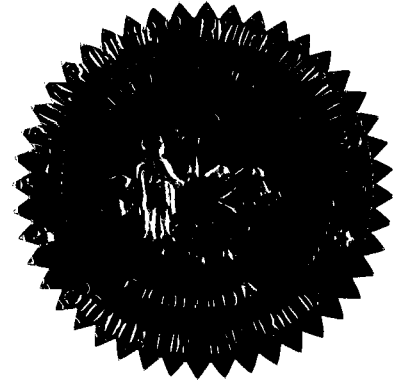


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 001148-EI

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In the Matter of:  
REVIEW OF FLORIDA POWER AND  
LIGHT COMPANY'S PROPOSED  
MERGER WITH ENERGY  
CORPORATION, THE FORMATION OF A  
FLORIDA TRANSMISSION COMPANY  
("FLORIDA TRANSCO") AND THEIR  
EFFECT ON FPL'S RETAIL RATES.



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PROCEEDINGS:           AGENDA CONFERENCE  
ITEM NO. 18

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

DATE:                    Tuesday, May 15, 2001

TIME:                    Commenced at 5:15 p.m.  
Concluded at 6:10 p.m.

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

REPORTED BY:           KORETTA E. STANFORD, RPR  
Official FPSC Reporter

06346  
May 21 - 01

## 1 PARTICIPATING:

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14 ROBERT ELIAS and DEBORAH HART, FPSC Division of Legal  
15 Services.

16 TIM DEVLIN, FPSC Division of Economic Regulation.

17 BOB TRAPP, FPSC Division of Policy Analysis and  
18 Intergovernmental Liaison.

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

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2 CHAIRMAN JACOBS: We'll go back on the record. Item  
3 18. Your expert has abandoned you? Mr. Elias, do you want to  
4 go ahead and introduce it?

5 MR. ELIAS: Mr. Devlin's the individual with the  
6 prepared remarks. Item 18 is the Staff's recommendation  
7 concerning Florida Power & Light's current earnings situation.  
8 And we are, basically, recommending that one, you direct the  
9 company to file MFRs in 90 days; two, that consistent with the  
10 current earnings stipulation you not direct the company to  
11 place monies subject to refund.

12 CHAIRMAN JACOBS: Okay.

13 MR. ELIAS: And, essentially, the reasons are  
14 expressed in greater detail in the recommendation, and many of  
15 the -- much of the discussion that was had with respect to  
16 Florida Power Corporation is equally applicable to Florida  
17 Power & Light Company.

18 CHAIRMAN JACOBS: Very well. Mr. Trapp, do you have  
19 comments?

20 MR. TRAPP: Yes, Chairman Jacobs. I just, basically,  
21 want to spare you from reading this again and just reiterate  
22 that we're involved with this docket on ratemaking issues and  
23 the need for MFRs to determine the impact of known change  
24 circumstance on the company, the RTO, we're here for ratemaking  
25 issues. Thank you.

1           CHAIRMAN JACOBS: Thank you. The company would like  
2 to make a presentation? Mr. Childs?

3           MR. CHILDS: Commissioner, my name is Matthew Childs  
4 from the firm of Steel, Hector & Davis. I'm appearing on  
5 behalf of Florida Power & Light Company, and with me is  
6 Ms. Grealy. I want to suggest -- we've heard an awful long  
7 time discussion about Florida Power Corporation, the preceding  
8 issue, and I want to ask you to please consider that there are  
9 some differences, and I want to approach it from that  
10 perspective.

11           We're here to speak against the Staff recommendation.  
12 We urge that you not order the filing of MFRs to initiate a  
13 rate proceeding. FPL's current situation was initiated by a  
14 settlement proposed by Mr. Shreve or a proposal that he wanted  
15 to pursue with us under which FPL will soon -- actually, it  
16 announced, I think, today or yesterday, the refund of an  
17 additional \$105 million to its customers.

18           That stipulation, which you approved, has nearly a  
19 year yet to run. We've just finished the second year of the  
20 three-year stipulation. The refunds that I mentioned of about  
21 \$105 million is based upon revenue. It has absolutely nothing  
22 to do with earnings and is made regardless of the earnings of  
23 the company.

24           Since it's based on revenue, I would expect that  
25 we're going to be looking at a revenue increase, if all goes

1 well, in the following year in somewhat similar circumstances.  
2 If this Commission desires to review and evaluate FPL's  
3 earnings situation, we will cooperate in every respect. We'll  
4 provide information to you and to your Staff. We think that  
5 this is the best way to proceed, because it would facilitate  
6 identifying and reviewing what really is important.

7           And with all due respect, I think, it's been a long  
8 time since any of us have spent much time looking at electric  
9 utility Minimum Filing Requirements. And when there was  
10 discussion about what would be there, for instance, for RTOs,  
11 you know, the question went through my mind as to what is  
12 there? And I don't think there's anything. There's nothing  
13 special about that that would be in an MFR.

14           And I make that observation, because I think that  
15 relates to a lot of what's going on in connection with the  
16 desire for information. We urge you to take a more flexible  
17 approach. We have, in years past when we initiated rate  
18 proceedings, as a matter of routine, had discussions about what  
19 MFRs were appropriate, what was not needed, how to streamline  
20 this, how to do it so it was more responsive.

21           If you're going to proceed in that way, first of all,  
22 we urge you to not use, say, the blanket MFRs and be done with  
23 it but that instead, you attempt to have a more flexible  
24 approach which we are willing to cooperate with you.

25           But what we really ask is that you not initiate this

1 process as it's coupled in the recommendation, as I read it, of  
2 initiating a rate case, because I think this eliminates  
3 incentive regulation and perhaps eliminates the basis for that  
4 kind of regulation. We do agree, however, recognizing that our  
5 current stipulation will be ended in about 11 months, we do  
6 agree to meet with you, your Staff, the office of public  
7 counsel, to discuss what to do and how to best do it.

8 We would hope and expect that any discussions that we  
9 would have would be under your continuing supervision or at  
10 least that you would be informed; that is, you, the Commission,  
11 would be informed and you could decide what you thought was the  
12 best way to proceed, if any changes were necessary.

13 Your Staff would, obviously, keep you informed and  
14 that would be the process. We urge you to pursue more  
15 selective process, a less structured process for information  
16 development and that we begin, subject to your oversight, to  
17 have meetings to discuss and negotiate where to go from here.

18 One of the reasons I make the comment about the  
19 structure of the MFRs and does it give you what you need is our  
20 last rate filing many years ago was over 20 feet high. That's  
21 a lot of effort, and we would like to focus in and urge you to  
22 focus in from the beginning on what you might want.

23 However, as to the path that you might be going down,  
24 if you, in connection with MFRs, in initiating a rate  
25 proceeding, we would submit to you that after a record that we

1 believe FP&L has of being both active and aggressive in  
2 reducing cost to provide service and a record of more than six  
3 years of facilitating the passing of those savings on to  
4 customers, that a rate proceeding is not called for, and it  
5 should not be initiated unnecessarily.

6           Initiating a rate proceeding would, we respectfully  
7 submit, send the wrong signals as to FPL. FPL has and  
8 continues to take significant risks to affect substantial  
9 customer savings. And, as I mentioned, I don't think incentive  
10 regulation should just end overnight.

11           FPL will be refunding, as I mentioned, \$100 million.  
12 That sort of a refund doesn't happen in a rate case. It's not  
13 the result of a rate proceeding. The settlement authorizes FPL  
14 to expense up to \$100 million in each of the three years of the  
15 settlement of discretionary write-off of rate base.

16           In terms of a recognition of what FPL's response to  
17 trying to reduce customer's costs, I want to point out that in  
18 the first two years FPL took the maximum of the discretionary  
19 amount. That means that rate base was reduced, that means that  
20 future revenue requirements are reduced, and that means that  
21 current earnings for the company were reduced. We think that's  
22 appropriate response, and we would like to think that it might  
23 continue to be.

24           We don't think that the proper message at FPL is that  
25 you should not continue to take steps, such as you already

1 have, to reduce costs. And I say that because having been  
2 through several, it appears to me that a major electric rate  
3 proceeding changes almost everybody's point of view and  
4 disrupts the very environment which, in our case, we believe  
5 has prevailed over the last eight years or so and has led to  
6 the kind of substantial savings that I'm talking about.

7           Rate cases are costly and the work on them consumes  
8 most of the time of many people for months on end, which means  
9 that many of the very people who are charged with the  
10 responsibility of running the company now have the added and  
11 very time-consuming job of working on discovery responses and  
12 completing necessary forms for MFRs.

13           Rate cases are contentious and they're adversarial.  
14 That's just the way it is. Rate cases either force or result  
15 in defensive strategies that lower incentives through reduced  
16 costs. We urge you to recognize that FPL is not a company that  
17 provides bad service. It's not a company that has high costs.

18           For instance, looking at FPL's O&M expense since 1990  
19 through the year 2000 on a cents per kilowatt hour basis, and  
20 this is not fuel, this is nonfuel O&M, it's continuously  
21 declined from a level of 1.82 cents per kilowatt hour in year  
22 1990 to 1.09 cents in the year 2000, 40% decline.

23           And I'm going to comment in a minute about what that  
24 relates to in terms of the Commission's O&M benchmark. But  
25 that has been a steady effort to reduce cost that has resulted



1 in benefits to customers. You don't need to take the step that  
2 you're being asked to take in order to obtain from FPL a  
3 responsive way of addressing its rates and costs to customers.  
4 FPL will provide the information, we'll negotiate subject to  
5 your continued monitoring.

6 We urge you to continue the incentive regulation  
7 approach that you have pursued so far. The settlement that we  
8 are in, and I want to summarize it for you a little bit, the  
9 settlement, because I heard discussion about rate changes in  
10 the prior item.

11 The settlement, which we had that was initiated with  
12 the office of public counsel, has a rate reduction of more than  
13 \$350 million a year. And I say more than, because the  
14 recommendation mentions \$350 million. But when you apply it to  
15 the billing determinants, it's not insubstantially an excess of  
16 \$350 million. That's a rate reduction, and it's a big one.  
17 That's about \$4.20 a month; that's not about -- that is, that's  
18 \$4.20 a month for the residential customer that uses 1,000  
19 kilowatt hours.

20 Refunds to customers, independent of that rate case,  
21 were 22 million in the year 2000 and the 105 million that I  
22 previously mentioned. We have a year yet to go. I also  
23 mentioned to you the \$100 million per year in discretionary  
24 write-off which, so far, FPL has used the maximum amount.

25 The agreement provides a continued incentive to

1 control O&M expenses, because refunds are made without regard  
2 to actual earnings. At the time this Commission approved our  
3 current settlement, arguments against the approval were made,  
4 and they are very similar arguments to those that are being  
5 made now.

6 In 1999, alternate Staff argued, in part, rate  
7 reductions and other issues can and should be resolved in the  
8 form of a full revenue requirements proceeding. And I had  
9 concluded, therefore, that where we are today with what you're  
10 being asked to decide, was not necessarily a factual change,  
11 but was a philosophical difference, that what you had  
12 authorized and found to be appropriate was opposed and it was  
13 thought, by some, that you shouldn't do it. But I want to  
14 point out that those arguments were made before and you  
15 considered them.

16 The stage was set for the \$350 million rate reduction  
17 by FPL efforts to reduce O&M and FPL reduction in debt costs  
18 which, in prior negotiations and agreements, to write off rate  
19 base and thereby further reduce cost of service. And just as a  
20 comment, FPL had independently gone out and reacquired  
21 high-cost debt, incurred a premium to do so and, thereby,  
22 reduced the cost of service. In one of your -- that freed up  
23 some dollars which were used in write-offs of rate base items.

24 Similarly, the same sort of approach was used because  
25 of the control of O&M levels by FPL. But it's the O&M that I

1 wanted to comment, because this is an area of extreme  
2 contention, had been over the years, with the extremely high  
3 levels of O&M expense that electric utilities we're seeing, and  
4 the Commission's imposition of an O&M benchmark to try to  
5 control them, to try to limit them and to try to force  
6 explanation by the utility for the level of their costs.

7           But, for instance, FPL's costs in 1994, which is  
8 right before we started the first Commission-approved write-off  
9 of rate base, FPL's O&M expenses for that year were nearly \$290  
10 million level -- lower, excuse me, \$290 million lower than the  
11 level that would have been produced by an O&M benchmark based  
12 upon a 1988 year, escalated only for consumer price increases,  
13 the CPI.

14           We didn't throw in customer growth -- or excuse me,  
15 we didn't throw in that as it related to generation O&M. I  
16 pick that year, because although you asked a question about  
17 when our last rate case was and, I think, the answer was '85,  
18 you did reduce rates for FPL in 1990, and you used 1988 test  
19 year. And so, I picked that 1988 -- or used numbers from 1988  
20 to do the calculation, and I picked the '88 year to pick the  
21 level of O&M that you allowed, and then did the multiplication.

22           That's a substantial amount, \$290 million. You know,  
23 it's only a little bit over a billion, in any event. And that  
24 was achieved, despite inflation of nearly 25%, customer growth  
25 of over 260,000, and sales growth of 15% in that time period.

1 FPL's efforts, we believe, to aggressively control  
2 O&M continue. And as I mentioned, this earlier chart shows  
3 that the level in 1995 was 1.33 cents per kilowatt hour in  
4 1995, and that's declined down to 1.09 cents per kilowatt hour.  
5 So, even after you started the incentive approach, we've  
6 continued that.

7 Commencing in 1995, FPL was authorized by this  
8 Commission to begin expensing or writing off a substantial  
9 amount of rate base. All told, that write-off period covered a  
10 little over four years. And in that time, FPL wrote off \$954  
11 million of rate base. The reduction of rate base has reduced  
12 average cost of service -- and this is just my  
13 back-of-the-envelope calculation -- has reduced the annual cost  
14 of service, but I emphasize annual by about \$115 million. And  
15 all that reflects is simply the cost of capital with equity  
16 escalated to reflect taxes. That's a continuing savings.

17 FPL's agreements to pursue these cost savings, and  
18 don't get me wrong, it wanted to do it, but FPL's efforts and  
19 agreement to do so had risk attached to it, and it was not an  
20 insignificant risk. The Commission expressly recognized this  
21 risk. And I want to read you from order 98-0027, in part.

22 For the Commission said, "Under the proposed plan,  
23 the company has an incentive to minimize its operational  
24 expense in order to achieve the forecasted minimum write-off."  
25 We didn't have just the discretionary amount. We had a minimum

1 we had to write off. So they had this incentive to achieve the  
2 forecasted minimum write-off requirement while still protecting  
3 current earnings level. In this respect, the company's current  
4 earnings may be in jeopardy if it fails to sufficiently control  
5 operational expenses. Of course, there were other things, too,  
6 which is unforeseen expenses or other problems which could  
7 create either a lack of -- a lowering of revenue or increasing  
8 expenses.

9           But FPL's voluntary efforts to reduce costs have and  
10 continue to produce substantial customer savings. In that  
11 regard, and that is in regard to voluntary efforts to reduce  
12 the cost of service, I want to touch on the annual  
13 discretionary amount that I mentioned once again under the  
14 current agreement.

15           That settlement agreement did not require FPL to  
16 write any of that amount off. It was discretionary. But, as I  
17 said, FPL booked the maximum amount and so far has further  
18 reduced rate base by another \$200 million, which reduced the  
19 annual cost as we go forward because of that substantial  
20 write-off. So now, we're over a billion dollars in rate base  
21 reduction.

22           Commissioners, I thought there were two conclusions,  
23 at least, that needed to be drawn from this history. First,  
24 FPL has not just agreed to actions to substantially reduce the  
25 cost of service. It has proposed them as well. Second, FPL

1 has continually demonstrated a willingness to respond, to  
2 negotiate, to agree to achieve cost savings and to pass those  
3 cost savings through to its customers without the necessity of  
4 going through a rate proceeding.

5           There are several factual assertions in the Staff  
6 recommendations with which I disagree. If you wish, I will  
7 respond to questions on them, otherwise, I'll move on. I want  
8 to urge you, however, that you not require the filing of MFRs  
9 to initiate a rate case and that as to FPL, that you recognize  
10 where we are with incentive regulation, you recognize what we  
11 achieve and what we're in the process of working on and that  
12 instead, with an agreement that has nearly a year yet to run  
13 that you pursue a more focused information-gathering process.  
14 And that subject to your oversight and direction, that we meet  
15 and discuss with Staff and the office of public counsel and  
16 whoever to find out what is the best way to go forward to  
17 address that time when the current stipulation is over.

18           I think, there have been some questions about, well,  
19 this doesn't stop us from negotiating and I would say, no -- I  
20 mean, that would stop it from negotiating, if a rate proceeding  
21 is initiated. And I would say no, it doesn't. However, I  
22 think that in terms of the argument being made that you must  
23 have certain information, you must look at it that it makes it  
24 difficult -- it makes it difficult to do so when you've made  
25 that commitment.

1           And, I think, as to Florida Power & Light Company, in  
2 particular, that not only its track record, but the fact that  
3 we've got nearly a year yet to run, suggests that you're not in  
4 that position, anyway. And so, you know, respectfully, we ask  
5 that you not do that.

6           The couple of points that I wanted to comment as to  
7 the MFRs, the --

8           COMMISSIONER JABER: Mr. Childs, may I interrupt you  
9 for just a second? I'm not sure I understood your last  
10 statement. Going forward with requiring a MFR filing prohibits  
11 you from negotiating?

12           MR. CHILDS: Okay.

13           COMMISSIONER JABER: I didn't understand your point.

14           MR. CHILDS: Well, maybe I have the wrong point that  
15 you didn't understand, but I will try to identify it.

16           As I understand the recommendation, FPL would be  
17 directed to file MFRs, I think, by August 15th is what the  
18 recommendation is. And what we have asked -- what we urge you  
19 to do is don't direct us to file MFRs to initiate a rate  
20 proceeding. We are -- we commit to provide information. We  
21 believe not only that, but that the questions that ought to be  
22 asked, if you're trying to pursue some of those concerns, are  
23 not just what's in the MFRs. A lot of that we don't think is  
24 what you necessarily need, but we would instead try to pursue  
25 what is important and we would ask that you do that in a more

1 filing date, I urge you, again, to be flexible with that and as  
2 to information and we not set a hard deadline which is going to  
3 be difficult.

4           And I want to come back and talk a bit, if I can,  
5 about the issue of GridFlorida. And Chairman Jacobs, I know  
6 there's been some comments about whether that relates to the  
7 motion or not and, unfortunately, some of the arguments that  
8 were already made related to the issue and the motion. And I'm  
9 going to try to avoid that, but I'm going to at the same time,  
10 suggest to you that we would have had occasion to respond to  
11 the recommendation orally, and that's what I'm trying do.

12           CHAIRMAN JACOBS: I understand.

13           MR. CHILDS: We believe and urge you to recognize  
14 that there ought to be a fairly rapid way took on to address  
15 this issue. It's been raised. It happened to be in the form  
16 of the motion, but I will represent to you today, again, that  
17 it's been raised as an area of concern, and we are telling you,  
18 not just signaling, but we're telling you that, you know, we  
19 ask that it be addressed in an expeditious fashion, and we  
20 would propose to do that.

21           I ask you again, however, not to make a decision on  
22 MFRs as it relates to FPL for the added reason of this  
23 assertion that you need it for GridFlorida because, first of  
24 all, that does relate to our motion, and I find a way that  
25 we're precluded -- we might be precluded from arguing, but I



1 don't think it's appropriate to decide that MFRs are necessary  
2 because of a concern about GridFlorida without perhaps --

3 CHAIRMAN JACOBS: Let me just say this, Mr. Childs.  
4 I would expect that whatever decision comes from the motion, we  
5 would make sure that it's consistent with whatever decision we  
6 issue today.

7 MR. CHILDS: Fine. That's fine, but I also would  
8 suggest that I don't think there's particular insight to be  
9 gained from MFRs as to that issue. It just -- I mean, you  
10 might have pro forma adjustments, but if someone asks you to  
11 address specifically something that was an MFR or something  
12 else, you can adjust it -- address it in your filing with the  
13 Commission, but it is not an MFR that has a particular space or  
14 form for that subject.

15 CHAIRMAN JACOBS: Understood.

16 MR. CHILDS: It doesn't -- it's not there.

17 CHAIRMAN JACOBS: Thank you.

18 MR. CHILDS: Once again, Commissioners, I realize  
19 that you have heard extensive argument, you've voted, you've  
20 expressed your views about Florida Power Corporation and where  
21 you'd like to go with them. I think, that we are in a  
22 different situation, and I would ask you, respectfully, to take  
23 that into consideration when you decide what the next step  
24 should be.

25 Thank you.

1 CHAIRMAN JACOBS: Thank you.

2 COMMISSIONER JABER: Ms. Grealy, were you going to  
3 address us at all?

4 MS. GREALY: No, I'm just going to respond to  
5 questions.

6 COMMISSIONER JABER: Well, I have two questions for  
7 you. On August 2000 -- August 10th, 2000, we had a workshop  
8 here on GridFlorida, and there were two questions, one that I  
9 asked and one that Commissioner Deason asked that you responded  
10 to in the workshop, and I just want to see if you have an  
11 update since that time.

12 I asked you how the membership interest, as I  
13 understand it, with GridFlorida, Florida Power & Light would  
14 contribute a membership interest into GridFlorida and would  
15 receive service in return. And I wanted to know how the  
16 membership interest would be reported on your books for  
17 regulatory purposes and how the tax deferral would be reported  
18 on your books for regulatory purposes, and your response was,  
19 "That's a take-home question. We'll have to get back to you."  
20 I was just wondering if you've had an opportunity to analyze  
21 that question.

22 MS. GREALY: I don't have an answer for you. We're  
23 still in the process of working on GridFlorida and the  
24 specifics of how it would be recorded. Let me check.

25 COMMISSIONER JABER: Okay.

1 MS. GREALY: Commissioner, what I can make sure that  
2 you and the Staff have is an answer to those questions with  
3 what our current thinking is, we have responded to those  
4 questions in the form of informal discovery or interrogatories  
5 that we received from your Staff. So, as far as what we're  
6 thinking, what we no know to date, we have responded to your  
7 Staff to those questions, and I'll get a copy.

8 COMMISSIONER JABER: Okay. I think, this was back  
9 when it was just Commissioner -- or Chairman Jacobs,  
10 Commissioner Deason, and I. And, I think, Commissioner Deason  
11 and I were concerned about how much of the transmission cost  
12 associated with the RTO would be in wholesale and how much  
13 would be in retail, and how we knew how to separate those costs  
14 so that we could make sure that the consumer was protected and  
15 wasn't, in fact, paying twice.

16 And Commissioner Deason asked you about the recovery  
17 of the incremental cost and how it could be identified. And  
18 back in August 2000, you said you were pretty close to  
19 identifying what's in our retail rates. I was wondering if you  
20 had that with you.

21 MS. GREALY: Yes.

22 COMMISSIONER JABER: Can you give that to Staff,  
23 then?

24 MS. GREALY: Sure. That question I did anticipate  
25 and recall that you were concerned with. And I have that

1 answer -- I was close then, I have that answer now. Let me  
2 just say that it's approximately 89% of our transmission assets  
3 are in retail and 11% are in wholesale. I also want to point  
4 out that that is --

5 COMMISSIONER JABER: So, if 89% is in retail, you  
6 don't think that we should probably use an MFR filing or  
7 something short of that rate case to identify what costs are  
8 associated with transmission versus what costs are associated  
9 with generation?

10 MS. GREALY: I think, this makes the point that it's  
11 not necessary to have a rate proceeding, and it's not necessary  
12 to have a rate case to give you that information. I have that  
13 information. It's \$265 million included in our retail base  
14 rates for those assets for transmission. That's what our base  
15 rates are based on, that's what's included in base rates.

16 And, I think, it really makes the point that we do  
17 not have to go through a full rate proceeding to provide that  
18 information to you. It's a separation study. It's information  
19 that we can readily get to you and your Staff. At the last  
20 meeting with you, you asked me the question, I didn't have it  
21 then, I have worked it up, the schedules, and we can provide  
22 that information.

23 COMMISSIONER JABER: What's a separation study?

24 MS. GREALY: A separation study looks at your cost  
25 and looks at your revenue requirements. It looks at how much

1 of your costs are used to serve your retail customers and how  
2 much are used to serve wholesale customers, and it's separated  
3 based on sales or load to serve retail versus wholesale. And  
4 it is a cost of service study.

5 CHAIRMAN JACOBS: Mr. McWhirter.

6 MR. McWHIRTER: Mr. Chairman, I'm not here today to  
7 recommend a rate reduction. We are committed not to make any  
8 such recommendation until next April, but I strongly support  
9 every aspect of the Staff's recommendation. And the reason  
10 that I do that is because as Mr. Childs spoke, simple questions  
11 come into your mind.

12 And, I think, that these simple questions can be  
13 answered, and they won't be answered in an adversarial way. In  
14 the many, many years we've practiced together, I don't think an  
15 unkind word has ever passed between Mr. Childs and myself, and  
16 I don't propose that there would be that in the future.

17 But the simple questions are: Florida Power & Light  
18 has base rates that were established, to the best of my  
19 recollection, somewhere between 1983 and 1985, based upon a  
20 utility system that existed at that time. Since that time,  
21 there's been tremendous growth in the system, there have been  
22 tremendous new assets added, operating expenses, as he's  
23 pointed out, have changed dramatically, over a billion dollars  
24 in income taxes has been collected from customers that were  
25 collected before they need to be paid and are sitting on the

1 books as an asset of the corporation.

2 As he's pointed out, O&M expenses have been reduced  
3 by \$290 million. Customer growth has been 15%. The rate base  
4 has been reduced by over a billion dollars, in addition to the  
5 rapid write-offs through the oil backout clause, since the last  
6 rate case the entire investment to bring coal by wire from  
7 Georgia has been written off.

8 So, you have, as Senator Campbell has suggested to  
9 you in his letter, it would be good to have MFRs just to get on  
10 the public table so people will understand what the  
11 circumstances are with respect to this utility and what it is  
12 that customers are paying for today.

13 When next April comes around and the settlement  
14 agreement expires, what will the base rates be then? I think,  
15 public counsel takes the position that base rates have now been  
16 permanently adjusted down \$350 million. I just have the sneaky  
17 sort of feeling that Florida Power & Light is going to say no,  
18 we go back to the base rates as they were before the settlement  
19 agreement.

20 So immediately, the \$350 million annual reduction  
21 that customers have seen for the last three years will  
22 evaporate. If the legislature then freezes base rates --

23 COMMISSIONER DEASON: Mr. McWhirter, --

24 MR. McWHIRTER: Yes, sir.

25 CHAIRMAN DEASON: -- are you indicating that you

1 anticipate Florida Power & Light to file for a \$350 million  
2 rate increase or that it would be an automatic action?

3 MR. McWHIRTER: No, sir. I'm suggesting it would be  
4 an automatic action. I think, base rates were established,  
5 customers were given a credit of \$350 million for three years,  
6 but when the three years was up --

7 COMMISSIONER DEASON: Well, let's just ask him. Is  
8 that Florida Power & Light's position?

9 MR. CHILDS: Well, not only is it not our position, I  
10 mean, it didn't happen. We reduced the rates by .0042 cents  
11 done on a kilowatt per hour basis the rate was reduced. It  
12 wasn't our intention. It's intriguing, though.

13 MR. SHREVE: Scratch all that.

14 MR. CHILDS: I don't think it had ever crossed  
15 anybody's mind that that was the approach.

16 COMMISSIONER DEASON: Let me say this. As one  
17 Commissioner that voted to approve that, I certainly did not  
18 contemplate that at the end of the three years there was going  
19 to be a \$350 million rate increase.

20 MR. SHREVE: Commissioner, our position is the only  
21 way they're going to get those rates back up is to come in here  
22 and go through a rate case.

23 MR. CHILDS: Clearly, you asked the wrong person.

24 MR. McWHIRTER: Well, this is a wonderful revelation  
25 to me, because I am pleased that my simple question has been

1 answered so immediately and so promptly that it was a \$350  
2 million permanent reduction that occurred four years ago, and  
3 the company is now on record stating that there will be no  
4 change in base rates from the reduced rates that we're under  
5 now.

6           There are still other simple questions, though. If  
7 the O&M expenses have gone down by \$290 million, does that \$350  
8 million incorporate that reduction or is that in addition to  
9 the \$350 million? The revenue adjustment program that results  
10 in \$100 million refund to customers this year is an indication  
11 that revenues have grown beyond a certain incremental growth  
12 rate that was locked in. So, the revenues have increased  
13 substantially. Customers didn't get all of the increase. They  
14 only got the amount over the annual increase in revenue that  
15 was permitted in the settlement agreement.

16           What my second simple question, then, is what happens  
17 at the expiration of the three-year period? Does that  
18 commitment to refund expire? And, of course, Mr. Childs will  
19 probably tell us, no, it doesn't expire. We will continue  
20 immediately to continue to get those kinds of refunds. And if  
21 he does, that certainly will answer another of my simple  
22 questions.

23           The problem is that customers in Florida, in the  
24 Florida Power & Light service area, are obligated to buy  
25 electricity only from Florida Power & Light. In a sense, it's



1 a government-protected monopoly.

2 Now, the rest of the government in the state of  
3 Florida lives under what we call the sunshine law. And people  
4 have access to information and understand all the facts. MFRs  
5 is a way that you cast the sunshine on utility operations. And  
6 I would suggest to you that it makes sense that a  
7 government-protected monopoly from whom customers are obligated  
8 to buy should be willing to open its books to the sunshine so  
9 that we know that what we're being asked to pay is appropriate.

10 I'm not going to belabor this issue, but only to tell  
11 you that I think the Staff has done a good job. I think,  
12 Senator Campbell is exactly right, that it makes sense to  
13 disclose what the real facts are, so when the legislature does  
14 address this next year, they will at least know what the  
15 earnings of Florida Power & Light are and how that reflects  
16 upon customers.

17 CHAIRMAN JACOBS: Mr. Shreve.

18 MR. SHREVE: A few very short comments really about  
19 something Mr. McWhirter brought up. And, I think, it was an  
20 excellent thing to do to bring up the three years and the rate  
21 reduction of \$350 million. I think, it was understood that it  
22 was -- at least our understanding, it was going to stay in  
23 place. But there have been so many references in the press and  
24 so many different places that it referred to a three-year  
25 billion dollar deal on the rate reduction. So, I think, it's

1 an excellent point that he brought that up and we've got it  
2 clarified on that. So, I think, it was good that Mr. McWhirter  
3 brought that up and we have it set.

4 CHAIRMAN JACOBS: Great. Mr. McWhirter, you're  
5 having quite a euphoric day here.

6 MR. McWHIRTER: Are you asking me a question?

7 CHAIRMAN JACOBS: No. I just said you're having  
8 quite a euphoric day here. You were able to reminisce on the  
9 first docket --

10 MR. McWHIRTER: -- a great old friend.

11 CHAIRMAN JACOBS: Mr. Twomey.

12 MR. TWOMEY: Mr. Chairman, Commissioners, I have the  
13 proud honor of filing a petition to intervene on behalf of my  
14 parents, who are customers of Florida Power & Light in  
15 Melbourne and, therefore, have a substantial interest or so, I  
16 would allege, in the outcome of this case. And unless  
17 Mr. Childs objects to me representing my mom a day or two after  
18 Mother's Day, I'll proceed.

19 Mr. Childs told you that at some length that FPL is  
20 different from Florida Power Corporation. He's right, of  
21 course. As your Staff told you earlier, Florida Power  
22 Corporation had a rate case eight or nine years ago. You had a  
23 shot at looking at their MFRs. I assume, there was a cost of  
24 service study fully allocated in that case.

25 Florida Power & Light, on the other hand, had its

1 last rate case fully 16 years ago in 1985. My recollection is  
2 that that case, and Mr. Childs can correct me, if I'm wrong,  
3 was to put St. Lucie II in rate base, it was a limited  
4 proceeding. The previous full revenue requirement of this case  
5 of the company, I think, was in 1983. And according to your  
6 Staff was based upon a fully-allocated cost of service study  
7 based on the year 1981, which is fully 20 years ago.

8 Now, that's the difference; that is, I would suggest  
9 to you, Commissioners, that you know and your Staff knows and  
10 your customers of this utility know substantially less about  
11 what this utility has been doing the last decade or two than  
12 what you're aware that Florida Power Corporation has been  
13 doing, merely because of the frequency of them appearing before  
14 you in cases in which they have to supply significant amounts  
15 of operations data.

16 Now, where they're similar; that is, FPL and FPC, is  
17 that they're both currently overearning, according to your  
18 Staff recommendations. That is to say, irrespective of this  
19 \$350 million thing and whether they're going to go back or not  
20 go back and increase their rate base, your Staff says at Page 3  
21 of the recommendation, they're currently overearning in the  
22 current rates and that they'll continue to so earn.

23 They say, if I can quote briefly at what is Page 3 of  
24 the Staff recommendation, it's in the first paragraph of the  
25 Staff analysis. They say, in part, "Every month, since the

1 inception of the revenue-sharing plan in April 1999, however,  
2 FP&L has achieved, quote, FPC-adjusted, closed quote, ROE, has  
3 exceeded the maximum of it's authorized ROE range over this  
4 23-month period. FPL has achieved the 23% ROE ceiling by a  
5 range of four to 157 basis points through February 2001."

6 Now, you'll have to get from your Staff what 100  
7 basis points equals in terms of annual revenues for this  
8 company but, I think, I heard 80 million. I don't know, but  
9 you can establish that. Now, your Staff was concerned about  
10 this company overearning under this plan, which is this plan of  
11 the day, it's what's operational now.

12 I'm not here to criticize anybody that participated  
13 in it, because I don't know -- I'm just not here for that  
14 purpose. But I don't understand necessarily how that squares  
15 -- their overearnings for 23 months squares with the statutory  
16 requirement that they be allowed a reasonable return, an  
17 opportunity to earn a reasonable return on their investment.

18 But your Staff says they're overearning,  
19 notwithstanding that they have included adjustments they find  
20 troublesome nonrecurring, things of that nature, as was the  
21 case of Florida Power Corporation.

22 And if you'll indulge me, one more quote, the same  
23 page of the Staff recommendation: "FP&L has maintained this  
24 high level of earning, despite this imposition of the revenue  
25 cap and its related refunds, the 350 million annual base rate

1 reduction, the 100 million discretionary production plan  
2 amortization write-off, the inclusion of a \$69 million  
3 settlement with FMPA in November of 1999, and the December 2000  
4 recording of a one-time cost, including substantial executive  
5 compensation expense of \$62 million related to the failed  
6 merger with energy. Staff is concerned that once the  
7 revenue-sharing plan ends on April 14th, 2002, FP&L's earnings  
8 will continue to exceed it's authorized maximum ROE ceiling of  
9 12% with no protection provided for the ratepayers from these  
10 high earnings," closed quote.

11 Now, to that, Mr. Childs says to you that even though  
12 we haven't given you formatted MFRs, well-established, that  
13 they had no problems and the other utilities had no problem  
14 filing when they were interested in having their revenues and  
15 their rates increased, he suggested it's burdensome, because  
16 it's 20 feet high.

17 He suggests, instead, if I heard him, I could be  
18 wrong, that he can tell you how much their expenses have gone  
19 down over the last four or five, six years, or whatever. I  
20 will submit to you, that's their obligation.

21 Each of the utilities you regulate have an obligation  
22 to be efficient. He's offered to give you balance sheets and  
23 other such data. You can get that in their annual reports. I  
24 submit to you that there is a greater case to be made for this  
25 utility being required to file MFRs, as your Staff has

1 suggested again, than Florida Power Corporation before. You  
2 won't have the information. The information that you have now  
3 is substantially more stale than what you had for Florida Power  
4 Corporation. The need is every bit as great.

5           The fact that they only have -- that they have a year  
6 left on their settlement means you probably should get started.  
7 When would they have you wait? If it takes three, four, five,  
8 six months to complete the MFRs, you need to get started. I  
9 won't touch on the RTO issues, but I think they're  
10 substantially the same as the Staff has suggested for Florida  
11 Power Corporation.

12           I would urge you to allow the Staff, Mr. Shreve,  
13 Mr. McWhirter, their clients, once they're in a position to do  
14 so, if there's going to be negotiations, to negotiate from a  
15 position of strength. They need to have the information to be  
16 on a level playing field with this utility. Arguing that MFRs  
17 are too expensive is, again, a case of being pennywise and  
18 pound foolish. So, I would urge you to adopt your Staff  
19 recommendation. Thank you.

20           CHAIRMAN JACOBS: Very well. Does that conclude the  
21 presentations?

22           MR. CHILDS: I'd like to respond to some points.

23           CHAIRMAN JACOBS: Do you want to do it now or wait  
24 until after questions?

25           MR. CHILDS: I'd like to do it now, if that's okay.

1 CHAIRMAN JACOBS: All righty.

2 MR. CHILDS: As opposed to what?

3 CHAIRMAN JACOBS: In case there are questions from  
4 Commissioners.

5 MR. CHILDS: If you have questions, I'll try to  
6 answer those.

7 CHAIRMAN JACOBS: Okay. Go ahead, if you'd like to  
8 do it now.

9 MR. CHILDS: Well, some of the suggestions that I  
10 think the, you know, the rhetorical approach of  
11 government-regulated monopoly or government-protected monopoly,  
12 et cetera, I think, are a bit pejorative, but I think that  
13 makes the point. What we're trying to have you understand is  
14 that there has been a good faith effort to affirmatively reduce  
15 costs and pass those costs on to our customers.

16 The suggestion of the what do we do at the end of the  
17 three-year period, that's exactly what I was trying to tell  
18 you, that what we propose is that we discuss and establish and  
19 negotiate what to do without committing ourselves to a rate  
20 case that perhaps we don't need; that once you've committed  
21 yourself, and I'm concerned about the commitment, that it's  
22 difficult to extricate yourself from that and, I think, the  
23 discussion here today has suggested that.

24 COMMISSIONER JABER: That's what I was trying to get  
25 you to clarify for me before. Whose commitment and who would

1 have trouble --

2 MR. CHILDS: Well, let me try to present it to you  
3 this way and just sort of think through what we would do, and  
4 that is --

5 COMMISSIONER JABER: I try. I try so hard to think  
6 through what you all do.

7 MR. CHILDS: -- that if you ordered us to file MFRs,  
8 our first reaction is that as it relates to committing to a  
9 rate case is that you're urged to tell us to do that; in other  
10 words, your Staff asks you to tell us to file MFRs to initiate  
11 a rate case. And I don't want to have the Commission  
12 unnecessarily state that it is initiating a rate case, because  
13 that is a formal proceeding. It's not just MFRs. It's a more  
14 formal proceeding, it's an adversarial proceeding, you have  
15 lots of participation, discovery, and features attendant with  
16 that.

17 Let's say we took the next step and we attempted to  
18 meet and discuss what to do. You've heard a lot of arguments  
19 about you have to have MFRs, you know, to do the review. And  
20 I don't want to have you accept an argument that you have to do  
21 something and then have a settlement be something short of what  
22 you've been urged is a necessary predicate.

23 I mean, we think that there's the basis for you and  
24 the office of public counsel and, I think, this has been done  
25 in the past to look at information that is relevant and



1 appropriate to FPL's operations and make a decision as to  
2 what's the proper course of conduct.

3           In terms of this argument, and Mr. Twomey suggests,  
4 well, you have to have MFRs to do it because there isn't any  
5 detail. If you want detail, we'll try to give you detail, but  
6 I think the relevant information is that the O&M expense is  
7 what it is, and then it's gone down and substantially below the  
8 O&M benchmark. And if you want us to talk about why it's not  
9 higher or why it's not lower, we can do that, but a commitment  
10 to a rate proceeding is very serious, and we wish to avoid it.

11           COMMISSIONER JABER: Glad to hear you say that.  
12 That's positive.

13           MR. CHILDS: Pardon?

14           COMMISSIONER JABER: That's positive. Because what I  
15 thought you were saying to me is you were worried about the  
16 commitment to a rate case would preclude you from negotiating,  
17 so I'm very relieved to know that you would negotiate in good  
18 faith.

19           MR. CHILDS: We think we have, and that's why I tried  
20 to go to the history. We think we have a history of that. We  
21 have a history of agreeing to \$350 million, and it is more than  
22 that, it is not an insignificant amount for a company, even one  
23 FPL's size. That's an awful lot of money, which brings me to  
24 the next argument, the argument made, and it's in the  
25 recommendation not quite, I don't believe, the way Mr. Twomey

1 said it, but he said Staff alleges that FPL is overearning.  
2 I'm going to read you something from the last recommendation  
3 when you approved the settlement.

4 That recommendation at Page 6 says, "With the above  
5 sharing mechanism, FPL could earn above the top of its  
6 authorized range of ROE of 12%, if its revenues are below 3.4  
7 million." Later, it goes on to say that "their own review  
8 reflects that the company probably would," it says, "under the  
9 stipulation, Staff estimates of the achieved return on equity  
10 indicate FPL will earn over 12%, the top of the ROE range,  
11 under the stipulation in 1999 and that the achieved earnings  
12 will continue to grow over the three-year period."

13 Now, to then say, well, now, here you are in  
14 midstream in your settlement and you're overearning, I think,  
15 that begs the question a bit. And I also think that in terms  
16 of what we've told you and explained to you is that the only  
17 reason the earnings are at that level is because the company  
18 has continued to aggressively manage its O&M expense and other  
19 costs. I mean, some of those are, for instance, reduction and  
20 debt costs.

21 CHAIRMAN JACOBS: Mr. Childs, that raises one of the  
22 important questions that occurred to me. And it is a  
23 balancing, I agree, but you wouldn't suggest, though, that the  
24 language you cited was intended to be of some authority to, or  
25 granting us some authority to, in perpetuity, for you to exceed

1 your earnings range?

2 MR. CHILDS: Absolutely not. What I'm saying is that  
3 when Staff had information, other people had information and  
4 looked at it and the Staff was warning you in this  
5 recommendation. This was in the Staff that said you ought to  
6 go to a rate case, and they said you ought to go to a rate  
7 case, one of the things they pointed out to you, and have MFRs,  
8 they pointed out that this earnings result could occur.

9 Now, what I hope you understand is that the view was  
10 that it might occur, if you're very fortunate in lots of things  
11 and you're able to maintain your O&M under control, you're able  
12 to maintain other expenses under control and actually reduce  
13 them and it was not a surprise. And the other sort of a -- you  
14 know, how these things happen is that there was not much more  
15 that FPL could have done. It already wrote off the maximum  
16 \$100 million discretionary amount for that year. There was not  
17 much more, except it could have said, and this is what I mean  
18 about the defensive postures that rate cases engender,  
19 potentially.

20 It could have said, well, appearances are important  
21 so, you know, maybe we ought to not control to that level. We  
22 ought to report something and spend more. And, I think, that  
23 gets us away from the very incentive regulation that we're  
24 talking about.

25 As to the sharing issue, you know, the sharing is

1 that over the first threshold FPL gets to keep 1/3, and 2/3  
2 goes to the customer in the refund. And above the second  
3 threshold, and I don't have those thresholds right before me,  
4 but over the second threshold the customer gets all of it. So,  
5 it's a sharing, but it's not exactly equal.

6           You've had a lot of comment, and I'm hesitant, but I  
7 want to come back to the MFRs and the concern about whether you  
8 have data about customer's costs and allocating costs. I  
9 think, those are part of the MFRs. There are those customer  
10 class cost of service studies, separation studies. There are  
11 several of them, as I recall. They specify several  
12 methodologies that you have to use.

13           That's the kind of information that doesn't  
14 necessarily -- you don't -- I'm suggesting to you that you  
15 don't tell us to file MFRs, all of them, if that's what you  
16 want. If that's what you want, we can provide that  
17 information. But rather than just providing everything,  
18 because it happens to be on the list, we're suggesting that you  
19 should be more selective.

20           We think you can look at that information, we believe  
21 you can look at that information and answer a number of  
22 concerns that have been raised about what do we do in terms of  
23 establishing sort of a level basis for knowing what degree of  
24 cost relationship there is between classes.

25           COMMISSIONER JABER: Mr. Childs, were you here for

1 the Florida Power Corp. item?

2 MR. CHILDS: I was.

3 COMMISSIONER JABER: Don't you think that that's --  
4 direction to Staff to eliminate or waive the rules with respect  
5 to unnecessary MFRs will accomplish exactly what you're saying?

6 MR. CHILDS: Well, I don't know. You know, I don't  
7 mean to be argumentative, but the rule applies to rate  
8 increases, not decreases. There is a form that's been filed.  
9 I think, it would. And we have, in the past when we filed --  
10 when companies filed increases, we've routinely met and  
11 discussed what we filed. And if that's the direction you take,  
12 I really would urge that, but I would urge that you please keep  
13 an open mind, in any filing requirement for flexibility,  
14 because there are going to be those kinds of concerns and  
15 issues that need to be addressed.

16 And I say that because having gone through MFR  
17 preparation and seeing a lot of detail preparation, there's  
18 some of them that are very useful and some of them that aren't  
19 used for much. And we'd like to avoid the ones that aren't  
20 necessarily important.

21 COMMISSIONER JABER: Just a couple of questions for  
22 Staff.

23 CHAIRMAN JACOBS: Very well.

24 COMMISSIONER JABER: Tim, there's a difference with  
25 respect to the two recommendations in that for Florida Power &

1 Light the rate settlement has not expired.

2 MR. DEVLIN: That's right.

3 COMMISSIONER JABER: And I got the impression from  
4 Staff's recommendation that you were recommending the August  
5 15th, 2001 deadline, because you want to be done with the rate  
6 case by the time the rate settlement expires. You're trying to  
7 allow for a transition into a new rate.

8 MR. DEVLIN: That's exactly correct, Commissioner.  
9 We were not, as Mr. Childs characterized, trying to cut in  
10 midstream. We were trying to set up a process that would deal  
11 with the day the revenue plan expires.

12 COMMISSIONER JABER: Okay. Saying all of that,  
13 though, August 15th is 90 days, I think, right, 90 days from  
14 today?

15 MR. DEVLIN: Correct.

16 COMMISSIONER JABER: You're more familiar with FPL's  
17 books and records than I am right now. Is it realistic, as  
18 opposed to the 120 days we had earlier, is it realistic for a  
19 company like Florida Power & Light, who is larger than Florida  
20 Power Corp. to be able to file MFRs, even efficient MFRs,  
21 within 90 days?

22 MR. DEVLIN: Well, I think, with your suggestion of  
23 sitting and seeing which ones we can perhaps waive or modify,  
24 the 90 days, there's nothing magic about it. Again, we were  
25 working back from the April 2002 day. And the reason 90 days

1 for Florida Power & Light versus 120 for Power Corp. is because  
2 they haven't been going through the significant changes that  
3 Florida Power Corp. has been going through.

4 COMMISSIONER JABER: Okay. That's with respect to  
5 capturing earnings. Now, with respect to the cost allocations  
6 and separating out production generation and distribution, what  
7 about Ms. Grealy's suggestion that a cost of service or a  
8 separation study is really all you need?

9 MR. DEVLIN: I'm going to need help on that question,  
10 because that's not really my area. Connie Kummer's probably  
11 the best person to answer that question. We may have to come  
12 back on that.

13 MR. WHEELER: I think, what Ms. Grealy was talking  
14 about was simply a separation study, and all that does is  
15 separate the pot into retail versus wholesale, it does not do  
16 the cost allocation among the rate classes within the retail  
17 jurisdiction. So, if she just meant just a separation study,  
18 no, that wouldn't get you all the way to the rate class level.

19 MS. GREALY: I think, I went on to say -- and Dave is  
20 absolutely correct -- to get this information I did a  
21 separation study, that's all I needed to do, but we have done a  
22 cost of service study, and we can certainly provide that. And  
23 that's really a very good example of the difference between the  
24 MFRs and information that you or your Staff would need.

25 The MFRs, for example, in cost of service ask you to

1 file in a couple of different ways under a couple of different  
2 methodologies. And, I think, it would be more appropriate for  
3 the Staff to ask us, give us a cost of service study done under  
4 current Commission policy. That's what we want to provide.  
5 That's what we're in a position to provide, as opposed to the  
6 MFRs. So, I think, the cost of service study is a good example  
7 of what we're proposing.

8 COMMISSIONER JABER: Do you envision, Tim, that that  
9 would be part of the discussion in terms of eliminating the  
10 MFRs and the requirements that are not going to be needed by  
11 Staff?

12 MR. DEVLIN: Yes, I do.

13 COMMISSIONER JABER: Can you take a guess -- you're  
14 not recommending any amount held subject to refund in the FP&L  
15 recommendation, and it's because you are trying to honor the  
16 spirit of the rate settlement that we are not a party to, but  
17 this Commission did approve. But could you take a guess, if we  
18 had to hold money, subject to refund, do you have a guesstimate  
19 of what that amount to be for Florida Power & Light?

20 MR. DEVLIN: We did a rough, very rough estimate and,  
21 hopefully, won't be held to it in evidentiary hearing, but  
22 making the same kind of adjustments we made with Power Corp.,  
23 back out nonrecurring items and merger-related costs, et  
24 cetera, we're talking roughly a quarter of a billion dollars,  
25 over the top of their currently authorized range of 12%.



1           COMMISSIONER DEASON: Mr. Chairman, when questions  
2 are finished, I think, I can make a motion.

3           CHAIRMAN JACOBS: Any other questions, Commissioners?

4           COMMISSIONER DEASON: Okay. Realizing the hour is  
5 late, I'm ready to make a motion and it can be voted up or  
6 down, and then we can proceed.

7           CHAIRMAN JACOBS: I second that motion.

8           COMMISSIONER DEASON: First of all, let me say that I  
9 wanted to compliment Staff on their recommendation. I thought  
10 a lot of thought went into it, and it certainly has provoked a  
11 lot of thought by a number of other people which, I think, is  
12 what we need at this time.

13           However, I'm not supportive of, at this time,  
14 mandating that we go forward and require the filing of MFRs at  
15 this time, and let me say why. First of all, I do make a  
16 distinction between Florida Power & Light and Florida Power  
17 Corporation. I think, that we do have the luxury, if you want  
18 to call it that, of having more time than is the time frame  
19 under which we're trying to pursue with Florida Power  
20 Corporation.

21           I think, it can give us an opportunity to proceed in  
22 a more flexible manner. This company is right now is in the  
23 filing year of the three-year incentive plan. I think that the  
24 plan has worked, it continues to work. I think, it was  
25 envisioned to work this way by the parties which presented it

1 to us, and it was fully represented to us, and we understood  
2 that there was the distinct possibility that Florida Power  
3 could earn in excess of its authorized rate of return. But it  
4 was a new mechanism, a new regime, and the idea was that  
5 customers probably would benefit because there are incentives  
6 for Florida Power to reduce cost, take some of those risks upon  
7 themselves. And if the revenues materialized, there would be  
8 even greater sharing for the customer.

9           So, but I agree with you, Mr. Chairman, that that was  
10 not a license for this company to overearn in perpetuity, that  
11 at some point we have to reassess where we are. And this  
12 company has benefitted, as has the customers, through the  
13 initiatives with management in containing costs, reducing not  
14 only O&M, but debt costs, and things of that nature, but at  
15 some point we need to reassess where we are and see where we  
16 need to go forward from here.

17           I think, it would be potentially constructive, and  
18 I'm certainly willing to give the parties an opportunity to sit  
19 down and discuss the flexibility of MFRs, whether they're  
20 required or not. Florida Power & Light has indicated that they  
21 are certainly willing to provide necessary and relevant  
22 information, both in terms of financial information, rate  
23 structure information, cost of service, and information on  
24 their RTO which, as Mr. Childs points out, MFRs don't even use  
25 the term RTO, it was never even contemplated when MFRs were

1 first instituted and that we give this opportunity to work to  
2 see what can come of it.

3 I recognize that Staff is trying to mesh the  
4 initiative here to get a final determination to coincide with  
5 the expiration of the current incentive rate plan, and that's a  
6 laudable goal, but I don't think it's necessary. We can, if  
7 necessary, put money subject to cover any period of time  
8 between expiration of the rate plan and before final rates  
9 could be implemented, if we find ourselves in a rate  
10 proceeding.

11 And the parties are certainly -- they can take  
12 initiative, and it may be that there could be some type of a  
13 temporary extension of the current rate plan to tide us over,  
14 if we need to. But all that is just supposition at this point,  
15 we don't really know. I would recommend that we not take the  
16 action recommended today, but that we allow a reasonable period  
17 of time, and I'm open to suggestion as to what would be a  
18 reasonable period of time to pursue this flexible process as it  
19 has been described by Mr. Childs and Ms. Grealy. And that if  
20 that is not fruitful, then we come back with a recommendation  
21 to go forward with MFRs.

22 COMMISSIONER JABER: Okay. Commissioner Deason, I  
23 can't support that motion, but I want to explain why. To me,  
24 the fact that FP&L -- that our Staff hasn't looked at the level  
25 of rates or the ROE for -- and I know there's disagreement as

1 to whether it's 20 years or since 1990 -- gives me great  
2 concern, not just from the earnings level, but I'm also trying  
3 to address the concerns we heard this session and with respect  
4 to, you know, potential restructuring.

5 I think, there's a sense of urgency that I'm trying  
6 to keep in the back of my mind with respect to allowing the  
7 rate case process, if it has to go that far, to be complete so  
8 that the Energy Commission can use it to benefit the goals and  
9 the proposal that the Energy Commission finds is appropriate.  
10 I want to be able to confidently comment on the RTO and the  
11 implementation on the RTO after I know what the cost -- what  
12 the retail rate impact is to the residential ratepayer.

13 And although, I completely agree with you that there  
14 are differences with the two items in the sense that this one  
15 has a rate settlement that doesn't even expire, Staff is not  
16 going to try to implement any of the rate changes until after  
17 the rate settlement expires.

18 For the sake of consistency, I would have supported a  
19 motion to support Staff. So, I'm not going to support your  
20 motion, Commissioner Deason, but I also don't think that an  
21 order that requires FP&L to file a rate case in any way  
22 prohibits them or prevents them from negotiating further.

23 You know, I think, it would be the same direction  
24 that we gave to Florida Power Corp. and to our Staff and even  
25 more so, because this is a bigger company and, I think, that

1 Mr. Grealy has raised very good points with respect to the cost  
2 of service. But as I listened to her, that's not any different  
3 than what I wanted Staff to do in eliminating some of those  
4 unnecessary MFRs, so I don't think we're very far apart. I  
5 just really think, though, that going forward with potentially  
6 a rate case perhaps might make Staff and the parties  
7 communicate more, because there is a sense of urgency to the  
8 situation. So, I can't support your motion, Commissioner.

9 CHAIRMAN JACOBS: We do have a motion. Is there a  
10 second?

11 COMMISSIONER DEASON: And like I said, my feelings  
12 aren't hurt in the least.

13 CHAIRMAN JACOBS: Good thing you qualified that  
14 today.

15 COMMISSIONER PALECKI: Mr. Chairman --

16 COMMISSIONER DEASON: Well, I would encourage a  
17 different motion so we can proceed.

18 CHAIRMAN JACOBS: I'll encourage that as well.

19 COMMISSIONER PALECKI: I can't second Commissioner  
20 Deason's motion. I agree with Commissioner Jaber. I very much  
21 appreciate the steps that Florida Power & Light has taken over  
22 the years to make itself a more efficient utility to reduce its  
23 cost and to simply make itself a better utility. Nonetheless,  
24 simply too many years have passed since this Commission has  
25 conducted a full revenue requirement rate proceeding for

1 Florida Power & Light. And, I believe, it's this Commission's  
2 duty to the consumers in Florida to initiate the full revenue  
3 requirement rate proceeding at this time.

4 I believe that as part of that, our Staff should look  
5 into incentive regulation to explore techniques that would  
6 allow Florida Power & Light to be incented to become even more  
7 efficient and to share savings with the ratepayers in that  
8 manner, and I think that can be done within the context of a  
9 rate case filing, but I would agree with Commissioner Jaber  
10 that a rate case filing in MFRs are needed at this time.

11 COMMISSIONER JABER: Yeah. And the only question  
12 left in my mind, though, is that August 15th date. When is  
13 Florida Power Corporation filing theirs?

14 MR. DEVLIN: September 15th.

15 MR. CHILDS: Commissioner, I don't want to speak  
16 inappropriately when you're voting, but if it is possible to  
17 comment on the filing date, I would appreciate being able to  
18 say something about it.

19 CHAIRMAN JACOBS: Go ahead, Mr. Childs.

20 MR. CHILDS: It will be difficult to meet that date.  
21 And if the sense of the Commission is to go forward with  
22 something other than what Commissioner Deason moved, we would  
23 urge you, please move it back. It's going to be tough. I  
24 mean, it may be that it's humanly possible. And certainly, if  
25 that's what had to be done, we would do our best to meet that

1 date. It's a very difficult date to meet, and we'd urge that  
2 it be moved back.

3 COMMISSIONER JABER: You know, I give everyone the  
4 same direction, which is I don't know what the magic number is,  
5 but I can move Staff for the purpose of moving this along with  
6 the same direction to Staff. If that is absolutely an  
7 unrealistic date, you need to let us know.

8 The other thing you need to keep in mind, Staff, is  
9 assuming you guys don't work really hard in negotiating with  
10 the parties and the consumer advocates, and we have to go  
11 forward with the rate case, you're going to have two big MFR  
12 filings right around the same time. And I know we've got the  
13 Staff to handle that and all of that good stuff, but you need  
14 to take the logistical concerns into account. So, I'll move  
15 Staff with the same direction we gave in the Florida Power  
16 Corporation filing.

17 CHAIRMAN JACOBS: Have a motion and a second. Let me  
18 just say I'd like to echo the comments I made earlier, but I'm  
19 even more encouraged here, because I've heard some very  
20 positive comments coming from the company. And again, I would  
21 expect that we will proceed forward in that same spirit. I  
22 really believe this is very much a window of opportunity to  
23 think through these issues more carefully. But again, I think,  
24 what we're looking for here are results. And, I think, with  
25 that in mind we can move forward. You had a comment?

1 MS. HART: Mr. Chairman, before ya'll vote, I need to  
2 make a verbal correction for the record, it's a technical  
3 correction. The recommendation, as originally filed, indicated  
4 that this docket is proposed agency and it is not, this is a  
5 procedural docket. And so, on the cover sheet of the  
6 recommendation as originally filed, the words "proposed agency  
7 action" should be stricken.

8 Thank you.

9 CHAIRMAN JACOBS: Very well. With that modification,  
10 to the motion as well.

11 COMMISSIONER DEASON: Before we vote, let me say I  
12 understand that there's a motion and a second. My motion died  
13 for lack of a second. I understand that. I just -- I'm going  
14 to vote for the motion. It's not my preferred alternative, but  
15 I think it is certainly a course of action which we need to  
16 pursue given that my original motion did not get a second.

17 CHAIRMAN JACOBS: Very well. It's been moved and  
18 seconded. All in favor, aye.

19 COMMISSIONER DEASON: Aye.

20 COMMISSIONER JABER: Aye.

21 COMMISSIONER BAEZ: Aye.

22 COMMISSIONER PALECKI: Aye.

23 CHAIRMAN JACOBS: Opposed? Show it passes, Item 18.

24 (Item 18 Agenda Conference concluded at 6:10 p.m.)

25



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

4

5 I, KORETTA E. STANFORD, RPR, Official Commission  
6 Reporter, do hereby certify that the Agenda Conference in  
7 Docket No. 001148-EI was heard by the Public Service  
8 Commission at the time and place herein stated.

9

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

15

16 I FURTHER CERTIFY that I am not a relative, employee,  
17 attorney or counsel of any of the parties, nor am I a relative  
18 or employee of any of the parties' attorneys or counsel  
19 connected with the action, nor am I financially interested in  
20 the action.

21

22 DATED THIS Monday, May 21, 2001.

23

24

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