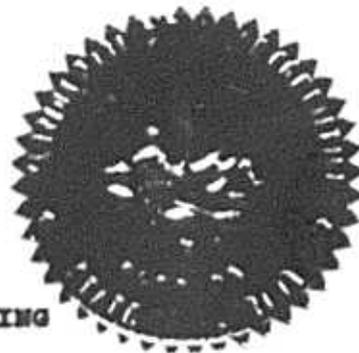


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

 In the Matter of : DOCKET NO. 970261-HI
 :
 Review of nuclear outage at :
 Florida Power Corporation's :
 Crystal River Unit 3 :



PROCEEDINGS: CONTINUATION OF PREHEARING
CONFERENCE

BEFORE: CHAIRMAN JULIA L. JOHNSON
Prehearing Officer

DATE: Thursday, June 19, 1997

TIME: Commenced at 2:30 p.m.
Concluded at 3:06 p.m.

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

REPORTED BY: JOY KELLY, CSR, RPR
Chief, Bureau of Reporting

DOCUMENT NUMBER-DATE

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FPSC BUREAU OF REPORTING

1 **APPEARANCES:**

2 **JAMES MCGEE, R. ALEXANDER GLENN and GARY L.**
3 **SASSO**, Florida Power Corporation, Post Office Box
4 14042, 3201 34th Street South, St. Petersburg, Florida
5 33733, appearing on behalf of Florida Power
6 Corporation.

7 **BOB ELIAS, VICKI JOHNSON and LESLIE PAUGH,**
8 FPSC Division of Legal Services, 2540 Shumard Oak
9 Boulevard, Gerald L. Gunter Building, Tallahassee,
10 Florida 32399-0850, appearing on behalf of the
11 Commission Staff.

12 **ROGER HOWE and JACK SHREVE**, Public Counsel,
13 Office of Public Counsel, c/o The House of
14 Representatives, Claude Pepper Building, 111 West
15 Madison Street, Room 812, Tallahassee, Florida
16 32399-1400, appearing on behalf of the Citizens of the
17 State of Florida.

18 **VICKI GORDON KAUFMAN**, McWhirter, Reeves,
19 McGlothlin Davidson, Rief & Bakas, P.A. Post Office
20 Box 3350, Tampa, Florida 32601-3350, appearing on
21 behalf of Florida Industrial Power Users Group
22
23
24
25

1 **APPEARANCES CONTINUED:**

2 **MICHAEL A. GROSS**, Office of the Attorney
3 General, PL-01, The Capitol, Tallahassee, Florida
4 32399, appearing on behalf of Robert A. Butterworth,
5 Attorney General of Florida.

6 **MICHAEL B. TWOMEY**, Route 28, Box 1264, Tallahassee,
7 Florida 32310, and **WAYNE R. MALANEY**, P. O. Box 7014,
8 Tallahassee, Florida 32302, appearing on behalf of Lake Dora
9 Harbour Homeowners Association.

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P R O C E E D I N G S

(Hearing convened at 2:30 a.m.)

CHAIRMAN JOHNSON: We're going to go on the record. Give everybody an opportunity to settle in.

MR. SHEREVE: Commissioner, before we even have the parties identify themselves, we have two parties, Senator Crist and AARP State Legislative Committee, that have both filed interventions that have not been granted. I wonder, if there are no objections from any of the parties, if we could go ahead and have those interventions granted.

CHAIRMAN JOHNSON: We had as a part of our Prehearing Order the request or the motion by the senator to intervene in this particular proceeding. We've not seen, but I understand --

MR. SHEREVE: It has been filed.

CHAIRMAN JOHNSON: It has been filed?

MR. SHEREVE: Just been filed, and they are parties to the agreement, and we do plan to present a settlement to you. And if none of the parties have any objection, we'd like to have both parties granted intervention at this point.

CHAIRMAN JOHNSON: And none of the parties object to -- I know there was no objection to the senator -- have the parties had an opportunity to

1 review the intervention motion?

2 MR. McWHIRTER: No objection.

3 CHAIRMAN JOHNSON: And Staff?

4 MS. JOHNSON: Staff has not yet seen it.

5 MR. SHEREVE: It's the AARP State Legislative
6 Committee and they're a well-known group.

7 MS. JOHNSON: Right. But I did have
8 discussions with Florida Power Corp and the Office of
9 Public Counsel and what they've advised me of I would
10 doubt that we would have any objections to it.

11 MR. MCGEE: We have no objection, Madam
12 Chairman.

13 CHAIRMAN JOHNSON: Florida Power Corp. You
14 said they are also signatores to the --

15 MR. SHEREVE: Yes, they are.

16 CHAIRMAN JOHNSON: I'll grant the
17 intervention of both.

18 MR. SHEREVE: Thank you very much, Chairman.

19 CHAIRMAN JOHNSON: Let me go ahead, then,
20 and take appearances.

21 MR. GROSS: Michael Gross, Office of the
22 Attorney General.

23 MS. KAUFMAN: John McWhirter, Vicki Gordon
24 Kaufman, McWhirter, Reeves, on behalf of the Florida
25 Industrial Power Users Group.

1 **MR. TWOMEY:** Mike Twomey, Wayne Malaney, on
2 behalf of the Lake Dora Harbour Homeowners
3 Association, Inc.

4 **SENATOR CRIST:** Charlie Crist, State
5 Senator, from the Tampa Bay Area, on behalf of the
6 Citizens.

7 **MR. SHEREVE:** Jack Shreve and Roger Howe,
8 Office of the Public Counsel, on behalf of the
9 Citizens of the State of Florida, Claude Pepper
10 Building Tallahassee, Florida.

11 **MR. MCGEE:** Jim McGee on behalf of Florida
12 Power Corporation.

13 **MS. JOHNSON:** Vicki Johnson, along with
14 Leslie Paugh, on behalf of the Commission Staff.

15 **CHAIRMAN JOHNSON:** Are there any preliminary
16 matters for us to take up before going into the
17 Prehearing Order?

18 **MS. JOHNSON:** Yes, Chairman Johnson. It's
19 my understanding that the parties have filed a
20 stipulation today along with a joint motion for
21 approval of that stipulation.

22 **MR. SHEREVE:** That is correct, Chairman
23 Johnson.

24 **CHAIRMAN JOHNSON:** Public Counsel, are you
25 the spokesperson, then?

1 MR. SERVE: I'll be brief, and I think some
2 of the other parties would like to have some remarks.
3 If anyone needs an additional copy of this, I'd be
4 glad to furnish it. I believe you have one.

5 Before I get started I'd like to explain the
6 procedures we have been going through and acknowledge
7 some of the parties that have been instrumental, and
8 I'd like to start with Roger Howe who, on behalf of my
9 office, prepared the case, the discovery, the
10 investigation, the interrogatories and worked closely
11 with our witness. And I frankly think we could not
12 have accomplished what we could have -- did, without
13 his participation.

14 I think Senator Charlie Crist has done the
15 people of the state of Florida a great service with
16 his interest in this in bringing attention to the
17 facts that were evident in this case, and I think he
18 has been a great help in accomplishing this
19 settlement.

20 Michael Gross and his boss, Bob Butterworth
21 the Attorney General, and their intervention was very
22 important, and had a great impact on the settlement of
23 this case and helped allow that.

24 We've had Monty Belote of the Consumer
25 Action Network involved from the beginning.

1 Michael Twomey and Wayne Malaney have been
2 very helpful. We appreciate their support and their
3 thoughts and ideas on this settlement and their help
4 throughout.

5 I would also like to mention John McWhirter
6 has been a stalwart from the very beginning in helping
7 to forge a settlement that I honestly believe would
8 not have been possible without his help in this, his
9 knowledge and vast experience he's already had.

10 I think all of this has come together unlike
11 really any other settlement that we've ever had
12 because of the number of parties we worked with, and I
13 think it's been a real joint team effort to put it
14 together.

15 Then beyond that, before I go into the
16 stipulation, I would like to say although we have been
17 adversaries for many, many years, a stipulation of
18 this type could not be possible if you could not deal
19 with parties in this case, particularly Florida Power,
20 on a honest and trustworthy basis and they have been
21 very, very good to deal with, and that's Jim McGee,
22 Jim Palmer and Sam Nixon, and I'd like to thank them
23 for their cooperation.

24 Beyond that, I'd like to just give some very
25 brief remarks about the stipulation, answer any

1 questions that you might have. I think Mr. McGee and
2 some other parties would like to follow that and
3 possibly give a little bit different view of theirs.

4 As you know, the total extra fuel charge was
5 approximately -- would be approximately \$170 million
6 if the outage were ended at the end of this year.
7 There's been a lot of confusion on the fuel adjustment
8 because it in itself is confusing, but the total
9 charge would be 170; the Commission allowed on a
10 temporary basis \$70 million to be 170 million;
11 \$70 million to be collected over 12 months. There
12 have been approximately, by the end of this month,
13 three months collection.

14 The additional expenses in the outage that
15 would be incurred by Florida Power would be
16 approximately 80 to \$95 million and then approximately
17 40 to \$45 million in capital expenditures.

18 We have reached an agreement that would
19 require Florida Power, after the approval of the
20 Public Service Commission of this stipulation, if you
21 do, immediately to reduce the bill by the \$2.22 which
22 was placed on it three months ago and have an
23 immediate refund through the fuel adjustment charge of
24 everything that had been collected up through that
25 point.

1 We would further agree that Florida Power
2 would only collect from the ratepayers, after the
3 plant is back on line, approximately \$33.8 million, or
4 approximately the first three months of the outage
5 after the plant has come back on line. If the plant
6 did not come back on line at the end of the year, that
7 would be Florida Power's responsibility and the
8 customers would be protected from paying any
9 additional fuel charges caused by the outage of
10 Florida Power.

11 We'd request that the \$33.8 million be
12 spread over 12 months with a time to be determined
13 after the plant comes on line.

14 Florida Power would absorb the \$95 million
15 in expenses used for repairs, modifications to the
16 plant; would place, of course, the 40 to \$45 million
17 in capital cost into the rate base but would be
18 prohibited from ever using that to raise rates. They
19 would also agree to a freeze of rates with none of the
20 parties being able to request a rate reduction or a
21 rate increase for the next four years. That would be
22 with them intending to write-off or amortize the
23 portions of the expenses over the four years, and that
24 would be completed within four years and they could
25 not raise rates within that time.

1 There are some other accounting procedures
2 in there that would benefit Florida Power which is one
3 of the reasons that they were willing to go along with
4 this type of settlement. One of the additional
5 paragraphs, Senator Crist, in consideration of the
6 settlement and the benefits received by the customers,
7 would withdraw his filings with the different courts
8 and he might want to speak to that himself. With that
9 I think it would be good if Florida Power could give a
10 little bit more of a view of the other side and
11 accounting procedures that would be there.

12 One other thing that would be within the
13 four years, the Hines Plant will be coming on line.
14 That's approximately \$300 million of which the revenue
15 requirement, if they were to come in for a rate
16 increase and receive that revenue requirement, would
17 be approximately \$59 million; they would be prohibited
18 from seeking that rate increase during that four
19 years. So that would be about two-and-a-half years
20 that the Hines Plant would be on line, and the
21 customers would receive the benefit of the more
22 efficient plant in the fuel adjustment clause.

23 Thank you.

24 **CHAIRMAN JOHNSON:** Thank you, Public
25 Counsel.

1 MR. MCGEE: Madam Chairman, I'd just like to
2 say that I think Mr. Shreve has given a good overview
3 of the key points that are in the stipulation. I
4 regard it, having been involved in several of these
5 discussions in the past, as really a unique approach
6 to working out a settlement of some complicated issues
7 such as the ones we have before us today.

8 And I think the approach -- I think you and
9 the Staff will agree, when you've had the chance to
10 review it, that this is one that doesn't work in the
11 traditional sense where we attempt just to balance the
12 respect of the party's legal interest. I think
13 there's been a genuine attempt to look at the ways in
14 which we can benefit the ratepayers by relieving them
15 of cost responsibility for the significant costs that
16 have been involved in this outage; and yet to try and
17 do it in a way that provides some mechanisms to
18 maintain Florida Power's financial integrity. And
19 those have been done by relieving the ratepayers of
20 significant cost responsibility for replacement fuel
21 cost, as well as some capital additions that are
22 coming up, and through the use of some accounting
23 approaches that Mr. Shreve referred to, such as the
24 suspension of fossil dismantlement accruals, to allow
25 Florida Power to write-off a significant regulatory

1 asset or to write-off a portion of it, were done in
2 ways that created what I would refer to as sort of a
3 win-win situation. Those accounting transactions will
4 be transparent to the ratepayers. They do provide
5 Florida Power some measure of relief in its attempt to
6 absorb these significant costs.

7 Beyond these accounting treatments being
8 transparent to the ratepayer immediately, we've gone
9 to considerable lengths to work in language that
10 provides safeguards so that these costs that are not
11 being -- the effects of these accounting treatments
12 that are aren't affecting the ratepayer immediately
13 can't affect them down the road. During our
14 negotiations, Mr. McWhirter referred to this as making
15 sure while we've closed the front door on relieving
16 the customers of cost responsibility, we've made sure
17 that the back door is closed as well.

18 And I think on balance the agreement
19 represents a good-faith attempt by all of the parties
20 to reach an accord that truly provides the maximum
21 benefit that could be derived for the ratepayer while
22 not compromising Florida Power's financial integrity.

23 And I'd like to thank the parties for their
24 effort to do that, and particularly Mr. Shreve.

25 **CHAIRMAN JOHNSON:** Very good. Senator.

1 **SENATOR CRIST:** Thank you, Madam Chairman.
2 I appreciate the opportunity.

3 I just want to add to the thanks to all of
4 the parties. It's been a real team effort to get to
5 this point; a struggle, nonetheless, but certainly a
6 happy day, I think, for the almost 5 million citizens
7 that are serviced by Florida Power. I think it's a
8 great day for them, and I think it's important for us
9 to recognize the efforts of everybody involved. I
10 want to address briefly the issue of the two pieces of
11 litigation that I had filed.

12 I think that when you analyze the situation,
13 you always are striving for equity and fairness and a
14 just result. I think that's what we have today, and I
15 think that's why it's the right thing to do, to go
16 ahead and be willing to dismiss those actions in the
17 Supreme Court, and that's why I've done so. And I
18 want to especially thank Mr. Shreve for his efforts.
19 He's an outstanding public servant, in my humble
20 opinion, and Floridians have a lot to be grateful for.

21 I also want to thank Florida Power for
22 listening to the people. I think that's commendable,
23 and I want to thank you.

24 **CHAIRMAN JOHNSON:** Thank you.

25 **MR. SHEREVE:** Madam Chairman, I apologize for

1 interrupting, but I did leave one person off. I had
2 mentioned Mr. McWhirter, but Vicki Kaufman has been
3 also instrumental and also took part in some of the
4 settlement negotiations and has been very helpful with
5 the pleadings and I wanted to thank her, too, for her
6 part in this.

7 **CHAIRMAN JOHNSON:** Okay. Mr. Twomey.

8 **MR. TWOMEY:** I'll be very brief. We came to
9 this process late and I was, frankly, amazed. This
10 is, in my view, a phenomenal victory for the customers
11 of Florida Power Corporation for which many people are
12 responsible, primarily Mr. Shreve, Mr. McWhirter, his
13 firm, Senator Crist for his interest in this. And
14 then, as well, I think it's a very generous and a
15 rational settlement on the part of Florida Power
16 Corporation, as well. I think it's a good day for
17 everyone concerned.

18 **CHAIRMAN JOHNSON:** Thank you.

19 Mr. McWhirter.

20 **MR. MCWHIRTER:** Madam Chairman, I'm pleased
21 that tonight Jack Shreve can get a good night's rest.
22 Poor guy has been burning up the highway for the last
23 two weeks trying to assimilate a concensus among
24 people who were not necessarily as friendly as you
25 might think from looking at us all today.

1 I think this case is a major breakthrough,
2 and for that I want to compliment Florida Power
3 Corporation.

4 In essence, what this case is about is
5 something that went wrong, and historically utilities
6 have always said if something goes wrong it's the
7 customer's fault and they shall pay. Florida Power
8 took a different viewpoint in this case, and they said
9 "Something has gone wrong, and we think there's some
10 logic in sharing responsibility," and they came up --
11 they met with us and tried to determine how much
12 should be shared and we came up to a solution that
13 everyone is satisfied with. And I want to compliment
14 Mr. Shreve especially, and every person sitting at
15 this table has made a significant contribution to the
16 resolution, and I think everyone should be applauded.
17 And I hope that the Commission will see merit in what
18 we've done. Obviously, the answer lies in your hands,
19 not in ours, and we recommend strongly the settlement
20 to you and we have filed or will file
21 contemporaneously with this a motion that you bring it
22 up at the earliest practicable date in order that the
23 suspension of the current \$2.22 charge can be
24 terminated and the commencement of the refund can
25 begin. Thank you very much

1 **CHAIRMAN JOHNSON:** Thank you. Mr. Gross.

2 **MR. GROSS:** Madam Chairman, the Attorney
3 General entered this case by intervention out of a
4 concern that was an inequitable burden placed on the
5 consumers in imposing the cost of replacement fuel
6 cost upon them.

7 The Attorney General is pleased to have had
8 an opportunity to make a material contribution to the
9 settlement. I would like to commend Senator Crist for
10 the instrumental role that he played in bringing this
11 issue to the forefront and in helping effectuate the
12 settlement agreement. Also Mr. Shreve, playing the
13 major significant role in initiating the settlement
14 process and also all the other parties. I'm just not
15 going to go down the list of every party and duplicate
16 what has been said. But this was truly a joint effort
17 where all parties made material contributions in order
18 to put all of the pieces of the puzzle together to
19 make it work.

20 I think it is a very good settlement for the
21 ratepayers. I also think that Florida Power is to be
22 commended for negotiating in good faith, and be
23 willing to compromise. And also that the accounting
24 provisions in the furtherance of Florida Power's
25 financial integrity have no adverse impact on the

1 consumers or the ratepayers and they are very
2 reasonable and were negotiated in good faith.

3 Thank you.

4 **CHAIRMAN JOHNSON:** Thank you. Thank you
5 all.

6 Now, before me I have a Joint Motion to
7 Expedite Consideration of the Settlement Stipulation
8 and the attached stipulation. On this joint motion,
9 the parties request that we consider this and rule
10 upon it at the June 26th date that had been set aside
11 for the hearing; is that correct?

12 **MR. McWHIRTER:** Yes, ma'am.

13 **CHAIRMAN JOHNSON:** As, Prehearing Officer, I
14 will grant the motion that we expedite this. I, of
15 course, have just received the stipulation. I haven't
16 had an opportunity to review it. It will take our
17 Staff, particularly with respect to the accounting
18 issues that have been resolved, a couple of days to
19 review this, but given the commitment and given all of
20 the time that you have spent, I think that we could at
21 least do the same in making sure that we focus on this
22 and, to the extent this is approved, that the benefits
23 to the customers are made available in as expeditious
24 a manner as we can make them available.

25 So with that I will go ahead and grant the

1 motion to expedite and this matter will be heard June
2 26th at the 9:30 time.

3 MR. MCGEE: Madam Chairman, just so that
4 we're clear on that. The procedure I think that we,
5 the parties, had envisioned --

6 CHAIRMAN JOHNSON: Speak up a little bit
7 since the rain is coming.

8 MR. MCGEE: The procedure that I think the
9 parties had envisioned in taking this up on the 26th
10 would be a presentation, questions and answers, but in
11 particular, we would ask that the Staff be prepared to
12 make an oral recommendation at the conclusion of that
13 session for a bench vote by the Commission.

14 CHAIRMAN JOHNSON: That's how I understood
15 it. The Staff will have the benefit of this
16 information today and have the opportunity to start
17 their analysis and, to the extent that there are no
18 unavoided circumstances or problems that would prevent
19 them from going ahead and making their recommendation,
20 we would expect, then, to have a recommendation and a
21 vote on the 26th. Again, in the event that no
22 barriers outside of our control prevent us from doing
23 that.

24 MR. MCGEE: And we would like to offer
25 Florida Power's efforts to meet with Staff as soon as

1 -- at the conclusion of this prehearing today, as well
2 as the early part of next week to do all we can to
3 explain the stipulation to them and in particular to
4 answer the questions that they are sure to have.

5 **CHAIRMAN JOHNSON:** I think that would
6 probably be helpful for Public Counsel and all of the
7 other parties to have an opportunity after the Staff
8 has had the opportunity to initially review this to
9 just sit down and work through it with the parties to
10 make sure that we have a clear understanding of all of
11 the elements so that they can make a proper
12 recommendation to the Commissioners.

13 Is there anything else? Staff?

14 **MS. JOHNSON:** My only concern -- not
15 concern, is just something I wanted to bring to your
16 attention is that Staff will, since today was the
17 prehearing, we'll issue a Prehearing Order with the
18 stipulation attached, and indicating that in
19 accordance with the stipulation all of the issues have
20 been withdrawn, et cetera, in accordance with that
21 stipulation for the consideration on June 26th at the
22 hearing.

23 **CHAIRMAN JOHNSON:** Okay. Any other -- and
24 let me make sure I understand procedurally. Assuming
25 we are in the position to get a Staff recommendation

1 and vote on this on the 26th, this would then be a
2 final order?

3 MR. MOGEE: Yes. That's the understanding.

4 CHAIRMAN JOHNSON: Is that the understanding
5 of the parties? That this would be issued as a final
6 order.

7 MR. MALANBY: Yes.

8 MS. JOHNSON: Yes, that's our understanding
9 as well.

10 CHAIRMAN JOHNSON: Very well. Then we will
11 make sure this document gets in the proper hands of
12 our members from AFAD and the other technical groups
13 that must review this and commit to you to do
14 everything possible to be in a position to actually
15 vote on this on the 26th.

16 Thank you very much. I appreciate all of
17 your work -- I notice Mr. Belote. Did you have any
18 comments?

19 UNIDENTIFIED SPEAKER: I'm thankful to be
20 here. (Laughter)

21 CHAIRMAN JOHNSON: Welcome. And you were
22 acknowledged, and we do have the information here and
23 I'd like to thank you all once again. We will then
24 see, I guess if not all of you, most of you to answer
25 questions and entertain any issues that the

1 Commissioners might have on the June 26th hearing
2 date.

3 MR. SHREVE: And, Chairman, thank you for
4 seeing us this afternoon. We appreciate you
5 accommodating us. Thank you.

6 CHAIRMAN JOHNSON: This prehearing is
7 adjourned.

8 (Thereupon, the hearing concluded at 3:06
9 p.m.)

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STATE OF FLORIDA)
:
COUNTY OF LEON)

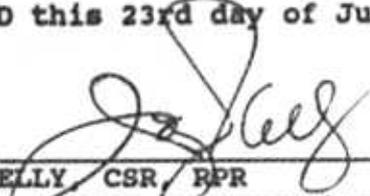
CERTIFICATE OF REPORTER

I, JOY KELLY, CSR, RPR, Chief, Bureau of Reporting Official Commission Reporter,

DO HEREBY CERTIFY that the Prehearing Conference in Docket No. 970261-EI was heard by the Prehearing Officer 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, consisting of 32 pages, constitutes a true transcription of my notes of said proceedings

DATED this 23rd day of June, 1997.



JOY KELLY, CSR, RPR
Chief, Bureau of Reporting
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