

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

IN RE: DOCKET NO. 001579-EI - Petition for approval  
of a performance guaranty agreement by Florida  
Power & Light Company.

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BEFORE: CHAIRMAN J. TERRY DEASON  
COMMISSIONER E. LEON JACOBS, JR.  
COMMISSIONER LILA A. JABER  
COMMISSIONER BRAULIO L. BAEZ  
COMMISSIONER MICHAEL A. PALECKI

PROCEEDINGS: AGENDA CONFERENCE

ITEM NUMBER: 29

DATE: Tuesday, December 19, 2000

PLACE: 4075 Esplanade Way, Room 148  
Tallahassee, Florida

REPORTED BY: MARY ALLEN NEEL  
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## PARTICIPANTS:

ELISABETH DRAPER, Commission Staff.  
ROBERT ELIAS, on behalf of the Commission Staff.  
WADE LITCHFIELD, on behalf of Florida Power &  
Light Company.  
MARLENE STERN, on behalf of the Commission  
Staff.

## STAFF RECOMMENDATION

Issue 1: Should the Commission approve Florida Power & Light Company's Petition for Approval of a Performance Guaranty Agreement?

Recommendation: Yes. The proposed tariff should be approved, provided FPL files with the Commission monitoring reports as described in the analysis portion of staff's December 7, 2000 memorandum.

Issue 2: What is the appropriate effective date of the proposed tariff?

Recommendation: The proposed tariff should become effective on December 19, 2000. In the event that a timely protest is filed, the tariff should remain in effect with any increase held subject to refund pending resolution of the protest.

Issue 3: Should this docket be closed?

Recommendation. Yes, if no protest is filed within 21 days of the issuance of the order.

1 CHAIRMAN DEASON: Item 29.

2 MS. DRAPER: Commissioners, Item 29 is  
3 FP&L's proposed performance guaranty agreement.  
4 The staff has a correction to make on page 5 of  
5 the recommendation. The first full paragraph  
6 which begins, "To monitor the application of the  
7 tariff," if you go to the fifth line, "and the  
8 total projected revenues," and insert, "and  
9 achieved revenues for a three-year period."

10 COMMISSIONER JACOBS: I'm sorry. What page  
11 was that?

12 MS. DRAPER: Page 5.

13 CHAIRMAN DEASON: You want projected  
14 revenues, and you want earnings; correct?

15 MS. DRAPER: And achieved revenues.

16 CHAIRMAN DEASON: And achieved?

17 MS. DRAPER: Achieved revenues, so we can  
18 see whether the customer's revenues are going --

19 CHAIRMAN DEASON: Okay. Achieved revenue?

20 MS. DRAPER: Yes.

21 COMMISSIONER JABER: Now, how are they  
22 going to give you that? I had a question about  
23 your correction. Unless I'm reading it wrong,  
24 they can't give you what their earned revenues  
25 are for a three-year period; right? That's not

1 what you mean.

2 MS. DRAPER: No. Once a year we'll get the  
3 report.

4 COMMISSIONER JABER: For a period of three  
5 years.

6 MS. DRAPER: Actually, we asked for  
7 monitoring a minimum of two years, but we can  
8 extend that.

9 CHAIRMAN DEASON: Okay. Are the parties  
10 here to make a presentation or answer questions?

11 MR. LITCHFIELD: Answer questions.

12 CHAIRMAN DEASON: Very well. Questions,  
13 Commissioners?

14 COMMISSIONER BAEZ: I had some questions  
15 of staff, and I guess under the category of when  
16 worlds collide.

17 I had a question as to, by our approval of  
18 this tariff, how we can be seen to have impacted  
19 or created a barrier under the Telecom Act --

20 COMMISSIONER JABER: Right.

21 COMMISSIONER BAEZ: -- for competitors.  
22 And am I off base, or is this not even a concern  
23 for us? I'm being too general. Here's what my  
24 concern is.

25 CHAIRMAN DEASON: We're on Item 29.

1                   COMMISSIONER BAEZ: Yes, I know.

2                   CHAIRMAN DEASON: Okay.

3                   COMMISSIONER JABER: No, I hope you're not  
4 off base, because I had the same question, so  
5 two of us would be off base.

6                   COMMISSIONER BAEZ: Here's what I'm  
7 concerned about. We approve a tariff that is  
8 somehow admittedly geared towards  
9 telecommunications service providers, or at  
10 least it's the communications providers that are  
11 giving rise to this need for the tariff. By us  
12 approving it, we are somehow blessing something  
13 that can be interpreted as creating a barrier to  
14 entry for these telecommunications service  
15 providers that would somehow be inconsistent  
16 with the Telecommunications Act. My question  
17 is: Did we consider it? I throw it to the  
18 Commissioners. Should we consider it before we  
19 approve something like this?

20                   MS. STERN: I think we were thinking --  
21 that's one of the considerations when we put in  
22 the monitoring in here, to make sure that there  
23 were not companies that were being discriminated  
24 against, so we could see how Florida Power &  
25 Light was -- who it was offering the performance

1 guaranty to and who it was not offering the  
2 performance guaranty to.

3 There's a similar -- another thing that we  
4 considered is that there's a similar -- this  
5 sort of parallels the CIAC statute, costs in aid  
6 of construction, whereby if the utility has to  
7 build additional facilities or expand its  
8 facilities, customers have to contribute to  
9 that. And there's no sort of threshold or  
10 bright line test for -- well, the utility has  
11 the discretion to decide when it gets a  
12 contribution in aid of construction and when it  
13 doesn't, and its the same here. So on that  
14 basis, because it's similar to that statute, we  
15 felt that it was --

16 COMMISSIONER JABER: No, but, see, the  
17 discrimination -- if there's potential for  
18 discrimination, wouldn't it occur at the  
19 contract -- entering the contract? In other  
20 words, one of the questions I had, is this  
21 because of the NAP issue in South Florida? I  
22 know the utility is Florida Power & Light. Is  
23 this as a result of the requests you're getting  
24 for service in South Florida? Is this related  
25 to the network access point?

1 MR. LITCHFIELD: Yes. Wade Litchfield on  
2 behalf of Florida Power & Light Company.

3 Principally, the driver for this issue and  
4 this proposed guaranty agreement is the  
5 development of, among other things, the NAP in  
6 South Florida, and fiber condos and other  
7 infrastructure that will support an expanded  
8 telecommunications business.

9 But to address Commissioner Baez's point  
10 with respect to the '92 Telecommunications Act,  
11 the people that are approaching Florida Power &  
12 Light Company to build out this infrastructure,  
13 with very few exceptions, are developers who are  
14 speculating that if they build it, they will  
15 come. They are equipping fiber condos and  
16 things of that nature. So in a few instances,  
17 we are receiving requests directly from the  
18 internet service providers and telecom entities,  
19 but the vast majority of requests come from  
20 developers who are looking to build out the  
21 infrastructure and then seek and obtain the  
22 tenants for this infrastructure.

23 COMMISSIONER BAEZ: Right. And I guess  
24 that's a distinction I wasn't clear on as well.  
25 I mean, are we requiring, or would the Company

1 be requiring contracts from the end user or  
2 contracts from the developer? And I see those  
3 as two different things. I think you're right.

4 MR. LITCHFIELD: From the applicant, who  
5 in most cases will be the developer.

6 COMMISSIONER BAEZ: So just to be clear,  
7 the projected revenues that we're talking about  
8 is actual -- what the Company would be looking  
9 at is how quickly or how successfully the fiber  
10 condo that it's, you know --

11 MR. LITCHFIELD: How quickly, for example,  
12 a building would be leased out to full  
13 occupancy, how quickly the tenants who take  
14 occupancy bring in their equipment, how quickly  
15 their business comes up to their expectations.  
16 So a lot of factors go into it, which actually  
17 leads me to a point that I probably should have  
18 raised earlier with respect to the reporting  
19 obligation.

20 We're comfortable providing projected  
21 revenue, but to the extent that we have the  
22 information from the customer to make those  
23 computations. In some cases we may not -- for  
24 example, a developer is coming in in a new  
25 building and may not have a hard estimate as to



1 when his tenants are going to come on line. So  
2 the ramp-up period, so to speak, will not be  
3 very firm for us to make very good estimates,  
4 but I think we're willing to provide you  
5 whatever we can at that point as long as we have  
6 that understanding.

7 COMMISSIONER JABER: Well, in some cases  
8 the developer is also the telco provider or the  
9 ISP. And how do you -- BellSouth comes to mind.  
10 FP&L Group comes to mind. And how do -- what  
11 criteria will you use in asking for a  
12 performance agreement from one developer/ISP or  
13 provider versus another?

14 MR. LITCHFIELD: Because the projected  
15 load requirements are multiples of what we have  
16 in place now in the same type of commercial  
17 building, our expectation is that they would all  
18 be asked to provide a performance guaranty  
19 agreement. We're talking about five to eight to  
20 ten times what typically we would install for a  
21 building of a similar size in a similar  
22 location.

23 CHAIRMAN DEASON: But staff's  
24 recommendation indicates that it's for those  
25 customers that the projected revenues are

1           uncertain, and that's one of the questions I  
2           have. How do you determine who -- their  
3           revenues may be uncertain? Or are you just  
4           going to put -- all customers who have high  
5           demand on a square footage basis would fall into  
6           that category?

7           MR. LITCHFIELD: That's correct. We really  
8           are not interested in getting into the business  
9           of assessing someone's revenue projections. We  
10          don't think we can, as I said, make a good  
11          analysis in that regard on the front end. So  
12          we're really just trying to protect the  
13          investment and ratepayers from bearing  
14          investments that are speculative to a certain  
15          extent and may not pan out.

16          CHAIRMAN DEASON: So you're not going to be  
17          saying this developer has got a good credit  
18          rating, so we'll let that one go, and this  
19          developer doesn't, or whatever, or this  
20          developer has a bad history, so we're going to  
21          make him --

22          MR. LITCHFIELD: That's correct.

23          COMMISSIONER BAEZ: So you have -- so there  
24          are standards in place? I mean, whatever the  
25          multiples are, we can go above -- we can only go

1 up to whatever the average was, six -- was it  
2 megawatts, or six kilowatts?

3 MR. LITCHFIELD: Well, to be honest, we  
4 don't have a firm standard in place, but the  
5 Company understands that it must apply this  
6 tariff in a nondiscriminatory fashion. Because  
7 all of the applicants to date have presented, in  
8 fact, multiples of what would be typically  
9 installed in a building, we know that it will be  
10 applied to all of them, and in that sense, we'll  
11 be nondiscriminatory.

12 The tariff does leave open the option to  
13 apply it to others outside of the telecom  
14 industry, and I think at that point, if we had  
15 people coming in with multiples of two or three,  
16 we would look at it a little differently, and  
17 maybe between two and three we would take into  
18 account other factors like that. But for this  
19 purpose in this application, we don't expect to  
20 do anything other than require it of all the  
21 applicants.

22 COMMISSIONER JABER: Let's say it's a new  
23 entrant that comes to you and requests service,  
24 and they're doing it through the idea of  
25 presenting a building, that they've decided to

1 enter the market by wiring a building and  
2 negotiating for the location of the NAP. And  
3 because it's a new entrant, sometimes the  
4 sources of capital are limited, and certainly  
5 their financial standing with a bank might be  
6 limited. Their refusal or inability to enter  
7 into a contract with you prevents them from  
8 entering into the telecommunications market,  
9 doesn't it?

10 MR. LITCHFIELD: well, I suppose if you  
11 make those assumptions, that may lead you to  
12 that conclusion. I think our impression is,  
13 based on discussions with customers, that this  
14 will not be an impediment. Customers have been  
15 shown -- some customers have been shown an  
16 example of the tariff and have expressed no  
17 concern about it, in fact, are anxious for it to  
18 be approved so that they can sign it and have  
19 the infrastructure built out. I guess I would  
20 venture to say that if they can't get a  
21 performance guaranty of the magnitude we're  
22 talking about here, they probably aren't a  
23 viable business in the first instance.

24 COMMISSIONER JABER: But is that your  
25 decision to make or the marketplace's decision

1 to make?

2 Let me tell you my concern. We're  
3 supposed to be removing barriers for the purpose  
4 of allowing a thriving telecommunications  
5 market. My worry with this is that this is  
6 creating a barrier unintentionally. That's my  
7 only concern. I don't --

8 CHAIRMAN DEASON: Let me say this. We  
9 don't need to be putting up barriers, but we  
10 shouldn't be making it particularly easy  
11 either. I mean, if there were economic  
12 realities out there, if we've got to protect the  
13 general body of electric customers, that is a  
14 higher criteria to me than it is trying to roll  
15 out a red carpet and inviting people to start up  
16 telephone companies in the state. I mean, we've  
17 got to balance the two here. Certainly there  
18 should not be undue burdens or requirements put  
19 in place which have the effect of deterring  
20 viable candidates from coming to this state and  
21 opening of businesses, any business, regardless  
22 of whether it's telephone or anything else.

23 But if there is a concern that there may be  
24 investment made that will be included in the  
25 Company's rate base that we would ask the

1 general body of ratepayers to pay for if some of  
2 these folks do not follow through with their  
3 commitments, I think that is a higher concern  
4 than making sure that there are not undue  
5 burdens. I mean, I don't think it is an undue  
6 burden to expect a company, regardless of if  
7 it's a telecommunications company or whatever,  
8 if they're going to put undue demands on the  
9 system beyond the normal average customer, for  
10 them to be able to demonstrate that they're  
11 going to be able to support the investment that  
12 is being made to provide them service.

13 COMMISSIONER JABER: Yes, and I don't  
14 disagree with you. I guess -- reading staff's  
15 recommendation, though, I didn't get from staff  
16 that they understood there were criteria. As a  
17 matter of fact, I think staff even questioned  
18 what customers would be asked for an agreement  
19 and what customers wouldn't. We do have to keep  
20 in mind the big picture, that's absolutely  
21 right. But I also don't feel like we have  
22 enough information to say that this is about  
23 preserving capacity and the viability of an  
24 electric utility.

25 Have any customers shown you that you they

1 won't fulfill the commitments?

2 MR. LITCHFIELD: I don't think that we've  
3 had any customers yet for whom we've done the  
4 build-out. It's such a new industry, and it's  
5 presenting a host of new issues for the electric  
6 industry around the country, frankly.

7 COMMISSIONER BAEZ: I agree, and I think  
8 that's what's giving me pause. And I guess  
9 another question I had is this criteria, the  
10 word "criteria" that keeps floating around. And  
11 we also have words like "projected revenues."  
12 whose projected revenues? Who's projecting  
13 them? I mean, is there somehow an incentive for  
14 an applicant to low-ball their expectations, and  
15 then under what -- you know, what obligation do  
16 you have to take those projections at face  
17 value? I mean, I'm seeing a whole bunch of  
18 possibilities of gaming the system that would  
19 allow or create a situation where, yeah, you  
20 don't get it, but you do.

21 And I think I agree with what the Chairman  
22 said. I think when you hold them on balance, I  
23 don't think there's an argument that protecting  
24 the ratepayers and that the goals that you're  
25 trying to achieve with the tariff are -- I guess

1 are more valid than our responsibilities to the  
2 Telecommunications Act.

3 But I'm seeing -- I'm not comfortable with  
4 the thoroughness or certainly the checks on the  
5 discretion that's going to get exercised by the  
6 Company. And maybe it's something that's not  
7 coming through in the recommendation, but I  
8 don't -- I'm still not clear on what kind of  
9 criteria. Yes, we've established a technical  
10 criteria. Certainly it would apply to anyone  
11 that has a multiple of -- that is requiring a  
12 multiple of facilities than you would normally  
13 require.

14 But how about on the back end when they're  
15 contractually obligated to come up with this  
16 money or they forfeit their security? What  
17 projected revenues are we talking about? Is it  
18 something that's submitted by the applicant? Is  
19 it something that's determined by the Company to  
20 be adequate? What --

21 MR. LITCHFIELD: Actually, projected  
22 revenues are not really -- on the front end,  
23 they're not really relevant for purposes of this  
24 agreement. We're willing to provide the  
25 information, but really, the basis of the



1 agreement is the incremental cost of the  
2 capacity that would be different or higher than  
3 what typically would be installed in that type  
4 of a premises. So projected revenues on the  
5 front end really aren't relevant.

6 COMMISSIONER BAEZ: So then explain to me  
7 how does it work, in as simple English as you  
8 can.

9 MR. LITCHFIELD: Sure, sure. An applicant  
10 would come to the Company and would say, "I  
11 would like to build a fiber condo at this  
12 address in this building, and it's an existing  
13 building." The Company would go out there and  
14 look and determine that it has X capacity in  
15 that building. But based on the customer's  
16 projections of expected load and occupancy for  
17 that building, the customer tells you, "I'm  
18 going to need 70 watts per square foot," and  
19 that's seven times -- let's say that's ten times  
20 what is already installed.

21 COMMISSIONER BAEZ: That's fine. Stop  
22 right there. Now, that is irrespective of how  
23 quickly the tenant -- how quickly the developer  
24 expects to reach full occupancy, how quickly --  
25 how many tenants they've got on the hook

1 already. You know, that's irrespective of that.  
2 Those are straight technical requirements;  
3 correct?

4 MR. LITCHFIELD: Correct. Exactly.

5 COMMISSIONER BAEZ: Okay. Go ahead.

6 MR. LITCHFIELD: And so the Company would  
7 take the customer's projections and would say,  
8 "Fine. If you want 10X capacity installed  
9 there, then we'll do it, and we'll pay for it,  
10 but we're asking that you post a performance  
11 guaranty in the amount representing the  
12 difference in the cost of the infrastructure  
13 that's already there and the amount of  
14 infrastructure that we're going to put in.  
15 You're not going to pay us anything. You're  
16 just going to post a guaranty, and then we're  
17 going to give you three years to produce revenue  
18 from this building, and if that revenue is  
19 greater than the performance guaranty, then we  
20 release the guaranty or we refund your deposit,  
21 whichever way you choose to post the guaranty."

22 COMMISSIONER BAEZ: So then -- it sounds  
23 like you're imposing a three -- you know, you  
24 better succeed in three years, or you better  
25 show me something in three years, or else.

1 MR. LITCHFIELD: Right. We did settle upon  
2 three years. But actually, some of the  
3 customers that we've talked to have said,  
4 "That's not going to be a problem. We can do it  
5 in two."

6 But we understand that some of these fiber  
7 condos are not going to take off immediately.  
8 And, of course, the three-year term is going to  
9 be running the from the date that the agreement  
10 is signed. So we thought that three years was  
11 more reasonable. By the time three years runs,  
12 we'll know whether these people are viable or  
13 not, and they'll know whether they're viable or  
14 not. So we thought it was a pretty good  
15 compromise.

16 COMMISSIONER JABER: You know, if you  
17 compare it to the CIAC policy, there is some  
18 merit in allowing the cost causer to pay for the  
19 cost of construction, and that in turn has a  
20 positive effect on the retail ratepayer, in  
21 that, you know, the retail ratepayer doesn't  
22 have to cover that added cost.

23 But this is a new area. And if this is so  
24 good, I think what I'm interested in looking at  
25 is, well, maybe all electric providers should

1 offer this, because if all the initiatives that  
2 come out of IT Florida and certainly out of the  
3 Telecommunications Act are going to come to  
4 fruition, then there will be an impact from  
5 telecommunications on every electric provider.

6 So I don't want to send a signal to you  
7 that this isn't a good idea. What I'm saying is  
8 I don't know enough about it being a good idea.  
9 And staff reinforced what I was thinking by  
10 saying they don't know how you're applying the  
11 criteria. And, of course, they've even added  
12 that we need to monitor it after a year.

13 Where I am -- let me throw this out for  
14 purposes of discussion. I would like staff to  
15 go back and relook at this with the idea of  
16 understanding what is happening in the  
17 telecommunications industry and the effect it  
18 has on all of the electric companies, and  
19 getting with the Company and understanding fully  
20 how the criteria will be applied and to whom,  
21 because if this is a good idea, I would be  
22 interested in allowing this kind of filing for  
23 every company.

24 I don't know if the Commissioners want to  
25 do that. It's just a suggestion.

1 MR. LITCHFIELD: The only issue that I  
2 would raise with respect to that proposal -- and  
3 under ordinary circumstances, I don't think we  
4 would have any objection, and I'm not saying we  
5 do have an objection. But one thing to point  
6 out for the benefit of the Commission is that we  
7 have 40 or 50 outstanding requests currently.  
8 These people are very eager to get started, and  
9 they've been waiting for us to get the tariff  
10 crafted and approved. So if we could discuss  
11 maybe putting it in place with a sunset  
12 provision or otherwise getting it started, we  
13 would like to start building it.

14 We're anxious to accommodate these  
15 requests, but at the same time, we want to make  
16 sure that we're not just throwing a lot of money  
17 out there. And we think that this agreement  
18 will provide some security to customers, and it  
19 will also provide some discipline to the market,  
20 and somebody who would like to have  
21 infrastructure put in place would probably have  
22 to give us more realistic proposals in terms of  
23 the build-out.

24 COMMISSIONER JACOBS: How would you suggest  
25 -- let's say -- and I don't know all the terms

1 here, but let's say there's some -- I assume for  
2 those customers who expressed an interest,  
3 they're aware of what you are proposing in terms  
4 of provisions in this guaranty?

5 MR. LITCHFIELD: It has been shared with  
6 several customers. I don't know how many. I  
7 can't say that it has been shared with all, but  
8 it has been shared with several customers.

9 COMMISSIONER JACOBS: Okay. And do I  
10 understand you to say those provisions will be  
11 applied uniformly across all applicants?

12 MR. LITCHFIELD: Yes.

13 COMMISSIONER JACOBS: How would any one  
14 party come in and suggest perhaps to us or to  
15 you that those arrangements are excessive, that  
16 the guaranty arrangements are excessive?

17 MR. LITCHFIELD: Well, we're hoping that  
18 you will rely upon staff's recommendation that  
19 the guaranty requirements and the contract  
20 otherwise is reasonable, the terms of the  
21 contract are reasonable.

22 COMMISSIONER JACOBS: So by our approval,  
23 then your customers would basically by entering  
24 into this guaranty be precluded from having any  
25 opportunity to address any concerns that they

1 have under the guaranty?

2 MR. LITCHFIELD: I don't think that they're  
3 ever precluded from doing so. I think they  
4 could raise the issue at any time. But I think  
5 the important point is that they -- by our  
6 understanding anyway, they're interested in  
7 signing this document and moving forward.

8 COMMISSIONER JACOBS: Well, I think it  
9 would be reasonable to say that, yes, they are  
10 very interested. But I think that's because of  
11 their rush to market for the condos, and this is  
12 seen as a necessary element of getting into the  
13 market.

14 I know that -- and we may -- I don't know  
15 if staff has already -- I don't know that there  
16 are many things we want to talk to people in  
17 California about with regard to electricity  
18 these days, but I do know that in Silicon Valley  
19 that this has been a very active issue, and a  
20 lot of discussion has occurred over this. And  
21 so I don't know -- if you have not done that  
22 already, I would like to understand just if  
23 there's any guidance we can gain from what has  
24 happened in that area in terms of serving this  
25 particular need. And that may give us some

1           understanding as to whether or not the terms and  
2           provisions of the guaranty here are adequate for  
3           our marketplace. We can't look exactly, but we  
4           can get some parallels.

5           MR. LITCHFIELD: May I suggest something  
6           that might get us through an interim phase  
7           here? If we could offer this on a voluntary  
8           basis and allow -- I haven't pitched this to my  
9           client. I might get slapped. But if we could  
10          offer this on a voluntary basis, then those who  
11          wanted to move forward could move forward, and  
12          those who did not want to sign this performance  
13          guaranty would be free to petition the  
14          Commission for some other arrangements.

15          COMMISSIONER BAEZ: I just wanted to say  
16          something. You know, my concerns are real, but  
17          I had no -- it's not my intention for everyone  
18          to walk away with nothing today. And because I  
19          think the fact that you mentioned that there's  
20          50 providers or somewhere in that area that are  
21          willing or are interested and are rushing to  
22          market, as Commissioner Jacobs characterized it,  
23          you know, that too raises an issue. I mean, for  
24          want of making it fair for everybody, we're  
25          standing in everybody's way, so maybe we do need



1 to get out of our way on this.

2 And I guess my question would be, and  
3 probably along the lines of your suggestion,  
4 because we've realized that there are questions  
5 that we need to answer, and perhaps staff may  
6 have questions that they want to look into, is  
7 there any way that we can have this in place or  
8 allow them, you know, properly to offer it so  
9 that we can let the providers start operating or  
10 get the ball rolling on this subject to our, you  
11 know, further review, or whatever issues there  
12 may be, that they get, you know, addressed.

13 MR. ELIAS: I believe so. Section 366.071,  
14 Interim Rates Procedure, "The Commission may,  
15 during any proceeding for a change in rates,  
16 upon its own motion, or upon petition from any  
17 party, or by a tariff filing of a public  
18 utility, authorize the collection of interim  
19 rates until the effective date of the final  
20 order."

21 I don't see any distinction between a  
22 tariff filed pursuant to the file-and-suspend  
23 statute, which this is, and a general rate  
24 proceeding with respect to the application of  
25 the interim statute, given that language. I

1 think you can put this in place on an interim  
2 basis pending a final decision, with the  
3 understanding that we're going to address the  
4 question of how the tariff is going to be  
5 applied, and with the expectation that the  
6 standards under which it's going to be applied  
7 are going to be determined, and the effect on  
8 the telecommunications market further considered  
9 and addressed to your satisfaction.

10 COMMISSIONER BAEZ: That sounds fine. I  
11 think that helps me. I don't know how the  
12 Company feels about that.

13 MR. LITCHFIELD: I think that meets our  
14 short-term needs.

15 CHAIRMAN DEASON: Let me ask a question at  
16 this point. Why is it that the CIAC policy that  
17 we have in place is not sufficient to meet the  
18 requirements here?

19 COMMISSIONER JABER: The CIAC policy that  
20 we have --

21 CHAIRMAN DEASON: Is it normally just  
22 directed towards residential customers, or is  
23 there a CIAC policy for these type customers as  
24 well?

25 MS. DRAPER: Well, CIAC only covers

1 extension of distribution facilities, and it  
2 only covers the cost for new poles and  
3 conductors. So, for example, any upgrades to a  
4 substation or transmission lines or transformers  
5 would not be covered.

6 CHAIRMAN DEASON: And that's the primary  
7 bulk of the investment for these customers, is  
8 going to be at that level as opposed to  
9 distribution and poles?

10 MS. DRAPER: Yes.

11 CHAIRMAN DEASON: It's going to be at a  
12 substation type --

13 MS. DRAPER: It might be substation, might  
14 be transmission upgrades.

15 And the second reason is that CIAC requires  
16 a projection of revenues, which FP&L tells us is  
17 kind of hard to do in this case.

18 CHAIRMAN DEASON: All right, Commissioners.  
19 What's your pleasure?

20 COMMISSIONER BAEZ: Well, I would offer it  
21 up. With the Company's agreement, you know, on  
22 an interim basis, we can approve it. Now, I  
23 don't know how formally we would do that. We  
24 can wait for counsel to put words in my mouth.

25 CHAIRMAN DEASON: Bob?

1           MR. LITCHFIELD: May I ask a question with  
2           respect to how the interim rate would be  
3           applied? We would potentially on the basis of  
4           these performance guaranty agreements that might  
5           be executed by prospective customers be  
6           expending a great deal of money over the next  
7           six to 12 months, in the tens of millions of  
8           dollars over the next 12 months, we expect.

9           And the question I have is, if the  
10          Commission were -- I don't think you will, but  
11          if the Commission were at the end of the day to  
12          decide that we didn't want to have any such  
13          performance guaranty agreement, then where would  
14          that leave the dollars that we had spent?

15          COMMISSIONER BAEZ: Well, I don't know to  
16          what extent you get some comfort from me. My  
17          questions were probably more of a legal nature  
18          than anything else, and I had no trouble -- if  
19          it were suggested to approve the tariff as is,  
20          you would get my support.

21          So as far as I'm concerned, I don't believe  
22          that you have a concern in that, that you should  
23          have a concern, and I wouldn't expect that the  
24          determinations or any decisions that the  
25          Commissioners make, or at least from my

1 perspective, would involve whether or not you're  
2 going to get an adequate security for the work  
3 that you need to do. I don't believe that  
4 that's an issue. That's certainly not an issue  
5 that I want to discuss, whether the propriety of  
6 doing it all is --

7 MR. ELIAS: And I think the first thing is  
8 that I don't think that we're envisioning a  
9 process that would take 12 months to come to a  
10 final conclusion. I mean, I see this as  
11 probably something that we can bring back to you  
12 at --

13 COMMISSIONER BAEZ: I'm sorry, Bob. I  
14 can't hear you.

15 MR. ELIAS: I'm sorry. I don't see this as  
16 a process that's going to take us 12 months to  
17 come to conclusion on. I think the time frame  
18 for bringing this back to you will be  
19 considerably shorter than that.

20 COMMISSIONER BAEZ: Much, much shorter?

21 MR. ELIAS: Yes.

22 COMMISSIONER BAEZ: But again, you know, I  
23 would like to make it clear, certainly none of  
24 my concerns gravitate towards that area. I  
25 think a tariff is appropriate, and certainly I

1 don't have a concern over what the numbers may  
2 tend to be. I'm more concerned over what kind  
3 of possible applications it can take.

4 COMMISSIONER PALECKI: Commissioners, I  
5 have no --

6 COMMISSIONER BAEZ: I don't know if the  
7 Commissioners -- excuse me. I'm sorry.

8 COMMISSIONER PALECKI: I really have no  
9 problem with the tariff in its present form  
10 except for one thing. I would like to see some  
11 recourse to an aggrieved customer. If a  
12 customer wanted to come before the Commission, I  
13 think the customer should have that avenue, and  
14 I think it should be clearly stated in the  
15 tariff. If it was, I would have no reluctance  
16 to pass this tariff in its present form.

17 COMMISSIONER BAEZ: And I guess that's  
18 really what we're trying to -- my understanding  
19 is that you can either vote a tariff up or down.

20 MR. ELIAS: Or they can agree to  
21 modifications.

22 COMMISSIONER BAEZ: Can they agree to  
23 modifications?

24 MR. ELIAS: Yes, here and now.

25 COMMISSIONER BAEZ: And I don't know that

1 we've given them enough direction on what kind  
2 of modifications. Certainly Commissioner  
3 Palecki has offered one up that sounds  
4 interesting, but I --

5 COMMISSIONER JABER: which is better? Is  
6 it better to do something on an interim basis or  
7 let you come back at the next agenda? My only  
8 questions were, if this is really, really good,  
9 then why not apply it statewide; and what  
10 criteria, having the criteria in the application  
11 of this articulated some place or memorialized  
12 some place that you all can review it thoroughly  
13 and perhaps run it through Walter's group, not  
14 because, you know, I think that the only thing  
15 we should be looking at is the effect on the  
16 telecommunications industry, but the unintended  
17 consequences.

18 And really, all I had in mind was a very  
19 quick review by staff, getting together with the  
20 parties. And how many agendas do you need for  
21 that?

22 MR. ELIAS: Well, to answer your first  
23 question first, I think suspending the tariff  
24 and bringing it back to you based on responses  
25 to the questions that were posed is cleaner. It

1 doesn't speak to -- you know, it doesn't plow  
2 any new ground as far as interpretations of the  
3 interim statute or doing something differently  
4 than we've done before or, you know, putting the  
5 Company at risk for investment that might not be  
6 realized.

7 COMMISSIONER BAEZ: But how does that  
8 affect at least a perceived need to move on?

9 MR. ELIAS: Well, and again --

10 COMMISSIONER BAEZ: I mean, we're really  
11 not interested in holding people up.

12 MR. ELIAS: To the second question, I would  
13 think that, without having to talk to any of the  
14 CMP folks, that we could probably bring  
15 something back for the January 16th agenda.

16 CHAIRMAN DEASON: But the Company has  
17 indicated that there are customers out there who  
18 want to get on with their projects, and this may  
19 be an impediment during the interim period.  
20 That's the problem that I have. If there are  
21 customers out there who are ready, willing, and  
22 able to sign and they want to get their projects  
23 going, and here we are sitting in Tallahassee,  
24 and we're portrayed as, you know, the  
25 Tallahassee bureaucrats that are preventing



1 economic development, and I don't want that to  
2 be portrayed.

3 COMMISSIONER JABER: Well, and as one of  
4 those people, I don't want to be portrayed as a  
5 Tallahassee bureaucrat.

6 COMMISSIONER BAEZ: Hear, hear.

7 COMMISSIONER JABER: No. I think, Chairman  
8 Deason, it's quite the contrary. I think this  
9 whole Commission is very much pro-economic  
10 development. But that's precisely our point.

11 So, no, I certainly don't want to be  
12 portrayed as a bureaucrat. It's quite the  
13 opposite. I want to do this right. And if  
14 you've presented to us a great idea, then why  
15 shouldn't it apply to everyone? I mean, you're  
16 to be commended because you're the first that  
17 has brought this to our attention. But are you  
18 really going to sign those people up during the  
19 next two weeks? What is January 16th to you,  
20 number one?

21 Number two, my guess is if those are  
22 customers that are willing to sign that  
23 agreement, those are probably big customers, and  
24 you want to go ahead and provide service to  
25 them.

1 I don't know. I don't see it as us sitting  
2 here in Tallahassee being bureaucratic.

3 CHAIRMAN DEASON: I didn't say we were. I  
4 said it could be portrayed as such. And there  
5 is a tendency for people to look at Tallahassee  
6 and say that's all that lives in Tallahassee.

7 COMMISSIONER JABER: And those news people  
8 that just left.

9 COMMISSIONER PALECKI: I would very much  
10 like to see some sort of mechanism in place so  
11 that the Company could start signing those  
12 customers as soon as possible.

13 COMMISSIONER BAEZ: Does that fit into the  
14 suspension?

15 MR. ELIAS: No. If the tariff is  
16 suspended, it's not operative.

17 COMMISSIONER BAEZ: I understand. And then  
18 it can change; right? It can get --

19 MR. ELIAS: well, the idea would be that we  
20 would bring it back.

21 CHAIRMAN DEASON: Can't we approve a  
22 tariff, and if we see there are problems with  
23 it, we can show-cause the Company to come in and  
24 show why their tariff should not be canceled?

25 MR. ELIAS: well, it wouldn't be in the

1 nature of a show cause. It would be -- the  
2 standard of proof is not quite as onerous as it  
3 is in that circumstance. We could approve this,  
4 and if we determined that it was not just, fair,  
5 and reasonable, on our own motion determine that  
6 the tariff should be withdrawn, issue a  
7 determination to that effect subject to protest,  
8 and then in the event that someone did choose to  
9 protest, conduct a hearing on it. So I mean, we  
10 can have it become effective today and then take  
11 action to eliminate the tariff offering at any  
12 future point.

13 CHAIRMAN DEASON: And let me ask you this.  
14 Even if we approve it in its present form, is  
15 there a recourse for a customer out there who  
16 can always file a complaint --

17 MR. ELIAS: That was my next -- that was  
18 going to be my next point.

19 CHAIRMAN DEASON: -- saying that in my  
20 circumstances, I'm being unduly discriminated  
21 against, or this is --

22 MR. ELIAS: Not just, fair, and  
23 reasonable. At any time, a customer can do  
24 that.

25 COMMISSIONER BAEZ: well, being the one

1 that started this whole thing, I'm comfortable  
2 with that, and I'm comfortable with what the  
3 Chairman is suggesting, with the understanding  
4 that, you know, staff can go back and review  
5 this a little closer for the issues that we've  
6 brought up and having that avenue open to us.

7 CHAIRMAN DEASON: We are requiring periodic  
8 reports to be filed anyway; correct?

9 MR. ELIAS: Yes.

10 CHAIRMAN DEASON: Those reports are  
11 yearly?

12 MR. ELIAS: Yearly.

13 CHAIRMAN DEASON: Maybe we want to see  
14 those every six months. Is that a problem, or  
15 do you think we can get any -- is that --

16 MR. LITCHFIELD: That's not a problem. We  
17 could give you the first report six months from  
18 the effective date of the tariff and then go to  
19 annually thereafter.

20 COMMISSIONER BAEZ: That's fine with me.

21 CHAIRMAN DEASON: Okay. Is staff  
22 comfortable with that?

23 MS. DRAPER: Yes.

24 CHAIRMAN DEASON: Is there a motion?

25 COMMISSIONER BAEZ: Moved as discussed,

1 with reports -- with the recommendation  
2 requiring the first report in six months.

3 COMMISSIONER PALECKI: I --

4 COMMISSIONER JACOBS: That said, I'll  
5 second it. I'm sorry.

6 COMMISSIONER PALECKI: I was going to  
7 second it.

8 COMMISSIONER JACOBS: Go right ahead.

9 COMMISSIONER PALECKI: I would second it.  
10 And as far as Commissioner Jaber's concern that  
11 it might be something that we want to see  
12 applicable on a statewide basis, I suspect that  
13 the other electric utilities that are in this  
14 room will probably see this as something that  
15 they want to file on their own. So I wouldn't  
16 be surprised if we see something being filed by  
17 each of the investor-owned electrics.

18 CHAIRMAN DEASON: We have a motion and a  
19 second. All in favor say "aye."

20 COMMISSIONER JACOBS: Aye.

21 COMMISSIONER BAEZ: Aye.

22 COMMISSIONER PALECKI: Aye.

23 CHAIRMAN DEASON: Show that it's unanimous.

24 COMMISSIONER JABER: No, nay.

25 CHAIRMAN DEASON: Oh, I'm sorry. I was

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jumping to a conclusion there. It is approved  
on a four-to-one vote. Commissioner Jaber  
dissents.

(Conclusion of consideration of Item 29.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)  
COUNTY OF LEON )

I, MARY ALLEN NEEL, do hereby certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter transcribed under my supervision; and that the foregoing pages numbered 1 through 38 are a true and correct transcription of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, or relative or employee of such attorney or counsel, or financially interested in the action.

DATED THIS 28th day of December, 2000.

  
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