

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of	:	DOCKET NO. 971513-EU
Establishment of additional	:	
filing requirements in the	:	
fuel and purchased power	:	
cost recovery clause when	:	
certain threshold levels	:	
are met.	:	

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PROCEEDINGS:            AGENDA CONFERENCE  
ITEM NO. 14

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

DATE:                      Tuesday, December 16, 1997

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

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

**LESLIE PAUGH and ROBERT ELIAS, FPSC Division  
of Legal Services.**

**TODD BOHRMANN, FPSC Division of Electric &  
Gas.**

**ROGER HOWE, Office of Public Counsel**

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

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2           **CHAIRMAN JOHNSON:** Item 14.

3           **MS. PAUGH:** Commissioners, this is Staff's  
4 recommendation regarding the guideline that should be  
5 used to determine when a utility must provide a  
6 preliminary explanation of projected fuel cost.

7           The recommendation is that if there is an  
8 increase in the six-month fuel factor by 5% or more  
9 from the previous recovery period, the utility must  
10 affirmatively demonstrate prior to approval of  
11 recovery that the actions or events which gave rise to  
12 the need for recovery and the underlying costs are  
13 reasonable.

14           Do the Commissioners have questions?

15           **COMMISSIONER GARCIA:** I just wanted to make  
16 a comment. I had mentioned it to Joe before, about  
17 the possibility of moving the fuel adjustments to a  
18 yearly basis. And I believe that Staff is looking  
19 into that.

20           **MS. PAUGH:** Staff has set an informal  
21 meeting with all of the parties in the fuel docket for  
22 this week on just that subject.

23           **COMMISSIONER CLARK:** Who is on the fuel  
24 docket?

25           **CHAIRMAN JOHNSON:** Are the parties here to

1 answer questions or -- oh, did you want to speak?

2 MR. HOWE: Chairman Johnson, I'm Roger Howe  
3 of the Public Counsel's Office.

4 Our concern is stated in the recommendation,  
5 and that is that using a 5% threshold in our view  
6 would create a point below which the company would not  
7 have to disclose certain matters, which could be,  
8 certainly in a dollar sense, significant to that  
9 particular utility.

10 COMMISSIONER CLARK: Would it be appropriate  
11 to say in these instances you must, but where there's  
12 a significant event you ought to?

13 MR. HOWE: We tried to address that with the  
14 language that you find in the Staff recommendation  
15 that I had offered. It appears on Page 5. And I use  
16 the terms "having a material effect on costs sought to  
17 be covered." I believe the Commission is used to  
18 dealing with issues of materiality in a accounting  
19 sense, and so forth, and it will vary from company to  
20 company. For example, Gulf Power versus Florida Power  
21 and Light, what's material for one might not be  
22 material for another.

23 But I'm concerned at the Commission's  
24 attempts to tighten up the standard has created -- has  
25 raised the bar such that the companies will is not

1 have to disclose significant material events because  
2 that particular event does not lead to a 5% increase  
3 in their fuel cost recovery factor.

4 COMMISSIONER CLARK: Why isn't 5%  
5 appropriate for materiality?

6 MR. HOWE: It might be. For example, with  
7 Florida Power and Light, I would imagine a couple  
8 billion dollars a year flows through the fuel  
9 adjustment clause. You might have some very  
10 significant numbers lost in that 5% threshold, numbers  
11 that you wanted to hear.

12 COMMISSIONER CLARK: Yeah, but this never  
13 precludes looking at it. It just is an early warning.

14 MR. HOWE: It might preclude looking at it  
15 because if it's not offered in the first instance, it  
16 isn't necessarily going to come up at any later date  
17 either.

18 COMMISSIONER GARCIA: That goes against the  
19 very concept of this policy. I mean, clearly the  
20 Public Counsel's Office, through Jack Shreve, followed  
21 us across the state, seven or eight hearings and many  
22 lacerations and tongue lashings by him, as well as the  
23 public, as well as certain senators and so on.

24 And our attempt here is to just have a  
25 fail-safe device so that this Commission does not find

1 itself in a similar position sometime in the future.  
2 But you're telling me that our rule does exactly the  
3 opposite?

4 MR. HOWE: I believe it could, yes, sir.  
5 And that's because what would happen -- pick a  
6 significant dollar amount, an event. I think the  
7 current practice is, with all of the companies  
8 generally, we have one instance where we feel things  
9 got passed by -- but generally the companies make a  
10 good effort in their prefiled testimony to identify  
11 any material matter they think might bear upon their  
12 fuel cost recovery. And we'd like to see that  
13 continued.

14 We would not like to see the company testing  
15 it against a 5% threshold and choosing to omit it and  
16 then get lost all together.

17 COMMISSIONER GARCIA: Is that possible,  
18 Mr. Elias?

19 MR. ELIAS: No.

20 COMMISSIONER GARCIA: Sorry. I looked to  
21 you because I saw you run up here, and I'm sure that  
22 she is as well versed or perhaps better versed on  
23 this. I'm sorry.

24 MR. ELIAS: Correct. (Simultaneous  
25 conversation.)

1           **MS. PAUGH:** Commissioner, this  
2 recommendation merely adds a threshold proof, it adds  
3 an additional proof; it creates no gap, it takes away  
4 nothing. Public Counsel's argument is essentially  
5 that we create a gap where we're not going to take a  
6 look at something.

7           I totally disagree with that. We always  
8 take a look at everything, and this in no way affects  
9 a prudency review that would occur in any case in any  
10 event.

11           **COMMISSIONER GARCIA:** Mr. Howe.

12           **MR. HOWE:** I guess I state in response,  
13 because of the myriad of things that happen with these  
14 utilities -- I mean, various fuels, various methods of  
15 fuel delivery, different types of generating units in  
16 different locations -- there's a lot of things that  
17 can happen. And every six months I kind of go into  
18 overload trying to keep up with all they had filed.  
19 And --

20           **COMMISSIONER GARCIA:** Hopefully now it will  
21 only be on a yearly basis.

22           **MR. HOWE:** We have to rely on the company's  
23 disclosure on material factors.

24           If, for example, the company failed to  
25 disclose a matter because it did not exceed the 5%

1 threshold, and in the future, you know, in the true-up  
2 proceedings, it had hit its projections right on the  
3 money, I'm not sure we'd ever see any disclosure of  
4 "By the way, back there six months ago we had an item  
5 less than 5% that you Commissioners need to be aware  
6 of and you employees of Public Counsel's Office might  
7 want to inquire into further." I think it could get  
8 lost in the process.

9 MS. FAUGH: Commissioners, if I may. Public  
10 Counsel's suggestion is so broad that any matter  
11 having a material effect, which is virtually  
12 undefinable, would create a preliminary proof for  
13 every dollar conceivably that goes through the fuel  
14 clause and it guts the policy of interim recovery.

15 If that's what the Commissioners would like  
16 to do, that's fine. But I think you need to  
17 understand that that's the effect, in my opinion, of  
18 his suggestion.

19 COMMISSIONER GARCIA: Mr. Howe, is there an  
20 intermediate point that you would take us to, or it's  
21 either that or nothing?

22 MR. HOWE: I'll go out on a limb,  
23 Commissioner Garcia, and say that perhaps you do not  
24 need an explicit statement. And the reason I say that  
25 is I think in years past you generally had complete



1 disclosure, and all material matters had come to the  
2 Commission's attention. It might be worth the  
3 Commission's while to think about whether -- this  
4 arose out of the Crystal River-3 outage.

5 COMMISSIONER GARCIA: And we thought to some  
6 degree that we were doing this to placate, among  
7 others, your boss.

8 COMMISSIONER KIESLING: How about "address"  
9 his concerns is a better word than placate.

10 COMMISSIONER GARCIA: Address his concerns,  
11 thank you. I'm going to miss you, Commissioner  
12 Kiesling. (Laughter)

13 MR. HOWE: Yes, sir. I guess you're putting  
14 me in a position where I either need to say -- to back  
15 off from a general statement like materiality and pick  
16 a percentage, and I cannot pick a number. If you ask  
17 me to retreat from a general term like "materiality,"  
18 I cannot offer anything except to state that perhaps  
19 it was an one-time event that isn't likely to occur  
20 again. I can't tell you for sure that Mr. Schreve  
21 would agree with that last statement.

22 COMMISSIONER GARCIA: I certainly wouldn't  
23 want to be whipped around like I was by Mr. Shreve  
24 again either. But I think this is a fail-safe device  
25 that I think does exactly what it was intended. I

1 didn't see it as you saw it, and I guess we could -- I  
2 don't know how we could change language to address  
3 your concern, but I think our rule addresses your  
4 concern because we always have the right to do a  
5 prudency review and we do.

6 This simply doesn't allow us to do it as par  
7 for the course procedure and say, "Okay, we approve  
8 this," and go through a laborious process of  
9 explaining why we did it.

10 In this particular case had we had -- had  
11 this been the issue that brought this up, we would  
12 have then done it on the front end to some degree, and  
13 it would have allowed everyone to see the facts before  
14 them. And it would have probably been in the -- and  
15 the company might have still pulled it and we wouldn't  
16 have had to go through the procedure.

17 MR. HOWE: I appreciate the situation you're  
18 in. And I hope you appreciate my perspective, and  
19 that's I do not see the mechanism that is going to  
20 cause the event that leads to a fuel cost increase of  
21 less than 5% necessarily coming to our, or the  
22 Commission's, attention at a future date.

23 COMMISSIONER DEASON: Mr. Howe, let me ask  
24 you, this is not an improvement over of the present  
25 situation in your opinion? (Pause)

1           MR. HOWE: I guess not. And the reason I  
2 say that is I feel as a -- routinely we have seen  
3 disclosures by the companies below what would be a 5%  
4 threshold.

5           COMMISSIONER DEASON: How would you change  
6 this language? Or is it impossible to change it in  
7 such a way that it would be acceptable?

8           MR. HOWE: I guess then I'd have to revert  
9 back to pride of authorship and say it just needs a  
10 materiality standard that would need to be refined  
11 over time for the Commission to find out what is or is  
12 not material. If you find the companies, for example,  
13 disclosing too many things, you might want to bump it  
14 up a bit.

15          COMMISSIONER DEASON: But if we don't  
16 quantify that with some type of percentage, or dollar  
17 amount or something, materiality is in the eye of the  
18 beholder.

19          MR. HOWE: That's true.

20          COMMISSIONER DEASON: And different people  
21 may consider different things material.

22          MR. HOWE: I understand. And I think you,  
23 as an accountant, understand that sometimes there's  
24 judgments have to be made every day. The Commission's  
25 auditors go out and review the company's books and

1 records and apply a materiality standard. And it's  
2 flexible and it's evolved over time. But I don't  
3 think they go in to audit a company with an automatic  
4 trigger point, for example, using the same one for  
5 Gulf Power, for example, in the fuel cost area, that  
6 they would use for Florida Power and Light who spends  
7 a great deal more money on fuel.

8 COMMISSIONER GARCIA: Lowering the standard  
9 wouldn't help you at all? No, I guess not.

10 COMMISSIONER CLARK: I move Staff.

11 COMMISSIONER KIESLING: Second.

12 CHAIRMAN JOHNSON: Any further discussion?  
13 Seeing none, all those in favor signify by saying  
14 "aye."

15 CHAIRMAN JOHNSON: Aye.

16 COMMISSIONER GARCIA: Aye.

17 COMMISSIONER CLARK: Aye.

18 COMMISSIONER DEASON: Aye.

19 CHAIRMAN JOHNSON: Opposed.

20 COMMISSIONER DEASON: Nay. Show it approved  
21 on a 4 to 1 vote. Item 15.

22 COMMISSIONER GARCIA: Mr. Howe, if you can  
23 develop something, I mean I'm willing to look at it in  
24 the future because clearly I want to avoid this  
25 happening again. And if there is something that we

1 can do, or do it better, I'm willing to consider it.  
2 But I certainly want to at least have this on the  
3 books so we can avoid what we just had happen. But if  
4 you think there's more that we could do --

5 MR. HOWE: Thank you. I appreciate that.  
6 Perhaps I can help the process during the fuel cost  
7 recovery proceedings discovering what there's below  
8 5%. We can find out if it's a reasonable threshold.

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1 STATE OF FLORIDA)  
2 COUNTY OF LEON )

## CERTIFICATE OF REPORTER

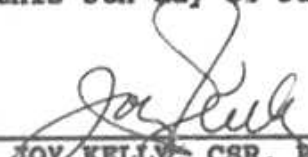
3 I, JOY KELLY, CSR, RPR, Chief, Bureau of  
4 Reporting, Official Commission Reporter,

5 DO HEREBY CERTIFY that the Agenda Item 14 in  
6 Docket No. 971513-EU was heard by the Florida Public  
7 Service Commission at the time and place herein  
8 stated; it is further

9 CERTIFIED that I stenographically reported  
10 the said proceedings; that the same has been  
11 transcribed by me; and that this transcript,  
12 consisting of 13 pages, constitutes a true  
13 transcription of my notes of said proceedings.

14 DATED this 5th day of January, 1998.

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