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

DATE: Tuesday, July 18, 1997

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

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

REPORTED BY: JOY KELLY, CSR, RFR
 Chief, Bureau of Reporting
 Florida Public Service Commission

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PARTICIPATING:

ROBERT ELIAS, FPSC Division of Legal Services.

BILL WELBOFF, FPSC Executive Director.

MARY BARR, FPSC Deputy Executive Director/Technical.

ROBERT SCHWELB WRIGHT, Lake Cogen, Ltd.

ANDREW WASSO, JR., Paces Cogen, Ltd.

JAMES FARR, Florida Power Corporation

P R O C E E D I N G S

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

CHAIRMAN JOHNSON: Item 5-A then, and I understand we have a preliminary issue.

COMMISSIONER KIRKLAND: Yes. Commissioners, there's no easy way for me to say this. However, when we voted on this at the last agenda, on the Lake Cogen on the last agenda, I made a mistake. I voted incorrectly. I don't know what happened. I have no explanation. I intended to vote consistent with my vote in the Pasco case. By the time the vote sheet got down here I realized what had happened but the parties had already left. And it was my intention to correct that, or to bring that matter up today at this agenda. However, matters raised in 5-A intervened, so this may seem like unusual timing, but it was just that these other matters intervened.

I have no explanation other than I had a lapse of concentration and I voted incorrectly. And for that reason I would like to request that we reconsider the Lake Cogen vote that we took at the last agenda, since I was on the winning side, inadvertently, in order that I could correct my vote.

And I don't know what the proper procedural way to deal with this is, but I feel like I can't let

1 it go forward with an error such as that, and I have
2 no other explanations for what happened other than
3 that I just had a lapse of concentration.

4 **CHAIRMAN JOHNSON:** Okay. Staff counsel, as
5 it relates to the procedure.

6 **MR. ELIAS:** Assuming that the Commission
7 votes to reconsider its decision, I think it would be
8 appropriate to take that up at the next agenda
9 conference, since the parties were not on notice that
10 this matter might be reconsidered today. I'm sure
11 that they are not prepared to address the merits of
12 the settlement agreement today.

13 **COMMISSIONER BROWN:** Let's clarify. They
14 were on notice that it may be reconsidered but for a
15 different reason.

16 **MR. ELIAS:** Yes.

17 **COMMISSIONER BROWN:** Okay.

18 **MR. ELIAS:** And I think that would probably
19 be the most expeditious way to handle it.

20 **CHAIRMAN JOHNSON:** That we wouldn't vote
21 out, we wouldn't reconsider, we wouldn't do any of
22 that today?

23 **MR. ELIAS:** If you would vote to reconsider
24 it, to take up the substance of it at the next agenda
25 conference.

1 **CHAIRMAN JOHNSON:** But we could vote.

2 **MR. ELIAS:** Put the recommendation back on
3 and then all parties would be on notice it was going
4 to be considered and would be prepared to address the
5 Commission and respond to questions on the merits of
6 the petition.

7 **CHAIRMAN JOHNSON:** How would that impact
8 this particular case?

9 **MR. ELIAS:** I think -- well --

10 **COMMISSIONER CLARK:** Madam Chairman, I do
11 think Commissioner Kieseling can move to reconsider,
12 but she would certainly need to have a second from
13 those who voted on the majority. And I have to say I
14 was wondering what happened? I knew your vote was
15 different from the vote in the previous case. I
16 didn't know what material difference there was --

17 **COMMISSIONER KIESELING:** There was none.

18 **COMMISSIONER CLARK:** -- to make it
19 different. But I would also point out if we vote
20 differently, I think we've reached two different
21 decisions in cases that have the same facts.

22 If you want to move it, I'll support your
23 motion because I do think, you know, that it was not
24 consistent with your last vote and I was wondering
25 what had occurred; what was the difference?

1 **COMMISSIONER KIRKLING:** In retrospect I'm
2 wondering what occurred, too, because I have no other
3 explanation.

4 **COMMISSIONER SAMPSON:** I would observe that
5 we spent a vast majority of the time on the item
6 discussing a legal issue, and that may have put some
7 confusion in it. And we didn't spend as much time
8 debating the merits of the actual buyout proposal as
9 we did the first time that one came before us. I just
10 know that that's what happened. But the facts are
11 generally the same, from the first case to the second
12 case.

13 **COMMISSIONER KIRKLING:** I appreciate that,
14 but I'm not making any excuse other than I just had a
15 lapse of concentration and made a mistake.

16 And I am moving to reconsider that, although
17 not necessarily today but on another agenda. So I
18 appreciate that --

19 **COMMISSIONER CLARK:** Madam Chair, I think we
20 can vote to reconsider, but leave it pending so that
21 there can be a recommendation and an opportunity for
22 further presentation by the parties.

23 **CHAIRMAN JOHNSON:** There's a motion for
24 reconsideration; and a second?

25 **COMMISSIONER CLARK:** I second it.

1 **CHAIRMAN JOHNSON:** All those in favor
2 signify by say aye "aye." Aye.

3 **COMMISSIONER KIESLING:** Aye.

4 **COMMISSIONER SIMMONS:** Aye.

5 **COMMISSIONER CLARK:** Aye.

6 **COMMISSIONER GARCIA:** Aye.

7 **CHAIRMAN JOHNSON:** Show that then approved
8 unanimously. And Staff, I'm assuming you can have
9 that prepared for our next available agenda. We can
10 put the parties on notice that this issue will be
11 further considered.

12 **COMMISSIONER KIESLING:** I would like to
13 apologize to the parties and everyone else concerned
14 for any problems that this has caused. Again, I'm
15 sorry but I'd rather correct it at the earliest
16 possible moment than to have --

17 **COMMISSIONER CLARK:** Commissioner Kiesling,
18 do you want me to speak up next time that I'm
19 wondering what's going on?

20 **COMMISSIONER KIESLING:** Yes. (Laughter)

21 **CHAIRMAN JOHNSON:** I guess I was just happy
22 to have you vote with me so I wasn't going to --

23 **COMMISSIONER GARCIA:** And you convinced her
24 is what I --

25 **COMMISSIONER KIESLING:** Again, I would like

1 to apologise to everyone for any problem this has
2 caused, but looking at the next item I understand we
3 have other problems that also involve this.

4 **CHAIRMAN JOHNSON:** Let me ask one -- I think
5 that matter has been taken care of.

6 Let me ask one question and perhaps,
7 counsel, you can advise me as to whether or not this
8 is even appropriate.

9 And maybe this is procedural, will the
10 recommendation stay the same? Will there be
11 opportunities to have it changed? And I'm thinking of
12 timing and for us to try to act on this matter as
13 quickly as possible.

14 One of the issues that had been raised was
15 the legal issue and I felt it hadn't been sufficiently
16 analyzed. In what forum would that be addressed? I
17 mean do we keep the record as it is and start over or
18 is there an opportunity to add more argument?

19 **MR. ELIAS:** And I think that's -- you can go
20 either way. I mean I think you've got the flexibility
21 and discretion to do -- to request us to brief
22 Florida -- or to have the parties brief the legal
23 issue.

24 **COMMISSIONER KISLING:** I understood what
25 was in that recommendation and simply made a mistake.

1 All I'm wanting to do is correct my mistake, not to
2 reopen it so that there's, you know, new argument and
3 a new recommendation. The only way I could think of
4 that I could correct my mistake would be to reconsider
5 it for the purposes of the vote. So I'm just telling
6 you what my intent was. However you want to handle it
7 within your discretion is fine with me.

8 **CHAIRMAN JOHNSON:** Okay. I think,
9 Mr. Elias --

10 **MR. ELIAS:** I'm sorry.

11 **CHAIRMAN JOHNSON:** I didn't know if you were
12 talking to Mary to answer a question.

13 **MR. ELIAS:** I think the Commission has the
14 discretion to decide whether or not they want Issue 1,
15 which no vote was taken on, briefed and brought back
16 to a later agenda. I'm not so certain we could get
17 input from the parties in time to file a
18 recommendation for the August 5th agenda that would
19 include a brief of the legal issue.

20 **CHAIRMAN JOHNSON:** Okay.

21 **MR. ELIAS:** We can bring the same
22 recommendation back.

23 **COMMISSIONER CLARK:** My view is you can put
24 the same recommendation on there and then parties can
25 appear once again and we'll just do the vote over. I

1 don't think anything further is needed.

2 **COMMISSIONER GARCIA:** The question is that
3 the Chairman would have liked certain legal issues
4 further briefed. And I don't see anything wrong with
5 having the parties do that also.

6 **CHAIRMAN JOHNSON:** I'm wondering, do you
7 wait until August 5th to have that same discussion
8 again? Because it will be opened again. And so it
9 will be that opportunity and the parties hadn't
10 briefed that particular issue. So I would have the
11 same questions. And almost in fairness to the
12 parties, it gives them the opportunity to address that
13 issue because that would be something I would still be
14 concerned about.

15 **MR. ELIAS:** And my only concern is with the
16 timing of it. We're talking about nine days from now
17 in terms of filing a recommendation on a regular time
18 frame, and time for parties to go back and brief the
19 issue, for us to analyse them and bring a cogent
20 written recommendation to you in two to two-and-a-half
21 weeks time might really be pushing it.

22 **COMMISSIONER BARNSON:** I think we need to
23 back up for just a moment.

24 As I understand the motion, and it was
25 simply to reconsider it to correct an error in a vote.

1 It was not to reconsider it to take further briefing
2 or further argument. Now, I'm not saying the
3 Commission cannot do that. Obviously if the
4 Commission wants to do that, that's fine. But as I
5 understood the action that was taken, it was simply
6 that there was an error in the vote and it needed to
7 be reconsidered to have that corrected. But if we
8 want to go further, that's fine. I think we need to
9 have an understanding of exactly what we're going to
10 do. And at this point I don't think we've made that
11 decision. I think the only thing we've done is to
12 reconsider, to correct an error in a vote. I
13 personally need some clarification if we're going to
14 do something different. And I don't think we've yet
15 made that decision.

16 **CHAIRMAN JOHNSON:** Right. And I think I
17 understand the nature of the motion and what
18 Commissioner Kiesling was suggesting and what had been
19 approved. And I was asking an additional question;
20 not to clarify Commissioner Kiesling's request, but
21 just to clarify the procedure and what could happen.
22 Because if we say that parties can participate in this
23 particular proceeding, it's like starting over, and I
24 know Commissioner Kiesling saying all she needs to
25 hear -- you know, she may be willing to make a motion

1 right a way. And if this has been opened up this
2 gives parties more opportunity to actually say
3 whatever they want to say.

4 One of the issues I addressed at that
5 particular meeting was the issue that Staff had framed
6 as Issue A, or Issue 1, and my concern was that I
7 didn't think it had been adequately addressed. And
8 wanted a forum for it to be addressed, and I was -- I
9 still have that concern, and I would be asking similar
10 questions and the parties hadn't had an opportunity to
11 brief that.

12 MR. WRIGHT: Madam Chair, I would suggest to
13 address those concerns to the extent as you discussed
14 at the June 24 agenda, the legal resolution of legal
15 Issue 1 might inform your vote on Issue 2. It might
16 be best for us to brief this and maybe look to have it
17 on your agenda on August 18.

18 I haven't really had a chance to discuss
19 calendaring with my colleagues, Mr. Fama, here but I
20 think we could handle briefing in time to let the
21 Staff have a brief before writing the recommendation
22 for the August 18 agenda. And if not we can slip in
23 two more weeks but that would be my suggestion.

24 MR. FAMA: Madam Chairman, if I might, if
25 the Commission is leaning towards revisiting Lake, it

1 seems to me you would have four reasons to do so.

2 You have Commissioner Kensing's concern
3 about the mistaken vote. You have to take a look at
4 the bias issue. The bias doesn't necessarily call for
5 a revote but I think it's something you need to look
6 at. The briefing that you talked about earlier would
7 be the third reason. And the fourth reason is the
8 consistency with the Penco decision which Chairman
9 Clark raised. So Florida Power would not object to a
10 revisitation.

11 **CHAIRMAN JOHNSON:** And how much time as
12 Mr. Wright had suggested, August 18th and I want Staff
13 to respond to or he's saying --

14 **MR. FRENK:** Would the Commission would want
15 our brief sometime before the Staff recommendation; a
16 week before or something like that?

17 **MR. ELIAS:** I'm thinking to meet an August
18 6th recommendation, probably no later than Monday the
19 28th, which would be a day short of two weeks from
20 now, and that would give us approximately ten days to
21 analyze that.

22 **CHAIRMAN JOHNSON:** To meet an August 18th
23 agenda?

24 **COMMISSIONER CLARK:** The recommendation has
25 to be in the 6th?

1 **MR. ELIAS:** Yes.

2 **MR. FAMA:** We could meet that deadline.

3 **CHAIRMAN JOHNSON:** Staff, is that sufficient
4 for you?

5 **MR. ELIAS:** Ten days, that would give us
6 roughly ten days to analyze and address the arguments
7 that are raised in the brief and do the research on
8 it.

9 **CHAIRMAN JOHNSON:** And that's flushing out
10 Issue 1.

11 Commissioners, any reaction to that or any
12 objection to that?

13 **COMMISSIONER CLARK:** No. Madam Chair, I
14 think that is an appropriate way to proceed,
15 especially since you did raise the concerns you had
16 about the legal issue, and it will give plenty of time
17 to look at all the issues because I do think there has
18 to be consideration due to the fact -- I think Staff
19 needs to recommend, if the vote on -- is it Lake,
20 whatever -- is different, we need to be aware that
21 it's inconsistent with the prior, and it may be that
22 the recommendation needs to cover that, too. If you
23 change your vote you need to consider changing your
24 vote on that one, too.

25 **CHAIRMAN JOHNSON:** The parties understand,

1 and you would also have a opportunity, I think as Mr.
2 Fama stated, to address those issues, the legal issue,
3 and I guess they would address the bias issue, and the
4 fallout of the legal issue would be the ramification
5 on Pasco?

6 **MR. FAMA:** In consistency with Pasco would
7 be the legal issue. I don't think that the briefing
8 would address the bias issue as I understand Staff's
9 recommendation today; if parties don't come forward or
10 the Commission doesn't come forward with any issue of
11 bias then that issue goes away.

12 **CHAIRMAN JOHNSON:** Any other questions?

13 **COMMISSIONER BROWN:** Well, let me ask a
14 question. What I hear is that by this action not only
15 are we going to reconsider Lake, but if there is a
16 decision, an ultimate decision in Lake that is
17 inconsistent with Pasco, then we may need to
18 reconsider Pasco. Am I hearing this correctly?

19 **CHAIRMAN JOHNSON:** That it might impact
20 Pasco.

21 **COMMISSIONER CLARK:** My view is the Staff
22 needs to at the same time it brings this back, needs
23 to inform the Commission of its opinion as whether
24 there is a basis for making two different decisions in
25 the case -- both cases. If there isn't it appears to

1 be arbitrary and capricious.

2 MR. WATSON: Madam Chairman, I think you may
3 be in a different situation than Pasco.

4 COMMISSIONER CLARK: Well, you guys can
5 brief that. If you think it's different, there's a
6 factual basis for concluding there is a difference
7 that can justify a different opinion, you can brief
8 that.

9 COMMISSIONER WATSON: Let me express a
10 concern here. Just a moment.

11 I was in the minority on both of these. And
12 while I disagreed with the decision in Pasco, part of
13 the concern I have that decision has been made, an
14 order has been issued. I assume that order is final,
15 and there's not been any protest filed. There
16 probably have been actions taken by parties, perhaps
17 contractual in nature.

18 I have difficulty at this point now saying
19 now that is subject to a revisit. I think they cast
20 so much doubt on their contractual obligations and
21 what they've done in the meantime that maybe that
22 toothpaste is already out of the tube, folks, and it's
23 going to be hard to get it back in. That's what my
24 concern is.

25 COMMISSIONER CLARK: And that may influence

1 the decision in this case to say if it ain't
2 different, you shouldn't vote different.

3 **MR. ELIAS:** And I think the concerns that
4 Commissioner Deason just raised are fair subject areas
5 for being addressed in the recommendation.

6 **COMMISSIONER CLARK:** I agree with that. I
7 think that point is well taken. It may be water under
8 the bridge. And there may be a reason to say there's
9 a factual difference, or even if there isn't a
10 difference, we believe a better policy is this one
11 now.

12 **MR. WOODEN:** For all the reasons
13 Commissioner Deason, I just wanted to make it clear
14 that Pasco is under no obligation to brief anything at
15 this point. Is my understanding in that regard
16 correct?

17 **CHAIRMAN JOHNSON:** Yes, Pasco is under no
18 obligation.

19 **MR. WOODEN:** I mean, that order is final and
20 nonappealable.

21 **CHAIRMAN JOHNSON:** Pasco, you're not -- did
22 you participate in the Lake?

23 **MR. WOODEN:** I did not participate in Lake.
24 I'm here for Pasco Cogen, Limited.

25 **CHAIRMAN JOHNSON:** Then with that

1 understanding, Staff will bring that back before the
2 Commission on August 18th.

3 **MR. ELIAS:** Item 5-A, Staff's recommendation
4 concerning the alleged violations of the Commission's
5 Code of Ethics, certain provisions of the
6 Administrative Procedures Manual and the Rules of
7 Professional Conduct by a former commission attorney.

8 Staff is recommending that the Commission
9 revisit three recent decisions to afford the parties,
10 Staff and other interested persons the opportunity to
11 provide input concerning the issue of any bias in the
12 information presented to the Commission in deciding
13 these matters.

14 Staff has recommended that absent a showing
15 of bias it is not necessary to revisit the merits of
16 each decision.

17 To date most of the parties have not had an
18 opportunity to provide input for this issue. One of
19 the reasons for bringing this matter to the Commission
20 so quickly is to afford the parties that opportunity.

21 I have two minor corrections to make to the
22 recommendation.

23 On Page 4, at the end of the first full
24 paragraph that discusses Docket 970096-EQ, the last
25 word should be "stipulation" rather than "petition."

1 And then on --

2 COMMISSIONER GARCIA: Mr. Elias, where are
3 you?

4 MR. ELIAS: Page 4, first full paragraph,
5 and that discusses Tiger Bay, and the last word should
6 be "stipulation" rather than "petition."

7 COMMISSIONER CLARK: Can I ask a question,
8 Mr. Elias? Your recommendation is that after notice
9 to parties the Commission should revisit at agenda
10 conference the decision made. And then further down
11 it says, "There does not appear to be any further
12 review necessary with respect to certain decisions."

13 I guess it would be my understanding that if
14 we aren't really revisiting them, we're reviewing
15 them. Would you agree with that? Is it appropriate
16 to make that change in the recommendation because
17 you're not, at this point, recommending that we reopen
18 it.

19 MR. ELIAS: No.

20 COMMISSIONER CLARK: That we review them for
21 bias.

22 MR. ELIAS: I think "review" describes the
23 situation aptly. I don't have a problem making that
24 change. I think it's a fair change.

25 The other correction in the recommendation

1 on Page 6, and it's the fourth paragraph down on the
2 page, the first sentence reads "While it is now a
3 final decision, the Fosse settlement buyout was
4 extensively discussed at the April -- " and rather
5 than "14", it should be "April 1st, 1997 agenda
6 conference."

7 And then one other note. The Orlando Cogen,
8 Limited buyout is a panel: Commissioners Clark,
9 Keisling and Garcia. I've advised the clerk's office
10 of that and the vote sheet will reflect that. But I
11 wanted to make sure that you all were aware of that
12 with respect to that docket three of you have been
13 assigned. And at this point I think it would be
14 appropriate to hear from the parties.

15 CHAIRMAN JOHNSON: Okay. Mr. Fama.

16 MR. FAMA: Madam Chairman, Florida Power
17 supports Staff's recommendation basically as is.

18 CHAIRMAN JOHNSON: Okay. Any other
19 comments? Mr. Wright?

20 MR. WRIGHT: We don't object -- Lake Cogen
21 does not object to reviewing the factual situation and
22 circumstances surrounding the Commission's
23 consideration of the Lake-Florida Power settlement.
24 From the extensive discussion, it doesn't appear to us
25 that there was any bias, and we hope that the

1 investigations will show that. In light of the
2 reconsideration taken up earlier I don't have anything
3 else.

4 CHAIRMAN JOHNSON: Okay. Pasco have any?

5 MR. WAGNER: Ansley Watson for Pasco Copen.

6 I was actually going to try to convince you
7 not to do anything, because I think if you really
8 think about the nature of the issue that was before
9 you in the case, that there's really only about three
10 ways anything could have been done and that would be
11 if the former Staff attorney had fabricated, withheld
12 or misrepresented information. And I think it's one
13 of the beauties of our sunshine law that it would have
14 been very difficult for that to happen. I mean we
15 were before this Commission for three, three and a
16 half hours on the the Pasco case. There was heated
17 debate on both sides and Ms. Wagner took a very
18 nonsubstantive part in those discussions when she took
19 part in it.

20 There are two things that do concern Pasco.
21 This recommendation is -- has been clarified at least
22 with Commissioner Clark's changes or review rather
23 than revisit, and the other thing that is a little bit
24 unclear is the timing of all of this. Who is going to
25 get notice that they should provide information, and

1 within what time frame and what format should that
2 information be furnished to the Commission or its
3 investigator or Florida Power, or just what's the
4 procedure here?

5 **CHAIRMAN JOHNSON:** Staff?

6 **MR. ELIAS:** It's our expectation, and we've
7 recommended, that different attorneys pursue this
8 matter if the Commission approves Staff's
9 recommendation.

10 My thoughts are that these attorneys will be
11 the ones that coordinate the input and the
12 investigation, and that a schedule would be
13 established after consultation with the parties to set
14 what's a reasonable time to conclude the
15 investigation. And I would think that something
16 between 30 and 60 days in terms of a turnaround in
17 terms of trying to bring this back to agenda ought to
18 be sufficient to provide a reasonable opportunity to
19 address the bias issue. Does that --

20 **COMMISSIONER CLARK:** I think Mr. Watson was
21 also asking to whom is notice going to be given.

22 **MR. ELIAS:** All parties.

23 **COMMISSIONER CLARK:** And I would assume also
24 the Public Counsel will be involved and to that extent
25 representing the greater public interest or consumers

1 in this case.

2 MR. WATSON: I think "parties" is the
3 correct way to go. I guess my concern with it is that
4 anyone who was prejudiced by the bias would have been
5 prejudiced by the PAA order approving the settlement
6 agreement. And these persons, anyone who might have
7 felt they were adversely affected by the approval of
8 the settlement agreement itself had the benefit of a
9 PAA order and 21 days to protest or request a hearing.
10 No one did that. So whatever bias there may have
11 been -- and, frankly, I feel if there was any, the
12 Staff ought to know what it is. All you had was the
13 petition, the additional information that was
14 requested by the Staff and they know what they
15 requested and whether or not it was furnished.
16 Whatever may have happened was in the nature of
17 harmless error.

18 COMMISSIONER CLARK: I think that may be
19 something that would be included in any recommendation
20 that may be made on that.

21 What I think you're suggesting is where you
22 have a -- you discover a bias or conflict, it usually
23 has relevance when it's adversely affected a party
24 and, therefore, undermined the decision. And it's your
25 view that it wouldn't because nobody protested the

1 action to begin with.

2 MR. WATSON: That's correct.

3 COMMISSIONER CLARK: You may be right. But
4 I think I personally am going to be more comfortable
5 with having these further reviewed.

6 MR. WATSON: Thank you.

7 CHAIRMAN JOHNSON: Any other comments? Any
8 further discussion?

9 COMMISSIONER HILTS: I have one question
10 as to Lake, now that we have reopened it and we're
11 going to have it rebriefed and reargued to some
12 extent, would I be correct in my belief that that
13 would cure any possible impact from that conflict, or
14 is it also going to be reviewed after we reconsider
15 it? It seems like if there was any impact from the
16 appearance of a conflict, or a question of bias, that
17 that is going to be cured by going back and rearguing
18 it and revoting on it?

19 MR. HILTS: I think that's true. I also
20 think that we intend to continue to explore the issue.

21 COMMISSIONER CLARK: Now, I'm not suggesting
22 that we not continue to review it, but it does put
23 that case in a somewhat different stance because
24 there's -- it's hard to figure out what to review.

25 CHAIRMAN JOHNSON: So as it relates to the

1 Lake case, do we pull it out of the review because it
2 will be reconsidered?

3 MR. HERS: With the understanding that
4 we're still going to look at that issue, and if need
5 be, bring it back to the Commission, I think that's
6 appropriate.

7 CHAIRMAN JOHNSON: Okay. Is it even
8 necessary to pull it out? I mean does it cause any
9 extra pain or anguish, or when you bring it back you
10 could say there was no bias here; we reopened it
11 discussed all the issues. That might be the easiest
12 way to do it. It might be a little sloppy but it is
13 the easiest.

14 MR. HERS: It is easiest, I think.

15 CHAIRMAN JOHNSON: Okay to leave it?

16 COMMISSIONER KIBLING: I just wanted to
17 know what it was that we were going to review.

18 CHAIRMAN JOHNSON: With that, I think we've
19 already moved the --

20 COMMISSIONER CLARK: I can move Staff on 5-A
21 with the understanding that "revisit" will be changed
22 to "review."

23 COMMISSIONER GARCIA: Second.

24 CHAIRMAN JOHNSON: There's a motion and
25 second. Any further discussion? Seeing none, show it

1 approved unanimously. Thank you.

2 (Thereupon, the hearing concluded at
3 10:10 a.m.)

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1 STATE OF FLORIDA)
 2 COUNTY OF LEON)

CERTIFICATE OF REPORTER

3 I, JOY KELLY, CSR, RFR, Chief, Bureau of
 4 Reporting, Official Commission Reporter,

5 DO HEREBY CERTIFY that Item 5-A of the
 6 7-15-97 agenda in Docket Nos. 961184-EQ, 961407-EQ,
 7 961477-EQ, 970086-ES and 970096-EQ was heard by the
 8 Florida Public Service Commission at the time and
 9 place herein stated; it is further

10 CERTIFIED that I stenographically reported
 11 the said proceedings; that the same has been
 12 transcribed under my direct supervision; and that this
 13 transcript, consisting of 36 pages, constitutes a true
 14 transcription of my notes of said proceedings.

15 DATED this 15th day of July, 1997.

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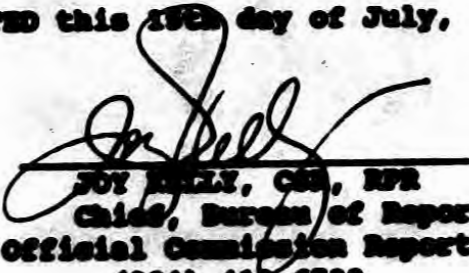
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 JOY KELLY, CSR, RFR
 Chief, Bureau of Reporting
 Official Commission Reporter
 (904) 413-6732