Is your position
4 though that there's not been any controversy
5 concerning the contractual interpretation of the
6 calculation of those specific dollars?

7 MR. DOLAN: There has been no controversy or
8 no objections raised by the parties that are being
9 paid under those contracts.

10 COMMISSIONER DEASON: Continuing down from
11 here, the energy cost is going to be recovered through
12 the fuel adjustment clause as it currently is; is that
13 correct?

14 MR. DOLAN: That's correct.

15 COMMISSIONER DEASON: Now the capacity
16 charge associated with the purchased power agreements,
17 can that also continue to be recovered through the
18 capacity cost recovery clause?

19 MR. DOLAN: That's correct.

20 COMMISSIONER DEASON: Now the revenues from
21 the capacity cost recovery charge, they are going to
22 be allocated first to the remaining fuel costs of the
23 natural gas costs?

24 I'm trying to understand that Subparagraph 1
25 there on the top of Page 3.

1 **MR. DOLAN:** Well, the existing energy
2 payments under the contracts is about half of what the
3 natural gas costs, including the Vastar and the gas
4 transportation costs that are associated with the
5 Tiger Bay facility.

6 So we are going to take the total revenues,
7 capacity and energy, and first just pay the gas costs,
8 which includes supply and transportation. And then
9 the remaining dollars will be to pay off the
10 regulatory asset.

11 **COMMISSIONER DEASON:** Okay. But it appears
12 that you are going to be allocating capacity --
13 revenue associated with the capacity cost recovery to
14 fuel costs.

15 **MR. DOLAN:** That's correct.

16 **COMMISSIONER DEASON:** Why is it that all
17 fuel costs are not recovered through the energy --
18 through the first portion -- through the fuel
19 adjustment clause?

20 **MR. DOLAN:** That was a negotiated item
21 between Florida Power, FIPUG and OPC. It basically
22 preserves the right of the high load factor customers,
23 the benefit they were getting from the coal energy
24 from the existing PPAs.

25 **COMMISSIONER DEASON:** Say that again. It

1 preserves what?

2 MR. DOLAN: The benefits that the high load
3 customers were getting from the existing PPAs due to
4 the different allocation methods on fuel and capacity.

5 COMMISSIONER DEASON: So what it boils down
6 to is that high load factor customers are benefited by
7 having more costs bred to a capacity recovery
8 mechanism as opposed to per kilowatt-hour mechanism
9 within the energy section?

10 MR. DOLAN: That's correct. But it also
11 preserves the benefits they were getting from the
12 existing PPAs and the coal energy associated with
13 those PPAs.

14 COMMISSIONER DEASON: Were we changing
15 anything that was done in terms of cost recovery and
16 cost allocation to specific customer classes that
17 existed prior to this buy out?

18 MR. DOLAN: No.

19 COMMISSIONER DEASON: Everything is being
20 done the same?

21 MR. DOLAN: That's correct.

22 COMMISSIONER DEASON: Okay. I'm looking at
23 Page 4 of the stipulation, Paragraph E. And as I
24 understand this, this allows Florida Power to amortize
25 more of this regulatory asset at Power Corp's

1 discretion; is that correct?

2 **MR. DOLAN:** That's correct.

3 **COMMISSIONER DEASON:** And then that
4 paragraph continues down, and the phrase is found that
5 states "shall be deemed a prudent regulatory expense."
6 Shall be deemed prudent by whom?

7 Are the parties agreeing that they are not
8 going to take issue with this, or are you trying to
9 bind the Commission that whatever you determine to
10 amortize that we are going to deem that as a prudent
11 regulatory expense?

12 **MR. SCARDINO:** Commissioner, I believe the
13 intent was to speak to the parties, the interested
14 parties in this stipulation, not the Commission, but
15 FIPUG and Office of Public Counsel.

16 **MR. McWHIRTER:** Mr. Deason, may I respond to
17 that? Our position was that's within the domain of
18 the Commission, as to deal with regulatory assets, and
19 you do it in an ongoing fashion. And we didn't want
20 to chisel into stone anything to date, but we did not
21 disagree with prudent amortization of a regulatory
22 asset, but we leave that in the Commission's domain,
23 and we didn't try to prejudge it.

24 **COMMISSIONER DEASON:** Well, let me say, it
25 seems to me that to the extent it can be done without

1 jeopardizing the financial integrity of the company to
2 eliminate regulatory assets as quickly as possible; so
3 that, I think that that is a valid aim or goal.

4 My only concern was the phraseology about it
5 would be deemed prudent, and I just didn't want to be
6 somehow binding the Commission by approving this when
7 it appears to me that perhaps it was an agreement
8 among the parties that the party would not contest the
9 prudence of such transactions.

10 MR. McWHIRTER: The determination of
11 prudence is in your hands and not ours.

12 COMMISSIONER DEASON: Is that Power Corp's
13 understanding?

14 MR. McGEE: Yes, sir, that is.

15 COMMISSIONER DEASON: I'm still on Page 4,
16 and now I'm in Paragraph F. About middle ways of that
17 paragraph there is a phrase which makes reference to
18 FPC's average annual increased dollar amount of
19 amortization of the retail portion of the Tiger Bay
20 regulatory asset.

21 When you say "average annual increase," is
22 this amortization amounts above what is contemplated
23 within the payment streams under the purchased power
24 agreements?

25 MR. DOLAN: That's correct. It's referenced

1 in the Paragraph E above. So any additional amounts
2 that Florida Power pays to pay down that regulatory
3 asset.

4 **COMMISSIONER DEASON:** Okay. I am looking at
5 what is entitled "supplemental stipulation," and I
6 understand it may not actually be a stipulation per
7 se.

8 And I'm looking at Item No. 3. The
9 dismantlement accruals, are those accruals that have
10 been taken by Tiger Bay itself?

11 **MR. DOLAN:** No.

12 **COMMISSIONER DEASON:** Okay. Is this what
13 has been determined that should be accrued for
14 ultimate dismantlement by Power Corp?

15 **MR. SCARDINO:** Yes, Commissioner.

16 **COMMISSIONER DEASON:** And so you will be
17 putting on your books in 1997 what should have been,
18 if you had owned the facility outright from the
19 beginning, what you would have accrued yourself for
20 dismantlement purposes?

21 **MR. SCARDINO:** Yes, that's right.

22 **COMMISSIONER DEASON:** Is there going to be a
23 current expense in 1997?

24 **MR. SCARDINO:** Yes, sir.

25 **COMMISSIONER DEASON:** And it's simply going

1 to be absorbed into your operations?

2 MR. SCARDINO: That's correct.

3 COMMISSIONER DEASON: Okay. That is all the
4 questions I have.

5 CHAIRMAN JOHNSON: Commissioners, do you
6 have questions? Staff any other matters to come
7 before the Commission?

8 MR. McWHIRTER: Madam Chairman, could I
9 respond to Mr. Deason's questions from the outlook of
10 FIPUG? It might save time at the agenda conference,
11 and you probably have a little more time today than
12 you would then.

13 You asked a series of questions. The first
14 question was, is there a dispute as to what the
15 capacity recovery cost is. And FIPUG's agreement to
16 this stipulation was based upon exhibits that were
17 filed in the case by Mr. Dolan and by our witness
18 Mr. Falkenberg.

19 And Mr. Dolan's Exhibit No. 4 gives a stream
20 of payments that are the anticipated capacity
21 surcharges for the next 28 years. This stipulation
22 gives customers the benefit of cutting off that stream
23 of payments that they would otherwise be required to
24 pay hopefully by the year 2003 with advanced
25 amortization of regulatory assets, but in any event

1 about the year 2008 instead of 2028. So it's an early
2 pay off, and that was impressive to us.

3 We would not anticipate that this charge
4 would be any higher at any point in time than it set
5 out in Mr. Dolan's exhibit, and we would refer the
6 Commission to that in its future analysis of these
7 proceedings.

8 Now, what has happened here in this
9 purchased power contract is that the utility entered
10 into an agreement with Tiger Bay to buy electricity.
11 And they paid for that electricity as though a coal
12 plant was being built. And there was an analysis made
13 that that was the best -- the least avoided cost
14 available to the company at the time the contract was
15 entered into. That turned out later on not to be a
16 good decision, but that was the decision that was
17 deemed appropriate at the time. So we are paying more
18 in capital cost and less in energy cost.

19 I'm dealing now with the third question.
20 Let me first deal with the second question. The
21 second question was what is the interest cost. Well,
22 the company assured us that it would get the best
23 available interest cost for this amortization, but
24 whatever that cost is, once again it's included within
25 this annual stream of payments. So the payments will

1 remain the same.

2 If the interest cost is a little bit higher,
3 then the payment toward the capacity retirement --
4 capacity cost retirement will be a little bit lower,
5 the principal payment will be a little bit lower and
6 the contract will spring out a little bit longer. If
7 they can get better interest rates, then pay out will
8 occur sooner. So we like that, and we were hopeful
9 they would come in with the lowest possible interest
10 rate.

11 Now, the third question you had, had to do
12 with the relationship between the fuel costs and the
13 capacity recovery. The Commission has two surcharges,
14 one is the contract capacity, additional capacity
15 purchase, and the other is the fuel adjustment clause.
16 And your question is, is it unfair the Vastar contract
17 payments are going to be higher than presumably you
18 would pay for coal -- or at least we anticipate that's
19 what's going to be in the future -- and shouldn't that
20 be collected through the fuel costs.

21 We think there's obvious logic in that
22 thinking, but the problem with it is that we are still
23 paying for a coal plant. So FIPUG's reasoning was
24 that as long as we are paying for a coal plant, we
25 ought to get the benefit of the coal price.

1 We agreed that once that plant is paid for
2 and absorbed in the system, the regulatory coal plant
3 goes away. And having gone away, it would be
4 appropriate at that time to then collect whatever the
5 gas cost is through the normal fuel cost. But until
6 that coal plant's payment goes away, we think it's
7 appropriate to maintain the same synergy that you had
8 when you first entered into the transaction.

9 As a consequence, we think hopefully in the
10 year 2003, but probably no later than 2006, at that
11 point in time the coal plant goes away, these capacity
12 charges go down. We anticipate also that there's a
13 possibility between now and that period of time
14 they'll be a buy down of this other regulatory asset,
15 the Vastar contract, and we'll be coming back to you
16 to address whether that's a prudent determination at
17 the time that decision is made.

18 But for purposes of responding to your
19 question, at a proper point in time, then the full
20 Vastar contract, if that contract is still in place,
21 will be collected through the fuel costs. But we
22 believe that the proper point in time is when the
23 regulatory asset for the coal plant is paid off.

24 The deferred energy charge question -- I
25 mean, the deferred tax question, I won't address

1 because I think that's within your domain and your
2 Staff's domain.

3 And the average annual increase,
4 Mr. Scardino answered that -- or Mr. Dolan answered
5 that satisfactorily. It, once again, refers back to
6 the schedule of payments in his Exhibit 4. Those
7 increased over time. So that's what we were talking
8 about. And I think probably Exhibit 4 needs to be
9 kept in mind as you are evaluating the stipulation.

10 And I apologize for prolonging it a little
11 bit, but you raised an issue that was sensitive to us
12 in part of the fundamental negotiation, and rather
13 than burden you at the time of the agenda conference,
14 I thought it would be better to address it today when
15 everybody is focused on this one issue and not others.

16 **COMMISSIONER DEASON:** Thank you.

17 **MR. MCGEE:** Madam Chairman, could I raise
18 one point on clarification? From a procedural
19 standpoint, my understanding is that after Staff files
20 its recommendation, it will come before the Commission
21 at agenda conference for final agency action, that
22 this won't be a PAA matter. I just want to make sure
23 we were all clear on that.

24 **CHAIRMAN JOHNSON:** Staff?

25 **MS. WAGNER:** That is correct, Madam

1 Chairman.

2 **CHAIRMAN JOHNSON:** Okay. Are there any
3 other issues? Seeing none and no further questions,
4 this proceeding is adjourned. Mr. Wiggins?

5 **MR. WIGGINS:** Thank you.

6 **CHAIRMAN JOHNSON:** Okay. Thank you.

7 (Thereupon, the hearing concluded at
8 10:40 a.m.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON)

CERTIFICATE OF REPORTER

3 I, ROWENA NASH Official Commission Reporter,

4 DO HEREBY CERTIFY that the Hearing in Docket
5 No. 970096-EQ was heard by the Florida Public Service
6 Commission at the time and place herein stated; it is
7 further

8 CERTIFIED that I stenographically reported
9 the said proceedings; that the same has been
10 transcribed under my direct supervision; and that this
11 transcript, consisting of 51 pages, constitutes a true
12 transcription of my notes of said proceedings

13 DATED this 18th day of April, 1997.

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ROWENA NASH
Official Commission Reporter
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