

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
TALLAHASSEE, FLORIDA

IN RE: Investigation into the equity ratio and return on
equity of Florida Power & Light Company.

DOCKET NO. 981390-EI

COPY

BEFORE:

CHAIRMAN JOE GARCIA
COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER JULIA A. JOHNSON
COMMISSIONER E. LEON JACOBS

PROCEEDING:

AGENDA CONFERENCE

ITEM NUMBER:

12**

DATE:

February 16, 1999

PLACE:

4075 Esplanade Way, Room 148
Tallahassee, Florida

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BUREAU OF REPORTING

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FPSC-RECORDS/REPORTING

APPEARANCES:

Matthew M. Childs, Esquire, representing FPL
John McWhirter, Esquire, representing FIPUG
and Tropicana
Ron LaFace, Esquire, representing the Coalition for
Equitable Rates

REQUEST FOR ORAL ARGUMENT

Issue 1: Should Florida Power & Light Company's Request for Oral Argument be granted?

Recommendation: Yes. Oral argument might aid the Commission in comprehending and evaluating the issues before it. Oral argument should be limited to twenty minutes per side.

Issue 2: Should Florida Power & Light Company's Motion to Dismiss be granted?

Recommendation: No. Each of the parties filing a protest has sufficiently alleged that it has standing to challenge the proposed action. The question of whether or not a ratepayer's substantial interests are affected by the recordation of additional expenses, such as those proposed by FPL, has previously been answered in the affirmative.

Issue 3: Should this docket be closed?

Recommendation: No. This docket should remain open pending resolution of the protests to the proposed agency action order.

PROCEEDINGS

1
2 CHAIRMAN GARCIA: If we're ready, I would assume
3 that -- you're up.

4 MR. ELIAS: Commissioners, the recommendation
5 that is before you concerns FPL's motion to dismiss
6 the protests that were filed to the PAA order that was
7 issued in late December. On Friday afternoon, FPL
8 filed a notice of withdrawal of their settlement
9 proposal that was the basis of the PAA order.
10 Obviously, the parties have not had a time, a chance
11 to respond in writing to that settlement proposal or
12 the withdrawal of that settlement proposal.

13 Staff has identified three options at least for
14 the Commission today. The first is to defer this
15 matter until the March 16th agenda, that gives the
16 parties the opportunity to respond to the notice of
17 withdrawal, and it is the next agenda conference, and
18 it is the agenda conference where we will be bringing
19 a recommendation to you concerning Public Counsel's
20 request to initiate a rate case concerning FPL. The
21 down side of doing that is that that means that the
22 hearing dates that we have reserved for April will be
23 unworkable for any issues.

24 The second option is to take up --

25 CHAIRMAN GARCIA: Tell me what the negatives are

1 involved in that one, Mr. Elias.

2 MR. ELIAS: The ability of the Commission to
3 consider a return on equity for Florida Power & Light
4 Company that reflects current market information could
5 possibly limit the amount of revenues that the
6 Commission would be able to hold subject to refund
7 during the pendency of the consideration of Public
8 Counsel's petition for a rate case. So it's a
9 question of ratepayer protection during the pendency
10 of the hearing.

11 And it's possible. It hinges on a number of
12 things. Number one, the Commission's decision on
13 Public Counsel's petition and, two, the ultimate
14 outcome of that hearing versus the currently
15 authorized return on equity.

16 The third option, and this is not one that we
17 believe is appropriate in this case, but it is out
18 there, there are orders and cases where an agency has
19 not acknowledged or declined to acknowledge the
20 withdrawal of a settlement proposal. And those are
21 typically in instances where withdrawing the protest
22 or objection has the effect of divesting the agency of
23 the ability to consider a matter that is otherwise in
24 its jurisdiction. And I don't believe that that is
25 operative here.

1 We have copies of the recommendation that was
2 filed in October and the supplement that was filed in
3 November. Our recommendation, subject to what the
4 parties have to say, is that the Commission take
5 action on that recommendation today and determine what
6 it wants to do as far as the April hearing.

7 CHAIRMAN GARCIA: Okay. If I'm not mistaken, and
8 you will correct me if I'm wrong, Mr. Elias, FPL
9 withdrew its proposed settlement. Should we have FPL
10 address that issue real quick before we get started on
11 this?

12 MR. ELIAS: I think the parties need to address,
13 yes.

14 CHAIRMAN GARCIA: Mr. Childs.

15 MR. CHILDS: Commissioners, my name is Matthew
16 Childs, I'm appearing on behalf of Florida Power &
17 Light Company. Florida Power & Light did file a
18 notice of withdrawal of its settlement on Friday of
19 last week. And one of the things that we had noted in
20 the notice of withdrawal, but rather tersely, was that
21 this docket had in our view become somewhat of a
22 procedural morass.

23 I want to comment briefly, though, that Florida
24 Power & Light Company did believe that and does
25 believe that the matters addressed in the settlement

1 proposal that it submitted to the Commission and which
2 the Commission voted to approve, that it was
3 productive and it was appropriate. It however had to
4 react to the reality and it took some time to do that.

5 It had to react to the reality that there were
6 arguments made that although this docket was an
7 investigation docket, there was no petition filed by
8 anyone to do anything in the docket, and that there
9 were attempts to make the docket a rate case, and we
10 thought that was wholly improper.

11 We had thought that by filing a stipulation or a
12 settlement offer when the Commission was considering
13 whether to go to hearing on return on equity was
14 certainly not the basis to say that now that you have
15 conceded and agreed voluntarily to reduce your return
16 of equity that now you must go to hearing on return on
17 equity. So we thought that was a bit backwards the
18 way that some were attempting to structure the
19 proceeding.

20 And, therefore, it was with reluctance that we
21 filed the notice of withdrawal. I think, and I've
22 listened to staff counsel's three alternatives. I
23 agree with him that the third alternative of not
24 accepting the withdrawal is not appropriate here. The
25 case that I am aware of where that happened was one

1 where there was a petition pending for a rate increase
2 by a water and sewer company under your specific
3 procedures on both PAA actions. I don't think the
4 case is the same and I actually don't think that the
5 authority that was cited in that order applies.

6 CHAIRMAN GARCIA: Mr. Childs, you addressed
7 something that was of concern to me, and if you can
8 answer that, and I hope I'm not interrupting too much
9 with your presentation. But it strikes me that at
10 least my belief, and perhaps I am wrong, that if this
11 Commission opens a docket on its own motion, it almost
12 strikes me that it would make sense that this
13 Commission can close its own docket if it feels
14 satisfied with the results of its discussion.

15 It almost is the only way that staff has to
16 address us as a group to discuss certain issues. I
17 say that, and it's nothing against the intervenors,
18 but it just strikes me that the only way that staff,
19 the accounting staff and the auditing could have a
20 discussion with the Commission as a whole is to put
21 the issue, your issue in this case on the docket, have
22 us as a group discuss it, and then bring us the
23 settlement that staff achieved. That being done, I
24 find myself troubled by the fact that I can't close my
25 own docket because it's protested.

1 And I say that because, like you, I think that
2 the settlement offer was good for Florida and its
3 ratepayers, and probably it was good for FPL. Could
4 you address that? I mean --

5 MR. CHILDS: Well, I'll try. I think you can
6 close your own docket. I mean, I ask the question
7 rhetorically, let's say that a recommendation had been
8 presented to the Commission to initiate a proceeding
9 to go to hearing. That was a recommendation and the
10 Commission voted no, we don't want to do that. That's
11 not a PAA order. That doesn't have to go to anyone to
12 protest your action. That is an action that this
13 agency can take and does take in furtherance of its
14 authority to investigate and generally regulate.

15 If, on the other hand, someone had petitioned to
16 open a docket so that you had a moving party, a
17 petitioner who was an appropriate petitioner who
18 initiated an appropriate case, for instance, we have
19 the Office of Public Counsel, who has an analogous
20 case. That is an appropriate party, that's an
21 appropriate pleading, that is an appropriate case.
22 That is a totally different situation.

23 I don't think that you are restricted in your
24 decision to act to close the docket. Nor do I think,
25 and nor did I think at the time that the Commission's

1 decision not -- that the Commission's decision to
2 extract something from Florida Power & Light Company
3 as a condition of not going forward was the basis for
4 someone to protest and force a hearing.

5 CHAIRMAN GARCIA: Because I'm troubled by the
6 question how have I affected anyone's substantial
7 interests by closing this docket. The only one whose
8 interests I have affected, in essence, is yours, your
9 company, and this Commission's position. But I'm
10 troubled because I don't have a rate case. I did not
11 change the rates for anyone else in Florida. We
12 remain the same. And so I'm troubled by the fact that
13 staff, I guess to some degree, believes that once we
14 start down this road, we are sort of trapped by it.

15 And what further bothers me is that as we head to
16 continually complex issues, I want staff to be able to
17 bring it before this Commission, for us to sit as a
18 body and be able to discuss these issues, but not be
19 trapped by our own discussion into a position where we
20 make it impossible for staff to negotiate with our
21 understanding of the events that are occurring.

22 And in this docket I feel we have trapped
23 ourselves. We have sort of put ourselves in a
24 position whereby by asking questions we become trapped
25 by the PAA process, and so we are off into this --

1 MR. CHILDS: I don't think you need to be
2 trapped, though. I have two points on that that I
3 think are directly applicable. The first is Section
4 366.076. It is the limited scope proceeding. It was
5 enacted in part because of the concern about the
6 Commission -- we were not doing things knowingly at
7 that time and calling them proposed agency action.

8 I mean, that was not something that the
9 Commission knew it was doing back in the early '80s.
10 But there was concern that when a party tried to
11 initiate a proceeding over here that affected rates,
12 could affect rates ultimately, is there a way to have
13 that matter addressed without having a general rate
14 case.

15 For instance, perhaps you wanted to change rate
16 design of a tariff. Does that mean that you have to
17 have a rate case? Well, this statute, this section
18 was enacted to address that. And it says, "Upon
19 petition or its own motion, the Commission may conduct
20 a limited proceeding to consider and act on any matter
21 within its jurisdiction, including any matter the
22 resolution of which requires a public utility to
23 adjust its rates."

24 I always thought that if you could limit the
25 proceeding when the action you took required an

1 adjustment to rates, that certainly you could limit a
2 proceeding when an adjustment that you made did not
3 necessarily require any change to rates.

4 An additional point was this Commission addressed
5 -- this Commission approached Florida Power & Light
6 Company in '92 and '93, and said we think your return
7 on equity is too high. What do you want to do about
8 it? We engaged in settlement discussions with the
9 Commission staff and the Office of Public Counsel. In
10 fact, the return on equity that we stipulated to, or
11 in settlement agreed to change this last time is the
12 one that was set before by this Commission as a result
13 of FPL's settlement.

14 But in that docket the Commission issued a final
15 order approving the settlement and expressly
16 considered the question of whether to use a PAA
17 proceeding. And at agenda it asked the question of
18 staff and of Public Counsel about should this be and
19 why wasn't it a PAA proceeding.

20 And, you know, I think that the reaction by both
21 the staff and the Public Counsel was that the action
22 by Florida Power & Light Company to agree to reduce
23 the return on equity that it was legally entitled to
24 was an action against its best interest only, not that
25 of the customers. And if a customer wished to

1 petition to change rates, or anyone else who had
2 proper standing wished to initiate a proceeding to
3 change rates, they could.

4 And the settlement didn't affect that. I mean,
5 there is the expressed discussion of whether the
6 Commission needed to act pursuant to PAA. And the
7 Commission concluded that it didn't.

8 So my view is you have precedent in your own
9 action, and that was an order issued July 13, 1993 in
10 Docket 930612. And you have an expressed statutory
11 authority to limited scope proceedings.
12 Unfortunately, this case got to be more directed
13 toward -- I thought and the company thought -- going
14 to hearing as rapidly as possible to address the
15 return on equity for Florida Power & Light Company in
16 order to take some action. We didn't think that was
17 appropriate.

18 We thought as a practical matter in addition to
19 the legal constraints that it was a little bit
20 unseemly to ask us to agree to a settlement and then
21 to sort of use that as the starting point in the case,
22 and say now you defend it. Our view was we could
23 defend that we settled, we could defend that we
24 offered that, but as a practical matter, we didn't
25 think that our legal position of entitlement to a

1 higher return disappeared.

2 We are mindful, however, we now have a case. We
3 have a case that was initiated by the Office of Public
4 Counsel. And it also factored into our thinking that
5 although we thought that going forward, as it appeared
6 we were, was inappropriate. That it also seemed to be
7 inappropriate to try to do that twice.

8 So, with all due respect, Commissioners, we felt
9 that we had no option at the time out to file our
10 notice of withdrawal. We do think that it was
11 appropriate. We think that the action taken by the
12 Commission was appropriate in terms of recognizing
13 various expenses and was also appropriate in its
14 action to force FPL to reduce its return on equity.

15 I mean, we were willing to do that. We thought
16 as a total package that it was worthwhile pursuing. I
17 don't think at this point that there is anything, you
18 know, other than for the future what can we do, to
19 discuss how it happened, but it just happened.

20 CHAIRMAN GARCIA: Well, Mr. Childs, that begs the
21 question what if this Commission wants to stay with
22 the settlement. Should we not have the -- let's say
23 that I don't believe the intervenors have a standing
24 and that I think this Commission can close this
25 docket. I'm not saying that we feel that, because I

1 don't know how we feel, but I do know how I feel. It
2 strikes me that what if we wanted to accept your offer
3 and proceed under the scenario of -- when is the date,
4 Mr. Elias, of Mr. Shreve's petition before this
5 Commission?

6 MR. ELIAS: We will be bringing a recommendation
7 for consideration at the March 16th agenda.

8 CHAIRMAN GARCIA: After meeting with our people
9 here at the Commission, I thought we had come to a
10 good agreement. I thought that the agreement reached
11 by staff and the company was to the benefit of
12 Florida's ratepayers and, therefore, I thought it was
13 a good agreement. And it strikes me that I would like
14 to, if we can accept your offer, at least have that
15 offer until we go to the 13th and meet with Mr.
16 Shreve's office.

17 At least I know that I have got -- at least my
18 thinking, and, again, I don't speak for the majority
19 -- but at least I would feel comfortable that we are
20 walking into the 13th in a good position, in a very
21 positive position for Florida's ratepayers. And
22 obviously we are going to hear out the intervenors,
23 but it sort of puts us in a difficult position. You
24 are taking away the offer and then we get into the
25 argument of whether we should go down this road of a

1 hearing. You're right, and that's another argument,
2 but --

3 MR. CHILDS: Well, I don't know that I can answer
4 that. I will try to tell you what my thought process
5 was. I thought, I don't know -- I mean, I was
6 prepared earlier to argue in the motion to dismiss,
7 and thought that we were correct there. On the other
8 hand, you have been to hearing before as it relates to
9 the amortization part of your action.

10 I mean, to me there are two sides to your action.
11 One is the extraction that I characterize it from
12 Florida Power & Light Company on equity, and the other
13 part is the amortization. You have been to hearing on
14 that before. And I pointed it out, the staff must
15 have missed it, but I did point that out in my
16 pleading with you that we had raised this before and
17 had not prevailed as to whether the amortization part
18 was something that could go to hearing. That is your
19 authorization for the company to amortize various
20 expenses commencing after 1999.

21 So, I would be reluctant to say that there is no
22 argument in view of your action that the amortization
23 part of the activity is not something that was
24 supposed to go to hearing. Candidly, that's what I
25 expected we do. I thought that if we had a protest,

1 that what we would go to hearing on was whether you
2 were going to amortize, you know, find that after the
3 hearing and the evidence whether the decision you made
4 would be inconsistent with the settlement. And, you
5 know, part of our thinking too was you just had a case
6 like that in 1998 on the same issues, so, we felt
7 fairly confident that we could prevail again.

8 I mean, there is nothing different about your
9 actions on amortization here other than what you have
10 already been to hearing on in another docket except
11 that you impose the minimum of \$140 million a year
12 that FPL had to expense and you permitted us to come
13 in later with no authorization, no pre-approval, but
14 said you can come in later and petition to add things
15 to this. So, there was a lot of similarity.

16 COMMISSIONER DEASON: Let me ask Mr. Childs a
17 question before we proceed. Are you indicating then
18 that it's your position that only the amortization
19 issues should go to hearing? That if you had not
20 filed your notice of settlement withdrawal and we were
21 going to proceed to a hearing, that that should be the
22 only issue and that return on equity is not
23 appropriate for this type proceeding?

24 MR. CHILDS: That's right. And the reason,
25 briefly, is that we are by law entitled to a higher

1 return on equity than we agreed voluntarily to reduce
2 it to. Your order, although the Commission voted,
3 your order is not final if a protest that conforms to
4 your rule is filed. And I just, I don't see how that
5 action against our own interests can meet the standard
6 under the law for a challenge. And I thought that the
7 Commission's prior action in 1993, and the argument
8 presented by staff and Public Counsel said that's
9 right.

10 COMMISSIONER DEASON: In 1993, what were the
11 other -- were there amortization issues involved
12 there, or was it strictly a return on equity question?

13 MR. CHILDS: Strictly return on equity.

14 COMMISSIONER DEASON: Thank you.

15 CHAIRMAN GARCIA: Commissioners, any other
16 questions? Mr. McWhirter.

17 MR. McWHIRTER: Thank you, Mr. Chairman. My name
18 is John McWhirter representing the Florida Industrial
19 Power Users Group and Tropicana.

20 CHAIRMAN GARCIA: Mr. McWhirter, in -- and it's
21 my own fault, I didn't put a time limit when we began,
22 but I think we allowed Mr. Childs to go 30 minutes or
23 at least I questioned him for that long. You are here
24 as -- and I see Mr. Laface is here -- will he be
25 speaking also representing a client, or are you

1 representing your entire side?

2 MR. McWHIRTER: I will be very short.

3 CHAIRMAN GARCIA: I have no doubt of that. I
4 just want to make sure if there is anyone else that
5 will be speaking --

6 MR. LAFACE: We would like to speak briefly.

7 CHAIRMAN GARCIA: We is?

8 MR. LAFACE: The Coalition for Equitable Rates.

9 CHAIRMAN GARCIA: Okay.

10 MR. BERTRON: Andy Bertron (phonetic) on behalf
11 of Georgia Pacific and Florida Alert. I'm sure by the
12 time Mr. McWhirter and Mr. Laface have spoken there
13 will be little left to say, but I would like to add
14 just a little bit.

15 CHAIRMAN GARCIA: Okay. Well, what we will try
16 to do is, and I know you are always short, but I don't
17 know about Mr. Laface. So what we will do is your
18 side has 30 minutes, so there being three of you, ten
19 minutes apiece should be sufficient.

20 MR. McWHIRTER: Thank you, sir. I will limit
21 myself to ten minutes or less.

22 Mr. Chairman, the question you posed was we
23 opened a docket, why can't we close it. And then Mr.
24 Deason suggested that since we appear to have
25 tentative agreement on return on equity, can we put

1 that to bed and go forward with the amortization
2 issues. My response will address both of those
3 aspects.

4 This case is an outgrowth of something that has
5 been going on for several years, and I think it
6 happened when Ameristeel petitioned for a rate case
7 either in 1997 or 1998, and your staff recommended
8 that you go forward with a rate hearing. At that time
9 Ameristeel settled its case with Florida Power & Light
10 by leaving its system, and the staff -- that case was
11 terminated, but the staff suggested that the return on
12 equity was too high and it should be investigated.

13 There were a series of discussions held between
14 Florida Power & Light and the staff, as I understand
15 it, and the Public Counsel was invited to attend, and
16 those discussions came to a head in late September.
17 And your staff filed a recommendation in November that
18 there have been no meeting of the minds between the
19 parties, and it recommended that you have a limited
20 issue return on equity case, and that is the case that
21 is presently pending in this docket. It was opened, I
22 believe, in October of this year.

23 The staff came to you with its recommendation
24 that you have a limited issue case on return on equity
25 on November 3rd, and you sent the staff and Florida

1 Power & Light back to the drawing boards and suggested
2 that see if you couldn't work out a settlement. At
3 that point in time we became involved and became
4 interested in the case because it looked like there
5 was an amount of money that was substantially greater
6 than the record would disclose in the matter.

7 In early December, the staff and Florida Power &
8 Light reached an accord, and the accord was that the
9 return on equity should be reduced provided that
10 Florida Power & Light could keep all the money. Which
11 seems somewhat peculiar to us, and the reason they get
12 to keep all the money is that a proceeding that
13 started back in 1995 where you allowed Florida Power &
14 Light to write-off \$30 million of its nuclear
15 facilities in order to avoid stranded investment when
16 retail competition came into play --

17 COMMISSIONER CLARK: Mr. McWhirter, that wasn't
18 the reason. We thought it was a good course of action
19 to take because it appeared that they were not being
20 -- it wasn't being reduced.

21 MR. McWHIRTER: Okay. Well, there was some
22 discussion of that. I just read about it in the
23 papers and I read your order and --

24 COMMISSIONER CLARK: Maybe the order would be
25 specific on it.

1 MR. McWHIRTER: That's really an aside. In any
2 event --

3 COMMISSIONER CLARK: I guess I am sensitive to
4 that because I always get that suggested that that was
5 our purpose, and it was not our purpose and it was
6 made clear in the order.

7 MR. McWHIRTER: Well, I'm pleased to hear that
8 was not your purpose, because you're in favor in
9 regulation and so am I, and we are here today to ask
10 you to protect the consumers with your regulatory
11 authority.

12 I mentioned the competition issue as an aside.
13 That started at \$30 million. In this proposed
14 settlement, ladies and gentlemen, this fast write-off
15 can grow to some \$723 million, and it can all be taken
16 in a very short period of time.

17 So what happens is the cash flow of Florida Power
18 & Light will be greatly expanded because even with a
19 reduced return on equity, it has non-cash expenses
20 that can come into play to forestall any rate
21 proceeding. And that's the amortization issue that
22 you wanted to address, Mr. Deason, to see if that \$723
23 million is still appropriate in this day and time.

24 As Mr. Childs told you, it started in '95 and it
25 grew in '96 and '97, and now it has grown to a

1 tremendous amount. And the question is is that in the
2 public interest. And we have requested in our
3 pleading that there be a rate reduction of \$140
4 million. We think that if the non-cash expenses are
5 disallowed, Florida Power & Light's earnings will be
6 somewhere about \$400 million more than you authorized
7 in 1993.

8 COMMISSIONER CLARK: Mr. McWhirter, let me be
9 clear. When you say non-cash expenses, you mean the
10 amortization, is that correct?

11 MR. McWHIRTER: Yes, ma'am. It's kind of like
12 depreciation. Florida Power & Light has \$1.2 billion
13 in depreciation expense that the customers pay for in
14 the most recent surveillance report that I saw, in
15 addition to another \$400 million in regulatory
16 write-downs in the most recent surveillance report
17 that I've seen, and this is cash that is coming up.

18 And the question I think you, as regulators, need
19 to address is is that flush cash is it being used for
20 the benefit of the Florida ratepayers who are
21 supplying those cash funds. And that's why we became
22 interested in this case.

23 And, Mr. Garcia, in response to your question, if
24 we opened the case, can't we close it? Yes, you can.
25 But from a consumers' viewpoint, it's not in the

1 public interest to do so. Because every month delay
2 costs the consumers additional money. If our number
3 of 140, which is on the low side --

4 CHAIRMAN GARCIA: You mean our settlement costs.
5 The settlement that we came -- that we had sort of
6 agreed with the company, you believe costs Florida
7 ratepayers money?

8 MR. McWHIRTER: Yes, sir. I believe --

9 CHAIRMAN GARCIA: So now you are representing
10 Florida ratepayers as opposed to your clients.

11 MR. McWHIRTER: My clients are Florida ratepayers
12 and they pay --

13 CHAIRMAN GARCIA: But you used the general
14 terminology of it and --

15 MR. McWHIRTER: Well, we are in the same boat and
16 we are trying to row together. And it's very
17 difficult for a single ratepayer to come in against a
18 goliath of the magnitude of Florida Power & Light. We
19 don't have the financial resources, and somebody needs
20 to take action, and I'm pleased to see that the Public
21 Counsel has done so.

22 But it's about \$12 million a month for every
23 month you delay, if our analysis is correct. And I'm
24 not sure it is correct, but it's based on the only
25 information that is available to us. And, you know,

1 Florida Power & Light is not all that forthcoming with
2 the development of public information about its
3 earnings.

4 It used to have to file minimum filing standards,
5 minimum filing requirements every four years, but that
6 legislation was repealed. So since they haven't had a
7 rate case since 1984, it's kind of hard to really know
8 what is going on until you turn over the rock. And
9 this case has essentially turned over the rock.

10 COMMISSIONER JOHNSON: Mr. McWharter, could we go
11 back through -- I'm trying to better understand your
12 argument and follow your presentation here. You are
13 stating that by -- when you say the delay, the delay
14 in going to hearing costs \$12 million per month under
15 your calculation, and are you basing that on -- you
16 are saying if we go to hearing the non-cash expenses
17 will be disallowed, we won't have some -- how are you
18 getting to the 12 million?

19 MR. McWHIRTER: If we are successful in our
20 proposition, we don't think that Florida Power & Light
21 can demonstrate the need for that additional cash and
22 the fact that that additional cash is being supplied
23 by Florida ratepayers is being --

24 COMMISSIONER DEASON: Mr. McWhirter, when you say
25 additional, what do you mean by additional cash?

1 There is no change in rates. It's the same cash flow
2 that existed before the settlement proposal, it's the
3 same cash flow that is going to exist after the
4 settlement proposal.

5 The only way there is going to be a change in
6 cash flow is if there is action as a result of Public
7 Counsel's petition and there is a change in rates.
8 Why do you keep saying cash flow?

9 MR. McWHIRTER: Our complaint is that there is no
10 change in rates, and there will not be any change in
11 rates until you re-examine these expenses and
12 determine if they are appropriate. And there won't be
13 a change in rates until after you take final action.
14 Florida Power & Light hasn't even filed minimum filing
15 requirements. It may be a year from now before final
16 action can be taken in this case.

17 COMMISSIONER DEASON: Well, how does this
18 settlement proposal in any way change that schedule of
19 whether there is going to be a change in rates?

20 MR. McWHIRTER: Well, I'm going to make some
21 recommendations to you in a minute, I'm just giving
22 you my background logic.

23 COMMISSIONER DEASON: Well, I wish you would
24 explain that.

25 MR. McWHIRTER: Well, I'll give it to you now.

1 The answer is that I would like to see you establish
2 the return on equity as soon as possible, and this
3 proceeding enables you to do that.

4 CHAIRMAN GARCIA: Let me ask you something.
5 Didn't the rate case filed by Mr. Shreve ask for
6 interim rates, so aren't rates affected in that one
7 specifically?

8 MR. McWHIRTER: The rates in that case are set as
9 of the utility's last authorized return, and that is
10 in 1993. And at that point in time the top of their
11 range was 13 percent on equity. When they had the
12 last rate case you had something like 40 percent
13 equity and 60 percent debt, so the customers only had
14 to say something like 7 percent return on the 60
15 percent debt. When you have 13 percent return on
16 equity, what happens is you have to mark that up for
17 taxes so customers have to pay a 21 percent return on
18 the equity component.

19 Now the equity component of Florida Power & Light
20 is some 65 percent of its capital structure. So there
21 hasn't been a change in what customers pay, but there
22 are a lot more customers, they are consuming a lot
23 more electricity than they used to as a result of
24 changes in weather patterns and conservation programs.

25 And as a consequence, although their rate for

1 base rates haven't gone down, their rates -- their
2 total electric bill, as LEAF would say, has gone up.
3 And, in addition, there are a lot more customers and
4 the utility is getting a lot more revenue.

5 What your duty is, as I understand it, is to
6 ensure that the utility doesn't make too much revenue.
7 And once you have made that determination then you can
8 set your rates. And the fact that the rates haven't
9 gone up when they may have been -- should have been
10 going down. In my frank opinion, is not justification
11 for just stopping.

12 Now --

13 COMMISSIONER DEASON: I'm sorry, is not
14 justification for what?

15 MR. McWHIRTER: Beg your pardon?

16 COMMISSIONER DEASON: I didn't understand what
17 you said. It's not justification for what?

18 MR. McWHIRTER: For the rate reduction. I
19 started out and told you we think as a minimum \$140
20 million that there ought to be a reduction, if it's
21 \$400 million that means something like \$35 million a
22 month for every month in delay customers are being
23 denied a reduction in their rates.

24 COMMISSIONER DEASON: But you seem to be
25 indicating this settlement proposal is the reason for

1 the delay, and I don't understand that logic.

2 MR. McWHIRTER: The settlement proposal is
3 because it incorporates in it the opportunity to
4 shield revenues with \$723 million of non-cash
5 expenses.

6 COMMISSIONER DEASON: If there had not been a
7 settlement agreement, the same cash flow would exist.
8 If there had not been a settlement agreement, the same
9 cash flow would exist and those dollars would flow to
10 the bottom line without being offset by any expenses,
11 and that's the situation that I think you want to
12 avoid. But you are attacking the settlement proposal
13 as the villain.

14 MR. McWHIRTER: I want it to flow to the bottom
15 line, and if they are getting too much on the bottom
16 line, I want the customers to get rate relief for a
17 change.

18 COMMISSIONER CLARK: Well, it's your position
19 that they shouldn't get a greater amortization of
20 their investment. And you think that you can convince
21 -- if you have a hearing, that you will be able to
22 convince us that the settlement allows too much
23 amortization and doesn't really appropriately reflect
24 the expenses. And that if we heard from you then we
25 would determine that, in fact, we need a rate increase

1 or decrease.

2 MR. McWHIRTER: I don't know that I can convince
3 you of that. I think that the logic supports that.
4 Regulatory procedure in the past has always supported
5 that, and the approach that you have chosen in these
6 vast write-offs may have been all right when it was
7 \$30 million and competition was on the horizon. It
8 isn't all right today when it's \$723 million and
9 competition is pretty much a deadend.

10 COMMISSIONER CLARK: Mr. McWhirter, let me ask
11 you, is that what the order said with respect to that
12 amortization? Is that what the order said when we
13 originally went into this settlement? I thought it
14 was because we found we were not writing off that
15 investment as fast as we should have. And I'm getting
16 a yes from Pat.

17 And, you know, we have always taken the position
18 that you ought to be writing off the amortization, or
19 I guess it is more appropriate to say depreciation
20 should reflect, in fact, what is being in effect used
21 by the customers. And that's what we were doing, Mr.
22 McWhirter, and I frankly take offense that you keep
23 tying it to a notion that we saw competition on the
24 horizon.

25 I will grant you it has the added benefit that if

1 competition does come that we don't have that sort of
2 problem that we would have to deal with at the same
3 time we might deal with other competitive issues. But
4 it was for the purpose of getting the pot right, so to
5 speak.

6 MR. McWHIRTER: I apologize. I certainly would
7 not want to offend you, Mrs. Clark.

8 COMMISSIONER CLARK: It's not just you, Mr.
9 McWhirter, I keep hearing that and that was not our
10 reason.

11 MR. McWHIRTER: Well, and it's beside the point,
12 because this is a regulatory case, and I don't know
13 the real justification for amassing this great amount
14 of money.

15 COMMISSIONER CLARK: And I take it your view is
16 that you think if we did look at the investment and
17 the appropriate depreciation we would conclude that
18 they were where they were, and that, in effect, we
19 could reduce rates. That's really your bottom line.

20 MR. McWHIRTER: Exactly. Now, I'm going to wind
21 up. Mr. Childs has been in writing and again today
22 that this is case is a procedural morass, and I think
23 there are certain steps that you can take to avoid it
24 being a procedural morass. And I will suggest six
25 steps to you, and I think they are consistent with

1 what your staff has recommended, what Mr. Deason seems
2 to be thinking about, and will get us to a prompt,
3 speedy, and fair result without any injury to Florida
4 Power & Light, but at the same time protecting
5 customers' interest.

6 The issue before you in Item 12 is should you
7 grant oral argument on a motion to dismiss. Well,
8 that may be moot. But if you grant oral argument, I
9 would say, yes, let's have it, and let's have it today
10 and get it over with.

11 Secondly, if Florida Power & Light wants to
12 withdraw its offer of settlement, I'm perfectly happy
13 with that, because the quid pro quo for the modest
14 reduction in return on equity was that they could
15 shield a lot more money through this fast write-down.

16 The third is that as Item 2 that the staff has
17 recommended to you, and let's let this be a simple
18 return on equity issue case. That's always a
19 component part of a general case anyway that's
20 frequently separated from the other part, and let's go
21 forward and let's set that return on equity as soon as
22 possible.

23 And once you have done that, then hold all funds
24 in excess of that return on equity subject to refund.
25 That doesn't hurt Florida Power & Light because if it

1 ultimately prevails then it doesn't have to refund the
2 money. It certainly hurts the customers if you delay
3 the moment in time when you start to hold the money
4 subject to refund.

5 Secondly, I would suggest to you that now that
6 the Public Counsel has filed a request for general
7 rate relief, I would presume that you will go forward
8 with that. And if you do, I would spir off the
9 expense write-downs, the rapid write-downs to that
10 case.

11 As long as the monies are held subject to refund,
12 you can give it a full and fair hearing in that case.
13 We don't have to make this case a procedural morass by
14 dealing with those issues.

15 And, finally, Florida Power & Light says it ain't
16 answering no questions for the time being since it has
17 withdrawn its settlement. Well, I don't know any
18 rationale as to why discovery can't proceed so that we
19 can get to the bottom of the issues, and I would
20 suggest to you that you recommend to Florida Power &
21 Light that it comply with civil procedural rules and
22 still respond to the outstanding discovery. If the
23 discovery is inappropriate then it can object to
24 inappropriate questions.

25 And having said that, those are five quick steps

1 you can take that will protect consumers without
2 injuring Florida Power & Light.

3 COMMISSIONER CLARK: Mr. Childs, what is wrong
4 with that? I mean, it sounds to me what he suggests
5 is remarkably similar to what you suggested.

6 MR. CHILDS: Well, I don't think so.

7 COMMISSIONER CLARK: Well, I guess you don't
8 agree with going forward with the hearing on ROE.

9 MR. CHILDS: No, and I think that fundamentally
10 that's one of the issues, is how is it that you can
11 agree to settlement and as a consequence of a
12 settlement you are forced to go to hearing.

13 COMMISSIONER CLARK: No, we will let you withdraw
14 your settlement, but we will set for hearing on our
15 own motion determination of the proper ROE and use
16 that as the benchmark for determining how much, if
17 any, we would hold subject to refund and then move
18 forward with the case.

19 MR. CHILDS: That's pretty fast to ask me what I
20 think about that. I would say clearly it has
21 something wrong with it. Seriously, though, you have
22 to -- and I mentioned it earlier, I don't think that,
23 I don't know that you can take that action in this
24 docket this way.

25 COMMISSIONER CLARK: Well, fine. We will close

1 the docket and start a new one.

2 MR. CHILDS: I certainly would want to protect
3 our interests in that regard. As a practical matter,
4 there is a separate case pending, which I have said
5 before. It's an appropriate party and it's an
6 appropriate pleading and it's an appropriate question.
7 I don't understand -- I did not understand that we
8 would take up that issue at all in this docket.

9 COMMISSIONER DEASON: Mr. Childs, wasn't that
10 what precipitated this docket? Wasn't it staff's
11 recommendation to go to an ROE investigation, and in
12 the meantime there was settlement -- those settlement
13 discussions, and they proved fruitful and we had what
14 we thought was a settlement. But that is what
15 precipitated this entire docket I thought.

16 MR. CHILDS: It is, but I think what I was trying
17 to respond to is what I heard was a package deal that
18 was offered by FIPUG, and I didn't like the package.
19 I mean, if this Commission at any time decides that it
20 believes that it wants to have a hearing on that
21 subject, I think the Commission can issue a notice and
22 go to hearing on that subject.

23 As to what you can do with the next steps in
24 terms of holding money subject to refund, we may have
25 some disagreement as to that. And there are some

1 cases on that about what your next step can be. But,
2 I mean, that was where I came into the argument was
3 that you could and you should in the exercise of your
4 power be able to decide whether you were going to go
5 to hearing or whether you were going to accept a
6 settlement. And the acceptance of the settlement
7 didn't mean that you then had to go to the hearing
8 that you were just trying to avoid.

9 COMMISSIONER CLARK: Let me ask a question.

10 COMMISSIONER DEASON: But we avoided the hearing
11 because we had a settlement. Now the settlement has
12 been withdrawn, so how do we now avoid the hearing
13 unless we just close our eyes to the fact that our
14 staff has recommending that ROE is too high?

15 MR. CHILDS: Well, I'm not suggesting that you
16 close your eyes at all. What I'm suggesting is that
17 to me, I guess, in the order of things that you
18 acknowledge that we have withdrawn. I know we have
19 discussed some other steps, and if you want to pursue
20 that, that's open, too.

21 But that if you decide that you wish to go to
22 hearing, what I am pointing out, Commissioner, is you
23 have a pending case on ROE. You have a pending case
24 on rates. It does it all. I don't know why you would
25 then -- I don't understand why you would go to a

1 hearing on ROE while you have a parallel case on ROE
2 and changing rates.

3 COMMISSIONER CLARK: Let me ask a question. I
4 think it was Tampa Electric Company, I may be wrong,
5 but one of the -- there seems there was a case where
6 we were primarily concerned with the level of the ROE.
7 We went -- we had a fast hearing -- maybe it was FPL.
8 We had a fast hearing and determined what we thought
9 was an appropriate ROE, and took that money subject to
10 refund and then went ahead with the whole case.

11 COMMISSION STAFF: To my recollection that was
12 FPL back in I want to say '90 or '91.

13 COMMISSIONER CLARK: Right.

14 COMMISSION STAFF: I think we had a fast hearing
15 in a matter of three weeks.

16 COMMISSIONER CLARK: Yes, because the concern
17 here is the ROE.

18 COMMISSION STAFF: I think it's a very similar
19 situation.

20 COMMISSIONER CLARK: Can we do that, Mr. Childs?

21 MR. CHILDS: Well, can you issue a notice and go
22 to hearing on ROE? I think you probably can, although
23 in 1991 I think that was -- we questioned whether that
24 was appropriate.

25 COMMISSIONER CLARK: Let me ask it another way,

1 then. If we are primarily concerned that your return
2 on equity and perhaps your ratio of debt to equity is
3 the primary driver of the problem -- let me put it
4 differently.

5 The rate being appropriate in some way, using the
6 formula of interim rates is not going to help you.
7 Because your method for setting things subject to
8 refund ties it to the last authorized return on
9 equity. And we don't preserve any jurisdiction we
10 would have over those monies if we don't look at the
11 ROE as fast as we can and use a new level to set the
12 interim rates.

13 MR. CHILDS: Well, I think I have argued
14 something like that. But, Commissioner, this is --
15 and Commissioner Deason, as well, when you asked isn't
16 this docket one which was initiated by the staff to
17 raise a question of ROE --

18 COMMISSIONER CLARK: Let me put it this way. I
19 don't care if we do it in this docket or in Mr.
20 Shreve's docket.

21 MR. CHILDS: Okay.

22 COMMISSIONER CLARK: I will be happy to use Mr.
23 Shreve's docket.

24 MR. CHILDS: I will ask you to keep that in mind,
25 but what I'm saying is it's a neat turn. I mean,

1 FIPUG was very good at turning that, you know, to say,
2 well, we have a procedural morass because we have
3 raised the return on equity in this case. And my
4 point is it's wrong to raise return on equity in this
5 case. The solution is, well, let's go ahead and do
6 away with the stipulation and raise return on equity
7 in this case. I don't think that's a solution to me.

8 This Commission voted to approve a settlement.
9 We had hoped when it voted to approve a settlement
10 that, as it has said today, that it recognized there
11 were benefits, that it was the appropriate way to
12 address return on equity, and that there didn't need
13 to be a procedural morass, and if you wanted to go
14 forward and hear the matters raised by parties on the
15 amortization, you could. I don't think the solution
16 ought to be to say, well, you know, we don't have to
17 hear the return on equity, but now we are going to
18 hear return on equity.

19 COMMISSIONER CLARK: Let me ask you -- go ahead.

20 MR. CHILDS: You specifically, you know, you
21 heard and reacted to some of the argument, but you
22 specifically in early 1998, you heard the case, the
23 argument against these amortizations. And you have
24 heard -- the order is there, and it talks about the
25 deficiencies for nuclear decommissioning. That's not

1 cash flow. It talks about the deficiencies for
2 depreciation.

3 COMMISSIONER CLARK: You know, I have told Mr.
4 McWhirter I don't agree with his characterization of
5 that.

6 MR. CHILDS: Well, I don't think that the -- I
7 guess I disagree, Commissioner, that the solution to
8 the problem is to go to hearing only on the ROE.

9 COMMISSIONER CLARK: But that would be
10 preliminarily.

11 MR. CHILDS: Okay.

12 COMMISSIONER CLARK: How about we do this, we
13 dismiss all of these parties, we accept your
14 settlement and then we go forward with Mr. Shreve's
15 case.

16 MR. CHILDS: Do I get to talk to my client at any
17 time?

18 COMMISSIONER CLARK: Well, you know, I think
19 that's something for everyone to consider. You know,
20 if the real issue is that we look at these things, the
21 settlement seems to be good for now, but, you know, I
22 think all the Commissioners expressed some concern
23 about where your return on equity is and what the
24 appropriate ratio of debt to equity is.

25 Can we accept the settlement and say thank you

1 very much for coming, and we are going to go forward
2 with Mr. Shreve's petition. And if you can maintain
3 standing in that docket, please intervene as
4 appropriate. Can we do that?

5 MR. CHILDS: Well, I think that in order to -- if
6 you did it, I believe that they all should be
7 dismissed, all of those parties from this case. On
8 the other hand, I think that you have the time for
9 them to amend, and you have the time for them
10 potentially to appeal, so that would have to be
11 factored in for them to take their best hold into your
12 decision. Because they could amend their pleadings
13 and they could certainly challenge your decision.

14 And, once again, I think that you would want to
15 think through -- if you were approaching it simply on
16 the basis of the matter before you is a motion to
17 dismiss, what do we do, then I would think you would
18 rule the way you thought was correctly. If you are
19 taking that step in any way because of not only that
20 position but because of the concern about the
21 relationship to another docket, then I would
22 understand that there are other steps they could take.

23 COMMISSIONER CLARK: I'm not sure I understood
24 that last part.

25 MR. CHILDS: If you dismiss with the expectation

1 that all the issues would be handled in another docket
2 and someone appealed, and finds that the Commission
3 improperly dismissed for some reason, then you have
4 not eliminated that problem.

5 COMMISSIONER CLARK: I see.

6 COMMISSIONER JOHNSON: The settlement is not on
7 the table anymore, is it, or are you saying that it is
8 on the table?

9 MR. CHILDS: No, we filed a notice of withdrawal.
10 I was asking questions about could we -- that
11 Commissioner Garcia posed, and trying to answer them
12 as best I could. Under the situation and the
13 circumstances what could be done, just as with
14 Commissioner Clark about some steps. But, no, we have
15 filed a notice of withdrawal, and I have not changed
16 that.

17 COMMISSIONER JOHNSON: So with respect to that,
18 then, if we are -- you know, historically, and I guess
19 when we were looking at the adoption of the settlement
20 it was in the context of an ROE kind of investigation.
21 So without that, the question then comes back to us,
22 the whole ROE analysis that was made.

23 So Mr. McWhirter's point makes -- they make
24 logical sense to me. And, in fact, where Susan was,
25 well, why do you guys object to this, because they are

1 saying you want to get rid of the settlement, fine,
2 let it go. You know, then let's look at the real
3 issues at hand. And if the amortization is an issue,
4 maybe spin that off and put it into Public Counsel's
5 case. But let's focus on ROE, because that's where
6 you started, Commission. They have gotten rid of the
7 settlement on their own motion, so the real issue is
8 at hand.

9 How do you respond to that? I mean, I still
10 haven't heard a real response as to why that wouldn't
11 be the logical way to go. Now, if you told me, whoa,
12 hold up, the settlement is on the table, and we are
13 still talking and so your ROE concerns have been -- or
14 we have tried to address those, and there is a package
15 there, then maybe we respond differently. But maybe
16 I'm missing something, so if you could answer.

17 MR. CHILDS: Okay, I will. And I thought I had,
18 my apologies. And maybe I'm reacting to it because of
19 some of the questions which are hypothetical and ask
20 what could you do.

21 This is the way I view it as to why that should
22 or shouldn't be done, is that we have filed the notice
23 of withdrawal. That says to me that the Commission's
24 order and its proceeding as to the hearing on the
25 settlement goes away.

1 You have a docket, you have a docket that was an
2 investigation docket, and you have the authority if
3 you determine you have the appropriate information
4 before you to decide what to do. I'm not arguing that
5 you can't do that.

6 I am pointing out to you, however, that as to the
7 suggestion by Mr. McWhirter and as to your own
8 evaluation of what to do that it does not seem to me
9 to make any sense knowing that you have a proceeding,
10 a rate proceeding which the Office of Public Counsel
11 has before you, a live docket, it doesn't make any
12 sense to open an independent docket on ROE which is
13 only a part of that rate proceeding of necessity.

14 Can you do it? I suppose you can. You can do
15 it. I do not agree, however, with one of the parts,
16 or several of the parts of Mr. McWhirter's. It wasn't
17 just the simple let's open a hearing on ROE. He was
18 saying, for instance, hold all funds subject to
19 refund. I think that if that is a part of what he is
20 proposing, no.

21 In fact, that's one of the reasons that in our
22 view what the Commission did when it approved the
23 settlement made sense from that concern. And when the
24 order said we have improved the circumstances
25 substantially, the status quo substantially over what

1 it would otherwise be, they were right.

2 COMMISSIONER JOHNSON: So you are just saying on
3 the ROE issue, you are not disputing or arguing that
4 it's on the table, you are just saying that it should
5 be addressed in the context of the Public Counsel's
6 case and not bifurcated and treated separately.

7 MR. CHILDS: Yes. As a practical matter, if the
8 Commission is asking itself do we go ahead and open a
9 docket to have a hearing on ROE, I would say that you
10 would say, well, why do we need to do that, we have
11 got one already.

12 COMMISSIONER JOHNSON: And so you just don't see
13 any merit in a separate -- perhaps even a more
14 expedient process occurring? And I know Mr. Elias
15 wants to answer that, and I guess that's where I'm
16 focusing on. I think with the settlement off the
17 table, you know, the issue does become -- not that it
18 wasn't always ripe, but it becomes ripe for discussion
19 right now, because I know that several, however many
20 months or years, whenever you all brought this to us,
21 the ROE was the issue.

22 So now how do we best address it? Do we address
23 it through an expedited process, ROE unbundled and on
24 a separate track, while we continue with the Public
25 Counsel case, or -- and, Mr. Elias, I know you are

1 just itching to talk, so go ahead.

2 MR. ELIAS: The quick answer is we believe, yes,
3 that that affords the Commission --

4 COMMISSIONER JOHNSON: Yes to which?

5 MR. ELIAS: To handle the ROE issue at the
6 hearing in April that has been reserved in this
7 docket, which was the purpose for which it was opened,
8 and the recommendation that is pending before you, or
9 we believe that is pending before you now is to do
10 just that.

11 I mean, with the withdrawal of the settlement
12 agreement I think that takes us back to where we were
13 before the settlement agreement was filed, which was
14 consideration of a staff recommendation to go to
15 hearing on the question of whether or not the
16 currently authorized return on equity was appropriate
17 and whether or not the current capital structure was
18 appropriate.

19 COMMISSIONER JOHNSON: Why doesn't it makes sense
20 -- finish that thought, but why doesn't it make sense
21 to do it the way that Mr. Childs would recommend?

22 MR. ELIAS: The question is protection of those
23 revenues during the interim from the time that a new
24 return on equity and/or capital structure is
25 established. And, again, that is not a final step.

1 That ultimately depends on the outcome of the full
2 rate case proceeding.

3 COMMISSIONER JOHNSON: Okay.

4 MR. ELIAS: The one thing that I need to mention
5 is that FPL has moved to dismiss the rate case, and
6 that is one of the things that we are going to be
7 taking up at the next agenda. So, you know, from the
8 comments that Mr. Childs has made here, it almost
9 seems like FPL is conceding that we are going to go
10 forward with that proceeding, and, you know, I'm just
11 curious if they are going to withdraw the motion to
12 dismiss the case or --

13 COMMISSIONER CLARK: There is a motion to dismiss
14 Public Counsel's case?

15 MR. ELIAS: Yes.

16 MR. CHILDS: That is not correct.

17 COMMISSIONER DEASON: What is not correct?

18 MR. CHILDS: We have not moved to dismiss that
19 case. We have moved to dismiss as to parts of the
20 case, we have not moved to dismiss the case.

21 COMMISSIONER JACOBS: What is your response to
22 the whole issue -- I understand that it would not be
23 comfortable for you to preserve jurisdiction over
24 revenues, but given that that is an issue, how would
25 you respond to it?

1 MR. CHILDS: The going forward with the hearing
2 in April to have a hearing and --

3 COMMISSIONER JACOBS: No. Under your scenario,
4 but addressing that issue of our jurisdiction over any
5 funds that might prove to have been collected under an
6 inappropriate equity ratio.

7 MR. CHILDS: Well, I guess one of the things that
8 I would do, and this is part of what we filed in a
9 motion to dismiss, we are talking about rates and
10 rates subject to refund and ROE and everything else.
11 But what we are not, I think, focusing on is that the
12 expenses, the amortization expenses that you approved
13 in your settlement begin in the year 2000, not 1999.

14 So when we talk about expenses for setting rates,
15 you have approved the expenses in 1999, through 1999,
16 with your order that was entered as final, not
17 appealed, that came out in early 1998. Therefore, and
18 Public Counsel has raised this, they have raised the
19 question of a challenge to expenses, amortization
20 expenses.

21 I don't think that you can say, however, well, we
22 are going to have a hearing on ROE, we are going to
23 hold revenue subject to refund. We don't know what it
24 is yet, and we are not sure what we are going to do
25 about the expenses that we just authorized a year ago.

1 I don't think you can just say, well, you know, maybe
2 we change our minds and make the revenues subject to
3 refund.

4 And keep in mind, too, that those expenses are
5 items that this Commission previously found were
6 appropriate, and some of them, for instance, a
7 substantial amount go to items like nuclear
8 decommissioning where the money is put in a fund for
9 the customers' benefit. So, you know, it's not like
10 there is just a lot of dollars floating around there
11 for someone to attach jurisdiction to, I don't think.

12 And the question of can you have a hearing, I
13 think, you know, we have talked become it, and I said,
14 yes, but it doesn't make sense to me to do that. You
15 have a pending case that the Office of Public Counsel
16 has initiated. Can you do anything more in terms of
17 attaching jurisdiction to dollars? I don't see how
18 you can, but clearly you would want to take an
19 independent view of that.

20 COMMISSIONER CLARK: Wait a minute. I guess I
21 missed something. Explain to me again why you don't
22 think we can. And I don't care what docket we do it
23 in, frankly. I mean, I don't want to get hung up on
24 do you do it in this docket or do you do it in Mr.
25 Shreve's docket. You don't think we can attach

1 jurisdiction to some revenues.

2 MR. CHILDS: Well, first of all, I asked the
3 question of if you set a return on equity and you had
4 a hearing and you set a return on equity and you said
5 it's going to be, let's say, 11.2 percent, which is
6 what we happen to agree to in our settlement. Let's
7 say that's what you did. Then what do you do next?
8 What do you do next? I don't know.

9 COMMISSIONER CLARK: Well, then we say beginning
10 today, anything in excess of that will be subject to
11 refund as we proceed -- and we will proceed with the
12 case and we will make that determination at the end of
13 the case.

14 COMMISSIONER DEASON: But there has to be a
15 proceeding to determine what is to be placed subject
16 to refund. I mean, you just don't -- when you
17 magically just say come up with a number of 11.2,
18 there is not a magic number in dollars that magically
19 appears and says this is what is subject to refund.
20 There has to be a determination of what that is, and
21 it seems to me it has to be a due process afforded to
22 determine that.

23 COMMISSIONER CLARK: And that's what I expected
24 the staff envisioned.

25 COMMISSION STAFF: That's what we envisioned, and

1 we could use the interim statute, which would say look
2 at the last 12 months of earnings and use the new set
3 ROE as a measure of how much they are over.

4 COMMISSIONER CLARK: It's a reverse make whole, I
5 think. It has been so long, I can't remember.

6 MR. CHILDS: And I don't think you can do that.

7 COMMISSIONER CLARK: Why not? I guess that's not
8 coming clear to me. You're saying because the
9 settlement that is final took care of that, is that
10 right?

11 MR. CHILDS: Do you want to argue this?

12 COMMISSIONER CLARK: You know, I apologize if I
13 have just, you know, there is just -- I'm just not
14 understanding, but I'm not.

15 MR. CHILDS: You know, I guess I'm puzzled, too.
16 I thought that, you know, you have a petition by the
17 Public Counsel that raises the question of what is the
18 -- of whether the rates are reasonable and
19 appropriate, and I --

20 COMMISSIONER CLARK: Well, I'm willing to do it
21 in that case.

22 MR. CHILDS: Pardon?

23 COMMISSIONER CLARK: I'm willing to take these
24 actions in that case.

25 MR. CHILDS: Commissioners, I don't want to

1 dissuade you. If you want to take the actions in that
2 case, okay. I'm trying to respond to, you know,
3 answer as to whether I think it's appropriate. I
4 don't think it's appropriate. I have a pending motion
5 that Jack has not responded to in that case on a
6 related issue.

7 COMMISSIONER CLARK: And my question is are you
8 saying that the expenses for '99 have already been
9 agreed to, that order is final and there is nothing
10 extra to put subject to refund, is that --

11 MR. CHILDS: That is part of what we have raised
12 in Public Counsel's case.

13 COMMISSIONER CLARK: Okay.

14 MR. SHREVE: And Public Counsel will disagree
15 with that. I understand where Mr. Childs is coming
16 from.

17 MR. CHILDS: He understands the argument, but I
18 cannot -- I mean, I feel like that -- I don't know
19 that you would rely on what I said anyway as to that,
20 but it's a pending matter that is going to be
21 presented to you separately.

22 I would come back, Commissioner, and say under
23 the circumstances when you have a case that has that
24 -- even that has that question there, that I don't
25 understand why you would pursue a separate proceeding.

1 But if you decided to, then we would have to deal with
2 that --

3 COMMISSIONER CLARK: It wouldn't be a separate
4 proceeding, it would be part of that proceeding. And
5 now I'm understanding your answer would be that we
6 have already agreed to that, so there is nothing
7 further for you to do in terms of interim action.

8 I concede that he may be wrong, Mr. Shreve. I
9 concede that. But I understand that --

10 MR. SHREVE: I just don't want the arguments
11 being made at this point when we have already in our
12 petition faced that issue, raised it, and said in
13 spite of these decisions, because we were put in there
14 in a specific order saying it did not affect our
15 rights. Those arguments will come in the future.

16 That is a different argument than the ROE. This
17 is a totally -- I understand where Mr. Childs is
18 coming from, I disagree with him, he disagrees with
19 me, and that will all fall out.

20 MR. CHILDS: And I have tried when I have
21 commented on it to not say anything about it that is
22 not in my motion that he already has, but I can't go
23 -- and neither of us can really go much further than
24 that.

25 CHAIRMAN GARCIA: Okay. Mr. Laface.

1 MR. LAFACE: In the interest of brevity and being
2 less offensive, Sean Frazier (phonetic) from our
3 office will make our argument.

4 CHAIRMAN GARCIA: Mr. Frazier.

5 MR. FRAZIER: Thanks, Commissioners. Really, we
6 don't have too much to add except for some brief
7 points about procedure. We agree that there was a
8 docket opened by the PSC staff that investigated
9 return on equity and equity ratios, and that was an
10 event that started happening back in October.

11 Through that investigation, and through
12 cooperation with FPL, they must have looked at their
13 books and understood what appropriate levels of equity
14 ratio and return on equity should be. So to claim
15 that there is some prejudice with going forward on a
16 hearing date that is now occurring some four or five
17 months later winding up with a hearing in April might
18 be misplaced.

19 You have the authority to either agree to accept
20 that withdrawal of settlement offered by FPL or not.
21 You have the Lake County case mentioned by Mr. Childs
22 and you have the power to go either way. We would
23 recommend that the most logical way to proceed is to
24 proceed how you started, continue an investigation
25 into return on equity and equity ratio.

1 COMMISSIONER DEASON: So you are saying we should
2 accept the withdrawal?

3 MR. FRAZIER: You should. The amortization plans
4 and other additional items Mr. McWhirter discussed
5 were in part the reasons our client and perhaps others
6 intervened in this docket, but the equity ratio and
7 return on equity were, as well. So we would like to
8 participate as full parties through what sounds like
9 is the only remaining contentious issue, equity ratio
10 and return on equity. Thank you.

11 CHAIRMAN GARCIA: Go ahead.

12 MR. BERTRON: Andy Bertron on behalf of Georgia
13 Pacific and Florida Alert. Just three quick points.
14 If I understand FPL's arguments, it appears to be that
15 because they proposed a settlement there should be no
16 hearing and now that they are withdrawing the
17 settlement there should be no hearing.

18 Secondly, the reason to go ahead with the hearing
19 is that procedurally we are in a much simpler and
20 quicker posture. If they withdraw their settlement
21 proposal and you allow them to withdraw their
22 settlement proposal, we are back to staff's initial
23 recommendation.

24 That request for hearing is still there. There
25 has been analysis that has been done. The parties are

1 here, the schedule is there, we have hearing dates and
2 the issue is teed up. It's the quickest and most
3 expedient way to address the issue.

4 Finally, my third and last point, I don't want to
5 belabor this point about stranded costs, but I am
6 concerned to the extent that you are considering
7 somehow not allowing FPL to withdraw its settlement
8 offer or allowing in whatever manner down the road any
9 further accelerated depreciation or amortization. The
10 reason this issue comes up, without at all questioning
11 your good reasons for doing what you did, is that FPL
12 in other statements and other places has said that
13 this is about accelerated depreciation to reduce
14 stranded costs because competition is down the road.

15 Now, they made those statements to investors.
16 They made those statements to equity analysts, and
17 their initial petition was styled, in re, petition to
18 establish an accelerated depreciation plan to avoid
19 stranded costs. Now, because they have made those
20 statements, I think it is reasonable for us to start
21 to question regardless of what your good reasons for
22 doing what you did, what is actually going on in FPL's
23 books. And that is our major concern with these
24 accelerated depreciation plans.

25 CHAIRMAN GARCIA: Okay. Mr. Shreve, you've got

1 nothing to add, do you?

2 MR. SHREVE: The only thing I would have to add
3 is one disagreement that I have with the statement
4 that you made earlier, that you knew Mr. McWhirter and
5 he would be short-winded, so I would have to try and
6 correct that.

7 CHAIRMAN GARCIA: I just said he would be short.
8 All right. Well --

9 COMMISSIONER CLARK: Let me just ask a question.
10 Has there been consideration of the notion -- well,
11 maybe you have answered the question, Mr. Childs.
12 This settlement really begins having effect in the
13 year 2000, is that right?

14 COMMISSION STAFF: No.

15 COMMISSIONER DEASON: It has effects in 1999.

16 COMMISSIONER CLARK: Well, I guess let me just
17 ask this sort of question. It seems to me that one of
18 my concerns is that one of the drivers of this is the
19 appropriate ROE given current financial conditions and
20 the appropriate debt equity ratio.

21 Was there any thought given to sort of going
22 ahead with looking seriously at the suggestion from
23 Mr. Shreve that we look at rates, but rather than
24 doing a -- having a hearing to determine ROE and then
25 putting rates subject to refund, that we kind of

1 accept the settlement in lieu of that kind of interim
2 rate reduction, or I guess you don't do rate reduction
3 when it's a reverse make whole, but you just handle --
4 you let that consideration be handled by the
5 settlement and then go to a full rate case.

6 MR. DEVLIN: If I understand what you're saying,
7 let the settlement be sort of a stop-gap for 1999 --

8 COMMISSIONER CLARK: Right. Thank you.

9 MR. DEVLIN: -- in lieu of putting money subject
10 to refund. There are two different ways of dealing
11 with a potential overearnings situation. I still
12 think that the PAA order that was protested to be long
13 term in the public interest.

14 COMMISSIONER CLARK: You need to talk louder.

15 COMMISSION STAFF: I still believe that the
16 settlement that they proposed and we recommended
17 accepting is still in the public interest. It's still
18 a good plan.

19 COMMISSIONER CLARK: Uh-huh.

20 COMMISSION STAFF: And I think you could probably
21 do both. Of course, you would have to get all the
22 parties on board, and I'm not sure if that's -- you
23 will probably have to talk to Mr. Shreve about that.
24 But I could see that it could be a viable stop-gap
25 measure to get us through 1999.

1 COMMISSIONER JOHNSON: I'm sorry, Tim, I'm still
2 not understanding. The settlement --

3 COMMISSION STAFF: What Susan Clark was
4 suggesting, I believe, is to re-enact the settlement,
5 the \$140 million additional amortization, reducing the
6 ROE to 11.2, freezing the equity ratio through 1999,
7 and then start a rate case. I think that is what you
8 are suggesting, 1/1/2000.

9 COMMISSIONER CLARK: Well, no, I think we would
10 go forward with the case now.

11 COMMISSION STAFF: Go forward with the case now
12 with the anticipation that something would change
13 1/1/2000.

14 COMMISSIONER CLARK: Instead of doing anything in
15 the interim, you just have the whole case and take
16 care of it at the end. In the meantime, the
17 settlement is in effect. I don't know if you can do
18 it. I mean, I just don't know.

19 MR. SHREVE: I'm not sure exactly what you are
20 talking about. If you're talking about a stop-gap
21 measure through 1999, and having to do only with the
22 ROE and not reducing the rates, I don't go along with
23 it at all.

24 Because the ROE docket did take care of two
25 things, the ROE and the capital structure. But it did

1 not address the reduction in rates for the customers,
2 and that's where we are in our docket. And as far as
3 delaying that through 2000, no way.

4 COMMISSIONER CLARK: No, no, I am not -- the
5 proceeding would begin now, but instead of doing --
6 what we would do is we wouldn't reduce rates in the
7 interim, we would hold the revenues subject to refund.

8 MR. SHREVE: Based on the new hearing or based on
9 the settlement?

10 CHAIRMAN GARCIA: I think what Commissioner Clark
11 is saying based on the settlement. In other words, we
12 take the settlement now and if we go to a rate case
13 with you, we begin that process of a rate case and
14 this settlement has effect until we conclude the rate
15 case. I know that you have requested interim and
16 other issues in that, but that this would hold effect.
17 That this would be the starting off point, the
18 settlement.

19 MR. SHREVE: So that you would, in effect, either
20 get their approval or dismiss the parties that
21 protested the ROE?

22 CHAIRMAN GARCIA: I would obviously have to get
23 them to say it was all right, again, but I don't think
24 Mr. Childs is going in that direction anyway, so --
25 and then I would send these gentlemen home and then we

1 would take up your case.

2 COMMISSIONER CLARK: With the understanding that
3 to the extent they are appropriate parties in the
4 case, they are welcome to be in the case.

5 CHAIRMAN GARCIA: Absolutely.

6 COMMISSIONER CLARK: And I'm not at all sure that
7 that is the right way to go.

8 CHAIRMAN GARCIA: Is that even -- Mr. Childs, you
9 are just sitting there hoping that we will all forget
10 that we are even here, but is this possible?

11 MR. CHILDS: I don't know.

12 CHAIRMAN GARCIA: Should I give you some time to
13 ask your client if it's possible?

14 MR. CHILDS: Well, yes. But I also think, you
15 know, that there is an impact on Mr. Shreve's case, as
16 well, and I don't want to presume that. And it's not
17 that I just don't want to presume it, I'm reluctant to
18 even attempt to argue it at this point because it's
19 sort of I would work something out and then we would
20 end up with him either understanding or
21 misunderstanding it.

22 CHAIRMAN GARCIA: You know what, let's do this,
23 we have been going for awhile now. Let's take a ten
24 minute break, if that's all right with all of you. So
25 we will be back here at 11:10. Thank you.

* * * * *

1
2 COMMISSIONER JACOBS: Well, Commissioners, I
3 think everyone has spoken. Mr. Childs, did you have
4 anything to add that you wanted to add?

5 MR. CHILDS: Well, I would like for you to know
6 this position of ours, because we discussed what we
7 might do and you have our notice of withdrawal. Our
8 position would be that we think that the settlement is
9 appropriate. We think the settlement is appropriate.

10 We think that if you did dismiss the parties
11 today, or if they agreed that we weren't going forward
12 with the challenges to ROE and equity ratio in this
13 proceeding, then we would go forward and we still have
14 Mr. Shreve's case which is an independent matter.

15 I don't want you to misunderstand. We think that
16 the settlement is appropriate and it is that morass
17 that I spoke to that we are attempting to avoid. Some
18 of which in our questioning I think we have indicated
19 the scope of that problem.

20 CHAIRMAN GARCIA: Let me ask a question, I might
21 have missed it. Are you saying that you believe the
22 settlement is good, would you -- could we accept the
23 settlement, send these gentlemen home, and then take
24 up any of those issues -- and these gentlemen may not
25 be willing to go home, but could we accept the

1 settlement and then go on to Mr. Shreve's case?

2 MR. CHILDS: Could you?

3 CHAIRMAN GARCIA: No. I mean, now I can only do
4 it if you are willing to do it.

5 COMMISSIONER CLARK: I think what you are asking
6 is if FPL is willing to leave it on the table, can we
7 accept it notwithstanding what the parties before you
8 might say and proceed with the rate case.

9 CHAIRMAN GARCIA: That is precisely it.

10 MR. CHILDS: What I told you before is the only
11 fly in the ointment that I know unless the parties are
12 willing to agree to withdraw, and that is that to the
13 extent they have made a proper showing and are proper
14 parties as to a hearing on the amortization portion,
15 yes, except for that you could go forward.

16 And I think one of the aspects, you know, is to
17 question -- they have heard the argument and some of
18 them have had suggestions, is that what they want to
19 do, you know, so we know before whether we have an
20 argument in the making. But I think, you know, that's
21 where we were with the motion to dismiss.

22 I hoped and had wished on this case that we could
23 have gotten the motion, you know, to you for
24 consideration earlier before some of the other
25 positions started to solidify as to where we were

1 going in the case. I think that the settlement is
2 what we should have done. I think you were right when
3 you approved it, and I think you have said that again
4 today, that it was an appropriate action.

5 CHAIRMAN GARCIA: I still don't know if I got my
6 answer.

7 MR. McWHIRTER: Would you like a response from
8 me?

9 CHAIRMAN GARCIA: I always look forward to your
10 responses, Mr. McWhirter.

11 MR. McWHIRTER: I would think as long as the
12 amortization issue is a live issue that can be
13 discussed in the rate case, I wouldn't have any
14 problem to spinning it into that case and letting you
15 go forward with the settlement. But if it is chiseled
16 in stone and binding without any analysis of the facts
17 or the justification for the major increase in the
18 amortization cost, then I would be very concerned.

19 CHAIRMAN GARCIA: Well, then, correct me if I'm
20 wrong, isn't it all open in a rate case? Aren't we
21 looking at all of these issues in a rate case? The
22 only thing I guess I'm discussing is accepting this
23 just in case we don't go forward with a rate case,
24 which I guess is a possibility, right?

25 MR. McWHIRTER: I would think so.

1 CHAIRMAN GARCIA: I don't want to give it any
2 credence one way or another, but am I correct in that
3 analysis?

4 MR. McWHIRTER: From what I heard here today, Mr.
5 Childs has questioned the ability of the rate case to
6 address the rapid write-off.

7 CHAIRMAN GARCIA: Is that what you are saying,
8 Mr. Childs?

9 MR. CHILDS: I'm saying that if they wanted to
10 retain their right to question the write-off in this
11 proceeding, that I am concerned about answering that
12 you can just tell them, no, they cannot. On the other
13 hand, as to what is suggested about it being a live
14 issue, please understand, if you are going to
15 approve --

16 CHAIRMAN GARCIA: But they can't give up their
17 rights in another docket here. The only rights that
18 we would be asking of them, and that you seem to be
19 asking that you are willing to have the settlement in
20 place if these gentlemen do not assert their rights,
21 and then these are -- everything is open, I guess,
22 when we go to the rate case, right?

23 MR. CHILDS: Yes, but you can't take half of the
24 settlement is what I'm saying. I don't think you can
25 say, well, I want to talk about this aspect of the

1 settlement and challenge it, and then leave you stuck
2 with another part of it.

3 I mean, in other words, if we have -- for
4 instance, we agreed to reduce our return on equity,
5 and I'm saying that you should not for purposes of
6 interim, say I will take your reduced return on equity
7 for purposes of setting interim rates as part of the
8 settlement, but then I will leave as a live issue
9 whether you get any expenses and kind of whipsaw you
10 that way.

11 I don't think that ought to be done. If you want
12 to raise a question of in the future we will address
13 prospective application for these people, prospective
14 application, what we should do with the amortization,
15 then that's fine.

16 COMMISSIONER CLARK: Your's was a quid pro quo.
17 You agreed to the lower equity if it had with it the
18 amortization.

19 MR. CHILDS: Correct.

20 COMMISSIONER CLARK: I have a suggestion. Can we
21 do this, we accept -- we acknowledge their withdrawal
22 of the settlement, which makes the intervention, I
23 guess, moot. We close this docket. We proceed with
24 Mr. Shreve's docket, and we use the hearing dates in
25 April to determine the equity and the amount, and that

1 would be what we would use to set the amount subject
2 to refund. But to make it clear to the parties that
3 they could reach a settlement with respect to that
4 interim issue and they could reach a settlement with
5 regard to the whole ball of wax if they wanted to.

6 MR. ELIAS: The one issue that is raised in
7 Public Counsel's petition that was alluded to that has
8 a direct bearing on this proposal is that Public
9 Counsel has suggested that the terms of the order that
10 was issued in early 1998 provides that the existing
11 plan can be excluded from the consideration of the
12 calculation of the amount that will be held subject to
13 refund under the interim statute.

14 And that's one of the aspects to the petition
15 that Florida Power & Light has objected to. And my
16 concern is that you may be facing the same issue next
17 time again, whether or not the plan should remain in
18 effect during the pendency of the case.

19 COMMISSIONER CLARK: I don't understand.

20 COMMISSIONER DEASON: What I understand,
21 Commissioner Clark -- that would have no bearing on
22 what Commissioner Clark just suggested. She just
23 simply suggested that we acknowledge the withdrawal,
24 that by acknowledging the withdrawal the settlement
25 goes away, the protests go away, and we basically fall

1 back to staff's original position and recommendation
2 that we address ROE and equity ratio, and that we do
3 that in the April hearings.

4 And that in the meantime if the parties can agree
5 to something on interim, so be it. But that this
6 would have no impact whatsoever on the interim.

7 MR. ELIAS: I'm sorry, I misunderstood.

8 COMMISSIONER DEASON: Am I characterizing it --

9 COMMISSIONER CLARK: Yes.

10 MR. McWHIRTER: (Inaudible, microphone not on.)

11 COMMISSIONER DEASON: This is what I understood
12 -- Commissioner Clark, why don't you explain, because
13 I'm just trying to explain it as I understand your
14 suggestion.

15 COMMISSIONER CLARK: That we acknowledge the
16 withdrawal of the settlement, that in effect makes the
17 protests moot. That we then use the dates in April to
18 address appropriate ROE, and I would assume it might
19 include the appropriate debt/equity ratio. And it
20 would seem to me then we would determine whether or
21 not we need to -- having done that, then we would look
22 at that and see if we need to capture (inaudible,
23 microphone not on.)

24 COMMISSIONER DEASON: Well, let me ask a question
25 then. You said and we would determine if any amounts

1 should be held subject to refund. Would that be done
2 at the April hearing or would that be done sometime
3 subsequent as part of Public Counsel's petition?

4 COMMISSIONER CLARK: (Inaudible, microphone not
5 on.)

6 COMMISSIONER DEASON: You would simply utilize
7 the new ROE, whatever that amount is. It could be
8 higher, it could be lower than what it is right now.

9 MR. ELIAS: Public Counsel has petitioned for an
10 interim decrease. Pursuant to the interim statute,
11 the Commission needs to take action on that request
12 within 60 days. That is March 19th or March 20th,
13 sometime in that time frame.

14 COMMISSIONER CLARK: (Inaudible, microphone not
15 on.)

16 COMMISSIONER DEASON: You know, I understand what
17 you are trying to accomplish, but it seems to me that
18 we have got a vehicle, and that train is starting to
19 leave the station already because we are already
20 talking about 60-day time limits and things. Why
21 don't we just use that vehicle and use -- there is an
22 established procedure. I know there is going to be
23 debate as to the merits of the issues, what expenses
24 are included or excluded, but there is a well-defined
25 procedure to address all of those things.

1 And Mr. Shreve has given us that vehicle, why
2 don't we just utilize it. Acknowledge this
3 withdrawal, close this docket, and we just all can
4 concentrate on Mr. Shreve's petition and go forward.

5 COMMISSIONER CLARK: Well, would you still
6 suggest that we use the April dates?

7 COMMISSIONER DEASON: No, I would not, and let me
8 tell you why. Because we are then subjecting further
9 uncertainty into Mr. Shreve's petition. He has a
10 process in place, he wants to use the reverse make
11 whole and use the last authorized return on equity,
12 and it will capture some -- I assume it will capture
13 some funds. If he makes his showing the way he
14 believes that he will, it will capture some funds, and
15 we will put those subject to refund through normal due
16 process procedures.

17 What I hear staff saying, and I don't fault them
18 for it, but they are saying -- and they said it way
19 back in October. That was way before, though, we knew
20 that there was going to be a subsequent petition
21 filed. Is that we need to look at this company's ROE
22 and its equity ratio. And I applaud them for doing
23 that. It's something that needed to be looked at.

24 In the meantime there were negotiations. We
25 encouraged those negotiations. We thought they were

1 fruitful, but there were some faults found with that.
2 But if we now to try to have a quick and dirty hearing
3 to set an ROE then to use to put money subject to
4 refund, I think we are unnecessarily complicating the
5 process we already have in Mr. Shreve's petition.

6 And I'm also concerned about -- perhaps we have
7 done that before and that's fine, but I'm concerned
8 about the precedent. What if the situation were
9 reversed? What if this company were underearning, and
10 this company was indicating that their authorized
11 return on equity was below our market return on equity
12 and they were coming in with a petition saying in
13 three weeks, Commission, I want a quick and dirty
14 hearing to raise my ROE so I can file an interim case
15 and get a higher interim increase. How would we look
16 at that?

17 I think we would look on it probably negatively,
18 that that is not the appropriate procedure to do.
19 You've got an authorized rate of return, go and file
20 your rate case, and if you can prove you are entitled
21 to any interim increase, so be it. But we are not
22 going to give you a quick and dirty hearing to
23 increase your interim increase. But we want to do it
24 in the reverse, and I think we have got to be
25 consistent. And that's part of the problem I have.

1 COMMISSIONER CLARK: But, Commissioner Deason,
2 I'm comfortable with what you suggested.

3 CHAIRMAN GARCIA: If you make a motion, I think
4 you've got a second.

5 COMMISSIONER DEASON: I would move that we simply
6 -- I'm willing to hear from staff before I make a
7 motion.

8 MR. ELIAS: The only concern that I have with
9 that procedure is the requirement under the statute
10 that we take the recommendation concerning the interim
11 to the March 16th agenda to meet the 60-day clock. I
12 mean, that's part of the mix.

13 COMMISSIONER CLARK: You're going to have to.

14 COMMISSIONER DEASON: The only thing I'm
15 suggesting is that we acknowledge the withdrawal. We
16 made a good faith effort, and I want to applaud the
17 company and the staff. The intervenors objected to
18 it, and that is certainly their right and I don't
19 fault them for that, and they are coming forward and
20 expressing that. We acknowledge the withdrawal, so it
21 goes away. The protests go away.

22 Now, I understand there is no objection from any
23 of the intervenors that the settlement just go away.
24 That we not have any type of hearing in April, and all
25 the parties would pursue their interests in Mr.

1 Shreve's docket.

2 MR. McWHIRLER: (Inaudible, microphone not on) --
3 and there is a proceeding in place to deal with that.

4 COMMISSIONER CLARK: What proceeding is that?

5 MR. McWHIRTER: The proceeding that is here
6 before you in Item 12 today.

7 COMMISSIONER DEASON: As I understand it, you
8 filed in protest of a stipulation, you didn't file to
9 reduce this company's ROE. And you are willing to do
10 that at any time. You can file that separately or you
11 can file it as part of Mr. Shreve's petition, but you
12 have not requested that.

13 The only thing is you tried to expand the scope
14 of the settlement by objecting and then trying to
15 raise issues addressing these matters. And I'm not so
16 sure that gives you standing to do so. I don't see
17 how us accepting the withdrawal is going to violate
18 your due process of an issue that you didn't raise to
19 start with.

20 MR. McWHIRTER: Well, if you accept the rapid
21 write-down --

22 COMMISSIONER DEASON: Well, I object to that
23 terminology of rapid write-down. The question is what
24 is the appropriate amount of expense that should be
25 booked on this company's books. Whether it be rapid

1 or unrapid, I don't care. It's the appropriate
2 amount.

3 MR. McWHIRTER: If you chisel in stone the
4 appropriate amount as determined in the PAA, and the
5 parties are estopped from arguing that in the rate
6 case, then we have been denied our opportunity to be
7 heard on that issue. And I think that's precisely
8 what Mr. Childs is saying. If you go forward on
9 that --

10 COMMISSIONER DEASON: My motion has nothing to do
11 with -- the settlement is completely rejected. There
12 is no settlement. There is no amortization amounts,
13 there is no reduction in ROE, there is no cap on the
14 equity ratio. There is nothing. It simply goes away.
15 We will find ourselves where we were before, and that
16 we are probably -- we are going to use Mr. Shreve's
17 vehicle to go and answer these questions.

18 MR. McWHIRTER: How do you proceed to protect the
19 revenues if you haven't had a proceeding for the ROE
20 and a determination on that subject? Can you do that
21 in the interim case?

22 COMMISSIONER DEASON: It is just as Mr. Shreve
23 suggested. I understand he has a process in place.
24 He wants to use the reverse make whole process, which
25 is basically interim in reverse, and use the last

1 authorized rate of return as the benchmark, and to
2 identify -- I understand he is questioning some of the
3 expenses that he considers to be inappropriate for
4 purposes of putting money subject to refund, so there
5 should be more money placed subject to refund.

6 And all of that will be discussed and a decision
7 will be made. And we may agree or disagree. I'm not
8 trying to presuppose what the outcome of that would
9 be.

10 MR. McWHIRTER: And as long as the appropriate
11 expenses are a legitimate subject matter for the rate
12 case because they haven't been resolved, I don't have
13 any problem with that.

14 CHAIRMAN GARCIA: I don't think any of it has
15 been resolved, correct? We are just going to a rate
16 case, Mr. Shreve's rate case, correct?

17 COMMISSIONER CLARK: Yes. We are in effect
18 abandoning a separate docket and just going to a full
19 blown rate case. I would second that motion.

20 CHAIRMAN GARCIA: Yes, Tim.

21 MR. DEVLIN: I just am a little uneasy, because
22 I'm not sure what the outcome would be using Mr.
23 Shreve's pleading for setting interim. I think there
24 are some questions there, and I don't have the answer.
25 And we are going to deliberate and file a

1 recommendation.

2 I would just like to plead with the Commission to
3 keep the option open of using the April hearing dates
4 for a return on equity and equity ratio. That
5 possibility could also be that it would be used to
6 place money subject to refund in that case with
7 respect to the April 12th hearing date. Because I'm
8 not sure how it is going to play out with --

9 COMMISSIONER DEASON: That is simply between you
10 and the Chairman. If you want to reserve hearing
11 dates for Mr. Shreve's petition and you can get the
12 Chairman to do it for that docket, that is between you
13 and him. I don't understand what you need the
14 Commission today to act on that.

15 MR. DEVLIN: What I was trying to say is -- I
16 understand what is on the table right now is we would
17 be closing out this docket, but we would be using the
18 hearing dates to deal with return on equity and equity
19 ratio.

20 COMMISSIONER CLARK: Well, no, I was willing to
21 follow -- I think Commissioner Deason has suggested an
22 appropriate way, a way to handle it. That we would
23 acknowledge the withdrawal of the proposed settlement.
24 I don't think we need to close this docket now, but I
25 guess we should close the docket and then we would

1 pursue the appropriate action in the rate case with
2 Mr. Shreve.

3 COMMISSIONER JOHNSON: (Inaudible, microphone not
4 on.) -- currently that you or Bob said something
5 about that you agreed that we should do them
6 concurrently because you had some concern that if we
7 didn't there was a problem protecting the revenues in
8 the interim. And I wanted to understand why Mr.
9 Shreve's vehicle wouldn't be sufficient to protect --

10 MR. DEVLIN: Well, mainly because, and we haven't
11 thoroughly analyzed how that would work, but it would
12 be predicated upon the current authorized rate of
13 return. The top of the range is 13 percent right now.
14 And then he has some ideas on what kind of expenses
15 should be backed out and how the calculations should
16 work.

17 I guess my only uneasiness is because we would be
18 using the last authorized return, which I think is
19 excessive, 13 percent, and I would want to keep open
20 the option of coming back March 16th and suggesting
21 that we hold -- use the April 12th hearing dates to
22 reset ROE for interim purposes in the event that Mr.
23 Shreve's vehicle isn't adequate.

24 COMMISSIONER CLARK: I think what Commissioner
25 Deason is suggesting is we don't have to decide that

1 now. All we have to really decide is what is before
2 us.

3 CHAIRMAN GARCIA: But Tim makes a valid point.
4 He is saying --

5 COMMISSIONER CLARK: Let me just say that I don't
6 think that precludes the staff from making that kind
7 of recommendation once they have looked at what Jack
8 Shreve has suggested. I don't think they are
9 precluded from saying we still think you should do a
10 limited proceeding on this and then we will deal with
11 that issue at that time.

12 CHAIRMAN GARCIA: I'm sorry, what is the issue
13 you just --

14 MR. DEVLIN: It's really timing, because if we
15 wait until March 16th then we are talking about, what,
16 three weeks. Is that enough time?

17 COMMISSIONER CLARK: Well, I think you should
18 talk to the Chairman about holding that date.

19 COMMISSIONER DEASON: What happens if we go
20 through that process, we have a quick and dirty
21 hearing on equity, and you have to have due process
22 and you have to file testimony, have a hearing, file
23 briefs, set it for a recommendation. I assume that
24 decision could be appealed, and if it is appealed,
25 well, then is it not effective. In the meantime, what

1 do we do to put money subject to refund?

2 I think Mr. Shreve has answered that question.
3 We use the last authorized rate of return, he makes a
4 showing what he thinks appropriate expenses are, the
5 company makes their showing what the appropriate
6 expenses are. We address the issues and we make the
7 determination and we go forward, and we do not have
8 this unnecessary complication.

9 I understand staff's motivation, but I think you
10 need to ask the question are we unnecessarily
11 complicating it, and perhaps not getting an answer in
12 time to go ahead and take action quickly. Which I
13 think Mr. Shreve's petition, since there is a 60-day
14 clock on that, we know we have got to make a decision
15 quickly.

16 MR. SHREVE: Commissioner, you are exactly right.
17 We are not saying that the ROE should not be lower.
18 We feel, in fact, it should be lower. Statutorily we
19 are limited to the established return on equity in the
20 top of the range, which we helped establish back in
21 the early '80s, and this whole procedure then became
22 law. We are limited to that. That's where we are
23 going, that's what the statute says. And not that we
24 don't feel it shouldn't be lower, but we don't have
25 that option at this point.

1 COMMISSIONER CLARK: Yes. Commissioner Deason,
2 if you are willing to make your motion, and I don't
3 think that precludes the staff from making a different
4 -- you know, once you have looked at the numbers, to
5 suggest yet again that we should look at ROE and then
6 we will deal with that issue.

7 COMMISSIONER DEASON: And I agree with that. I'm
8 not saying that that is something that we are shutting
9 the door to. Obviously, staff needs to look at that
10 in conjunction with, I guess, the recommendation you
11 are going to be filing for the 16th agenda. And you
12 are free to recommend whatever you think is
13 appropriate. Considering the time clock has already
14 been triggered by Mr. Shreve's petition, and what is
15 the quickest and fairest way to do the appropriate
16 thing, I'm willing to look at that.

17 CHAIRMAN GARCIA: So what happens is if Tim has
18 this concern then he can still use Mr. Shreve's
19 petition to bring this up, and we still have those
20 hearing dates open. Is that all right with staff?

21 MR. DEVLIN: Great.

22 MR. SHREVE: I'm not sure what you just said.

23 CHAIRMAN GARCIA: If Mr. Devlin still has a
24 question about the ROE and where it should be, and he
25 doesn't feel that your petition properly addresses it,

1 he still has those hearing dates to bring it up on his
2 own motion that we should address this.

3 MR. SHREVE: Well, if Mr. Devlin feels that my
4 petition didn't properly address it, he is wrong. And
5 so we statutorily are limited to put in our petition
6 what we did.

7 Now, if Mr. Devlin wants to move forward and
8 change some ROE, we would like to also have some
9 change in rates, which has not been done so far.
10 Whatever Mr. Devlin and the staff want to do, let them
11 proceed with it, but not interfere with my petition.

12 CHAIRMAN GARCIA: Well, I don't think Mr. Devlin
13 would even consider interfering with your petition,
14 and perhaps it's my inappropriate stating of his
15 position, Mr. Shreve.

16 COMMISSIONER CLARK: Commissioner Deason, do you
17 want to state the motion again?

18 COMMISSIONER DEASON: Yes. I would move that we
19 acknowledge the withdrawal, and as I understand the
20 parties are not objecting to the withdrawal.

21 MR. LAFACE: Yes. This is Ron Laface speaking
22 for the Coalition for Equitable Rates. We don't
23 object to the withdrawal of the petition, but in our
24 petition -- in our petition to the PAA, our motion to
25 intervene, we also intervened as to return on equity.

1 So if a hearing indeed does go forward on return on
2 equity we feel we have standing to participate in that
3 proceeding.

4 COMMISSIONER DEASON: I agree with that, but my
5 motion is to acknowledge the withdrawal, that means
6 that the settlement goes away, the protest to the
7 settlement goes away. The docket can be closed.
8 Those hearing dates, they are there on the calendar,
9 and if staff wants to pursue that with the Chairman,
10 and in conjunction somehow with Mr. Shreve's petition,
11 they can pursue that. But as far as this docket and
12 this settlement, it has been closed.

13 CHAIRMAN GARCIA: You're comfortable with that,
14 Tim, correct? Good.

15 COMMISSIONER CLARK: Second.

16 MR. McWHIRTER: Mr. Chairman, I believe FPL has a
17 motion to dismiss the rate case. If the rate case is
18 going forward --

19 COMMISSIONER CLARK: We will deal with it at the
20 right time.

21 MR. McWHIRTER: -- we don't have a problem. If
22 the rate case is not going forward then --

23 COMMISSIONER CLARK: Well, we can't prejudge
24 that.

25 CHAIRMAN GARCIA: We can't prejudge that, but

1 we've still got the hearings, the staff can still
2 bring this up on their own motion, and we can deal
3 with it then. And we've got hearing dates and
4 everything, correct? So we are all on the same page
5 now. All right. We've got a --

6 COMMISSIONER DEASON: And let me say this, if
7 this motion passes, there is no need for a status
8 conference this afternoon in this docket, because it
9 no longer exists.

10 CHAIRMAN GARCIA: I take it you are the hearing
11 officer?

12 COMMISSIONER DEASON: Yes. I'm looking out for
13 my own interests.

14 COMMISSIONER CLARK: Are you also the hearing
15 officer on Mr. Shreve's petition?

16 COMMISSIONER DEASON: No, I think Leon is.

17 CHAIRMAN GARCIA: Commissioner Jacobs is the
18 hearing officer on that case. We decided a baptism of
19 fire was the way to get new Commissioners.

20 MR. SHREVE: Was Mr. Jacobs not at that meeting?

21 COMMISSIONER JACOBS: I heard about it later.

22 The one issue that staff keeps bringing up, and I
23 really would be concerned about are the equities on
24 interim between ratepayers. And that in my mind is a
25 real important key issue, and I don't want us to lose

1 sight of that.

2 I think it's okay to move forward here, but I
3 would be very concerned if we diminish in some way the
4 potential -- and I'm sure Mr. Shreve is most sensitive
5 to that, so I don't have a great concern, but I can
6 tell you that it is a concern that I would have.

7 CHAIRMAN GARCIA: I think staff feels comfortable
8 with this, and we have walked through it, and I know
9 Mr. Shreve believes in equities, so -- in equities,
10 not inequities.

11 MR. SHREVE: No, I believe in inequities as long
12 as they lean towards the customer. But, you know, I
13 really am not clear. Maybe I misunderstood something.
14 What is it that the staff wants to do? I'm not sure I
15 really understand.

16 COMMISSIONER CLARK: We are going forward with
17 your petition.

18 MR. SHREVE: No, I know that.

19 CHAIRMAN GARCIA: If they believe that they want
20 to address the equity issue in any specific way that
21 differs from the way you are addressing it, Mr.
22 Shreve --

23 MR. SHREVE: But at an earlier date, or in this
24 docket, or what? I just don't know what Tim wants.

25 CHAIRMAN GARCIA: For interim purposes.

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MR. SHREVE: For interim purposes possibly the April date?

MR. DEVLIN: Yes.

CHAIRMAN GARCIA: I don't think that affects you in any negative way.

MR. SHREVE: I don't think so, huh-uh. I will let you know.

CHAIRMAN GARCIA: All right. Very good. That being the case, we have a motion and a second. All those in favor signify by saying aye.

(Unanimous affirmative vote.)

CHAIRMAN GARCIA: All opposed. It passes 5-0.

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, JANE FAUROT, RPR, do hereby certify that the foregoing proceeding was transcribed from cassette tape, and the foregoing pages number 1 through 84 are a true and correct record of the proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing action.

DATED THIS 28th day of February, 1999.

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