

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of
Joint petition for approval of
new territorial agreement
between Florida Power & Light
Company and Jacksonville Electric
Authority.

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: DOCKET NO. 980755-EU
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:



PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 3

BEFORE: CHAIRMAN JULIA L. JOHNSON
 COMMISSIONER J. TERRY DEASON
 COMMISSIONER SUSAN F. CLARK
 COMMISSIONER JOE GARCIA
 Teleconferencing from Miami
 COMMISSIONER E. LEON JACOBS, JR.

DATE: Tuesday, November 17, 1998

TIME: Commenced at 11:42 a.m.
 Concluded at 1:15 p.m.

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

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

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SAM WATERS, Florida Power & Light

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RICHARD MELSON, Jacksonville Electric Authority

DONALD W. WEIDNER, Citizens Against Power Exchange

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PROCEEDINGS

CHAIRMAN JOHNSON: Item 3.

MS. PAUGH: Madam Chairman, Item 3 is the Florida Power & Light-JEA Joint Territorial Agreement, Docket No. 980755. There are a couple of preliminary matters I'd like to bring to the Commissioners' attention before we begin.

Yesterday, by facsimile, I received a letter from the town of Baldwin. This letter supports the Joint Territorial Agreement and it will be entered into the record of this docket.

In addition, yesterday I received a petition to intervene from Citizens Against Power Exchange, Inc. Because the petition to intervene has not -- the statutory time has not run for response to this petition, it's premature for the Commissioners to rule on it, but I did want to bring it to your attention. And I believe the attorney is here from Citizens Against Power Exchange, also known as CAPE.

COMMISSIONER CLARK: Where is the city of Baldwin located, Duval or --

MS. PAUGH: Duval County. The letter, by the way, is from the Mayor of the city of Baldwin. I believe Roberta received two additional letters as well, both from Duval County -- from Alberta Hipps,

1 and Max Leggett. The letterhead is the Office of City
2 Council. They are City Council members from District
3 2 and District 13 in Duval County.

4 **MR. NELSON:** Chairman Johnson, I've got
5 copies of those letters and also of a map, if now
6 would be an appropriate time to hand them out.

7 **CHAIRMAN JOHNSON:** Why don't we have those
8 distributed. (Counsel hands Commission documents.)

9 Anything else, Staff?

10 **MS. PAUGH:** Not as a preliminary matter.

11 **CHAIRMAN JOHNSON:** Okay? Did we want to go
12 ahead then and present the item.

13 **MS. PAUGH:** Yes, Madam Chairman.

14 In summary, Staff's recommendation is to
15 deny the Joint Territorial Agreement. The reason
16 Staff has recommended denial is because we find
17 that -- or we believe it is not in the public
18 interest.

19 The basis of our decision is the rule that
20 governs territorial agreements for electric utilities
21 and that rule is 25-6.0440. The standards in the rule
22 are the reasonableness of the purchase price, the
23 reasonable likelihood that the agreement will not
24 cause a decrease in reliability, and the reasonable
25 likelihood that the agreement will eliminate existing

1 uneconomic duplication.

2 Based on all of the evidence that we have in
3 this docket, which include discovery from Staff, the
4 pleadings of the parties, as well as meetings with
5 parties, Staff has determined that the reasonableness
6 of the purchase price is, I shall say, somewhat in
7 question. It is not consistent with prior Commission
8 precedent. We won't say it's unreasonable but we
9 really don't know that it is reasonable either.

10 With respect to uneconomic duplication of
11 facilities, there simply is no uneconomic duplication.
12 There's one line that crosses in the two territories,
13 and it's like 2.4 miles. Otherwise, the boundaries
14 are very well set. They have been in existence since
15 1965. And there just simply isn't anything to correct
16 with this Joint Territorial Agreement. With respect
17 to reliability, there appears that the two utilities
18 are roughly equally reliable and there won't be any
19 change in reliability.

20 So with that, Staff felt that the agreement
21 did not meet the statutory criteria and that the
22 agreement should be denied.

23 **CHAIRMAN JOHNSON:** Thank you. I think we're
24 prepared, then, to hear from the parties. Florida
25 Power and Light.

1 **MR. MILLER:** Madam Chairman, Commissioners,
2 my name is Wilton Miller of the law firm Bryant,
3 Miller & Olive, 201 South Monroe Street, Tallahassee,
4 Florida. I'm appearing as counsel for Florida Power
5 and Light. On my right as Ms. Anne Grealy. On my
6 left, Mr. Sam Waters, representing the company.

7 This Commission has always encouraged
8 utilities to work out their differences among
9 themselves before coming here. The Commission today
10 is witnessing, I think, an historic occasion in that
11 you have before you one of the country's largest, most
12 efficient municipal utilities, and one of the
13 country's largest, most efficient investor-owned
14 utilities coming to you in harmony, having worked out
15 problems between them in seeking approval of a
16 territorial agreement that we submit to you is in the
17 public interest.

18 I'd like to take just a moment to retrace
19 how we came to this place on this date.

20 Back in 1963 these two utilities worked out
21 a territorial agreement. Over the years, as growth
22 took place throughout Duval County and in St. Johns
23 County, each utility gave the other utility, where
24 good engineering practices and economies dictated, the
25 opportunity to serve within each other's territory.

1 In 1995 these two utilities came back to you
2 to actually put into practice, and to move those
3 customers which were within each other's service
4 territories, into the respective service territories.
5 At that time you approved the agreement between the
6 two utilities.

7 However, it soon became apparent that there
8 was a conflict in the territorial agreement and that
9 it could not be executed or carried out in certain
10 parts of the territory. Specifically, in the Maxville
11 area, which is in western Duval County.

12 I'm going to skip over that, as Mr. Melson
13 will, in detail, explain to you what the problems were
14 in the Maxville area that caused us to sit back down
15 together and start working.

16 What happened when we sat down and we
17 started to look at the problems, we looked at all of
18 the problems between the utilities and whether or not
19 services could be improved between the two utilities
20 by a further adjustment of the boundary lines. We
21 believe that we have accomplished that, and that that
22 agreement is within the public interest. Staff has
23 recommended to you that in their view the agreement
24 does not indicate that it is in the public interest.
25 However, we find little specificity as to why it is

1 not within the public interest. I would like to point
2 out to you some of the reasons that we believe that it
3 is within the public interest.

4 This Commission has long recognized that
5 investor-owned utilities and municipal utilities are
6 vastly different, not only in their ownership but in
7 their financial underpinnings.

8 In 1970 -- I believe it was 1973, 17 years
9 ago, in the New Smyrna Beach case, this Commission
10 found that where a utility was seeking -- a municipal
11 utility was seeking to expand its service territory
12 considerably outside its municipal boundaries, that it
13 was contrary to public policy of the state to
14 encourage it. It found that the public policy of the
15 state dictated that municipalities should, to the
16 extent possible, serve within municipal boundaries,
17 recognizing that they have the legal right to provide
18 service outside municipal boundaries where such
19 service was incidental to their primary purpose of
20 serving municipal citizens. As we all know,
21 municipalities, municipal systems, are heavily
22 subsidized, legitimately so, for the purpose of
23 providing municipal service.

24 In this case we have a utility, a municipal
25 utility, voluntarily moving its lines back to its

1 municipal boundaries in a large section of this
2 territory. A large section of the territory that is
3 involved here is industrial in nature. While it is
4 appropriate for a municipal utility to consider such
5 things as stimulation of jobs for the community,
6 adding property to its rate base, and in so doing may
7 adopt rate structures with this Commission's approval,
8 which would encourage and protect that industrial
9 investment in growth, it would be highly inappropriate
10 for an investor-owned utility to adopt a rate
11 structure which penalized or discriminated against
12 other ratepayers.

13 As to the issue of whether or not we have
14 eliminated uneconomic duplication of facilities,
15 there's a conflict between your rule and the statute
16 which authorizes its implementation. As we all know,
17 rules must sit within the four corners of the statute.
18 The statute provides -- if you'll permit me just one
19 moment to find it in the statute. (Pause) The
20 operative language of the statute is "the avoidance of
21 further uneconomic duplication of generation,
22 transmission and distribution facilities." That's the
23 operative language, is future, as it only could be.
24 You cannot gain economy by eliminating something that
25 the funds have already been expended for. The

1 legislature, in its wisdom, said that in considering
2 these territorial agreements you should look for the
3 further avoidance of uneconomic duplication of
4 facilities. If we were eliminating something that was
5 already bought and paid for, we'd only be spending
6 funds for the elimination, we would not be gaining any
7 efficiencies or protecting ourselves from the future.

8 We believe that when we adjust these lines
9 back largely to the municipal boundaries of the city
10 of Jacksonville that we are avoiding future
11 duplication of uneconomic duplication of facilities.
12 Jacksonville will no longer plan for the contingency
13 that it will be serving customers within the area
14 being transferred to Florida Power and Light in
15 St. Johns County. The City of Jacksonville has total
16 municipal power over all facilities and other
17 utilities and permitting procedures within the city of
18 Jacksonville. They should be very efficient in
19 planning the future growth within that municipal
20 system. Florida Power and Light will no longer be
21 planning to expand facilities within Duval County.
22 Each of these utilities should be able to avoid future
23 uneconomic duplication of facilities, and we submit
24 this is in the public interest.

25 While the Commission has long recognized

1 that no customer has the right to select this utility
2 because of rates, we believe that the strong
3 objections of some of those customers in St. Johns
4 County, who are not residents of the municipality but
5 wish to remain as municipal customers, has influenced
6 the direction of these proceedings: Primary reason,
7 there is a difference in rates.

8 **COMMISSIONER GARCIA:** Mr. Miller, what can
9 we do for these residents?

10 **MR. MILLER:** Florida Power and Light has
11 proposed a transitional rate which will guarantee to
12 them that no one will pay more than they are currently
13 paying for three years. It also offers them the
14 opportunity to reduce their rates for three years, and
15 approximately half of those citizens forever, by
16 taking advantage of Florida Power and Light's
17 conservation measures -- could reduce their bills. So
18 there will be no immediate impact. And while the
19 rates are currently different, it has not always been
20 that way and it may not be that way in the future.
21 Have I answered your question, sir? (No response.)

22 One of the reasons, too, that we have a rate
23 disparity is that while the residents of Duval County
24 justifiably have the real advantage in the forgiveness
25 of taxes by federal government and by state

1 government, we have in Duval County, also, where
2 Florida Power and Light is serving, Florida Power and
3 Light is not currently paying a franchise fee but they
4 are paying ad valorem taxes to Duval County. Last
5 year we contributed more than \$1 million to the
6 general revenue fund of Duval County, and, of course,
7 this will decrease as -- increase as we pick up
8 additional customers. It's my understanding that the
9 same facilities of the municipal-owned utility would
10 be tax exempt and they would not be making a
11 contribution.

12 A lot of the rate difference is being paid
13 by Florida Power and Light to St. Johns County for the
14 purpose of maintaining its schools, its hospitals,
15 roads, streets, et cetera and other public purposes.
16 Again, we believe that this agreement is in the public
17 interest because it will enhance the contribution that
18 Florida Power and Light is making to the citizens of
19 St. Johns County.

20 These citizens who are residents of
21 St. Johns that are currently being served by JEA, they
22 are not making, through their utility bills, the same
23 contribution to their community that the other
24 citizens of St. Johns are making, because they are
25 enjoying the benefits of a system that enjoys benefits

1 for the purpose of providing municipal service to its
2 citizens. They do not enjoy those benefits for the
3 purpose of competing freely in competition with
4 investor-owned utilities outside its municipal
5 boundaries.

6 We submit that all of these things have been
7 considered. We submit that the -- we do meet the test
8 of avoiding further uneconomic duplication of
9 facilities. We submit that the realignment is in the
10 public interest, and that there is no immediate harm,
11 and potentially no harm at all to any customer of
12 either utility.

13 It's prospective, at best, and that is only
14 to a small number of customers who do not reside
15 within the municipal limits but would like to remain
16 as customers of a municipal system. Thank you.

17 **CHAIRMAN JOHNSON:** Thank you, Mr. Miller.
18 Mr. Melson.

19 **MR. MELSON:** Commissioners, I'm Rick Melson
20 representing the Jacksonville Electric Authority. I
21 handed out copies of letters that Staff referred to
22 from the mayor of the town of Baldwin and the two
23 Florida City council persons who represent customers
24 in the western part of Duval County. The two city
25 council persons could not be here today. The mayor of

1 the town of Baldwin is here today, and, I believe, may
2 want to very briefly address you when you take public
3 comment.

4 JEA basically agrees with what Mr. Miller
5 has said on before of FP&L. I'd like to make a few
6 additional points. I want to explain in a little more
7 detail that a conflict between the existing JEA-FP&L
8 territorial agreement and the JEA-Clay Co-op agreement
9 was really the impetus for JEA in entering into
10 negotiations about the amendments before you. I also
11 want to explain a little bit more about why JEA
12 believes that approval of the agreement would avoid
13 some future duplication of facilities. I want to talk
14 just briefly about the legal standard that's implicit
15 in the Staff recommendation, and I want to close by
16 explaining why JEA believe it's in the public interest
17 for JEA to serve the entire political boundary of
18 Duval County.

19 Commissioners, let me use a map. We've
20 handed out smaller copies of this map to you. Let me
21 start by explaining why JEA began negotiations with
22 FP&L for this territorial agreement amendment.

23 The general boundary between JEA and FP&L in
24 western Duval County has been fixed for a number of
25 years. In 1992, though, JEA entered into a

1 territorial agreement with Clay Co-op. Clay County is
2 here south of Duval County, and the boundary line
3 between Clay Co-op and JEA that was established in
4 that agreement and approved by that Commission is
5 essentially this green line along the Duval-Clay
6 County line. And that agreement with Clay Co-op
7 provided some JEA customers in Clay County would be
8 transferred to the Co-op, and conversely, some Clay
9 Co-op customers in Duval County would be transferred
10 to JEA.

11 That transfer has largely been completed
12 with the exception of some customers in the Maxville
13 area, which is outlined in gold down here in the lower
14 left-hand corner. (Indicating) And what we've got,
15 frankly, is a conflict between the JEA-Clay
16 territorial boundary and the JEA-FP&L territorial
17 boundary.

18 The agreement with Clay calls for Clay to
19 transfer the customers in this gold outlined area in
20 Maxville to JEA, but under the JEA-FP&L agreement that
21 territory is allocated to FP&L. So as it stands today
22 we cannot give full effect to both agreements. And it
23 was that conundrum that caused JEA to enter into
24 negotiations with FP&L about adjusting the territorial
25 boundaries. And then as we got further into the

1 negotiations, the desirability to JEA as a municipal
2 utility of essentially rounding out and serving the
3 entire city of Jacksonville, the entire Duval County,
4 became apparent. And that was the way that this
5 territory in western Duval County was eventually
6 settled upon.

7 I've got one other -- my next point, and
8 I'll use the map for this one as well, is to talk
9 about the elimination of uneconomic duplication.

10 I think the Staff points out properly that
11 this territorial agreement will not really eliminate
12 any significant existing duplication because there is
13 no existing duplication. What it will do, though, we
14 believe, is avoid some duplication of distribution
15 facilities and distribution substations in the future.
16 Again, if I can show you on the map, there are a
17 couple of little squares outlined in blue. One down
18 here just within the existing JEA service territory,
19 and another in the portion of the territory that's
20 served today by FP&L.

21 JEA plans to put future generation at one or
22 the other of those sites, and also plans to put a
23 future distribution substation at the lower site.
24 Today either company could serve short-term growth in
25 this western Duval County territory with existing

1 substation facilities. But as we experience growth in
2 Duval County in the future, sooner other later
3 additional distribution substations are going to have
4 to be added. It's JEA's position that we expect to be
5 adding a distribution substation here in the future in
6 any event to serve growth in the existing JEA
7 territory, and that new substation would give us then
8 the capacity to efficiently serve growth in the
9 additional territory.

10 If the territorial agreement is not
11 approved, and if this remains FP&L territory, at some
12 point FP&L, to serve growth, is going to have to add a
13 substation, and ultimately you'll have two
14 substations, one owned by JEA and one owned by FP&L,
15 to serve territory that efficiently could be served by
16 a single substation. We think that's the kind of
17 further duplication of facilities that the statute is
18 designed to address, and we think that's the kind of
19 duplication that this agreement will eliminate.

20 On a third point --

21 **COMMISSIONER DEASON:** Mr. Melson, let me ask
22 a question. Are you leaving the uneconomic
23 duplication discussion?

24 **MR. MELSON:** Yes, I was.

25 **COMMISSIONER DEASON:** What about the area in

1 St. Johns County -- I guess perhaps I should direct
2 this question to FP&L. The area in St. Johns County
3 that would be acquired by FP&L, are there -- is there
4 the need to construct new facilities, a new
5 substation, to serve that area that JEA already has
6 the ability to serve?

7 **MR. MELSON:** Again, I think JEA or FP&L can
8 probably answer that better. I believe the answer is
9 no.

10 **MR. MILLER:** Mr. Sam Waters will answer that
11 question.

12 **MR. WATERS:** Good morning, Commissioners.
13 It's my understanding that we would not need a new
14 substation in that area, but there would be new
15 distribution facilities required to serve the load in
16 that area.

17 **COMMISSIONER DEASON:** Is that new
18 distribution for new growth or is that additional
19 facilities that would have to be constructed just to
20 affect the transfer of existing customers?

21 **MR. WATERS:** I think it's -- actually would
22 be both. We are expecting growth in that area,
23 substantial growth. But we would also have some
24 facilities required to meet the existing load there.

25 **COMMISSIONER DEASON:** Would JEA have to

1 construct additional facilities if the territorial
2 agreement is not approved to serve the area in
3 St. Johns County in question? (Pause)

4 **MR. MELSON:** We would have to build new
5 facilities in this area to serve growth if the
6 agreement were not approved.

7 **COMMISSIONER DEASON:** So regardless of who
8 served, new facilities are going to have to be
9 constructed; is that correct?

10 **MR. MELSON:** Based on what FP&L said, yes,
11 there would be new facilities in that territory to
12 serve growth.

13 **COMMISSIONER DEASON:** Okay.

14 **MR. MELSON:** Commissioners, beyond the
15 duplication facilities, my third point is that JEA
16 believes that the Staff is essentially applying an
17 incorrect legal standard in its recommendation. It
18 says -- the recommendation says "In effect, the
19 agreement should be rejected because the utility has
20 not proved it's in the public interest." The standard
21 established by the Supreme Court, though, for review
22 of territorial agreements is that voluntary agreements
23 on territorial boundaries are favored, and that an
24 agreement should be approved so long as there is no
25 detriment to the public interest. We, in fact, think

1 there's a benefit to the public interest here in the
2 sense of the elimination of the further duplication of
3 facilities. But even if you were to find that the
4 agreement were absolutely neutral on that point, the
5 standard is, is there a detriment. And there's
6 nothing in the Staff recommendation that indicates any
7 type of detriment at all.

8 **COMMISSIONER GARCIA:** Mr. Melson, could I
9 ask a favor, I didn't hear Mr. Waters. Could
10 Mr. Waters answer again the questions posed by
11 Commissioner Deason?

12 **MR. WATERS:** Yes. The answer was that we
13 will have to construct the facilities; not a
14 distribution substation but we will have to construct
15 distribution facilities to serve the new load in
16 St. Johns County, growth and the existing load.

17 **COMMISSIONER GARCIA:** Thank you.

18 **COMMISSIONER CLARK:** Mr. Melson, I need to
19 have you clarify something for me. Is it a different
20 standard between -- with respect to the approval of
21 voluntary agreements as opposed to resolving disputes?

22 **MR. NELSON:** Commissioner Clark, I, frankly,
23 have not looked at the case law in resolving disputes.
24 I've looked at the case law on voluntary agreements
25 and it's going back to the New Smyrna Beach vs Public

1 Service Commission case in 1985, which actually, I
2 believe, may have been -- may have started at one
3 point as a territorial dispute. But the Commission
4 said in that case that the test is no detriment. And
5 then they reaffirmed that standard, I guess is the
6 best way to say it, in dicta, in a more recent
7 AmeriSteel case where they said the Commission ought
8 to give effect to voluntary agreements and only reject
9 them if there's a finding of detriment.

10 **COMMISSIONER CLARK:** Refresh my memory. Did
11 New Smyrna start out as a dispute and then the
12 companies involved reached an agreement -- I think,
13 did the Commissioners say, "Well, that's fine. We
14 don't like the agreement. We're going to settle it
15 this way." And the Court came back and said "Unless
16 you can show there's a detriment to the agreement,
17 detriment to the public interest, you should approve
18 the agreement." Is that --

19 **MR. MELSON:** I guess, Commissioner, I'm not
20 positive how the case started. The opinion reflects
21 that there was a group of customers who were opposed
22 to the agreement, and the Commission, focusing on that
23 group of customers, said there is no substantial
24 benefit to this particular group of customers, and,
25 therefore, we're going to disapprove the agreement, or

1 came back and said substantial benefit is not the
2 standard. When you're dealing with a voluntary
3 agreement the question is there a detriment -- not
4 even a detriment to any particular group of customers,
5 but is there a detriment to the utilities as a whole.

6 **COMMISSIONER CLARK:** The utilities or the
7 public interest?

8 **MR. NELSON:** Let me be exact. "So long as
9 the agreement works, no detriment to the public
10 interest."

11 **COMMISSIONER CLARK:** Do you have an extra
12 copy of that? May I look at your copy?

13 **MR. NELSON:** No, but you may look at my
14 copy.

15 (Counsel hands document to Commissioner.)

16 My final point, Commissioners, is that in
17 looking at the public interest, JEA believes that the
18 public interest is served by authorizing municipal
19 utilities to serve throughout its municipal
20 boundaries. As you probably all know, Jacksonville
21 has a consolidated government so that the municipal
22 boundaries of the city of Jacksonville are the same as
23 the county boundaries. In this case, approving the
24 agreement would bring that pocket in western Duval
25 County into the JEA service territory. That area is

1 industrial in nature. To the extent JEA, because of
2 some of the municipal advantages of -- municipal
3 financing, ad valorem taxes and so forth, to the
4 extent JEA is able to offer that customer an
5 industrial existing rate that is lower than the rate
6 it pays today, that is a benefit, we believe, to the
7 political -- to Duval County as a whole, because it
8 helps to retain jobs, helps to retain tax base. And
9 those are kinds of considerations that, as Mr. Miller
10 pointed out, really are unique to a publically-owned
11 utility and something that an investor-owned utility
12 simply cannot take into account in the same way.

13 The citizens of Jacksonville essentially are
14 the owners of the system, and JEA believes it's
15 appropriate that JEA serve those owners so that to the
16 extent the municipal utility provides benefits, that
17 all of the citizens of the city are able to enjoy
18 those.

19 I'll be happy to answer any questions. That
20 sort of concludes my overview.

21 **CHAIRMAN JOHNSON:** Thank you, Mr. Melson.

22 **MR. WEIDNER:** Good morning, Commissioners.
23 My name is Donald W. Weidner. I'm an attorney in
24 Jacksonville, Florida, 11265 Alumni Way, in
25 Jacksonville, representing the Citizens Against Power

1 Exchange.

2 As I was sharing during the break with
3 Commissioner Johnson, I started my law practice in
4 front of this very body some 24 years ago with the
5 staff of the Public Counsel's Office. And I can
6 remember back then I had -- in my first year in law
7 practice I had seven cases from this Commission that
8 we took on appeal to the Florida Supreme Court. There
9 aren't very many lawyers that get an opportunity to
10 argue seven cases before the Supreme Court in their
11 career, let alone in their first year in practice.

12 **COMMISSIONER GARCIA:** Hopefully we won most
13 of those.

14 **MR. WEIDNER:** We did, as a matter of fact.
15 A few of them anyway.

16 I can remember that when when I stood before
17 the Court, and the opening line before the the Court,
18 after you introduce yourself, is who you are appearing
19 on behalf of. And I can remember back then I would
20 get a catch in my voice every time I would say that I
21 was there appearing on behalf of the citizens of the
22 state of Florida. And that opportunity to appear on
23 behalf of the citizens of the State of Florida is
24 something that this Commission is well familiar with,
25 because over three buildings ago, and many years ago

1 and through today, this Commission's obligation to act
2 in the public interest has never changed. And while
3 the Commissioners are different, some members of the
4 staff are different, the obligation that this
5 Commission has to carry out is still the same.

6 What's at stake in this case is something
7 that we think is not in the public interest, quite the
8 contrary of what my colleagues at the bar have put
9 forth to you.

10 First of all, you know, it has a nice sound
11 for JEA to say, "Well, we want to take on all of the
12 municipal boundaries." And it has a nice sound for
13 FP&L to say, "Gee, we really think that JEA ought to
14 take on all of the political boundaries." But the
15 political desire of JEA to control all of Duval County
16 is not this Commission's responsibility. This
17 Commission's responsibility is to see what's in the
18 public interest for all of the ratepayers and the
19 citizens of Florida.

20 The Staff recommendation goes through the
21 three criteria set forth in your rule, and with one
22 exception, we think accurately points out that this
23 case has not been presented to you in a way that would
24 enable you to make a ruling in support of the swap.

25 First of all, they talk about the

1 reasonableness of the purchase price. And as your
2 Staff points out, it does not seem reasonable for FP&L
3 to spend \$5 million to get a base rate of
4 \$1.6 million. FP&L counters that by saying, "When
5 we've done our sophisticated studies, looked at all
6 these great analysis, we come out with saying in the
7 end it's probably not going to be a big loss." Well,
8 that's not what the public interest standard requires.
9 What they've said to you is that based on some
10 sophisticated studies we think maybe it won't hurt
11 FPL's customers. What your Staff has showed you is
12 that FP&L is going to pay \$5 million to get
13 \$1.6 million and that's not in the interest of FPL's
14 ratepayers.

15 One area where we have a little bit of
16 disagreement with the Staff is on the question of
17 reliability. The Staff says, "Well, we've looked at
18 the reliability numbers and we think the reliability
19 numbers are about the same." The reliability numbers
20 that the Staff was using was comparing, we believe,
21 Duval County with St. Johns County, in the totality of
22 the area served by the two utilities. What should be
23 looked at is the area of St. Johns County that FP&L
24 wants to serve. And as you recall, and I think you
25 recognize from the Staff recommendation, part of this

1 area that is being proposed to be swapped was just
2 swapped a couple years back. And we think when you
3 look at the historical rate of service reliability
4 you'll find that FPL's rate of reliability in that
5 area that is proposed to be taken over is not the same
6 as the reliability that JEA has been able to provide
7 the citizens in that area today.

8 JEA has done a tremendous job of providing
9 excellent reliability and service in that area. That
10 excellence and reliability was not matched by FP&L
11 when FP&L had that service area, and we don't believe
12 that there's in evidence this record that shows that
13 that reliability of service that JEA now offers the
14 St. Johns residents will be matched when FP&L takes
15 back over. And there are a number of reasons that we
16 could go into to show that.

17 And, finally, the third area of the Staff,
18 is a reasonable likelihood that the agreements will
19 eliminate existing duplication of services. The
20 utilities tried to play a semantic game here and say
21 "Well, the question is, is there going to be a
22 duplication of service in the future? And are we
23 going to eliminate or avoid a duplication that has not
24 occurred but may occur sometime down the road? And
25 then they throw up sometime we're going to have to add

1 facilities to serve these customers.

2 As the Commissioners pointed out,
3 Commissioner Garcia, and I think Commissioner Deason,
4 as you well pointed out, the St. Johns' part of this
5 territory, there is no evidence that this swap is
6 going to have any effect on eliminating any future
7 duplication of service. Both companies, regardless of
8 which one takes over, is going to have to expand
9 services in this area because the area is a rapidly
10 growing area. But that's not to say there's going to
11 be any avoidance of a duplication of service
12 territory.

13 There's a very simple solution to this
14 problem. And that is that if FP&L really -- if JEA
15 really wants to serve Duval County, let it buy the
16 service area in Duval County from FP&L and take over
17 its service area. But when the company suggests to
18 you, "Oh, we're just sort of moving back so JEA takes
19 on Duval County," they've played a little charade with
20 you. But if you'll note the territorial lines in
21 St. Johns County, JEA is not moving back to the Duval
22 county line. They are only giving up some customers
23 in St. Johns County. And there's still a large block
24 of customers in St. Johns County that are being left
25 in the service area of JEA. Now, one could speculate

1 why they wanted to do that. The fact that it's a
2 rapidly growing area, a lot of customers, a lot of
3 people with political muscle in that area, that
4 there's a big subdivision going in with a lot of
5 political muscle and that, "We don't want Florida
6 Power and Light. We want to stay with JEA." I don't
7 know. But the bottom line is to suggest to you that
8 is being done so JEA can return to its boundaries is a
9 subterfuge because that's not true. What's happening
10 is they are sacrificing a group of loyal customers who
11 are now going to experience increased -- significant
12 increase in their rates.

13 So the bottom line is what is happening here
14 that is in the public interest? FP&L customers, at
15 best, come out neutral, but probably come out to their
16 detriment because FP&L is giving up a large
17 territorial area and not getting a commensurate
18 return. And JEA customers get harmed because they are
19 going to see a significant increase in their rates.

20 And finally, the Commission says -- FP&L
21 says, "But what we're going to do is we're going to
22 freeze the rates for those customers for three years
23 out of the goodness of our hearts and that should make
24 them say okay."

25 I have been around this Commission for

1 20-some years. I can't remember any instance where
2 the Commission has ever approved a differential rate
3 for a block of a utility's customers that would not be
4 applicable to all of the utility's customers. And I
5 have some real questions -- as much as I would like to
6 see it if the Commission approved the territorial
7 swap, I have some real questions about the
8 constitutionality of that kind of a proposed
9 differential rate.

10 The Commission has to make its decision
11 based on the record that it has. And there's no
12 substantiation in this record that this swap is going
13 to be in the public interest. And even if you adopt
14 the standards suggested by counsel for JEA, there's no
15 support in this record that this swap would not be a
16 detriment to the public. In fact --

17 **COMMISSIONER CLARK:** Mr. Weidner, I think
18 that is the question. As I read the case, it appears
19 the standard for approving the voluntary agreement,
20 and particularly one where there had been a dispute
21 pending -- as I read this case, apparently there was a
22 dispute. We settled the dispute and divided up the
23 territories while it was on appeal to the Court. They
24 reached an agreement. The Court sent it back to us.
25 We disapproved it. And the Court said, apparently,

1 the substantial benefit requirement imposed on the
2 South Beach transfer, which was the area that was
3 objected to, created an unnecessary burden on the
4 settling utilities. The agreement, as a whole,
5 contained no detriment to the public and should have
6 been approved.

7 It looks to me like that is the standard
8 when you have an agreement. And I guess the question
9 is what is the detriment?

10 **MR. WEIDNER:** The detriment, number one,
11 that FP&L's customer are going to suffer because FP&L
12 is taking on -- or is going to be paying \$5 million to
13 get \$1.6 million. And you have to go a long way to
14 try to figure out how that's not going to be in their
15 detriment. And the other detriment to the public is
16 that there's a significant block of ratepayers that
17 are going to see a significant increase that their
18 rates. And the final detriment is that there's a big
19 block of ratepayers that were just switched from one
20 utility to another two years ago and now are going to
21 be switched back again.

22 **COMMISSIONER CLARK:** Well, it appears the
23 reason it wasn't approved in here was a rate increase
24 to a particular area of customers. And apparently
25 that -- the Court didn't conclude that that was a

1 substantial detriment.

2 **MR. WEIDNER:** You said because the --

3 **COMMISSIONER CLARK:** It didn't appear that a
4 change in the rates was a factor.

5 **MR. WEIDNER:** I think you have to look at
6 what was really going on in that case. And without
7 going into the details now, I think it is clear that a
8 change in rates all by itself may not be enough. But
9 there's a lot more here than a change in rates taking
10 place, and there is a significant change in rates
11 where -- that we have not brought upon ourselves.

12 **CHAIRMAN JOHNSON:** Did you have anything
13 else wanted to add? You can continue.

14 **MR. WEIDNER:** And we do have a number of
15 members from the affected area that travelled over
16 here this morning that would like to talk to you at
17 the appropriate time.

18 **CHAIRMAN JOHNSON:** Okay. I think we're
19 prepared unless --

20 **COMMISSIONER CLARK:** Let me ask one thing.
21 Staff, would you please respond to the appropriate
22 standard. It does appear to me that the standard,
23 when you have agreements, is a no-detriment standard.

24 **MS. PAUGH:** Are you asking us to address the
25 Supreme Court case or the rule?

1 **COMMISSIONER CLARK:** What is the standard
2 for approving a voluntary agreement? Does the rule
3 address a dispute or does it address approving a
4 voluntary agreement?

5 **MS. JAYE:** Commissioner, Rule 25-6.0440
6 speaks to territorial agreements for electric
7 utilities. It does not speak to there being a
8 dispute. It has been Staff's position that under
9 Subsection 2 of that rule, there are three criteria
10 which the Commission may consider. The Commission is
11 not limited to considering those three. And those
12 three are the ones that Staff addressed in the
13 recommendation itself.

14 **COMMISSIONER CLARK:** It appears we have a
15 standard from the Supreme Court. What's the date on
16 that rule? I'm sure it's after this case.

17 **MS. PAUGH:** The rule was new on March 4th,
18 1990, and amended on February 13th, 1996.

19 **COMMISSIONER CLARK:** What's the rule number
20 again?

21 **MS. PAUGH:** 25-6.0440, subsection --

22 **COMMISSIONER GARCIA:** What was the
23 amendment?

24 **MS. PAUGH:** I'm sorry?

25 **COMMISSIONER GARCIA:** What was at amendment

1 that was done in '96?

2 MS. PAUGH: I don't know what the amendment
3 was. The date of the amendment was 2-13-96.

4 MS. BASS: The amendment was to add county
5 maps. That county maps had to be put in the
6 territorial agreement.

7 COMMISSIONER GARCIA: Thank you, Roberta.

8 COMMISSIONER CLARK: Do you have a copy of
9 the rule?

10 MS. PAUGH: I certainly do.

11 (Hands document to Commissioner.)

12 COMMISSIONER DEASON: What was the rule
13 reference again, please?

14 MS. JAYE: 25-6.0440 Territorial Agreements
15 for Electric Utilities.

16 MS. PAUGH: Just so the Commissioners know,
17 subsection 2 of that rule is titled "Standards for
18 Approval."

19 COMMISSIONER CLARK: Yeah. But it says --
20 it says -- that's probably not quite correct. It says
21 what you shall consider in making the approval, but
22 they are not really standards for approval. Those are
23 the things, apparently, you would look at in reaching
24 a determination as to whether it benefitted the
25 public, or it resulted in a detriment. But I think

1 the standard probably is, is there a detriment to the
2 public interest. Because as far as I know that case
3 hasn't been overruled.

4 MS. BASS: I think that perhaps we're
5 talking about the same thing but a difference in
6 semantics.

7 I think over the last several years that I
8 have been involved in territorial agreements our
9 standard has been whether or not the territorial
10 agreement has been in the public interest. And I
11 guess it would be our interpretation, or my
12 interpretation -- nonlegal interpretation -- that if
13 it is not a detriment to the public, then it would be
14 in the public interest.

15 COMMISSIONER CLARK: Well, I would agree
16 with you. But what they are saying is that it's
17 unnecessary to prove a substantial benefit. What is
18 necessary is to prove no detriment, which I think are
19 probably different standards.

20 MS. BASS: I agree. I think they are
21 probably different standards too. But I think that in
22 this particular case there is a detriment to the
23 ratepayers and I don't believe it is in their public
24 interest.

25 COMMISSIONER CLARK: What is that?

1 **MS. BASS:** I don't believe that the
2 utilities, either one of them, have given any
3 compelling reasons why this is in the public interest
4 and why it is not detrimental to the public interest.
5 There's no uneconomic duplication of facilities, not
6 currently. And I would disagree with Mr. Miller when
7 he says that once -- if there were uneconomic
8 duplication of facilities, that those are sunk costs
9 and you don't have to worry about them anymore. I
10 disagree. I think you still have to worry about them
11 because you have continued maintenance on those lines,
12 plus you'll have extension of those lines if
13 additional customers are to be served.

14 As far as potential uneconomic duplication
15 in the future, there's always that possibility when
16 you have territorial agreements. And I think that's
17 recognized when you have territorial agreements. You
18 draw a boundary line and the utilities are going to
19 come to that boundary line to serve their customers
20 and we recognize that. But the utilities, by
21 establishing this boundary and having had established
22 it since 1965, they've known very well where their
23 service territories are, and they have planned their
24 facilities in such a way that they will most
25 economically and efficiently serve their customers.

1 I want to make sure that Commissioner
2 Deason's question was answered when they talked about
3 additional facilities in the area.

4 For FP&L to serve in the St. Johns area, to
5 take over that part of those customers, they will have
6 to expend additional dollars to currently serve
7 existing customers. Both utilities, to serve these
8 transferred areas, will have to build additional
9 facilities for future customers. That goes without
10 saying. You always have to build -- you generally
11 build additional facilities to serve those customers.
12 JEA does not -- has indicated they do not have to
13 incur additional costs to serve customers in Duval
14 County except for the dollars to buy out the existing
15 facilities. FP&L not only has to buy the existing
16 facilities, but will have to expend an additional
17 3.6 million to serve current customers.

18 **COMMISSIONER CLARK:** You're saying FP&L will
19 have to spend 3.6 million to serve customers in the
20 St. Johns area.

21 **MS. BASS:** Yes. Existing customers.

22 **COMMISSIONER GARCIA:** Are you saying, then,
23 that this is -- this deal is not good for ratepayers
24 because it costs too much?

25 **MS. BASS:** I'm not saying it costs too much.

1 I question whether or not it's reasonable for them to
2 expend the dollars that they are going to just to get
3 additional customers in St. Johns County and give up
4 the customers who have large revenues in Duval County.

5 **COMMISSIONER GARCIA:** But we have to find
6 whether it's good or bad. And is it bad for
7 ratepayers of FP&L as a whole?

8 **MS. BASS:** I think the utility has indicated
9 that it's not. Our review of their analysis indicates
10 that it's marginal to make a small benefit to Florida
11 Florida Power and Light. My concern is always the RIM
12 test that they proposed to Staff, is based on
13 projection. It's based on growth projection in that
14 particular area. And between the first RIM test
15 analysis we received from Florida Power and Light and
16 the second, the revised RIM test, there was a
17 substantial difference in the growth projections on
18 what Florida Power and Light determined the growth
19 would be in that particular area and what the
20 St. Johns County Planning Board determined the growth
21 would be in that area.

22 So it's all based on projections and
23 assumptions and that sort of thing. So if it's
24 marginal, I don't have real comfort in it.

25 **COMMISSIONER JACOBS:** Is there a particular

1 time within which Florida Power and Light will recover
2 its additional expenses it would have to expend in
3 St. Johns County?

4 MS. BASS: I'm sure there is a breakeven
5 where eventually they would recover it. However,
6 based on our calculations, in St. Johns County they
7 would have to expend the additional dollars, of
8 \$5 million to receive revenues of 1.6.

9 COMMISSIONER JACOBS: That's for existing
10 load.

11 MS. BASS: That's for existing.

12 COMMISSIONER JACOBS: What about the issue
13 after the three-year rider is over?

14 MS. BASS: After the three-year rider the
15 rates would go to whatever FPL's were at the end of
16 three years.

17 COMMISSIONER JACOBS: If that were existing
18 rates, what would the comparison be?

19 MS. BASS: It would be an additional
20 approximately \$271,000 a year additional. So they are
21 at 1.6 now, so it would be 1.8, 1.9 million.

22 COMMISSIONER JACOBS: Okay.

23 MR. MILLER: If I might, Mr. Waters can
24 respond to Mr. Bass's concerns.

25 MR. WATERS: I think there has been some

1 discussion of the RIM analysis FPL performed and
2 pieces of that analysis have been thrown out, for
3 instance, how much FP&L paid for the customers --

4 **COMMISSIONER GARCIA:** Sam, could you please
5 get right into the mike because I can barely make you
6 out.

7 **MR. WATERS:** I'll get as close as I can.
8 Can you hear me now? Okay.

9 The RIM analysis attempts to look at all of
10 the costs and all of the benefits associated with the
11 swap, both the costs associated with picking up new
12 customers and growth, the benefits of new revenues,
13 the benefits associated with avoiding the new
14 facilities that would be required for the existing
15 customers and so on. And without going through every
16 element, I think it's important to know we ran a
17 number of scenarios. While there's a question on
18 growth rate, we ran a case of no growth at all in the
19 territory we're picking up in JEA, which we would
20 consider not to be a realistic case. But even in that
21 case, the RIM result is 1.0. There's no harm to FPL's
22 general body of ratepayers in that case.

23 **COMMISSIONER GARCIA:** Can FPL guarantee that
24 to us, Mr. Waters?

25 **MR. WATERS:** Guarantee it? I can't

1 guarantee any forecast. I'd be reluctant to ever
2 guarantee a forecast of anything because it depends on
3 so many factors.

4 **COMMISSIONER CLARK:** You can't guarantee no
5 growth in the sense you can guarantee -- maybe not.

6 **MR. WATERS:** I can guarantee there will
7 probably be more --

8 **COMMISSIONER CLARK:** -- North Dakota loses
9 people every year so --.

10 **MR. WATERS:** I feel fairly certain, I would
11 guarantee there will be at least one new customer in
12 that territory over the next 20 years, which would
13 be --

14 **COMMISSIONER GARCIA:** That's a brave
15 position --

16 **MR. WATERS:** -- which is greater than we
17 assumed in the analysis.

18 And I think that's important in meeting the
19 no-detriment standard. We ran two other growth
20 scenarios. We ran the one based on the population
21 forecast which was provided to us by Staff. That
22 shows a positive RIM ratio. We ran another analysis
23 of a forecast provided by a consulting study that was
24 done for Jacksonville Electric, which they provided to
25 us, and that also shows a positive RIM ratio. In

1 other words, in both those cases under either growth
2 forcast, there's a positive net benefit to FPL's
3 general body of ratepayers.

4 **COMMISSIONER JACOBS:** Does that --

5 **COMMISSIONER CLARK:** Let me be clear about
6 that. When you said there was a positive impact, is
7 it the two swaps together?

8 **MR. WATERS:** Yes. Yes. Because it's been
9 mentioned, for instance, the \$5 million that FP&L
10 pays. FP&L is also being paid for facilities that we
11 are selling to Jacksonville. You have to look at the
12 net of the deal, not just one-way, one-sided.

13 **COMMISSIONER CLARK:** What is the net of the
14 deal?

15 **MR. WATERS:** The net of the deal is about --
16 net value terms is about million dollars net cost to
17 FP&L.

18 **COMMISSIONER CLARK:** And even with that cost
19 it's your estimate that the impact to customers --
20 when it's at 1 it's even, right?

21 **MR. WATERS:** At 1 it would be dead even,
22 which means there's no rate impact to FPL's general
23 body of ratepayers. Anything greater than 1 indicates
24 that there is a positive impact. And by "positive"
25 meaning rate reduction for the general body of

1 ratepayers, if that were to be passed through, for
2 instance, in ratemaking.

3 **COMMISSIONER JACOBS:** Does that consider --
4 does the RIM test consider the revenues -- I guess the
5 reduction in revenues for that three-year rider and
6 then the increase after the three years?

7 **MR. WATERS:** Yes. It is a three-year rate
8 agreement and that's what were reflected in the RIM
9 analysis. So there's a revenue reduction, in fact, a
10 cost to FP&L that's reflected in the analysis for
11 three years.

12 **COMMISSIONER JACOBS:** Why just three years?

13 **MR. WATERS:** Three years is an assumption I
14 was given. I guess I'll let Ms. Grealy address the
15 appropriateness of the three years.

16 **MS. GREALY:** We utilized three years because
17 we believed it was within the Commission's authority
18 to provide transitional rates for a limited period of
19 time. Three years provides an opportunity for these
20 customers to take advantage of our energy conservation
21 programs, which I'd like to point out, although they
22 are three years, we would guarantee rates would be
23 equal to or lower than JEA's current rates. If these
24 customers take advantage of the energy conservation
25 programs, their rates would actually be lower, their

1 bills would be lower than the bills they receive today
2 from JEA. So although there's no magic number, three
3 years was considered a reasonable period of time.

4 **CHAIRMAN JOHNSON:** I believe there are
5 several customers here that would like to speak.
6 We're going to take the time now to hear from the
7 customers. If they could come forward and there's a
8 microphone, one of the microphones at the able to my
9 right.

10 Mr. Weidner, most of the customers are with
11 you. I understand that there are some elected
12 officials that want to speak, too, that are, I guess,
13 in support of the JEA -- JEA? Were they with you, Mr.
14 Melson? There's some customers with you?

15 **MR. NELSON:** There's the Mayor of city of
16 Baldwin -- excuse me, town of Baldwin.

17 **WITNESS FITZGERALD:** Good morning. It's
18 still morning, Lady Chairman and Commissioners, I'd
19 like to make this as brief as possible.

20 **CHAIRMAN JOHNSON:** If you could -- I'm
21 sorry. If you could, state your name and your address
22 for the record.

23

24

25

ROBERT FITZGERALD

1
2 appeared as a witness and testified as follows:

DIRECT STATEMENT

3
4 **WITNESS FITZGERALD:** And a copy of this will
5 be submitted for the record.

6 My name is Robert Fitzgerald. I reside at
7 1954 Grove Bluff Circle West in the community of
8 Switzerland, Florida 32259. I represent the
9 Switzerland Grove Homeowners Association, which has a
10 membership of 37 members. A list of the homeowners is
11 attached to this, which I will provide when I'm
12 finished. We support the recommendations of the
13 Staff.

14 By way of introduction, I have been a JEA
15 customer since July 1995. Before then my electric
16 supplier was Virginia Power & Electric, and before
17 then it was Long Island Lighting Company. Through the
18 years I was also a member of the -- customer of Utah
19 Power and Light.

20 I have been granted a Masters Degree in
21 electrical engineering from Michigan State University.
22 I'm a 43-year member of the Institute of Electric and
23 Electronic Engineers, and I'm a practicing electrical
24 engineer for 38 years.

25 I was initially drawn into this action by

1 the very cavalier letter I received from the JEA
2 announcing that my account was scheduled to be
3 transferred to FP&L, and that they, quote, "regret
4 losing me." The letter made it appear that the goal
5 is, quote, "better and more reliable service,"
6 unquote, and the proposed transfer was the means to
7 that end. A trite statement directs the reader to the
8 reverse side for a, quote, "summary of charges." On
9 the reverse side was not a rate structure but rather
10 only a sample of three points. It did not indicate
11 that one, the lowest value showed FP&L rates were
12 higher than JEA. You had to figure that out for
13 yourself. And that two, the more the electric power
14 one buys from FP&L, the higher the rate, which is just
15 the reverse for JEA. Adding to my infuriation, an
16 ending statement told me that, quote, "these changes
17 will benefit all JEA and FP&L customers," unquote.

18 Considering the amount of public deception
19 that abounds today, I guess it was the mere rhetoric
20 and persuasiveness of this, quote, "deal" that bothered
21 me the most.

22 The very well worded recommendation of the
23 FPSC Staff clearly indicates that the Commission has
24 thoroughly analyzed the proposal, and also came to a
25 similar conclusion. The Staff astutely points out the

1 likelihood that this swap will cause the St. Johns
2 County ratepayers to incur higher rates.

3 I have been a suburban or rural electric
4 consumer all my life. I must commend the JEA on the
5 excellent service it presently provides, in
6 consideration of the very taxing power drained on the
7 utility during the lengthy hot spell earlier this
8 year. We had no brownouts and we were without
9 power -- not without power due to a system overload.

10 The proposal identified one of the
11 boundaries as, quote, "Roberts Road." This means that
12 that the northside ratepayers will continue with JEA,
13 whereas the southside customers will be transferred to
14 FP&L. Presently only a single power feed provides JEA
15 power to both sides of that road.

16 In order for the north side to receive power
17 from JEA, the distribution system, the south side
18 received from FP&L, the duplication of feeds is
19 required, unless JEA has already replaced duplicate
20 feeds to the northside subdivisions. There's
21 obviously -- has to be an additional expenditure,
22 which came out before, to require it to establish an
23 independent feed for these subdivisions.

24 Not to criticize the fine report of the PSC
25 Staff, but rather be told some of the statistics

1 provided there, there appears a significant difference
2 under the reliability of electric service when
3 comparing the number of the interruptions per customer
4 of just those customers involved in this swap. The
5 value for those customers of FP&L in Duval County is
6 .06. As a subset of those JEA customers in St. Johns
7 County, the value for us is .03. This indicates that
8 just those customers involved in the swap, the FP&L
9 customers, have twice as many interruptions than we.
10 If this is the type of service provided by FP&L to
11 those Duval County customers to be transferred to us,
12 we would definitely have a reduction of reliability.

13 Along those lines, a Review of the Electric
14 Service, Quality and Reliability was the title of a
15 report made by the Public Service Commission and
16 released December 1997. Although this analysis did
17 not include the JEA, it did compare the FP&L with
18 other FPSC-regulated utilities.

19 The report conclusion was to set -- was to
20 set goals for the FP&L since, quote, the data examined
21 in this review indicates a reduction in the
22 distribution service quality. This report certainly
23 does not indicate that the FPSC -- that FP&L is the
24 premier electric power company that we would like
25 us -- they would like us to believe that it is.

1 In conclusion, for the record, I'm the
2 secretary-treasurer of the Citizens Against Power
3 Exchange, and I'd like to introduce my next speaker.
4 It would be Mr. Wayne Lee, who is our Committee
5 Chairman for Communications. And I'll leave these
6 copies with whoever you want me to.

7 **CHAIRMAN JOHNSON:** Thank you,
8 Mr. Fitzgerald. If you could provide them to the
9 Commissioners, that would be great. Sir, I didn't
10 catch your last name.

11 - - - - -

12 **WAYNE LEE**

13 appeared as a witness and testified as follows:

14 **DIRECT STATEMENT**

15 **WITNESS WAYNE LEE:** My name is Wayne Lee. I
16 live the 963 Satsuma Circle in Jacksonville, Florida,
17 actually Switzerland, Florida. Post Office is in
18 Jacksonville.

19 I'm here to tell you a little bit of a
20 story, try not to take too long here.

21 Northwest St. Johns County has been a haven,
22 I think, for some folks trying to find a little calmer
23 area to live. A lot of us have been moving out there
24 over the years. Wonderful place to live. Less
25 expensive, et cetera, so it's drawn a lot of us young

1 careers, as well as people nearing retirement. We've
2 moved out there because the value of the area compared
3 to downtown Duval County was less expensive.

4 Over the last ten years -- we have been out
5 there now since 1990, the tax base has gotten a lot
6 closer. Our area is booming too. We used to have cut
7 tax rates on your home, that kind of thing, et cetera,
8 which now they are getting less and less every year.
9 And if the power exchange goes through here we're
10 going to lose what advantage that we have had with the
11 power companies.

12 We come today -- there are several of us
13 here trying to represent several things. I'm giving
14 an overview. This is basically an overview from Wayne
15 Lee and his family, what we have been doing and trying
16 to do.

17 I'm nearing retirement. I will have a
18 pension. Not everyone that's -- a lot of us are
19 getting close to retirement in St. Johns County, and
20 many of them aren't going to be as fortunate as I
21 am -- I will have a pension, it won't be very large,
22 but it will be approximately 30% of my salary.
23 Unfortunately, I have some health problems so I may
24 have to retire early, probably within three to five
25 years at the most of how long I expect to work. So I

1 will be expected to -- I'll have to live on that lower
2 pension until such time as Social Security comes in,
3 whenever that might be.

4 We have lots of folks in our area -- it's a
5 rural area -- that are just absolutely tight. I am
6 sure you guys face the same problems we do in that,
7 you know, it's tight to make it go. If you're going
8 to provide for your family, you know, do the things
9 you need to do, get your children educated, whatever
10 you can do, it takes a lot of money to make it today.
11 We're a rural area there.

12 And my point is that we, as the citizens of
13 CAPE -- I am the communication chairperson. I have
14 done a lot of the leg work. I did get the thing
15 rolling. I did put up the signs. Got the first
16 people to come to the meetings. Got people excited
17 about this saying, "Hey, you can fight City Hall."
18 And we do appreciate what we have as a perception that
19 the Public Service Commission does listen to the
20 customer and we really appreciate that.

21 One of our biggest things we want to talk
22 about is cost. But reliability is also a big factor
23 and we understand that's certainly large with you
24 guys. May not pay as much attention to cost, but you
25 do reliability.

1 Let me make a couple of comments. In
2 Florida Power and Light and the JEA they have been
3 very nice. Did hold a meeting in our area. They did
4 provide us cost rates, which I asked for, Mr. Bob
5 Coleman, I believe, is his name, provided that for me
6 and I did certainly appreciate that. It very
7 graphically shows that at about thousand
8 kilowatt-hours it goes from 7.1%, up to -- at 15 it's
9 about 11.8% larger; at 2,000 it's 13.4%; 2500
10 kilowatt-hours you'll be paying 15% more and at 3,000
11 kilowatt-hours you'll be paying 16% more, actually
12 15.6. I'll leave this sheet with you in case you all
13 don't have access to that. You're welcome to it if
14 you'd like.

15 But the second point I want to make -- and
16 why I gave you that background, and I'm sure it's not
17 that much different throughout the country, but all of
18 us are -- you know, I have been planning for 25 years
19 where do I want to live in retirement, where do I want
20 to raise my children, et cetera. I've moved to
21 northeast St. Johns County because of the area, the
22 beautifulness of the area, because it was rural,
23 because it was less expensive, and the power rates at
24 the time of purchase -- we move out in 1990 -- were
25 very good. With changes in rates, that changes

1 everything. That changes the value of homes,
2 et cetera, because costs are more than they were.

3 Let's talk about -- I'd like to talk about
4 service for just a minute, if I could. I have a
5 letter here and this letter is from Mr. Boatwright.
6 Mr. Boatwright is a businessman that lives in
7 Orangedale, which is part this proposed agreement in
8 the swap. And let's see, "Public Service Commission,
9 Commission Members, Tallahassee, Florida. Dear
10 Members: I, George Boatwright, have lived in
11 Orangedale, Florida, for the last 24 years. For 22
12 1/2 of those years I have had electric service (if
13 you'll call it that) from Florida Power and Light.
14 Many times on Friday, of all days, my power would be
15 out and stay out until I had to close my business and
16 go home. And, believe me, in the liquor store/bar
17 business, that's not a good day to have to close.

18 "My repeated calls to FP&L for service have
19 sometimes been answered and sometimes not. Also,
20 response time has varied from several hours to several
21 days.

22 "For about the last year-and-a-half I have
23 had electric service from JEA. The difference is
24 incredible. The only time I have needed to call for
25 service was met with a quick and courteous response

1 and I haven't lost a single Friday's business due to
2 the lack of electricity with JEA."

3 **COMMISSIONER GARCIA:** Mr. Lee --

4 **WITNESS WAYNE LEE:** "As both a homeowner and
5 a small business person, I ask you to let me stay with
6 the JEA. Thank you -- "

7 **COMMISSIONER GARCIA:** Mr. Lee.

8 **WITNESS WAYNE LEE:** "-- and I ask for your
9 consideration of this matter. I remain respectfully
10 yours, George Boatwright, 9915 Shands Pier Road,
11 Orangedale, Florida 32259." He has his phone numbers
12 here if you'd like to call him.

13 In addition to their service being much
14 better, their rates are better also. I have a copy of
15 that letter in this second one I plan to read for you
16 also. The second letter --

17 **CHAIRMAN JOHNSON:** Mr. Lee, there may be a
18 question before you begin the second letter. I think
19 Commissioner Garcia may have a question.

20 **COMMISSIONER GARCIA:** It was just to stop.

21 Can Consumer Affairs look and see if we have
22 had any complaints from Mr. Boatwright, in particular
23 that area on FPL's service? While he continues, I
24 didn't want to interrupt him, I just -- there's no way
25 I could communicate to Staff, but if somebody could

1 look up on our complaint forms, on our Complaint
2 Analysis System.

3 MS. BASS: Okay. We'll look into it.

4 CHAIRMAN JOHNSON: Thank you, Mr. Lee.

5 WITNESS WAYNE LEE: All right. Second
6 letter is from MaryJane Marks-Sweetman. She has her
7 phone number here. She didn't list her address.

8 "I, MaryJane Marks-Sweetman, lived in
9 Orangedale, Florida, from July 1996 through January
10 '98. During the period FP&L was our electric supply
11 company, we experienced weekly power outages. It
12 seems like anytime there was a wind or rain, power
13 went out. Once the switch over to JEA was complete,
14 the amount of electric outages decreased greatly.

15 "There is one experience I had with FP&L
16 that I feel needs to be told. I went outside my
17 trailer after a loud boom and a power outage. I found
18 an electric line laying across my driveway arcing and
19 sparking.

20 "I immediately called FP&L to inform them of
21 the situation. The woman who answered the phone was
22 told that the line was laying in my driveway and the
23 driveway was the only exit. She told me to go out and
24 move it then.

25 "Needless to say, I became quite upset.

1 Having worked for 12 years as electronic aviations
2 technician I knew better than to touch a live wire. I
3 explained this to the woman and asked to speak to a
4 supervisor, who was quite rude and stated that I had
5 misunderstood what she said. When it came out that I
6 was accurate, they he became very apologetic. If I
7 had listened to this woman, I probably would not be
8 here today to write this letter.

9 "One other point I'd like to address. The
10 electric cost decreased approximately \$25" -- I'm
11 sorry, "25% with the JEA takeover. This was very
12 refreshing."

13 "Sincerely, MaryJane Marks-Sweetman."

14 I guess we've been fortunate -- I worked my
15 first eight years -- out of the University of
16 Florida's electrical engineer -- Florida JEA. I then
17 had a smarter idea and went to work for AT&T; actually
18 Southern Bell here in town. Later transferred to AT&T
19 in '83 as a result of the regulation break up.

20 I understood the JEA, the power companies
21 were deregulated, or were supposed to start
22 deregulation about the same time.

23 My question is how come it hasn't come
24 quicker? I have been downsized -- I have been chasing
25 downsizing from the large utilities for years. Since

1 1988 they started downsizing with AT&T. My question
2 is, we have several states in this country that allow
3 people to buy their power basically from the cheapest
4 people that are available; cheapest power companies
5 that are available. Why can't we have that in this
6 state? And why haven't -- and why, at least, can't we
7 at least be left alone when we have what is probably
8 the best service in the state?

9 We have other -- we have some other speakers
10 with us today -- and let me say this. You know, they
11 say you can't fight City Hall. We wanted to try. If
12 we don't do anything else we're having fun trying.

13 Okay?

14 I have in my hand here -- and this was done
15 just before Kate became a reality -- my wife, my son,
16 several co-workers that are here with us today, went
17 out and started canvassing door to door, particularly
18 after we got the information. I have approximately
19 350 names, addresses and phone numbers. Some of the
20 names you can't read. I called about 30 of these
21 yesterday so I could have at least, on my list, what
22 the real name is on here. This is the original. I
23 want to leave that with you today.

24 I mean, let's face it, I think -- if we all
25 had time, I think all 1800 customers that's on the

1 list would sign this thing, would they not? If I
2 approached your door and said, "Would you rather pay
3 extra 15.6% on your light bill? Or if not, would you
4 mind signing this?" is there anybody in this room that
5 wouldn't sign that bill? But at any rate, here's the
6 effort we did so far. We have other names that have
7 signed in CAPE.

8 I think the biggest thing that we have on
9 our side is the service deterioration -- I don't know
10 all about the rules that you guys are under, but I
11 think there is a difference, and I think maybe it's
12 because Florida Power and Light is trying to cover 350
13 miles from Miami. And we're on the very extremity of
14 Florida Power and Light.

15 I was offered a job by Florida Power and
16 Light in 1973, and I decided to take JEA because it's
17 my home -- Jacksonville Electric Authority -- because
18 it's my home. I was born in St. Vincent's. I didn't
19 want to move 350 miles. That's too far to come home.
20 They are trying to maintain facilities 350 miles from
21 their headquarters. Now, I know they have
22 substations. I know all about that. But I think
23 we're on the very extremity of what they have
24 available to provide us power and reliable service.
25 And I think that's why the service has deteriorated as

1 shown by the letters I have just read you from two
2 people who have had service from both recently.

3 COMMISSIONER GARCIA: Let me ask you, what
4 does the petition read? Is there something that
5 people signed on?

6 WITNESS WAYNE LEE: Yes, sir.

7 COMMISSIONER GARCIA: -- if it's very long
8 then don't worry about it. I'll have Staff fax it.

9 WITNESS WAYNE LEE: No. It's not. Thank
10 you for asking.

11 All right. At the top of my -- of this
12 petition it says "Ms. Julia Johnson (Chairperson of
13 Florida Public Service Commission) Docket # 980755.

14 "We, the residents of St. Johns County who
15 live in the proposed area to be swapped from the JEA,
16 (Jacksonville Electric Authority) to Florida Power &
17 Light (FP&L) do protest this proposed change. We
18 protest this change for the following reasons: 1)
19 Restoration of service by FP&L takes 24 hours in many
20 cases where as in JEA it only takes a 1 hr. (according
21 to Orangedale residents) and 2) FPL rates are 12% - 20%
22 higher than the JEA rates." And I think it said "3"
23 but anyway all I got on there was "2".

24 That's all it says. The rest of it, as you
25 can see, are signatures. I get about 22 to the page

1 here, okay?

2 **COMMISSIONER GARCIA:** Thank you. You're
3 going to leave that with our clerk.

4 **WITNESS WAYNE LEE:** Every bit of that right
5 there is for you guys. We do appreciate you giving us
6 this time today.

7 **COMMISSIONER JACOBS:** Mr. Lee, do you have
8 any sense of how many of the customers that you have
9 spoken to are prepared to sign up for the Demand
10 Management Program?

11 **WITNESS WAYNE LEE:** No, sir. I can give you
12 some. I can give you a little bit.

13 You see, the problem with that, our concern
14 with that is that you are completely in their hands.
15 The concern is, is that when you need hot water and
16 when you need your pool pump on, and when you need
17 your air conditioner, it's going to be at times -- may
18 be at the times when peak power is there, which is
19 when they are going to have you cut off. That's our
20 concern.

21 I am glad they have that opportunity for us.
22 It is good. But that's the problem. You know, it's
23 out of your control whenever you have to turn it over
24 to them like that. That's the feel.

25 **COMMISSIONER JACOBS:** Thank you.

1 **MS. BASS:** Commissioner Garcia, we couldn't
2 find a record if there has been a complaint officially
3 filed by Mr. Boatwright. However, I was go to ask
4 Mr. Lee if he knew the name of his business, that
5 perhaps it would be listed under that name.

6 **WITNESS WAYNE LEE:** It's a tavern he said.
7 I'm not sure of the name, to be honest. I wish we had
8 that. It's right there at State Road 13 and 16, right
9 at the intersection -- 16A, excuse me. 16A and the
10 State Road 13. And he brought this to me last night
11 at 9:30 and we were getting up at 3:30 and had 4:00 to
12 come here, so that's why it was important to have it
13 here today.

14 **MS. BASS:** Thank you.

15 **WITNESS WAYNE LEE:** All right. I'm going to
16 give a little bit -- they always say tell them what
17 you're going to tell them, tell them, and then tell
18 them what you told them, right? So I'm going to try
19 to tell you what we're going to tell you. I just gave
20 you my spiel.

21 I've got a homeowner coming here that's
22 going to tell you how this bill is specifically going
23 to affect him. And then we've got a lady going to
24 tell you about -- they are retired and they are going
25 to tell you how it's going to affect them. And then I

1 have my son, that as a younger generation, how it's
2 going to affect him in the next 30 years. Okay?
3 Lastly, but not least, we have a wrap-up by a very
4 fine lady, Rhonda Davis. I'm going to ask Mr. Winn
5 Davis to come up.

6 **CHAIRMAN JOHNSON:** Thank you, Mr. Lee.

7

- - - - -

8

WINN DAVIS

9 appeared as a witness and testified as follows:

10

DIRECT STATEMENT

11

WITNESS WINN DAVIS: My name is Winn Davis.

12

I'm a resident of Switzerland, Florida, 943 Satsuma

13

Circle. I'm also a teacher in Duval County, so I

14

guess you could consider me skipping school today to

15

be here. I hope the Commissioner of Education isn't

16

here right now.

17

But anyhow, the things that concern me about

18

this swap was not only the rate adjustment, which

19

would have definitely had to be paying higher fees,

20

there's other things like this conservation thing that

21

they are talking about. If you shut your power off,

22

you can save this much money. I already know that.

23

Why should I inconvenience myself to get the same

24

rates I'm getting with JEA? For instance, why should

25

I turn off my air conditioner to bring my power down

1 to where I'm paying the same rates I am with JEA?

2 Just doesn't sound feasible to me.

3 Everything I'm getting from JEA has been
4 tremendous. I have been in Switzerland since 1974.
5 The reason I moved out there is for the same reasons a
6 lot of other people moved out there: Cheaper rates,
7 better community, out of the city, and it's nice and
8 peaceful. Built my own home. I couldn't afford to
9 have somebody else build my home so I built it myself.

10 They talk about duplication. I know
11 duplication right in Jacksonville itself. You take
12 the JEA north station. You get the JEA northside
13 generating station, which is right beside the
14 coal-fired plant, which is run by both JEA and FP&L.
15 Everybody knows that in Jacksonville.

16 The reason that Baldwin wants to change is
17 because they are getting poorer service and they are
18 getting higher rates so they pick on people in
19 Switzerland. We'll swap Switzerland. If they are
20 going to do that, if they are going to come down and
21 get everybody in St. Johns County, then take all of
22 St. Johns County. Take Fruit Cove, take Ponte Vedra;
23 take all of St. Johns County under FP&L. Not just
24 swap us here and there in Duval County.

25 And when they say it's politically sound, us

1 people in St. Johns County don't vote for anybody up
2 in Duval County, and neither does anybody in Fruit
3 Cove or Ponte Vedra. That's what I can't understand.
4 Why do they want to do this? It's not feasible.
5 Everything they have said is not -- to me, that's a
6 little old citizen that's been out there -- it's not
7 true. It's just not true.

8 And I'd just like to see it stay the way it
9 is. There's no duplication. You don't see down State
10 Road 13 duplication of lines. FP&L on one side and
11 JEA on the other side. But you will see it if FP&L
12 comes in and you're going down Roberts Road, you'll
13 see FP&L on the south side and you'll see JEA on the
14 north side, and to me that's true duplication.

15 That's about all I have to say. I'd just
16 like for you to take it into consideration. Thank
17 you.

18 **CHAIRMAN JOHNSON:** Thank you.

19 - - - - -

20 **JANICE MILLER**

21 appeared as a witness and testified as follows:

22 **DIRECT STATEMENT**

23 **WITNESS MILLER:** It's almost afternoon.
24 Good afternoon. I'm Janice Miller. I live the 1427
25 Cricket Hollow Lane. Actually Fruit Cove. I'm on

1 the line of being Switzerland. We are exactly a
2 quarter of a mile inside this territory, which should
3 if they are going to take all of Duval County, why not
4 give up that part which is between the creek,
5 Julington Creek, and between Roberts Road? Don't just
6 draw a line there and take from Roberts Road on south.

7 The other thing, I have one question that I
8 want to ask Mr. Miller that occurred earlier.

9 During this switch, Mr. Miller, did they
10 take in the cost to the customer that it's going to
11 cost us for the two of you to change, for you to pay
12 your bills? Also, the exchange is going to cause our
13 monthly bills to go up. Forget the three years. It's
14 still going to go up the end of three years. Was this
15 taken into consideration of the customer?

16 **MR. MILLER:** Those are all things that the
17 Commission will take into consideration, are taking
18 into consideration. As to whether or not your bills
19 will go up within three years, that's only a
20 potentiality. I don't know what your rate consumption
21 is. It's possible you could have lower bills on ad
22 infinitum if the rates stay the same. But rates of
23 all utilities change through the years. It's not
24 always been true that JEA rates were lower than
25 Florida Power and Light's. It's possible they will

1 not be in the future. I can't predict what the rates
2 will be but they will be approved by this Commission
3 after due consideration.

4 **WITNESS MILLER:** Thank you. The energy
5 conservation that Florida Power and Light proposes
6 that we all use -- a very short example, my daughter
7 went on it this past year. She lives in Orlando -- or
8 Oviedo, sorry -- was on it for a very short period of
9 time. She has a two year old daughter. Her
10 electricity was shut off at the most opportune time
11 for Florida Power and Light, I'm sure, time of day;
12 for her, not. Two o'clock in the afternoon her power
13 was shut off. By the time it came back on, she could
14 not bring her air conditioning back up. The baby
15 broke out with heat rash, was sick from being too hot.
16 She had to cancel it because it was not saving her
17 money. It was costing money because it took all
18 afternoon and evening for the air conditioning to get
19 back up.

20 That part taken care of, a few years ago my
21 husband and I were living in Fort Lauderdale under
22 Florida Power and Light electric. Every day we come
23 home from work we'd have to reset our clocks because
24 the electricity had been out. If it rained, we had
25 brownouts. We complained and complained. Florida

1 Power and Light says, "Well, that's just the way it is
2 in your area. We'll replace them. But the wires get
3 a little corroded over a period of time. We'll
4 replace them." It never happened.

5 MR. MILLER: Excuse me, please. Perhaps I
6 misunderstood you. What was the location? It seems
7 to me you're talking about --

8 WITNESS MILLER: Cooper City.

9 MR. MILLER: I believe that's in Florida
10 Power Corporation's territory -- or either Orlando
11 Utilities --

12 WITNESS MILLER: I paid Florida Power and
13 Light. That's all I know.

14 MR. MILLER: I'm speaking of your daughter.

15 WITNESS MILLER: Oh. That's in Oviedo.

16 MR. MILLER: I believe that area is served
17 by Florida Power Corporation, not Florida Power and
18 Light.

19 WITNESS MILLER: Okay. I stand corrected on
20 it.

21 COMMISSIONER CLARK: I think her point was
22 still the notion of having the demand control was not
23 beneficial, at least to your daughter.

24 WITNESS MILLER: Right. Right.

25 My husband and I are both retired. We're on

1 fixed incomes. And our living expenses are set on a
2 budget. Three years, if you grant them this petition
3 and all, the three years of being on the same rate are
4 as low as JEA, at the end of that time we're still
5 going to go up. We're still going to be paying a
6 higher rate at the end of that three years. Our bill
7 is still going to go up. Our income is taken care of.

8 I'm not alone, my husband and I aren't, in
9 this. There's many retirees, many widows on very,
10 very fixed incomes that do not have the retirement
11 incomes. They just have Social Security. This is
12 going to hurt them very, very badly.

13 And in closing, I urge you to vote no on the
14 power exchange between FP&L and JEA. Thank you.

15 **CHAIRMAN JOHNSON:** Thank you.

16 - - - - -

17 **JASON LEE**

18 appeared as a witness and testified as follows:

19 **DIRECT STATEMENT**

20 **WITNESS JASON LEE:** Good morning,
21 Commissioners. My name is Jason Lee. I live at 963
22 Satsuma Circle, Switzerland, Florida 32259.

23 Like he was saying, I'm Wayne Lee's son
24 here. I'm 19 right now. I was born in Jacksonville.
25 We had to move away a while, but we returned in '90,

1 so we have been living in this area since '90. I went
2 to schools there. Graduated from high school in the
3 area.

4 During that time I was in Boy Scouts and I
5 received my Eagle Scout. Through that I realized we
6 needed to participate in our government. That's what
7 we're all doing here is trying to participate. Since
8 you are the Public Service Commission to serve the
9 public, we have to be here to inform you of how we
10 would like you to serve us.

11 I'm currently going to the U of F, and I'm
12 really representing the future, you know. I plan to
13 get married and, you know, have kids. And I love the
14 area we're in. I'm going to stay in the same area,
15 and maybe even the same house later on in life. And
16 then as my parents get older, I'm going to be taking
17 care of them. And, you know, many people have certain
18 devices, whether it be an oxygen machine, things of
19 this nature, they have to have this power to run. And
20 it's very crucial to them for life. And so, you know,
21 these power interruptions, as Mr. Boatwright and other
22 customers in Orangedale have said, really would affect
23 them in a great way. You know, the rest of us, we're
24 inconvenienced by not having power in our home. But
25 this could be something life and death for some

1 people, these power interruptions. I think that's the
2 greatest disservice to customers that are in that
3 situation.

4 If this switch was approved, this is a long
5 term thing. It's going to affect people from now on.
6 It would affect not just the people that are paying
7 now but the future generations that will be buying
8 homes and continuing this three-year hold. You know,
9 it's great, but what about after that? The
10 conservation issue, as has been stated many times
11 before. It's just a complete change of life for
12 people. Most people live, you know, pretty much the
13 way they want to right now. They are happy with their
14 situation. They are happy when they eat dinner.
15 Little things like that. And this conservation method
16 would cause them to change many things in their life
17 and be another bad point for them.

18 That's all I have to say. Thank you.

19 - - - - -

20 **RHONDA DAVIS**

21 appeared as a witness and testified as follows:

22 **DIRECT STATEMENT**

23 **WITNESS RHONDA DAVIS:** Commissioners of the
24 Public Service -- I'm trying to keep this brief so
25 I'll read from a text script.

1 "I'm Rhonda Davis, 943 Satsuma Circle,
2 Switzerland, Florida, and I'm one of the people that
3 will be affected by this territorial exchange. I'm
4 not fully aware of the criteria the PSC selects to
5 make their final decision regarding a matter such as
6 this, but I am aware of what your approval of this
7 exchange could mean to me and many others in our
8 community.

9 "We know that you look at what is perceived
10 to be fair and reasonable. And we know that you look
11 at duplication of service and how the service level
12 may affect the customers based on the services of JEA
13 compared to the services of FP&L. But what you do not
14 know is how it feels to actually be one of these
15 customers, or what a change like this means or how it
16 will truly affect people like ourselves.

17 "The people that are dealing with this are
18 dealing with a very real problem and they are very
19 real people. They may have trouble managing another
20 \$5, \$10, \$20 or \$30 a month to pay for their services
21 through FP&L.

22 I don't approve of the rate freeze myself
23 because I don't think that's fair. And if I lived in
24 St. Augustine I would object if my rates were higher
25 than some other FP&L customer.

1 The money will have to come from somewhere.
2 Will it be from the athletic fund mom and dad set up
3 for little Johnny to play T-ball, or will it be from
4 Suzy's dance lessons? Or worse, maybe it will be from
5 the change jar set aside to buy the kids school
6 clothes and school supplies for the next year. Or
7 maybe it might be the grocery money from a retired
8 person. You see, there are very real funds that we
9 set aside to make ends meet for the month and
10 throughout the year. And many of those in this
11 community would have a problem with that.

12 "No, we don't know exactly what criteria you
13 follow to make your decision, but we do know ours.
14 Our criteria is what is best for our families. What
15 is going to meet our financial means and our electric
16 service to be reliable when we need it most. These
17 are questions that so many of us have gone over and
18 over in our heads. We desire to have, and to keep,
19 JEA because of their lower rates and the quality
20 services they provide. We need to be able to rest on
21 your decision to ensure that our services will not
22 deteriorate and our rates will not increase through an
23 exchange.

24 "You are the Public Service Commission and
25 today you will decide what is fair and reasonable. We

1 on the 3 a.m. And appreciate your patience and
2 tolerance. We had a lot of things to do this morning
3 and appreciate all of those comments.

4 There may be some questions. Any questions,
5 Commissioners? Thank you all again.

6 **MR. MILLER:** Madam Chairman, Ms. Grealy
7 would like to -- just in case he's not totally
8 familiar with the conservation programs, and explain
9 to these residents just what their opportunities are
10 under the conservation program and what's involved,
11 with your permission. It will just take a moment.

12 **CHAIRMAN JOHNSON:** I don't think --

13 **WITNESS WAYNE LEE:** We have been given the
14 information and they have been very nice about
15 giving -- they had an entire energy show and the whole
16 bit for us to try to make us feel more comfortable and
17 we appreciate that down in St. Johns County.

18 **CHAIRMAN JOHNSON:** Thank you. I don't think
19 we need the explanation in here for the customers.
20 I'm certain we don't.

21 **MR. MELSON:** Chairman Johnson, if I could
22 ask Mayor Godbold of the town of Baldwin to come
23 forward and make his brief comments.

24 **CHAIRMAN JOHNSON:** Mayor Godbold.
25

1 **MARVIN GODBOLD**

2 appeared as a witness and testified as follows:

3 **DIRECT STATEMENT**

4 **CHAIRMAN JOHNSON:** Speak directly in the
5 microphone.

6 **MAYOR GODBOLD:** Good afternoon. Yes. We
7 certainly appreciate your folks' time, and I'm sorry
8 to be the last on the docket here, and I'm not going
9 to take very long. But I'm just going to say I
10 certainly appreciate the concerns of the people over
11 in St. Johns County.

12 I'd just like to touch on just a couple of
13 points that were brought up by the people. And being
14 mayor, being responsible for the community, and just
15 to the taxpayers as a whole, is what I feel like that
16 I am just as yourselves, you're just committed to all
17 taxpayers, and that you have such a job that I'm not
18 so sure I would want your position, just sitting here
19 through this first committee meeting.

20 But when things are said about blackouts and
21 people being without service and all of that, that
22 could be easily docketed by your Staff and all. And
23 so I'm sure you folks have already looked into that
24 and that is a concern and I appreciate it. And I'm
25 sure there's times there are concerns about that and

1 that could be documented, brought up by your Staff as
2 to see if there's any basis for that.

3 We have been served by Florida Power and
4 Light for the past 23 years. I've lived in
5 Jacksonville, Duval County, all my life. There have
6 been times there's going to be outages, and their
7 service of getting things back on board has been
8 relatively quickly. And just like anything else that
9 has -- that service is interrupted in water, sewer,
10 lights, whatever, it takes time to correct those
11 things. But Florida Power and Light has been on the
12 spot and tried to correct those things.

13 The people that are concerned in St. Johns
14 County number -- as the gentlemen said, Mr. Lee -- and
15 I appreciate the way that he presented his information
16 to you all and to the public -- 300 signatures or
17 such. I represent a town of approximately less than
18 2,000 it's probably in the best interest of our
19 community -- our community is 70% low to moderate
20 income. And we certainly can see the possibilities of
21 the savings to our customers as well as other parts of
22 western Duval County. And considering the growth
23 potential in that area that's coming, we, too, would
24 see it would be a great benefit to have a utility
25 company that is based in Duval County and serves the

1 Duval County area.

2 I feel kind of bad to know that it gets down
3 to what's good for one is not good for another
4 situation. And then it gets down to the point it's
5 just what's best overall for the taxpayer, the
6 consumer.

7 The way we see it, we're, of course, on the
8 plus side and we feel it's in the best interest of the
9 taxpayer and the consumer that JEA take over our
10 utility and our Commission has voted such in our last
11 council meeting this past Tuesday.

12 I, again, thank you for your time. If
13 there's any questions, I'd be more than happy to try
14 to answer them for you.

15 **CHAIRMAN JOHNSON:** Thank you. Any
16 questions? Thank you, Mr. Mayor.

17 **COMMISSIONER GARCIA:** Madam Chairman.

18 **CHAIRMAN JOHNSON:** Yes, Commissioner Garcia.

19 **COMMISSIONER GARCIA:** May I ask Staff an few
20 quick questions?

21 **CHAIRMAN JOHNSON:** I think there's someone
22 else who would like to speak.

23 **COMMISSIONER GARCIA:** Okay.
24
25

1 **BOB MUHLHANE**

2 appeared as a witness and testified as follows:

3 **DIRECT STATEMENT**

4 **WITNESS MUHLHANE:** Bob Muhlhane. I'm here
5 representing AmeriSteel. We are one of the customers
6 who are affected in western Duval County.

7 I think Mayor Godbold pretty much spelled
8 out what the issues are for western Duval. As a
9 business in that end of the county that's very energy
10 intensive, we have a significant interest in the cost
11 of power.

12 If specific financial benefits to consumers
13 are going to be considered in this hearing, we believe
14 that the benefits to our company are meaningful and
15 will support jobs in the Jacksonville area.

16 In the past we approached this Commission
17 regarding our desire, as a citizen of Duval, to be
18 included in the JEA service area. In the past, issues
19 of who paid what for power really weren't important
20 under the rules. I think that the facts that were
21 presented today, the fact that this is a voluntary
22 agreement between the utilities, and that it meets the
23 tests that the Commission routinely sets out ought to
24 be sufficient to allow Duval County citizens to enjoy
25 the benefits of being served by their utility.

1 Thank you.

2 **CHAIRMAN JOHNSON:** Thank you.

3 **MS. PAUGH:** Madam Chairman, I just have a
4 postscript to the public comment. And that is that
5 the Commission has received 521 letters and 32 phone
6 calls all in opposition to the territorial agreement.
7 That's reflected in the recommendation. Thank you.

8 **COMMISSIONER CLARK:** I have a question.

9 **Mr. Weidner,** you basically gave me three
10 things to illustrate there would be a public
11 detriment: There will be a detriment to FP&L
12 customers to the tune of \$5 million. There will be a
13 change in rates to customers; your customers will
14 experience a higher rate. And what was the third
15 thing?

16 **MR. WEIDNER:** I believe the third thing was
17 the service, the decrease in the service to St. Johns
18 County residents. And, Commissioner, I'm glad you
19 asked because there's one thing I want to be sure is
20 clear. The Supreme Court has put us in a
21 uncomfortable dposition.

22 **COMMISSIONER GARCIA:** I'm sorry. What was
23 the last point again? Because I have the same
24 question. I don't think you answered it. Give me all
25 three again.

1 **MR. WEIDNER:** First of all, there's the
2 adverse rate impact on FPL's customers. Second,
3 there's the adverse impact on the St. Johns County
4 residents because of the FP&L rates. Third, there's
5 going to be an adverse service impact on the St. Johns
6 County customers. And I think there is a fourth thing
7 that has only been sort of skipped over, but I want to
8 come back to the standard question first, that is the
9 Supreme Court has put us in the uncomfortable position
10 of having to use double negatives in order to
11 establish a case. But what that case did not do is
12 change the burden of proof. It is still on the
13 utility companies to come through and establish that
14 there has been -- or is going to be no detriment to
15 the public. It's not on the Staff to prove that
16 there's no detriment. It's the utilities that have to
17 bear that burden.

18 I don't think on the record that you've got
19 before you the utility companies have successfully
20 borne that burden. We have the three items that we
21 just talked about. And the other thing that was sort
22 of skipped over real quickly, I believe it was
23 Commissioner Deason -- it may have been
24 Commissioner Garcia that asked the question early on
25 about is there going to be a duplication of facilities

1 in the St. Johns County area? And if you remember,
2 both of the representatives here sort of turned around
3 and looked at their people and kind of like, "Well, we
4 don't think so."

5 The area in question that is going to be
6 transferred is projected to be one of the fastest
7 growing areas in northeast Florida. That service area
8 includes the spillover from the World Golf Village.
9 There are projected to be over 2,000 new homes in that
10 area --

11 **COMMISSIONER CLARK:** I'm sorry. Which area
12 is to be transferred, the St. Johns area?

13 **MR. WEIDNER:** The St. Johns area. The
14 St. Johns area that's going to be transferred is
15 projected to have phenomenal growth in just the next
16 two to three years. And it appears from the response
17 that we got this morning that there hasn't been an
18 adequate review as to whether we would do a
19 duplication of facilities, because obviously JEA is
20 going to have to gear up to serve the customers that
21 remain in its area, and FP&L is going to have to gear
22 up in order to serve the customers that remain in its
23 area.

24 So I think that at least at this stage the
25 companies have not proven that there's not going to be

1 no uneconomic duplication. They clearly have not
2 proven that there's no detriment to the FP&L
3 customers. They have certainly -- it's clear that
4 there's going to be a detriment to the St. Johns
5 County residents. And we think there's a service
6 debt.

7 So we don't think that the utilities have
8 met their burden of proof at this stage. And it would
9 be appropriate for the Commission to deny the
10 petition. If the utility companies decide then to ask
11 for a formal hearing, we'll have an opportunity to
12 challenge some of those things at a formal hearing
13 which would give a full record to this Commission.

14 **COMMISSIONER CLARK:** I want to ask one thing
15 of Staff. It wasn't necessarily clear to me how --
16 your conclusion with respect to the economic
17 evaluation of it. Do you agree that the rate impact
18 test is a viable way of assessing the impact?

19 **MR. DUDLEY:** Commissioners, I think that the
20 RIM test that Florida Power and Light did provide,
21 albeit a marginal benefit, I think it did -- in the
22 various scenarios that it provided, it did show that
23 the transfer of these customers should not affect the
24 general body of FPL's ratepayers.

25 **COMMISSIONER CLARK:** You have not concluded

1 that there's a reliability issue either. They have
2 both substantially the same reliability records. Is
3 that correct?

4 **MR. DUDLEY:** I'll pass that back to Roberta.

5 **COMMISSIONER JACOBS:** If I could ask while
6 you're standing there, your conclusion is based
7 primarily on the potential for growth, i.e. if the
8 growth meets the expected levels, then there should be
9 no impact on the body of ratepayers.

10 **MR. DUDLEY:** Like Mr. Waters told you, one
11 of the scenarios was the projection that there would
12 be no additional growth in these areas. And that's
13 where you got to the RIM value of 1.0 where there was
14 no benefit to the transfer, but likewise there was no
15 detriment to the general body of ratepayers.

16 **COMMISSIONER JACOBS:** So the 1.0 is if
17 there's no growth.

18 **MR. DUDLEY:** It was no growth. When you
19 started taking into consideration additional growth in
20 these areas is when you got to the 1.01 and I think up
21 to a 1.07 which was a high growth scenario.

22 **COMMISSIONER CLARK:** Yes, Roberta, I
23 understand the recommendation to be there's no
24 substantial difference in reliability issues.

25 **MS. BASS:** That is correct. Based on the

1 information that was provided by both of the
2 utilities. The information does apply, though, to
3 their service areas, their total service areas in
4 Duval and St. Johns County. It wasn't specifically
5 targeted for those contiguous areas that are the areas
6 that are being swapped.

7 **COMMISSIONER DEASON:** I have a question
8 concerning the three-year rate differential that would
9 be imposed if the transfer were approved. Is it
10 Staff's opinion that that rate differential is
11 permissible legally?

12 **MS. BASS:** What do you mean is it
13 permissible?

14 **COMMISSIONER DEASON:** You had a rate
15 difference between FP&L customers. Is it legal for
16 there to be that rate difference?

17 **MS. PAUGH:** Yes. There is Commission
18 precedent to that effect.

19 **COMMISSIONER GARCIA:** Doesn't 366.075 grant
20 the Commission experimental and transitional rate
21 difference?

22 **MS. PAUGH:** Yes, it does.

23 **COMMISSIONER GARCIA:** That's an explicit
24 authority, right?

25 **MR. ELIAS:** That's explicit authority. And

1 remember the standard is a question of whether or not
2 the rate is unduly discriminatory.

3 On at least one previous occasion with
4 respect to the transfer to Florida Power Corporation
5 of service territory of what had previously been the
6 Sebring Utilities Commission --

7 **COMMISSIONER GARCIA:** Right.

8 **MR. ELIAS:** -- the Commission established
9 and approved a rate differential based on the higher
10 financing costs associated with the retirement of some
11 debt of the Sebring Utility's authority. That
12 particular action was challenged as unduly
13 discriminatory on appeal, and the Commission's order
14 was affirmed by the Supreme Court.

15 **COMMISSIONER GARCIA:** Bob, you don't see any
16 time limit to this authority we have, right?
17 Obviously not ad infinitum. I think it's relatively
18 explicit in the way it's laid out.

19 **MR. ELIAS:** I think if you do not set a
20 finite period for it, you raise the question of
21 whether it's experimental or transitional. If it's
22 indefinite or permanent. I think you run the risk of
23 giving credence, more credence for those arguments if
24 you don't establish a time certain.

25 **COMMISSIONER GARCIA:** Let me make a

1 suggestion -- I guess a motion. I'm going to move
2 several things.

3 **COMMISSIONER DEASON:** Before you make your
4 motion can I ask one last question?

5 **COMMISSIONER GARCIA:** I'm sorry, I did
6 interrupt you. I'm sorry.

7 **COMMISSIONER DEASON:** I want to make sure
8 that the cost-effectiveness test, the rate impact
9 measure, that it basically was all inclusive. And by
10 that I mean first of all, did it include the proceeds
11 FP&L would receive from the sale of facilities, did it
12 consider the cost to be avoided by relinquishing
13 territory? Did it consider the payment that would be
14 made to JEA for facilities? Did it include the
15 expenditure of investment dollars to put in necessary
16 facilities to serve the new territory, and did it
17 include lost revenues from the area that was being
18 given up, as well as additional revenues at the lower
19 discounted rate in the area that would be acquired.
20 And were all of those factors considered and the net
21 positive?

22 **MR. WATERS:** The answer to all of those is
23 yes, it did include all of those factors including the
24 rate agreement, three-year rate agreement, and the
25 lost revenues associated with those. It included lost

1 revenues associated with the customers transfer to
2 JEA. It included additional revenues for customers
3 being swapped from JEA to FP&L. It included the
4 incremental cost to serve customers transferred to
5 FP&L and growth. It include cost avoidance to
6 customers transferred to JEA. I think that was the
7 list that you had. All of those were included in that
8 analysis.

9 **COMMISSIONER DEASON:** I guess Staff's review
10 confirms that as well?

11 **MS. BASS:** (Nods head.)

12 **CHAIRMAN JOHNSON:** Any other questions,
13 Commissioners?

14 **COMMISSIONER GARCIA:** Since Commissioner
15 Deason asked that, Sam, what affect would it have if
16 we increased -- the rate differential from three to
17 five years?

18 **MR. WATERS:** The --

19 **COMMISSIONER GARCIA:** Sorry, Sam. I'm going
20 to ask the same question of Staff, at least how they
21 see it.

22 **MR. WATERS:** The answer to that would depend
23 on which scenario we choose. If we chose the
24 no-growth scenario and say we're going to carry
25 differential further, then it would drop below 1. For

1 the scenario which I would consider the most likely,
2 which is a high growth scenario -- I think Mr. Weidner
3 mentioned we expect high growth in that area --
4 carrying it from three years to five years would
5 reduce the ratio, which is now 1.07, but it would not
6 reduce it to 1. It would not even reduce it to 1.

7 **COMMISSIONER GARCIA:** Bob, do you see it
8 this same way? I guess Bob isn't the right one to
9 ask. Roberta?

10 **MS. BASS:** I believe it's Staff's opinion
11 that it would still be above 1.0 except perhaps in the
12 no-growth scenario.

13 **COMMISSIONER GARCIA:** Let me ask you this
14 question, Bob.

15 Could the Commission move to do a rate
16 freeze for five years and then revisit that issue when
17 this comes up six months before and see what we're
18 looking at?

19 **MR. ELIAS:** Well, the utilities would have
20 to agree to that because --

21 **COMMISSIONER GARCIA:** I agree. It's a
22 settlement.

23 **MR. ELIAS:** Well, no, it's also -- the rate
24 freeze was in the form of a tariff, which they waived
25 the suspension.

1 **COMMISSIONER GARCIA:** Let's assume they
2 agree to it.

3 **MR. ELIAS:** And the other point that I want
4 to make as far as the --

5 **COMMISSIONER GARCIA:** Do me a favor, answer
6 the question and then you can make your point.

7 **MR. ELIAS:** I think that the longer in time
8 that you put a rate in place, the more you run the
9 risk -- and a rate that's different from the rest of
10 the customers -- the more you run the risk that it
11 could be perceived as unduly discriminatory. The
12 experimental and transitional rates are permitted by
13 statute for two reasons --

14 **COMMISSIONER GARCIA:** Wait a minute. Hang
15 on one second. I got a feeling when I discussed with
16 Staff at a certain point that Staff was almost saying
17 that it should be granted for a ten year period.

18 **MR. ELIAS:** There are two reasons in the
19 statute why we can authorize experimental or
20 transitional rates. The first is to encourage energy
21 conservation, and the second is to encourage
22 efficiency. So that whatever we do we have to couch
23 in those terms to meet the standard -- to be
24 consistent with the standard of the statute.

25 **COMMISSIONER GARCIA:** The word

1 "transitional" has to do with that issue, or is not
2 transitional what we're looking at precisely here?

3 **COMMISSIONER CLARK:** No, Joe. It applies to
4 both.

5 **MR. ELIAS:** Let me read the statute so that
6 you'll be --

7 **COMMISSIONER GARCIA:** That would be good.

8 **MR. ELIAS:** -- on exactly what it says.

9 "The Commission is authorized to approve
10 rates on an experimental or transitional basis for any
11 public utility to encourage energy conservation or to
12 encourage efficiency. The application of such rates
13 may be for limited geographic areas and for a limited
14 period."

15 And, you know, I think you get into a fact
16 question of whether something that is -- for a period
17 of ten years meets the definition of the statute.

18 **COMMISSIONER GARCIA:** No, I didn't say ten
19 years. I thought Staff had said it at some point.

20 **MS. PAUGH:** We did not --

21 **COMMISSIONER GARCIA:** You did not say that
22 here. I got a feeling that at some point we were
23 looking at that as a possibility.

24 **CHAIRMAN JOHNSON:** Joe, let me ask a
25 question on that same point you just raised, and it

1 goes to the question Commissioner Deason actually
2 raised with respect to whether we had the authority.

3 This language, it doesn't necessarily go to
4 the three or six years, whether it's three or six
5 years if there are some stipulations with respect to
6 encourage energy conservation or encourage efficiency.
7 How is Staff saying three years is okay and it
8 encourages, you know, energy conservation or
9 efficiency, but six years does not? It doesn't appear
10 to me that it should turn on the three to six years.

11 **MS. PAUGH:** For the record, we did not say
12 it was okay. Our recommendation is to deny this joint
13 territorial agreement even with the three-year
14 transition rate rider.

15 **CHAIRMAN JOHNSON:** So did anybody ever
16 answer Commissioner Deason's question as to whether or
17 not we had the legal authority -- I thought Bob said
18 yes, and cited this as the provision that gave it to
19 us.

20 **MR. ELIAS:** Again, as long as you can
21 satisfy yourself within the context of the approval of
22 this territorial agreement the purpose is to encourage
23 efficiency, it can pass statutory muster. But I think
24 that's a fact question.

25 **COMMISSIONER CLARK:** And I wouldn't -- say

1 what was it, the Sebring case.

2 **MR. ELIAS:** That's the only time that I know
3 of that our ability to --

4 **COMMISSIONER CLARK:** Allow a different rate.

5 **MR. ELIAS:** -- transitional rates has ever
6 been litigated before the Supreme Court.

7 **COMMISSIONER CLARK:** I don't think that
8 transitional rate had anything to do with the statute.

9 **MR. ELIAS:** Correct.

10 **COMMISSIONER CLARK:** I don't think it turned
11 on that either. Did the Court even address that issue
12 in their decision?

13 **MR. ELIAS:** Commissioner, my recollection --
14 and it's been an awful lot of years and I did not look
15 at that opinion for this agenda item -- was that was
16 one of the issues that was challenged in the appeal,
17 was questioning the authority of the Commission to
18 oppose a different rate based on the question of undue
19 discrimination.

20 **COMMISSIONER CLARK:** It strikes me the
21 argument goes is it undue? I guess if I were arguing
22 this point I would say it's not undue. It's for a
23 finite period of time; it's a finite geographical
24 area, and it's for the purpose of easing a transition
25 to a new rate from a new utility. And I'm not sure

1 that the Court had any problem with that. And in the
2 case of Sebring it was they were going to pay higher
3 rates for a significant period of time.

4 **MR. ELIAS:** That's correct.

5 **COMMISSIONER DEASON:** Let me ask this
6 question -- I'll direct it to Florida Power and Light.

7 How are the revenues to be accounted for on
8 the company's books? Is the differential booked above
9 or below the line? How is it recognized?

10 **MS. GREALY:** Commissioner, the way this
11 would work is that customer's bills would be exactly
12 the same for clauses. These would be lower nonfuel
13 energy, and in one case customer charges. So it would
14 just be a reduction in revenues; be a reduction in
15 base revenues on our books.

16 **COMMISSIONER DEASON:** You're not going to be
17 imputing what you would normally be charging above the
18 line. You would be accounting for what you actually
19 charged. That would be reflected on your books as
20 actual revenues.

21 **MS. GREALY:** Yes, Commissioner.

22 **CHAIRMAN JOHNSON:** Any other questions,
23 Commissioners? Mr. Elias, did you want to add
24 something?

25 **MR. ELIAS:** Ms. Brown indicated that she

1 does not believe that that particular statute, the
2 experiment transitional rate statute, was one that was
3 raised in the Sebring appeal.

4 **COMMISSIONER CLARK:** I wouldn't think it was
5 either, and wouldn't think that we would necessarily
6 rely on it here.

7 **MR. ELIAS:** It was a question of whether or
8 not it was undue, or undue discriminatory.

9 **COMMISSIONER DEASON:** You could make the
10 argument that since the RIM test is positive that
11 there is efficiencies being -- as a result, and to the
12 extent there's a transitional rate being implemented
13 to ease that transition, that there are efficiencies
14 being generated. I'm not saying that's a correct
15 argument. It's something that perhaps can be argued
16 at some point if it ever made it to the Court.

17 **MR. ELIAS:** I agree that you could argue,
18 that -- you know, if you believe the factual predicate
19 is there with respect to encouraging efficiency in the
20 context of this agreement, that it meets the standard
21 or the test of that statute or transitional rate.

22 **CHAIRMAN JOHNSON:** Any other questions,
23 Commissioners? Commissioner Garcia, did you have a
24 motion?

25 **COMMISSIONER GARCIA:** I'm going to make a

1 motion -- and, obviously, I need the companies to
2 agree with -- that we freeze the rate for five years.
3 That Staff do a follow up -- a year from now on seeing
4 how reliability issues are being dealt with in that
5 area, and that -- I guess that's the motion -- and we
6 deny Staff.

7 **MS. GREALY:** Just one point of
8 clarification. We're proposing that it would be the
9 lower of JEA or FPL's.

10 **COMMISSIONER GARCIA:** Absolutely. If rates
11 change and FP&L in two years is offering a lower rate,
12 then everybody is equal and we go from that there.

13 **MS. GREALY:** Right.

14 **COMMISSIONER JACOBS:** Don't the parties have
15 to modify their petition then?

16 **COMMISSIONER GARCIA:** Yeah.

17 **MS. GREALY:** Our petition had the three
18 years but it always had the lower of JEA or FPL's
19 applicable rates.

20 **COMMISSIONER GARCIA:** All we're asking is
21 that you modify it to five years.

22 **MS. GREALY:** Right.

23 **MR. MILLER:** Commissioner, might I have a
24 moment to confer with my clients? Thank you.

25 **MS. BASS:** May I point out that the rate

1 they are talking about would extend five years from
2 the date the last customer is transferred in the area.

3 COMMISSIONER GARCIA: Right.

4 MS. BASS: And that those rates will only
5 apply to the existing customer. So if someone was to
6 sell their home and someone else to move in, they
7 would not be considered an existing customer and they
8 would begin paying FPL's rates immediately.

9 COMMISSIONER GARCIA: Correct. Just like if
10 there's a new homeowner or anything else.

11 COMMISSIONER CLARK: Ms. Bass, when do they
12 estimate the last customer will be transferred?

13 MS. BASS: They had originally estimated
14 that it would take approximately three years to
15 transfer all of the customers. Now their estimate is
16 probably six months to a year.

17 COMMISSIONER CLARK: So, effectively, if
18 it's a year, then it's four years from now.

19 MS. BASS: If it takes them a year.

20 COMMISSIONER GARCIA: No.

21 COMMISSIONER CLARK: Yes.

22 COMMISSIONER GARCIA: You mean if we go
23 under the three year.

24 MS. BASS: Under the three year, yes.

25 COMMISSIONER GARCIA: Right. Under the five

1 years, it probably would effectively be then six
2 years.

3 **MS. BASS:** Potentially could be six.

4 **MR. MILLER:** Excuse me. I've conferred with
5 my client.

6 Florida Power and Light had originally
7 thought that three years was sufficient time to
8 encourage those customers to utilize our conservation
9 practices. However, we concur with the Commission
10 that if it takes five years, that we would go along
11 with the five years. And hopefully the growth takes
12 place that we're projecting, and Mr. Weidner is right,
13 there's going to be tremendous growth. And there will
14 be all of the efficiencies that we're looking for in
15 this swap. Thank you.

16 **COMMISSIONER DEASON:** Let me second the
17 motion then and state that one of the overriding
18 reasons I think that we should take this route is that
19 I think that voluntary agreements should be something
20 this Commission tries to encourage. I think by doing
21 that we'll be doing this here.

22 I'm also -- I think the fact that there is a
23 positive benefit on a cost-effectiveness test using
24 the RIM measure, I think that also is very persuasive.
25 I think that test was all encompassing and looked at

1 the various aspects to include additional cost as well
2 as avoided cost, and then took into consideration the
3 fact there was a differential in rates.

4 Now, I understand that the measure would
5 still be positive even with a five-year differential,
6 except for the no-growth scenario, which is an
7 extremely unlikely scenario. And I think Staff is
8 acknowledging that.

9 I do have a concern about the perceived
10 differential in quality of service. I have reviewed
11 Staff's statistics on that and it appears that it's
12 not material. But we have had quite a bit of
13 testimony here today from customers who have had
14 experiences, who think that is not the case.

15 I think it's part of Commissioner Garcia's
16 motion that the quality of service be reviewed
17 periodically by Staff to ensure that there's not an
18 inappropriate differential. So for those reasons I
19 second the motion.

20 **CHAIRMAN JOHNSON:** There's a motion and a
21 second. Any further discussion?

22 **COMMISSIONER CLARK:** Madam Chairman, I would
23 only add that I think that in conjunction with the
24 notion of approving voluntary agreements I think the
25 Supreme Court has narrowed considerably the basis on

1 which we could reject that. There's an indication
2 that there's an overall benefit as demonstrated by the
3 RIM test. With respect to reliability, it was not
4 substantially different, and the motion today is to
5 look at it. And it seemed that the Court said a
6 change in the rates is not enough to find that there
7 has been a detriment. And given the fact that there
8 will be a transition and the opportunity to lower
9 those rates through conservation, I'm not sure we have
10 much of a choice here.

11 **COMMISSIONER JACOBS:** I think the Court's
12 interpretation there is the persuasive -- is
13 persuasive logic, but I'm very concerned that there
14 are this number of consumers who have expressed
15 concern. Albeit their concern has been a focus
16 primarily on the level of rates, and the Court seems
17 to say that is not a linchpin. I think it is a --
18 there have also been some concerns raised on
19 reliability as well. And I would hope the company
20 would be very careful to attend to those concerns.
21 Because ultimately those customers are going to be --
22 your new ratepayers, and ultimately, I think, their
23 views ought to have a lot of weight. I want to make
24 sure we've heard what we are saying and proceeding on
25 the assumption that those kinds of issues will be

1 addressed.

2 **CHAIRMAN JOHNSON:** With that, there's been a
3 motion and a second. All those in favor signify by
4 saying "aye." Aye.

5 **COMMISSIONER CLARK:** Aye.

6 **COMMISSIONER GARCIA:** Aye.

7 **COMMISSIONER DEASON:** Aye.

8 **COMMISSIONER JACOBS:** Aye.

9 **CHAIRMAN JOHNSON:** Opposed? Show it
10 approved unanimously.

11 **MS. BASS:** Is it my understanding that
12 Commissioner Garcia's motion -- that Staff would look
13 at this after a year. And I'm curious, do you want us
14 to come back with some sort of formal presentation or
15 what, in a year? And after a year you want us to
16 continue monitoring it? Because this agreement is in
17 effect forever. So I'm wondering how long we should
18 be monitoring the reliability aspect.

19 **COMMISSIONER GARCIA:** I'd like you to
20 monitor it after a year. And I'd like to request
21 something else. I'd like you to get with our Office
22 of Consumer Affairs and make sure we send them
23 information on how to protest when they have problems
24 with reliability and things of that nature. That way
25 we can be looking at this. And you're right, this is

1 in effect. But it gives us the opportunity to deal
2 with the company and correct any reliability problems
3 that we may have.

4 **MS. BASS:** Do you want just an informal
5 notification after a year of the status of the
6 reliability, whether there's been significant changes
7 or --

8 **COMMISSIONER GARCIA:** I think that would be
9 fine. Either a notification to the Chairman's office
10 or to the Commission at Internal Affairs. In fact, I
11 think to the Executive Director would be fine, and let
12 he or she determine whether it needs to be brought to
13 the attention of the Commission.

14 **MS. BASS:** All right.

15 **CHAIRMAN JOHNSON:** There's a motion and a
16 second. I think we voted it out and Joe's follow-up
17 question. With that clarification, I'd like to thank
18 the customers and all of the interested parties that
19 participated. And with that, we're going to take --

20 **MS. BASS:** Chairman Johnson, you need to
21 vote on Issue 2. That was to close the docket.

22 **CHAIRMAN JOHNSON:** Is there a motion?

23 **COMMISSIONER GARCIA:** I'll move.

24 **CHAIRMAN JOHNSON:** Is there a second?

25 **COMMISSIONER JACOBS:** Second.

1 **CHAIRMAN JOHNSON:** Show it approved.

2 **COMMISSIONER CLARK:** Wait a minute. Wait a

3 minute. Close the docket if there's no protest?

4 **MS. BASS:** If there's no protest.

5 **CHAIRMAN JOHNSON:** Show it approved

6 unanimously. Thank you.

7 We're going to take a 15-minute break.

8 (This is the conclusion of Item 3)

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1 STATE OF FLORIDA)
: CERTIFICATE OF REPORTER
2 COUNTY OF LEON)

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

5 DO HEREBY CERTIFY that the Special Agenda
6 Conference in Docket No. 980755 was heard by the
7 Florida Public Service Commission at the time and
8 place herein stated; it is further

9 CERTIFIED that I stenographically reported
10 the said proceedings; that the same has been
11 transcribed under my direct supervision; and that this
12 transcript, consisting of 103 pages, constitute a
13 true transcription of my notes of said proceedings.

14 DATED this 19th day of November, 1998.

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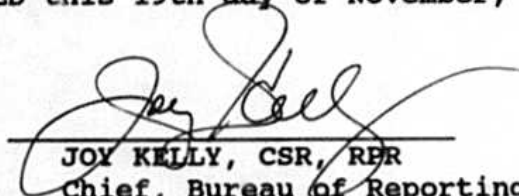
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JOY KELLY, CSR, RPR
Chief, Bureau of Reporting
Florida Public Service Commission
(904) 413-6732

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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of : DOCKET NO. 980755-EU
: Joint petition for approval of :
: new territorial agreement :
: between Florida Power & Light :
: Company and Jacksonville Electric :
: Authority. :

PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 3

BEFORE: CHAIRMAN JULIA L. JOHNSON
COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER JOE GARCIA
Teleconferencing from Miami
COMMISSIONER E. LEON JACOBS, JR.

DATE: Tuesday, November 17, 1998

TIME: Commenced at 11:42 a.m.
Concluded at 1:15 p.m.

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

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

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