

Matthew M. Childs, P.A.

July 17, 2001

Blanca S. Bayó, Director  
Records and Reporting  
Florida Public Service Commission  
4075 Esplanade Way, Room 110  
Tallahassee, Florida 32399-0850

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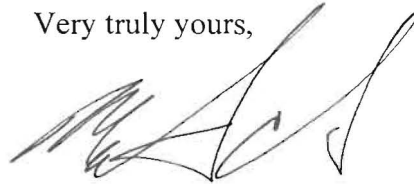
**In Re: Review of Florida Power & Light Company's proposed merger with Entergy Corporation, the formation of a Florida transmission company ("Florida transco"), and their effect on FPL's retail rates; Docket No. 001148-EI**

Dear Ms. Bayó:

Enclosed for filing on behalf of Florida Power & Light Company ("FPL") are the original and fifteen (15) copies of FPL's Response to the Request of South Florida Hospital and Healthcare Association.

If you or your Staff have any questions regarding this transmittal, please contact me.

Very truly yours,



Matthew M. Childs

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

**In re: Review of Florida Power & Light Company's proposed merger with Entergy Corporation, the formation of a Florida Transmission company ("Florida transco"), And their effect on FPL retail rates** ) ) ) ) ) )  
**Docket No. 001148-EI**  
**Filed: July 17, 2001**

**FLORIDA POWER & LIGHT COMPANY'S RESPONSE TO THE REQUEST OF SOUTH FLORIDA HOSPITAL AND HEALTHCARE ASSOCIATION, ET AL. FOR CLARIFICATION, OR IN THE ALTERNATIVE, RECONSIDERATION**

Florida Power & Light Company ("FPL"), pursuant to Florida Administrative Code Rules 25-22.060 and 28-106.303, hereby responds to the July 5, 2001 Request of South Florida Hospital and Healthcare Association, *et al.* For Clarification, or in the Alternative, Reconsideration (the South Florida Hospital and Healthcare Association and other entities on whose behalf the request was filed will be referred to as the "Hospitals," and the request will be referred to as the "Hospitals' Request"). The Hospitals' Request should be denied for the following reasons, each of which is developed more fully hereafter:

1. The Hospitals are not parties to this proceeding.
2. The paragraph of the Commission's Order No. PSC-01-1346-PCO-EI for which the Hospitals seek clarification or reconsideration is not ambiguous, and the Hospitals identify no basis upon which it could be properly reconsidered.
3. The Settlement and Stipulation that the Hospitals seek to challenge (the "Stipulation") was approved by the Commission's Order No. PSC-99-0519-AS-EI (the "Settlement Order") as final agency to resolve the rate

proceeding initiated by the Office of Public Counsel (“OPC”) in Docket No. 990067-EL. The time to challenge that order -- by reconsideration or appeal -- has long passed, and the Hospitals may not do so here.

4. Because the Hospitals are alleged to be retail ratepayers of FPL and hence were represented by parties to the Stipulation, they are bound by the Stipulation.
5. It would be bad precedent and bad policy for the Commission not to honor the Stipulation that it previously approved.

**I.  
The Hospitals Are Not Parties To This Proceeding.**

The Hospitals petitioned to intervene in this proceeding on May 5, 2001. FPL timely opposed their petition on May 9, 2001. The Commission has not yet entered an order ruling on the Hospitals’ petition. The Hospitals are, accordingly, not a party and have no standing to seek the relief they request. *See Brasfield & Gorrie General Contractor, Inc. v. Ajax Constructions Co.*, 627 So.2d 1200, 1202-3 (Fla. 1<sup>st</sup> DCA 1993)(“The reason for requiring a party to have standing to participate in a judicial or administrative proceeding is to ensure that it has a ‘sufficient interest in the outcome of the litigation which warrants the court’s entertaining it,’ ....”)(citations omitted); Florida Administrative Code Rule 25-22.060 (“any *party* to a proceeding who is adversely affected by an order of the Commission may file a motion for reconsideration of that order.”)(emphasis added).

**II.**  
**The Hospitals Have Pled No Valid Basis For  
Clarification or Reconsideration.**

Even if the Hospitals were a party entitled to seek relief in this proceeding, the Hospitals' Request contains no valid basis for the relief they seek. The Hospitals' Request focuses upon the following paragraph from Order No. PSC-01-1346-PCO-EI:

Although we are not a party bound by its terms, we did approve the Stipulation in Order No. PSC-99-0519-AS-EI. One provision of the stipulation provides that the revenue sharing plan is to be the parties' "exclusive mechanism" to address any excessive earnings that might occur during the term of the stipulation. This provision provides some measure of protection for the ratepayers. For this reason, we find that no money shall be placed subject to refund at this time.

The Hospitals argue that this paragraph is ambiguous. They further argue that, if the paragraph in question is not ambiguous and the Commission really meant what it said, then the Commission should reconsider the conclusions reached in that paragraph.

The paragraph in question is not ambiguous and does not require clarification. Moreover, the Hospitals have identified nothing in the paragraph warranting reconsideration.

**A. The Paragraph In Question is Not Ambiguous.**

There is no need for the Commission to clarify the above-quoted paragraph, for its meaning is clear. The Commission stated it was not a party bound by the terms of the Stipulation but that it had approved the Stipulation via the Settlement Order. The Commission also noted that the Stipulation's revenue sharing plan is the parties' "exclusive mechanism" to address excessive earnings during the term of the Stipulation. The Commission further noted that this

provision provides some measure of protection for ratepayers and therefore that it will not hold any revenues subject to refund at present.

The paragraph could not be more straightforward. The Commission recognized that it is not bound as a party by the Stipulation but that it had approved the Stipulation, and it concluded that the Stipulation set in place a mechanism that adequately protects ratepayers. Because of that mechanism, the Commission exercised its discretion not to hold monies subject to refund. This conclusion is both logical and unambiguous. The Commission's reasoning does not depend on the tortured distinction the Hospitals try to draw between parties bound by the Stipulation and those not bound by it. Nothing requires, or even admits of, clarification.

**B. The Hospitals' Request For Reconsideration Fails To Meet The Standard.**

Reconsideration is appropriate when a party "identifies some point of fact or law that was overlooked or not considered by the decision maker in rendering its order." *See, e.g., In re: Petition for determination of need for the Osprey Energy Center in Polk County by Seminole Electric Cooperative and Calpine Construction Finance Company, L.P.*, 01 FPSC 4:329, citing *Diamond Cab Co, v. King*, 146 So.2d 889 (Fla. 1962). The Hospitals' Request identifies no points of fact or law that the Commission overlooked or failed to consider in entering Order No. PSC-01-1346-PCO-EI and hence states no valid basis to request reconsideration. Instead, the Hospitals' Request merely disagrees with the Commission's conclusion that FPL's rates should not be subject to refund. "The mere fact that a party disagrees with the order is not a valid basis for reconsideration." *Id.*

**III.**  
**The Order Approving The Stipulation Is Final Agency**  
**Action Which There Is No Valid Basis to Overturn.**

The Hospitals' Request is fundamentally an attack on the Settlement Order, a copy of which is attached hereto as Exhibit A. The Settlement Order was entered in Docket No. 990067-EI, which had been opened by the Commission on the petition of the OPC to initiate a full revenue requirements rate case for FPL. Before the rate case went to hearing, however, all of the parties to the docket agreed to settle on the terms set forth in the Stipulation, a copy of which is attached hereto as Exhibit B. The rate case settlement was expressly contingent upon approval of the Stipulation in its entirety by the Commission. Stipulation, Ex. B, at ¶10.

As is typical in litigation settlements, the Stipulation represented a compromise of the various parties' interests. It required FPL, *inter alia*, to lower prospectively its authorized return on equity to a range from 10% to 12%, to make an immediate base rate reduction of \$350 million, to make further refunds to customers in the event that its revenues exceeded certain thresholds (the "revenue-sharing mechanism"), to observe limits on the use of adjustment clauses to recover the cost of capital items, and to refrain from initiating or supporting any rate-increase request during the Stipulation's term. *Id.*, at ¶¶3-6. In exchange, FPL was protected against rate-decrease proceedings during the Stipulation's term, and the aforementioned revenue-sharing mechanism was to be substituted for traditional "rate case" reviews of expenses, investment and financial results of operations. *Id.* at ¶6. The Stipulation expressly recognized that, as a result:

[t]he achieved return on equity may, from time to time, be outside the authorized range and the sharing mechanism herein described is intended to be the appropriate and exclusive mechanism to address that circumstance.

*Id.*, at ¶4.

On March 10, 1999, the parties to the Stipulation filed a Joint Motion for Approval of Stipulation and Settlement with the Commission. The Commission staff carefully reviewed the Stipulation and issued its recommendation on March 15, 1999, to approve the Stipulation (the “Staff Recommendation”; a copy is attached hereto as Exhibit C). In recommending approval of the Stipulation, the staff recognized that:

The Stipulation will cause the Commission to alter its traditional viewpoint concerning ROE and excess earnings. ... With the [revenue] sharing mechanism, FPL could earn above the top of its authorized range for ROE, 12.00%, ....

Staff Recommendation, Ex. C, at 6. At the March 16, 1999, agenda conference, the Commission considered the Staff Recommendation and voted to approve the Stipulation. The Settlement Order was issued on March 17, 1999. In the Settlement Order, the Commission found that the Stipulation “provides immediate and substantial benefits for customers of [FPL]” and “[t]herefore, we find that the Stipulation should be approved.” Settlement Order, Ex. A, at 1.

It has now been over two years since the Commission issued the Settlement Order. The time for reconsideration or judicial review of the Settlement Order has long since passed. It is a final order of the Commission and not subject to collateral attack as the Hospitals seek to do here. As stated in *Gulf Coast Electric Co-Op, Inc. v. Johnson*, 727 So.2d 259, 265 (Fla. 1999),

The doctrine of decisional finality provides that there must be a “terminal point” in every proceeding both administrative and judicial, at which the parties and the public may rely upon a decision as being final and dispositive of the rights and issues involved therein. ... Once a decision has become final for these purposes, it may be modified only if there is a significant change in circumstances or a great public purpose is served by the modification.

(Citations omitted). The “terminal point” of the OPC’s 1999 rate case proceeding was clearly reached when the Commission issued the Settlement Order approving the Stipulation, and the time for challenging that order has passed.

The Hospitals’ Request suggests that the Commission disregard the finality of the Settlement Order because FPL is alleged to be earning beyond its authorized return. But this allegation, even if true, would not warrant modifying the Settlement Order under either of the exceptions just described. In view of the explicit recognition in both the Stipulation and the Staff Recommendation that FPL might earn beyond the top of its authorized return, the Hospitals can hardly claim that FPL’s allegedly doing so now would constitute the sort of changed circumstance that would warrant disturbing the finality of the Settlement Order.<sup>1</sup> There likewise would be no “great public interest” served by disavowing the negotiated resolution embodied in the Stipulation. As the then-Chairman of the Commission observed at the March 16, 1999, agenda conference when the Stipulation was approved:

I think staff put the ball in play, and Jack Shreve I think scored a touchdown for Florida ratepayers today, and I think he is to be commended. ... Clearly this is good for Florida ....

Transcript of March 16, 1999, agenda conference, a copy of which is attached hereto as Exhibit D, at 40. Nothing is offered by the Hospitals to suggest why a stipulation that was “clearly ...

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<sup>1</sup> It is worth noting as well that the “authorized return” to which the Hospitals want to compare FPL’s earnings was lowered from its previous level by the Stipulation. FPL agreed in the Stipulation to this reduction with the express understanding that, during the term of the Stipulation, FPL might earn above the authorized return without being subject to an earnings-based rate adjustment. *See* Stipulation, Ex. B, at ¶4. The Hospitals cannot have it both ways, applying the lowered rate of return to which FPL agreed in the Stipulation while at the same time ignoring the companion agreement that the authorized return would not be used during the term of the Stipulation to reduce rates.



good for Florida” when the Commission approved it in March 1999 has now somehow become so contrary to the public interest that it must be disavowed.

**IV.  
The Hospitals Were Fully And Adequately  
Represented As Parties In Docket No. 990067-EI.**

For the foregoing reasons, the Settlement Order is final agency action that may not properly be disturbed. That is true regardless of whether the Hospitals were or were not represented as parties in the proceeding where the Settlement Order was entered (Docket No. 990067-EI). However, even if there were merit in principle to the Hospitals’ argument that only the parties to Docket No. 990067-EI are bound by the Stipulation and the Settlement Order approving it, their argument would fail as a matter of fact, because the Hospitals were fully and adequately represented in that proceeding.

The Hospitals’ Request makes a specious distinction between the four direct signatories to the Stipulation, upon whom it concedes that the Stipulation is binding, and the roughly four million FPL customers who were not direct signatories to the Stipulation and, according to the Hospitals, are therefore not bound. What the Hospitals fail to acknowledge is that all of the signatories to the Stipulation other than FPL were acting in a representative capacity. Some or all of those signatories represented the Hospitals’ interests.

At a minimum, the Hospitals were represented by the OPC when it signed the Stipulation and the joint motion requesting that the Commission approve the Stipulation. The OPC is statutorily authorized to “represent the general public of Florida before the Florida Public Service Commission.” Section 350.061(1), Fla. Stat. (2001).

Consistent with this statutory mandate, when the OPC petitioned to initiate Docket No. 990067-EI, it stated that: “Public Counsel is filing this petition on behalf of the retail customers of FPL...” Petition By The Citizens Of The State Of Florida, Docket No. 990067-EI, January 20, 1999, par. 2. When OPC signed the Stipulation, it was likewise acting on behalf of FPL’s retail customers. This necessarily included the Hospitals, whom the South Florida Hospital and Healthcare Association petition to intervene in this docket alleges are all FPL retail customers. See SFHHA Petition to Intervene at ¶6. Thus, the Hospitals are bound by the Stipulation in the same way as every other FPL retail customer.<sup>2</sup>

**V.**  
**It Would Be Bad Precedent And Bad Policy**  
**For The Commission Not To Honor**  
**A Stipulation It Previously Approved.**

Finally, putting aside all the reasons why the Hospitals are not *entitled* to the relief they seek, the Hospitals’ Request should be denied for the additional, compelling reason that granting it would create extremely unfavorable precedent and policy. The Hospitals’ Request asks the Commission to disavow -- to FPL’s disadvantage -- a rate compromise that has benefited FPL’s customers enormously since its inception two and a half years ago. Granting this one-sided request would chill the prospects for future innovative ratemaking settlements, not just with respect to FPL, but for all utilities the Commission regulates.

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<sup>2</sup> Furthermore, the petition to intervene in Docket No. 990067-EI filed by the Coalition for Equitable Rates asserts that the Coalition represented at least one health care organization, which may have some or all of the Hospitals as members: the “Florida Health Care Association” (“FHCA”). In any event, regardless of whether the Hospitals are members of FHCA, the Coalition’s representation of FHCA shows that the Hospitals were protected not just by the OPC’s broad-based representation of the general public but also by an organization specifically attuned to the interests of the health care industry.

To understand the adverse impact that granting the Hospitals' Request would have, it is useful to review the background of the Stipulation. As discussed above, the Stipulation resolved a Commission rate proceeding initiated by OPC on behalf of FPL's retail customers. FPL, the OPC and the other parties who had intervened in that proceeding concluded among themselves that settling on the terms embodied in the Stipulation better served their mutual interests than litigating the proceeding to conclusion. As is always the case with litigation settlements, each party compromised positions that it otherwise would have advocated. But even after the parties agreed that the Stipulation was a mutually satisfactory balancing of their interests, the Commission's approval of the Stipulation was required to implement the Stipulation. For example, the Stipulation required FPL to reduce its existing rates and charges by at least \$350 million annually, something FPL could not do without Commission approval. FPL was also to refund future revenues over certain forecasted amounts, again something that required Commission approval.

In approving the Stipulation, the Commission was exercising its authority to establish just and reasonable rates under Chapter 366. If the Commission had determined that the Stipulation was inconsistent with the proper exercise of that authority, it would not -- could not -- have approved it. The Stipulation provided FPL an incentive to be more efficient and reduce its O&M expenditures by allowing FPL to share certain revenues with its customers. It also exposed FPL to the risk of underearning with no prospect for rate relief during the term of the Stipulation, if expenses rose more than expected. In other words, the Stipulation was a form of incentive ratemaking that the Commission embraced and approved. Moreover, as the OPC pointed out at the agenda conference where the Stipulation was approved, the Stipulation's focus on revenues

rather than on earned return had the benefit of simplicity and avoided potential disputes about how to calculate earned return. *See* March 16, 1999, agenda conference transcript, Ex. D, at 36. In short, the Commission did not turn a blind eye to its rate making duties under Chapter 366 when it approved the Stipulation; to the contrary, the Commission exercised those duties in a creative way, to the mutual benefit of FPL and its customers.

The Hospitals now ask the Commission to turn its back on that portion of the Stipulation that was to benefit FPL, after FPL has already reduced rates and made additional rate refunds to customers pursuant to the revenue sharing mechanism of the Stipulation. The Hospitals want all the benefits that the Stipulation offers customers, but do not want the Commission to honor the portions of the Stipulation that would benefit FPL.

And the benefits conferred on FPL's customers by the Stipulation have been very substantial indeed. When the Stipulation was approved, FPL immediately effected a rate reduction that resulted in FPL's foregoing \$350 million in revenues for the first year. Because of customer growth in subsequent years, the revenues foregone by FPL in those subsequent years have increased. By the end of the Stipulation's three-year term, FPL will have foregone revenues as a result of the Stipulation totaling in excess of \$1 billion. In addition, without ever having to initiate a proceeding to address overearnings, as a result of the revenue sharing mechanism FPL customers received a refund of \$22 million for the first year of the Stipulation, received another refund of \$105 million for the second year, and stand to receive yet another refund for the third year

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<sup>3</sup> The OPC aggressively ensured that customers were adequately protected. As Commissioner Clark observed at the time the Stipulation was approved, "I don't think I would

If the Commission failed to recognize and honor the Stipulation it had approved, such conduct would be unseemly and improper. In *Palm Springs General Hospital, Inc. v. Health Care Cost Containment Board*, 560 So.2d 1348 (Fla.3<sup>rd</sup> DCA 1990), the Third District Court Appeals had occasion to address an attempt by an agency to recede from a stipulation it had approved to terminate litigation. A dispute had arisen between the Hospital and the Board as to the method of calculating Medicaid reimbursement payments to the Hospital. The matter had been referred to the Division of Administrative Hearings (“DOAH”) for an evidentiary proceeding. Prior to hearing, the Hospital and the Board reached a written settlement, so the DOAH hearing examiner closed the file and referred the matter back to the Board. At that point, however, the Board sent a letter to the Hospital stating that it would not honor the agreement.

The court had the following to say about the Board’s attempting to renege upon the agreement it had approved and entered:

The principles which favor settlement of existing controversies, see *Lotspeich Co. v. Euster*, 416 So.2d 1163 (Fla. 3DCA 1982), and which require adherence to all enforceable contracts have particular application to an administrative proceeding such as this. See § 120.57(3), Fla. Stat. (1989) (“Unless precluded by law, informal disposition may be made of any proceeding by stipulation, agreed settlement, or consent order.”); Florida Admin. Code Rule 22I-6-033(2); *Health Care & Retirement Corp. v. Department of Health & Rehabilitative Servs*, 516 So.2d 292 (Fla. 1<sup>st</sup> DCA 1987); *Manatee County v. Florida Public Employees Relations Comm’n*, 387 So.2d 446 (Fla. 1<sup>st</sup> DCA 1980). Indeed, it is no less than unseemly, perhaps even more so than in the case of private litigants, for an agency of our government to renounce an agreement into which it has freely entered. In any event, we will not permit it to do so.

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like to negotiate with Mr. Shreve under any circumstances.” March 16, 1999, agenda conference transcript, Ex. D, at 37.

560 So.2d at 1349; *see also Florida Power & Light Company v. Beard*, 626 So.2d 663 (Fla. 1993) (Court affirms Commission's rejection of regulatory out clause based upon Commission's commitment to allow future recovery of costs: "FPL can have no reasonable apprehension that it will be unable to recover the payments it is required to make under the QF contract"). The fact that here the Commission *approved* the Stipulation rather than merely being a party to it makes the Hospitals' suggestion that the Commission disavow the Stipulation even more "unseemly."

The Commission should seriously consider the chilling effect that disavowing the Stipulation would have. It would substantially discourage -- if not outright halt -- the practice of parties before the Commission reaching settlements as a cost-effective alternative to litigation. If all the parties to a Commission-approved settlement cannot depend upon receiving the benefits to which they are entitled thereunder, they will have little or no incentive to accept voluntarily any detriments that the settlement might entail. An especially important casualty of this wariness to settle could be innovative forms of ratemaking. Almost by definition, innovative ratemaking requires consent of the parties, because it operates outside the conventional bounds of the Commission's regulatory scheme. But if utilities cannot reliably depend on receiving the benefits as well as the detriments of innovative ratemaking arrangements, then they will have little reason to pursue them.

**Conclusion**

For the foregoing reasons, the Request of South Florida Hospital and Healthcare Association, *et al.* For Clarification, or in the Alternative, Reconsideration should be denied.

Respectfully submitted,

Steel Hector & Davis LLP  
Suite 601, 215 S. Monroe St.  
Tallahassee, Florida 32301

Attorneys for Florida Power  
& Light Company

By: 

Matthew M. Childs, P.A.  
Fla. Bar No. 122666  
John T. Butler, P.A.  
Fla. Bar No. 283479  
Charles A. Guyton  
Fla. Bar No. 398039

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of FPL's Response to the Request of South Florida Hospital and Healthcare Association, *et al.* For Clarification, or in the Alternative, Reconsideration was served by Hand Delivery (\*) or mailed this 17<sup>th</sup> day of July, 2001 to the following:

Robert V. Elias, Esquire\*  
Legal Division  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Room 370  
Tallahassee, FL 32399

Andrews & Kurth Law Firm  
Mark Sundback/Kenneth Wiseman  
1701 Pennsylvania Ave., NW, Suite 300  
Washington, DC 20006

Dynegy Inc.  
David L. Cruthirds  
1000 Louisiana Street, Suite 5800  
Houston, TX 77002-5050

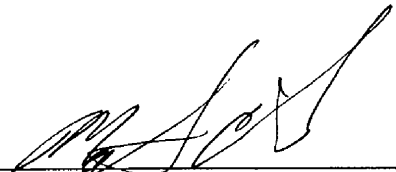
Florida Industrial Power Users Group  
c/o John McWhirter, Jr.  
McWhirter Reeves  
P.O. Box 3350  
Tampa, FL 33601-3350

Gray, Harris & Robinson, P.A. )  
Thomas A. Cloud/W. Christopher Browder  
P.O. Box 3068  
Orlando, FL 32802-3068

Office of Public Counsel  
Jack Shreve/John R. Howe  
c/o The Florida Legislature  
Tallahassee, FL 32399-1400

South Florida Hospital and Healthcare  
Association  
Linda Quick  
6363 Taft Street  
Hollywood, FL 33024

By



Matthew M. Childs



**THE FLORIDA PUBLIC SERVICE COMMISSION**

**In re: Review of Florida Power & Light  
Company's proposed merger with Entergy  
Corporation, the formation of a Florida  
transmission Company ("Florida  
transco"), and their effect on FPL's retail  
sales**

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**Docket No.: 001148-EI**

**PETITION TO INTERVENE**

South Florida Hospital and Healthcare Association ("SFHHA") and individual healthcare institutions in the Florida Power & Light Company ("FPL") service territory (collectively with the SFHHA, the "Hospitals"), pursuant to the Florida Administrative Code Rules 25-22.039 and 28-106.205, hereby petition to intervene in this docket. As grounds therefore, the Hospitals state as follows:

1. The name and address of SFHHA is:

South Florida Hospital and Healthcare Association  
6363 Taft Street  
Hollywood, Florida 33024  
(954) 964-1660 Phone  
(954) 9642-1260 Facsimile

2. The names of individual healthcare institutions referenced in the first sentence of this pleading are listed in Appendix A to this pleading.

3. All pleadings, orders and correspondence should be directed to Petitioners' representative as follows:

Mark F. Sundback  
Kenneth L. Wiseman  
Andrews & Kurth L.L.P.  
1701 Pennsylvania Avenue, N.W.  
Suite 300  
Washington, D.C. 20006  
(202) 662-2700 Phone  
(202) 662-2739 Facsimile

and

DOCUMENT NUMBER-DATE

05509 MAY-26

REGISTRATION NUMBER

Linda Quick, President  
South Florida Hospital and Healthcare Association  
6363 Taft Street  
Hollywood, Florida 33024  
(954) 964-1660 Phone  
(954) 9642-1260 Facsimile

4. This proceeding was initiated to consider FPL's retail rates, in light of *inter alia*, the planned formation of a regional transmission organization ("RTO") for peninsular Florida, and of a proposed merger with Entergy Corporation. See, "Order Establishing Procedure," Docket No. 001148-EI (November 6, 2000), p.1 (hereinafter "Order Establishing Procedure"). FPL's retail rates could be affected by costs or savings arising from formation and participation in a RTO, as well as costs arising from its apparently unsuccessful merger attempt.

5. SFHHA is a regional healthcare provider association acting as an advocate, facilitator and educator for its members, and a voice for improving the health status of its community. Particularly, SFHHA advocates the interests, and encourages involvement, of its member organizations in communications with the public, to elected and government officials, and to the business community and engages in cost-effective projects and programs that benefit, or add value to the services offered by, its member organizations.

6. Entities listed on Appendix A are engaged in providing, *inter alia*, acute healthcare services, and receive electric power from and pay the rates of FPL. Healthcare facilities, because of the services they render, their load profile, and their concern with reliable, consistent levels of service, have important concerns regarding the services and rates of FPL.

7. The Commission's order establishing procedures in this docket recognized that "[i]t is anticipated that an extended period of discovery will take place before the . . . identification of specific issues to be considered." Order Establishing Procedure, p. 1. Not all of the specific issues to be addressed have yet been identified, as was noted in the March 14, 2001 "Order Granting Motion For Leave To File Amended Petition To Intervene and Granting in Part and Denying in Part Amended Petition to Intervene" in this docket (p. 3).

8. Disposition of this case may affect rates for FPL, as well as the terms and conditions of service for healthcare institutions connected to FPL's facilities; thus the Hospitals have an interest in the proceeding and would be directly and substantially affected by any action the Commission takes in this docket.

9. For a potential intervenor to demonstrate that its substantial interests will be affected by a proceeding, the potential intervenor must show: (a) it will suffer injury in fact as a result of the agency action contemplated in the proceeding that is of sufficient immediacy to entitle it to a hearing; and (b) the injury suffered is a type against which the proceeding is designed to protect. *See, Ameristeel Corp. v. Clark*, 691 So. 2d 473, 477 (Fla. 1997).

10. Disputed issues of material fact include, but are not limited to, the following:

- (a) The effect of the failed merger on FPL's earnings and costs;
- (b) The effect of the RTO on competition in Florida;
- (c) The effect of the proposed RTO on retail rates in the Florida market;

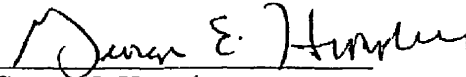
- (d) Appropriate adjustments to be made in setting retail rates for FPL retail customers; and
- (e) The appropriate level of rates charged by FPL for service.
- 11. The applicable statutes and rules, include, but are not limited to:

Chapter 366, Florida Statutes  
Fla. Admin. Code Chapter 25  
Fla. Admin Code Rule 28-106

WHEREFORE, the Hospitals request that the Florida Public Service Commission grant the Hospitals' Petition to Intervene and accord them full party status in this docket.



Mark F. Sundback  
Kenneth L. Wiseman  
Andrews & Kurth L.L.P.  
1701 Pennsylvania Avenue, N.W.  
Suite 300  
Washington, D.C. 20006  
Ph. (202) 662-3030  
Fax. (202) 662-2739



George E. Humphrey  
Florida Reg. No. 0007943  
Andrews & Kurth L.L.P.  
600 Travis, Suite 4200  
Houston, Texas 77002-3090  
Ph. (713) 220-4200  
Fax. (713) 220-4285

Attorneys for the Hospitals

May 1, 2001

**APPENDIX A**

Northwest Medical Center	University of Miami Hospital and
Plantation General Hospital	Clinics
University Hospital	Bascom Palmer Eye Institute
Westside Regional Medical Center	Ann Bates Leach Eye Hospital
Aventura Hospital	Jackson Memorial Hospital
Cedars Medical Center	Jackson Memorial North Maternity
Deering Hospital	Center
Kendall Regional Medical Center	Broward General Medical Center
Columbia Hospital	Coral Springs Medical Center
JFK Medical Center	Imperial Point Medical Center
Palms West Hospital	North Broward Medical Center
Florida Medical Center	North Shore Medical Center
Hollywood Medical Center	
North Ridge Medical Center	
Coral Gables Hospital	
Hialeah Hospital	
Palmetto General Hospital	
Parkway Regional Medical Center	
Delray Medical Center	
Palm Beach Gardens Medical Center	
West Boca Medical Center	
Vencor Hospital - Hollywood	
Vencor Hospital - Ft. Lauderdale	
Vencor Hospital - Coral Gables	
Baptist Hospital of Miami	
South Miami Hospital	
Miami Children's Hospital	
Mt. Sinai Medical Center	
Miami Heart Medical Center	

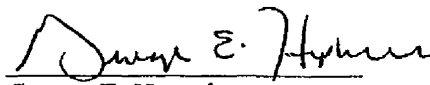
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Federal Express to the following parties of record and interested parties, this 1<sup>st</sup> day of May, 2001.

Robert V. Elias, Esquire.  
Legal Division  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Room 370  
Tallahassee, FL 32399-0850

William G. Walker, III  
Florida Power & Light Company  
9250 West Flagler Street  
Miami, Florida 33174

J. Roger Howe, Esq.  
Office of Public Counsel  
c/o Florida Legislature  
111 W. Madison Street  
Room No. 812  
Tallahassee, Florida 32399-1400

  
George E. Humphrey

Florida Industrial Power Users Group  
c/o John McWhirter, Jr., Esq.  
400 North Tampa St., Suite 2450  
Tampa, Florida 33601-3350

Joseph A. McGlothlin, Esq.  
Vicki Gordon Kaufman, Esq.  
McWhirter Reeves Law Firm  
117 South Gadsden  
Tallahassee, Florida 32301

Thomas A. Cloud, Esquire  
Gray, Harris & Robinson, P.A.  
301 East Pine Street, Suite 1400  
P.O. Box 3068  
Orlando, Florida 32802-3608

Matt Childs, Esquire  
Steel Hector & Davis, LLP  
215 S. Monroe Street, Suite 601  
Tallahassee, Florida 32301-1804

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Florida Power & Light Company's proposed merger with Entergy Corporation, the formation of a Florida transmission Company ("Florida transco"), and their effect on FPL's retail sales §  
§  
§  
§  
§  
§

Docket No.: 001148-EI

MOTION FOR ADMISSION *PRO HAC VICE*  
OF  
MARK F. SUNDBACK AND KENNETH L. WISEMAN

George E. Humphrey, an attorney duly admitted and in good standing with the Bar in the State of Florida, hereby moves the admission of Mark F. Sundback, Esquire and Kenneth L. Wiseman, Esquire of the law firm of Andrews & Kurth L.L.P. *pro hac vice*, as counsel for the Hospitals, as that term is defined in the petition to intervene filed concurrently with this motion. Attorneys Sundback and Wiseman are members in good standing of the Bar of the District of Columbia and admitted to practice before the District of Columbia Court of Appeals, the highest court in the District's judicial system. Each is experienced in the matters involved in public utility regulation and has practiced extensively before agencies engaged in such regulation as reflected in the attached certifications.

Respectfully submitted,

ANDREWS & KURTH L.L.P.



George E. Humphrey  
Florida Reg. No.0007943  
600 Travis, Suite 4200  
Houston, Texas 77002  
Telephone: 713-220-4200  
Facsimile: 713-220-4285

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

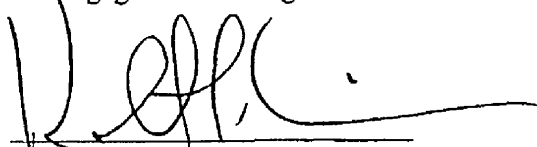
**In re: Review of Florida Power & Light  
Company's proposed merger with Entergy  
Corporation, the formation of a Florida  
transmission Company ("Florida  
transco"), and their effect on FPL's retail  
sales**

§  
§  
§  
§  
§  
§

**Docket No.: 001148-EI**

**CERTIFICATION**

I, Kenneth L. Wiseman, hereby certify, pursuant to Rule 25-22.008, Florida Administrative Code, that I am an attorney in good standing of the Bar of the District of Columbia, that I am experienced in the matters involved in public utility regulation, and that I have practiced extensively before agencies engaged in such regulation.



Kenneth L. Wiseman  
District of Columbia Bar No. 943092



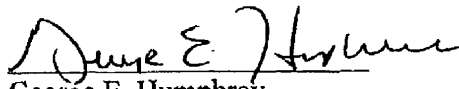
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2540 Shumard Oak Boulevard  
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Steel Hector & Davis, LLP  
215 S. Monroe Street, Suite 601  
Tallahassee, Florida 32301-1804

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by the Citizens  
of the State of Florida for a  
full revenue requirements rate  
case for Florida Power & Light  
Company.

DOCKET NO. 990067-EI  
ORDER NO. PSC-99-0519-AS-EI  
ISSUED: MARCH 17, 1999

The following Commissioners participated in the disposition of  
this matter:

JOE GARCIA, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
JULIA L. JOHNSON  
E. LEON JACOBS, JR.

MAR 17 1999

ORDER APPROVING STIPULATION AND SETTLEMENT

BY THE COMMISSION:

On January 20, 1999, the Office of Public Counsel (OPC) filed a Petition to "have the Florida Public Service Commission conduct a full revenue requirements rate case and establish reasonable rates and charges" for Florida Power & Light Company. The Florida Industrial Power Users Group and the Coalition for Equitable Rates have intervened in the proceeding.

On March 10, 1999, the parties filed a Joint Motion for Approval of Stipulation and Settlement together with the Stipulation and Settlement (Stipulation) in the above-referenced docket that will resolve all issues raised in OPC's Petition. A copy of the Stipulation and Settlement is attached to this Order as Attachment A and is incorporated herein by reference. Among other things, this Stipulation provides for a \$350 million annual rate reduction. It provides immediate and substantial benefits for customers of Florida Power & Light Company. Therefore, we find that the Stipulation should be approved.

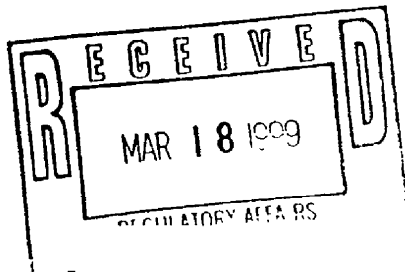


Exhibit A

DOCUMENT NUMBER-DATE

13441 MAR 17 99

20250317/13441

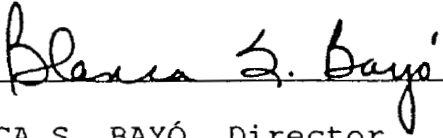
ORDER NO. PSC-99-0519-AS-EI  
DOCKET NO. 990067-EI  
PAGE 2

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Stipulation and Settlement, attached to this Order as Attachment A and incorporated herein by reference, filed by the Office of Public Counsel, Florida Power & Light Company, the Florida Industrial Power Users Group, and the Coalition for Equitable Rates is approved. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 17th day of March, 1999.

  
\_\_\_\_\_  
BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

RVE

ORDER NO. PSC-99-0519-AS-EI  
DOCKET NO. 990067-EI  
PAGE 3

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for a full revenue )  
requirements rate case for ) DOCKET NO. 990067-EI  
Florida Power & Light Company )  
\_\_\_\_\_ )

STIPULATION AND SETTLEMENT

WHEREAS, the Office of Public Counsel of the State of Florida ("OPC") has petitioned the Florida Public Service Commission to initiate and conduct a full revenue requirements base rate proceeding for Florida Power & Light Company ("FPL"). In its Petition, the OPC, among other matters, alleges that, while long-term benefits for both FPL and its customers may have been achieved by the "Plans" approved by the Florida Public Service Commission in Dockets Nos. 950359-EI and 970410-EI, the time has now come for the customers to share in the benefits;

WHEREAS, The Florida Industrial Power Users Group ("FIPUG") and The Coalition For Equitable Rates ("Coalition") have petitioned for and been granted leave to intervene;

WHEREAS, a base rate proceeding can be costly, time consuming, lengthy and disruptive to efficient and appropriate management and regulatory efforts; and,

WHEREAS, the Parties to this Stipulation and Settlement have undertaken to resolve the matters raised in the Petition so as to

effect a current and prompt reduction in base rates charged customers and achieve a degree of stability to the base rates and charges;

NOW THEREFORE, in consideration of the foregoing and the covenants contained herein, the Parties hereby stipulate and agree:

1. This Stipulation and Settlement will become effective on the day following the vote by the Florida Public Service Commission approving this Stipulation and Settlement which will be reflected in a final Order. The starting date for the three-year term of this Stipulation and Settlement will be 30 days following the vote and will be referred to as the "Implementation Date."

2. The continued amortization and booking of expenses and other cost recognition authorized and required by the Florida Public Service Commission in Dockets Nos. 950359-EI and 970410-EI will terminate on the day before the Implementation Date. Beginning on the Implementation Date, FPL is authorized to record an amortization amount of up to \$100 million at the discretion of the Company per year for each twelve months of the term of this Stipulation and Settlement which shall be applied to reduce nuclear and/or fossil production plant in service. The amortization will be separate and apart from normal depreciation, and existing depreciation practices and resulting depreciation rates will not be adjusted, either before, during or after the term hereof to eliminate the effect of the additional amortization amount

recorded.

3. FPL will reduce its base rates by \$350 million. The base rate reduction will be reflected on FPL's customer bills by reducing the base rate energy charge by .420 cents per kWh. FPL will begin applying the lower base rate energy charge required by this Stipulation and Settlement to meter readings made on and after the Implementation Date.

4. Effective on the Implementation Date, FPL's authorized return on equity range on a prospective basis will be 10.00% to 12.00% with a midpoint of 11.00% for all regulatory purposes; it being understood that during the term of this Stipulation and Settlement the achieved return on equity may, from time to time, be outside the authorized range and the sharing mechanism herein described is intended to be the appropriate and exclusive mechanism to address that circumstance. FPL's adjusted equity ratio will be capped at 55.83% as included in FPL's projected 1998 Rate of Return Report for surveillance purposes. The adjusted equity ratio equals common equity divided by the sum of common equity, preferred equity, debt and off-balance sheet obligations. The amount used for off-balance sheet obligations will be calculated per the Standard & Poor's methodology as used in its August 1998 credit report.

5. No party to this Stipulation and Settlement will request, support, or seek to impose a change in the application of any

provision hereof. OPC, FIPUG and the Coalition will neither seek nor support any additional reduction in FPL's base rates and charges, including interim rate decreases, to take effect for three years from the Implementation Date unless such reduction is initiated by FPL. FPL will not petition for an increase in its base rates and charges, including interim rate increases, to take effect before three years from the Implementation Date. Other than with respect to the environmental cost recovery clause as herein addressed, FPL will not use the various cost recovery clauses to recover new capital items which traditionally and historically would be recoverable through base rates.

6. During the term of this Stipulation and Settlement revenues which are above the levels stated herein will be shared between FPL and its retail electric utility customers--it being expressly understood and agreed that the mechanism for earnings sharing herein established is not intended to be a vehicle for "rate case" type inquiry concerning expenses, investment and financial results of operations. For the first 12 months beginning with the Implementation Date, FPL's retail base rate revenues in excess of \$3.400 billion up to \$3.556 billion will be shared between FPL and its customers on a one-third/two-thirds basis, one-third to be retained by FPL and two-thirds to be refunded to its customers. Retail base rate revenues above \$3.556 billion for the first 12-month period will be refunded to FPL's customers. For the



second 12-month period, retail base rate revenues in excess of \$3.450 billion up to \$3.606 billion will be subject to the same one-third/two-thirds sharing between FPL and its customers. Retail base rate revenues above \$3.606 billion for the second 12-month period will be refunded to FPL customers. For the third and final 12-month period, retail base rate revenues in excess of \$3.500 billion up to \$3.656 billion will be subject to the same one-third/two-thirds sharing between FPL and its customers. Retail base rate revenues above \$3.656 billion for the third 12-month period will be refunded to FPL's customers. Because implementation of this Stipulation and Settlement may not begin on the first day of a calendar month, the three resulting 12 month periods used to calculate potential refunds may each include two partial calendar months. Revenues for these two partial calendar months will be calculated by multiplying total revenues for the full calendar month by the ratio of days the Stipulation and Settlement is in effect in the partial calendar month, or days to complete the applicable twelve month period, as the case may be, to the total days in that calendar month.

All refunds will be paid with interest at the 30-day commercial paper rate as specified in Rule 25-6.109, Florida Administrative Code, to customers of record during the last three months of each applicable 12-month period based on their proportionate share of kWh usage for the 12-month period. For

purposes of calculating interest only, it will be assumed that revenues to be refunded were collected evenly throughout the preceding 12-month period at the rate of one-twelfth per month. All refunds with interest will be in the form of a credit on the customers' bills beginning with the first day of the first billing cycle of the second month after the end of the applicable twelve month period. Refunds to former customers will be completed as expeditiously as reasonably possible.

7. FPL's recovery of costs through the environmental cost recovery docket will be phased out over a three-year period beginning January 1, 2000. FPL will be allowed to recover its otherwise eligible and prudent environmental costs, including true-up amounts, in 2000 up to \$12.8 million. For 2001, FPL will be allowed to recover its otherwise eligible and prudent environmental costs, including true-up amounts, up to \$6.4 million. For 2002, FPL will not be allowed to recover any costs through the environmental cost recovery docket. FPL may, however, petition to recover in 2003 prudent environmental costs incurred after the expiration of the three-year term of this Stipulation and Settlement in 2002.

8. During the term of this Stipulation and Settlement, accruals for nuclear decommissioning and fossil dismantlement expense will be capped at the level previously approved by the Commission in Order No. PSC-95-1531-FOF-EI in Dockets Nos. 941350-

EI and 941352-EI as amended by Order No. PSC-95-1531A-FOF-EI and Order No. PSC-95-1532-FOF-EI in Docket No. 941343-EI. In addition, the Protests or Petitions on Proposed Agency Action by FIPUG and the Coalition of Order No. PSC-99-0073-FOF-EI will be withdrawn and that Order will be made final. Thereafter, depreciation rates as addressed in Order No. PSC-99-0073-FOF-EI will not be exceeded for the term of this Stipulation and Settlement.

9. The construction costs associated with the Ft. Myers and Sanford plant repowering projects will be treated as CWIP in rate base and AFUDC will not be accrued on these projects.

10. This Stipulation and Settlement is contingent on approval in its entirety by the Florida Public Service Commission. This Stipulation and Settlement will resolve all matters in this Docket pursuant to and in accordance with Section 120.57(4), Florida Statutes (1997). This Docket will be closed effective on the date the Florida Public Service Commission Order approving this Stipulation and Settlement is final.

11. This Stipulation and Settlement, dated as of March 10, 1999, may be executed in counterpart originals and a facsimile of an original signature shall be deemed an original.

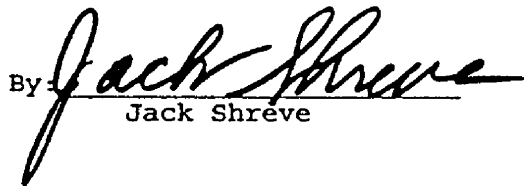
In Witness Whereof, the Parties evidence their acceptance and agreement with the provisions of this Stipulation and Settlement by their signature.

Florida Power & Light Company  
9250 West Flagler Street  
Miami, Florida 33174

Office of Public Counsel  
111 West Madison Street  
Suite 810  
Tallahassee, FL 32399

Steel Hector & Davis LLP

By:   
Matthew M. Childs, P.A.

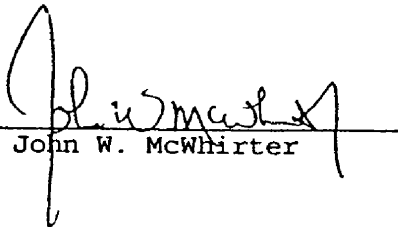
By:   
Jack Shreve

Florida Industrial  
Power Users Group

The Coalition for  
Equitable Rates

John W. McWhirter, Jr., Esq.  
McWhirter, Reeves, McGlothlin,  
Davidson, Decker, Kaufman  
Arnold & Steen, P.A.  
P. O. Box 3350  
Tampa, FL 33601-3350

Ronald C. LaFace, Esq.  
Seann M. Frazier, Esq.  
Greenberg, Traurig, P.A.  
101 East College Avenue  
Tallahassee, FL 32301

By:   
John W. McWhirter

By:   
Ronald C. LaFace

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for a full revenue  
requirements rate case for  
Florida Power & Light Company.

---

Docket No.: 990067-EI  
Filed: March 10, 1999

**JOINT MOTION FOR APPROVAL  
OF STIPULATION AND SETTLEMENT**

The Citizens of the State of Florida, through the Office of Public Counsel, the Florida Industrial Power Users Group, The Coalition for Equitable Rates, and Florida Power & Light Company jointly move the Florida Public Service Commission for entry of a final order approving the attached Stipulation and Settlement as full and complete resolution of all matters pending in this docket in accordance with Section 120.57(4), Florida Statutes (Supp. 1998).

WHEREFORE, the undersigned parties to this docket respectfully urge the Florida Public Service Commission to approve the attached Stipulation and Settlement in all respects.

DATED this 10th day of March, 1999.

Respectfully submitted,



JACK SHREVE

Office of Public Counsel  
c/o The Florida Legislature  
Room 812  
111 West Madison Street  
Tallahassee, FL 32399-1400

FOR THE CITIZENS OF THE  
STATE OF FLORIDA



MATTHEW M. CHILDS, P.A.

Steel Hector & Davis LLP  
215 South Monroe Street  
Suite 601  
Tallahassee, FL 32301-1804

ATTORNEYS FOR FLORIDA  
POWER & LIGHT COMPANY

*Joseph A. McGlothlin for*  
JOHN W. McWHIRTER, JR.

McWhirter, Reeves, McGlothlin, Davidson,  
Decker, Kaufman, Arnold & Steen, P. A.  
Post Office Box 3350  
Tampa, FL 33601-3350

ATTORNEYS FOR THE FLORIDA  
INDUSTRIAL POWER USERS GROUP

*Ronald C. LaFace*  
RONALD C. LaFACE

Greenberg Traurig, P.A.  
101 East College Avenue  
Post Office Drawer 1838  
Tallahassee, FL 32302

ATTORNEYS FOR THE COALITION  
FOR EQUITABLE RATES

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for a full revenue )  
requirements rate case for ) DOCKET NO. 990067-EI  
Florida Power & Light Company )  
\_\_\_\_\_ )

STIPULATION AND SETTLEMENT

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WHEREAS, The Florida Industrial Power Users Group ("FIPUG") and The Coalition For Equitable Rates ("Coalition") have petitioned for and been granted leave to intervene;

WHEREAS, a base rate proceeding can be costly, time consuming, lengthy and disruptive to efficient and appropriate management and regulatory efforts; and,

WHEREAS, the Parties to this Stipulation and Settlement have undertaken to resolve the matters raised in the Petition so as to

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purposes of calculating interest only, it will be assumed that revenues to be refunded were collected evenly throughout the preceding 12-month period at the rate of one-twelfth per month. All refunds with interest will be in the form of a credit on the customers' bills beginning with the first day of the first billing cycle of the second month after the end of the applicable twelve month period. Refunds to former customers will be completed as expeditiously as reasonably possible.

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8. During the term of this Stipulation and Settlement, accruals for nuclear decommissioning and fossil dismantlement expense will be capped at the level previously approved by the Commission in Order No. PSC-95-1531-FOF-EI in Dockets Nos. 941350-

EI and 941352-EI as amended by Order No. PSC-95-1531A-FOF-EI and Order No. PSC-95-1532-FOF-EI in Docket No. 941343-EI. In addition, the Protests or Petitions on Proposed Agency Action by FIPUG and the Coalition of Order No. PSC-99-0073-FOF-EI will be withdrawn and that Order will be made final. Thereafter, depreciation rates as addressed in Order No. PSC-99-0073-FOF-EI will not be exceeded for the term of this Stipulation and Settlement.

9. The construction costs associated with the Ft. Myers and Sanford plant repowering projects will be treated as CWIP in rate base and AFUDC will not be accrued on these projects.

10. This Stipulation and Settlement is contingent on approval in its entirety by the Florida Public Service Commission. This Stipulation and Settlement will resolve all matters in this Docket pursuant to and in accordance with Section 120.57(4), Florida Statutes (1997). This Docket will be closed effective on the date the Florida Public Service Commission Order approving this Stipulation and Settlement is final.

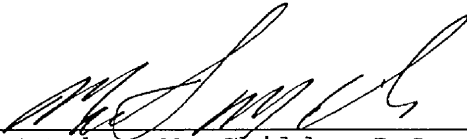
11. This Stipulation and Settlement, dated as of March 10, 1999, may be executed in counterpart originals and a facsimile of an original signature shall be deemed an original.

In Witness Whereof, the Parties evidence their acceptance and agreement with the provisions of this Stipulation and Settlement by their signature.

Florida Power & Light Company  
9250 West Flagler Street  
Miami, Florida 33174

Office of Public Counsel  
111 West Madison Street  
Suite 810  
Tallahassee, FL 32399

Steel Hector & Davis LLP

By:   
Matthew M. Childs, P.A.

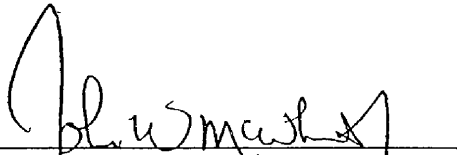
By:   
Jack Shreve

Florida Industrial  
Power Users Group

The Coalition for  
Equitable Rates

John W. McWhirter, Jr., Esq.  
McWhirter, Reeves, McGlothlin,  
Davidson, Decker, Kaufman  
Arnold & Steen, P.A.  
P. O. Box 3350  
Tampa, FL 33601-3350

Ronald C. LaFace, Esq.  
Seann M. Frazier, Esq.  
Greenberg, Traurig, P.A.  
101 East College Avenue  
Tallahassee, FL 32301

By:   
John W. McWhirter

By:   
Ronald C. LaFace



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

RECEIVED-FPSC  
MARCH 15 1999  
RECORDS AND REPORTING  
-M-E-M-O-R-A-N-D-U-M-

**DATE:** MARCH 15, 1999

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

**FROM:** DIVISION OF AUDITING AND FINANCIAL ANALYSIS (SLEMKEWICZ, JS JS  
D. DRAPER, LEE, LESTER, MAILHOT, MAUREY, DEVLIN, SALAK DM  
DIVISION OF ELECTRIC AND GAS (BREMAN, TEW, WHEELER) P/ ALN  
DIVISION OF LEGAL SERVICES (ELIAS) KS DW ONG RET

**RE:** DOCKET NO. 990067-EI - PETITION BY THE CITIZENS OF THE STATE OF FLORIDA FOR A FULL REVENUE REQUIREMENTS RATE CASE FOR FLORIDA POWER & LIGHT COMPANY.

**AGENDA:** 03/16/99 - REGULAR AGENDA - DECISION ON STIPULATION PRIOR TO HEARING - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\AFA\WP\990067.RCM

CASE BACKGROUND

On January 20, 1999, the Office of Public Counsel (OPC) filed a Petition to "have the Florida Public Service Commission conduct a full revenue requirements rate case and establish reasonable rates and charges for FPL."

On March 10, 1999, the parties filed a Joint Motion for Approval of Stipulation and Settlement together with the Stipulation and Settlement (Stipulation) in the above-referenced docket that resolves the issues raised. This recommendation addresses the Stipulation and Settlement agreed upon by the parties.

DOCUMENT NUMBER-DATE

03228 MAR 15 99

DOCKET NO. 990067-EI  
DATE: March 15, 1999

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission approve the Stipulation entered into by Florida Power & Light Company (FPL), OPC, the Florida Industrial Power User Group (FIPUG), and the Coalition for Equitable Rates (the Coalition). (Attachment)

**PRIMARY RECOMMENDATION:** Yes. The Stipulation should be approved. (DEVLIN)

**ALTERNATIVE RECOMMENDATION:** No, the stipulation should not be approved. (SALAK, MAUREY, ELIAS)

**PRIMARY STAFF ANALYSIS:** Because of time constraints, staff did not prepare an analysis by paragraph. Instead, we have concentrated our efforts in areas that we believe need clarification and/or specific attention by the Commission.

The main reason Primary Staff recommends approval of the Stipulation is that it results in immediate and significant savings to all of FPL's ratepayers. We recognize that, at the conclusion of a full rate case, a greater rate reduction is possible. However, that would be after eight to twelve months.

In addition to the \$350 million rate reduction, there is potential for further credits under the revenue sharing plan. For instance, ratepayers will be credited in the first 12 month period for two thirds of the revenue in excess of \$3.4 billion. FPL's revenue for calender year 1998 was approximately \$3.75 billion and therefore, the rate reduction places FPL at about where sharing begins. Any growth in revenue will benefit ratepayers. Historically, FPL's revenue has grown at about 3% a year. Absent unusual weather, it does not appear there will be any additional credits for the first year. It is more likely there will be some credits for the second and third years of the plan.

Another benefit of the plan are the caps on the environmental cost recovery clause (ECRC or the clause). This area is addressed later in the recommendation but these caps will directly benefit ratepayers since the amounts flowing through the clause are decreased. For instance, in 1998, FPL recovered approximately \$22.3 million through ECRC, and, in year 2000, ECRC will be limited to \$12.8 million. In year 2001, the limit is \$6.4 million, and, in year 2002, no amounts can be flowed through the clause.



Primary Staff recognizes that the Stipulation will, probably result in a higher Return on Equity (ROE) for FPL, than achieved over the last five years. For the first year, we calculate that the Stipulation will result in an achieved ROE of 13.3% assuming FPL does not opt to record any "amortization amount". We expect FPL to exercise its option to amortize some amount in order to meet internal corporate goals such as a targeted level of growth in earnings. We expect to see ROEs in the upper 12% range during this plan which is excessive but does not overshadow the significant up front ratepayer benefits. In addition, the Commission maintains its authority to review FPL's earnings during the period of the Stipulation.

The following are areas that we believe need clarification and/or specific attention by the Commission. We have numbered our analyses to correspond with the section numbers in the Stipulation.

## 2. Expense Plan

The first sentence of section 2 of the Stipulation requires that the plan approved by the Commission in Docket Nos. 950359-EI and 970410-EI continue until the day before the Implementation Date. The plan approved by the Commission was set up on a calendar year basis. Staff has no objection to ending the plan on the day before the Implementation Date. However, the method for calculating the minimum required amount of expense to be recorded for the period from January 1, 1999 until the day before the Implementation Date remains to be resolved. (Mailhot)

### Amortization

Section 2 of the Stipulation permits FPL to record an amortization amount of zero up to \$100 million each year of the three-year term. The exact amount recorded is at the discretion of the company as long as it does not exceed \$100 million annually. The amortization will be applied to reduce the nuclear and/or fossil production plant in service. Further, depreciation rates established in the future are prohibited from recognizing the effects of the amortization amounts.

Staff believes clarification is needed regarding how these amortization amounts will be recorded to reduce plant in service. From discussions with the company, it is staff's understanding that the intent is to reduce net plant in service rather than gross plant. To achieve a reduction in net plant (investment less accumulated reserve), it appears that the amortization amounts would be recorded in separate reserve accounts. This would serve

to increase the total fossil/nuclear account reserves which, in turn, will reduce net plant. However, these additional amortization amounts would not be included in the reserve component in the design of subsequent depreciation rates. The numerator of the remaining life rate formula is a measure of the net unrecovered plant at the time depreciation rates are implemented. The additional amortization amounts are not included in the numerator indicates that a greater amount of net plant remains to be recovered than is actually the case. The result is an overstated depreciation rate and resulting overstated depreciation expenses. In a word, this is accelerated depreciation. The potential endpoint is that the design of depreciation rates, and the resultant rate base, will no longer reflect the matching principle, but rather, the degree of variability in the company's revenues. When depreciation rates are reset after the term of the Stipulation, failure to include the amortization in the rate calculations will result in continued accelerated depreciation. Yet, staff believes the Commission should not ignore the overall benefits of the Stipulation.

One of the basic axioms of depreciation is to match capital recovery with consumption. Staff is concerned with the concept of using economic conditions to adjust depreciation expenses which should properly be matched to service life. Previously, the Commission has approved faster write-offs of perceived reserve deficits, and of unrecovered net plant that are not life related; such actions were considered not to conflict with the matching principle.

The Stipulation essentially allows FPL the flexibility to shorten the recovery period of the fossil/nuclear plants. This is not the writing off of a perceived historical deficit, but simply accelerated depreciation, in conflict with the matching principle. Staff's concern is that each step made in this direction makes the next step easier. Further, the amortization will reduce the company's achieved earnings over the life of the Stipulation.  
(Lee)

### **3. Allocation of Rate Reduction**

The Stipulation in section 3 specifies that the \$350 million reduction in base rates will be implemented by reducing the non-fuel energy charge of each customer class by .42 cents per kilowatt hour (kWh). Consequently, the reduction is allocated among the rate classes based on their energy (kWh) consumption. This will result in a \$4.25 reduction in the monthly bill for a residential customer who uses 1,000 kWh, from \$75.54 to \$71.29.

The proposed reduction based on energy usage differs from the method used to allocate most costs at the time FPL's base rates were determined. The bulk of the costs recovered through base rates are fixed costs which do not vary with the level of kilowatt hours (kWh) generated. As a consequence, in a rate case, most base rate costs are allocated to the rate classes on a demand, rather than an energy, basis. The bulk of FPL's fixed production and transmission plant costs were allocated based on each class's estimated contribution to the 12 monthly maximum system peaks. This method, known as the 12 Coincident Peak and 1/13 Average Demand (12 CP and 1/13 AD) method, was used to allocate most fixed production and transmission costs for each of the four major investor-owned utilities in their last full requirements rate cases.

By reducing rates on a kWh basis, high load factor classes (i.e. those whose energy use is high relative to their peak demand), such as large commercial and industrial classes, receive a proportionately larger share of the reduction than they would had the reduction been allocated in a manner similar to that used in a rate case. Conversely, lower load factor classes, such as residential and small commercial classes, receive a smaller share of the reduction.

For illustrative purposes, staff has estimated the impact on residential customers of allocating the entire \$350 million reduction on a 12 CP and 1/13 AD basis, in lieu of the proposed energy basis. For the purposes of the calculation, staff has used the projected kWh sales for the period January through December, 1999. This projection was used to establish FPL's currently effective rates for the fuel and other adjustment clauses. In addition, staff has used FPL's 1997 load research estimates of the class contributions to peak demand. Based on this data, the residential customers would receive a .463 cent per kWh reduction in their non-fuel energy charge, as compared to the .420 reduction proposed. The demand allocation would result in a reduction of \$4.68 on the monthly 1,000 kWh bill, a \$.43 larger reduction than under the energy allocation.

Staff believes that the use of a demand allocator more closely reflects how the reduction would be distributed in a full requirements rate case. (Wheeler)

#### 4. Achieved Return on Equity

In section 4, the Stipulation states:

DOCKET NO. 990067-EI  
DATE: March 15, 1999

. . FPL's authorized return on equity range on a prospective basis will be 10.00% to 12.00% with a midpoint of 11.00% for all regulatory purposes; it being understood that during the term of this Stipulation and Settlement **the achieved return on equity may, from time to time, be outside the authorized range** and the sharing mechanism herein described is intended to be the appropriate and **exclusive** mechanism to address that circumstance. (Emphasis added.)

In Florida, the traditional use of the authorized return on equity (ROE) is to compare a utility's achieved return to its authorized return. If a utility earns above the top of the range of its authorized return, then it is overearning. The overearnings can be quantified in dollars using the top of the range of the authorized ROE. The Commission then disposes of the overearnings through rate reductions, offsets with regulatory assets, or another way.

This Stipulation will cause the Commission to alter its traditional viewpoint concerning ROE and excess earnings. With the Stipulation, the revenue sharing mechanism is the sole methodology for addressing excess earnings, i.e., earnings above the top of the authorized range. In section 6, the basics of the sharing mechanism are presented as follows:

During the term of this Stipulation and Settlement revenues which are above the levels stated herein will be shared between FPL and its retail electric utility customers--it being expressly understood and agreed that **the mechanism for earnings sharing herein established is not intended to be a vehicle for "rate case" type inquiry concerning expenses, investment and financial results of operations.** For the first 12 months beginning with the Implementation Date, FPL's retail base rate revenues in excess of \$3.400 billion up to \$3.556 billion will be shared between FPL and its customers on a one-third/two-thirds basis, one-third to be retained by FPL and two-thirds to be refunded to its customers. (Emphasis added.)

With the above sharing mechanism, FPL could earn above to top of its authorized range for ROE, 12.00%, if its revenues are below \$3.400 billion. Therefore, this Stipulation requires the Commission to make a fundamental change in its traditional rate base and rate of return regulation. The Stipulation is essentially based on revenues, not earnings.

DOCKET NO. 990067-EI  
DATE: March 15, 1999

The Commission has approved sharing plans before. In Docket No. 880069-TL, the Commission approved a rate stabilization plan for Southern Bell. This plan had a sharing mechanism in which revenues were shared between customers and shareholders from the point at which earnings exceeded the top of the range for ROE. The proposed Stipulation presented by FPL, OPC, et al, **could** allow earnings to exceed the authorized ROE and be retained entirely by shareholders. This will depend on FPL's revenues and how those revenues are measured. (Lester)

The Commission has considered the impact of a stipulation on its jurisdiction in Order No. PSC-94-0172-FOF-TI, issued February 11, 1994, in Docket No. 920260-TL. In part, the Commission stated:

The text of the Settlement contains numerous references that purport to require us to act, to refrain from acting, or to otherwise restrict our actions in some manner, or seek action for which we have no authority. Generally, such attempts to bind us to a specified future course of action by adoption of the Settlement must fail as a matter of law. See, e.g., United Telephone Company v. Public Service Commission, 496 So.2d 116, 118 (Fla. 1986), (parties to a contract cannot confer jurisdiction). Similarly, parties cannot by contract or agreement limit or require our exercise of jurisdiction.

It is our statutory responsibility to ensure that Southern Bell's rates, charges, and practices are fair, just, and reasonable. See Sections 364.01(2), 364.03, and 364.14, Florida Statutes. The terms of a contract for the rendering of a service of a public nature are subject to governmental authority. State ex rel Ellis v. Tampa Waterworks Co., 48 So. 639 (Fla. 1909).

When we approve a stipulation between parties, the provisions of the stipulation become part of our order. However, we cannot, by our own order, require or preclude a future Commission from carrying out its mandate. This is analogous to the principle that in adopting legislation, the legislature is not bound by actions of prior legislatures nor can it bind future legislatures.

The question of the Commission being precluded from acting was last addressed in Docket No. 880069-TL. There, Southern Bell argued that, in approving the parameters of the Plan, we committed to leave the Plan as is, absent some precipitous change in circumstances. Several parties had argued that, because the cost of equity capital had fallen, certain amounts of revenue

DOCKET NO. 990067-EI  
DATE: March 15, 1999

should be held subject to refund, pending the outcome of the upcoming rate case. We concluded that regardless of the Plan's silence on whether it could be modified due to changes solely in the cost of equity capital and regardless of our prior approval of the Plan, we were not precluded from acting, if the public interest so required. See Order No. PSC-92-0524-FOF-TL, issued June 18, 1992.

The Commission, even if it so desired, cannot be bound to a specific course of action through the approval of a stipulation. As we stated in Docket No. 890216-TL:

[W]e do not possess the legal capacity of a private party to enter into contracts covering our statutory duties. Indeed, we cannot abrogate -- by contract or otherwise -- our authority to assure that our mandate from the Legislature is carried out. As a result, we may not bind the Commission to take or forego action in derogation of our statutory obligations.

See Order No. 22352, issued December 29, 1989.

The parties are without authority to confer or preclude our exercise of jurisdiction by agreement. In our view, any such provisions in the Settlement are not fatal flaws; they are simply unenforceable against the Commission and are void ab initio. The parties cannot give away or obtain that for which they have no authority. We note that, consistent with our discussion above, the parties commented during our agenda conference that there was no intent to restrict in any fashion the Commission's responsibility or legal authority.

While it is clear that we cannot be precluded from carrying out our statutory mandate by approving this Stipulation, we also understand that should we find it necessary in the future to alter the regulatory provisions we are now approving, such changes could be the basis for a party to the Settlement to abrogate the prospective portions of the agreement.

Order No. PSC-94-0172-FOF-EI at pages 5, 6.

The situation addressed by the Commission in Order No. 940172 is analogous to that confronting the Commission in this docket. The stipulation binds the parties, and not the Commission. The Commission remains able to utilize during the term of the agreement, all powers explicitly and impliedly granted by Chapter 366, Florida Statutes. This includes the ability to determine that

the rates charged by FPL are no longer fair, just, and reasonable, and to change those rates. This also includes the ability to order an interim change in rates. Given that this stipulation does not limit the Commission's ability to exercise its jurisdiction to the fullest extent, and does not violate any specific provision of Chapter 366, it is consistent with the requirements of Chapter 366. (Elias)

6. Sharing

Section 6 of the Stipulation requires the sharing of FPL's retail base rate revenues in excess of a certain amount each year of the plan. It is staff's understanding that the retail base rate revenues are those revenues reported on the Earnings Surveillance Report as FPSC Adjusted, which was \$3,757,273,247 for 1998. (Mailhot)

Capital Structure Treatment of Deferred Customer Refunds

The Stipulation does not address whether the company should include the deferred customer refunds in the capital structure. Staff believes the appropriate treatment of the deferred customer refunds should be reported in the capital structure, as a separate line item, and include the principle and interest with a cost rate at the 30-day commercial paper rate as specified in Rule 25-6.109, Florida Administrative Code. This is similar to the treatment of deferred revenues that staff is recommending for item number 9 on the March 16 agenda, Docket No. 980379-EI, Tampa Electric Company. (D. Draper)

7. Environmental Cost Recovery Clause (ECRC)

Section 7 of the proposed stipulation states in part that "FPL's recovery of costs through the environmental cost recovery docket will be phased out over a three-year period beginning January 1, 2000." FPL has clarified that the "phase out" is temporary. FPL will continue to petition for cost recovery both during and after the three-year period; however, the amount recovered through the clause will be the lesser of actual costs or a capped amount each year of the stipulation period. The lesser of actual costs or the capped amounts will be the basis for calculating FPL's environmental cost recovery factors for the years 2000, 2001, and 2002. Therefore, the charge per kilowatt hour for environmental compliance costs will be significantly reduced throughout the stipulation period. The terms of the proposed stipulation with respect to the ECRC are summarized in the following table:

ECRC Hearing	Set Factors for Projection Period	Recovery Cap
Fall 1999	Calendar Year 2000	\$12.8 M
Fall 2000	Calendar Year 2001	\$ 6.4 M
Fall 2001	Calendar Year 2002	\$ 0
Fall 2002	Calendar Year 2003	No stipulation cap

In the Fall 2001 ECRC hearing, the Commission will determine whether the new environmental compliance projects proposed for 2002 are appropriate for recovery through the ECRC. According to the proposed stipulation, FPL's ratepayers will not be billed in calendar year 2002 for any of these environmental compliance costs. However, FPL clarified that it may petition for recovery of the prudently incurred costs of the new projects which were both approved in the 2001 ECRC hearing and placed into service between the expiration date of the proposed stipulation and December 31, 2002. If such a petition by FPL were granted, recovery would begin in 2003. FPL maintains that no other true-up amounts will be carried forward for purposes of setting ECRC factors for 2003. As of January 1, 2003, the caps proposed by this stipulation will no longer be applicable, and FPL may once again be allowed to recover its prudently incurred environmental compliance costs through the environmental cost recovery factor as it had prior to the stipulation. Both during and after the stipulation period, FPL will continue to participate in the annual ECRC hearings and file the appropriate ECRC testimony and schedules. (Tew, Breman)

#### 8. Depreciation

Section 8 of the Stipulation caps the annual nuclear decommissioning and fossil dismantlement accruals at their currently approved levels. In addition, the protests of Order No. PSC-99-0073-FOF-EI filed by FIPUG and the Coalition will be withdrawn and that Order will be made final. The depreciation rates addressed in that Order will not be increased during the term of the Stipulation.

Rule 25-6.0436, Florida Administrative Code, requires electric companies to file depreciation studies at least once every four years. FPL has, however, filed production plant studies more frequently in the past. The Stipulation will preclude such studies being filed over the three-year term.



DOCKET NO. 990067-EI  
DATE: March 15, 1999

Additionally, FPL's next depreciation study is required by Rule 25-6.0436, Florida Administrative Code, to be submitted no later than December 26, 2001. Even though the stipulation period will not end until April 15, 2002, staff believes this should not prevent the study filing as required. The Implementation Date for new depreciation rates, however, will not be prior to April 15, 2002, per the Stipulation.

As part of Order No. PSC-99-0073-FOF-EI, the allocation of the \$90 million in nuclear amortization accumulated as provided by Order No. PSC-96-0461-FOF-EI was deferred until after a final decision in Docket No. 981390-EI, In Re: Investigation into the Equity Ratio and Return on Equity of Florida Power and Light Company. At the February 16, 1999 Agenda Conference, the Commission decided to close this docket and pursue these issues in the instant docket. Accordingly, the Stipulation does not address the disposition of the \$90 million nuclear amortization. This issue will be addressed in Docket No. 990324-EI.

**ALTERNATIVE STAFF ANALYSIS:** It is hard to argue that a rate reduction in the magnitude of \$350 million is not the appropriate course of action for the Commission to take. However, Alternate Staff believes that rate reductions and other issues can and should be resolved in the form of a full revenue requirements proceeding. To allow due process, the customers' rate reductions would be delayed; however, the Commission would have a complete evidentiary record upon which to determine the best long term interests of the ratepayers.

The last full rate case for FPL was in the mid-1980's. Significant changes have occurred since that time which should be recognized for resetting rates. Due to potential changes in the industry, this may be the last opportunity to fully scrutinize FPL. Alternate Staff believes that a thorough review of each company will aid any transition that may be necessary.

A full cost of service study needs to be submitted. As discussed in the Primary Analysis, the methodology for allocating the rate reduction proposed in the Stipulation is based upon energy which will favor the large commercial and industrial classes at the expense of the residential and small commercial classes. Further, as has been seen in the deregulation of the telecommunications industry, it is imperative to assign the appropriate costs to customers and services before any regulatory changes occur.

Under the Stipulation, staff estimates of the achieved return on equity indicate that FPL will earn over 12.0%, the top of the ROE range under the Stipulation, in 1999 and that the achieved

DOCKET NO. 990067-EI  
DATE: March 15, 1999

earnings will continue to grow over the three year period. As noted in the Primary Analysis, there is no cap on earnings under the Stipulation. This provision of the Stipulation makes ROE basically meaningless for surveillance purposes. In 1998, FPL's achieved earnings were 12.6% even with FPL recording \$372 million of additional expenses under the Commission Plan. The rate reduction is less than the amount of additional expenses recorded in 1998. In a rate case, rates would be set at the midpoint. Under the Stipulation, the midpoint is 11.0%. Based upon an historic or prospective view of earnings, Alternate Staff believes that greater rate reductions would be likely if the Commission proceeded to a full revenue requirements proceeding. FPL has stated in its press release that a million dollars in rate case costs will be saved by the Stipulation. A million dollars is a little over a basis point for FPL, but could lead to significant savings for the ratepayers.

The reduced amounts recovered through ECRC has been stated as a reason to endorse the Stipulation. Alternate Staff submits that during a base rate proceeding, the amounts being recovered through this clause can be rolled into base rates as indicated by Section 366.8255, Florida Statutes. The ECRC items rolled into base rates will lead to a reduction in the ECRC factor for a longer period of time than the proposal in the Stipulation.

DOCKET NO. 990067-EI  
DATE: March 15, 1999

**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** Yes. Absent a timely appeal of the Commission's final order, no further Commission action will be required and the docket should be closed. (ELIAS)

**STAFF ANALYSIS:** The Stipulation has been signed by all of the official parties of record, namely the Office of Public Counsel, the Florida Industrial Power Users Group, The Coalition for Equitable Rates and Florida Power & Light Company. The Stipulation is offered "pursuant to and in accordance with Section 120.57(4), Florida Statutes. Section 120.57(4), Florida Statutes, provides that "...informal disposition may be made of any proceeding by stipulation, agreed settlement, or consent order." The Stipulation does not require further Commission action to implement the agreement. Therefore, the docket should be closed.

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Petition for a full revenue )  
requirements rate case for ) DOCKET NO. 990067-EI  
Florida Power & Light Company )  

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**STIPULATION AND SETTLEMENT**

WHEREAS, the Office of Public Counsel of the State of Florida ("OPC") has petitioned the Florida Public Service Commission to initiate and conduct a full revenue requirements base rate proceeding for Florida Power & Light Company ("FPL"). In its Petition, the OPC, among other matters, alleges that, while long-term benefits for both FPL and its customers may have been achieved by the "Plans" approved by the Florida Public Service Commission in Dockets Nos. 950359-EI and 970410-EI, the time has now come for the customers to share in the benefits;

WHEREAS, The Florida Industrial Power Users Group ("FIPUG") and The Coalition For Equitable Rates ("Coalition") have petitioned for and been granted leave to intervene;

WHEREAS, a base rate proceeding can be costly, time consuming, lengthy and disruptive to efficient and appropriate management and regulatory efforts; and,

WHEREAS, the Parties to this Stipulation and Settlement have undertaken to resolve the matters raised in the Petition so as to

effect a current and prompt reduction in base rates charged customers and achieve a degree of stability to the base rates and charges;

NOW THEREFORE, in consideration of the foregoing and the covenants contained herein, the Parties hereby stipulate and agree:

1. This Stipulation and Settlement will become effective on the day following the vote by the Florida Public Service Commission approving this Stipulation and Settlement which will be reflected in a final Order. The starting date for the three-year term of this Stipulation and Settlement will be 30 days following the vote and will be referred to as the "Implementation Date."

2. The continued amortization and booking of expenses and other cost recognition authorized and required by the Florida Public Service Commission in Dockets Nos. 950359-EI and 970410-EI will terminate on the day before the Implementation Date. Beginning on the Implementation Date, FPL is authorized to record an amortization amount of up to \$100 million at the discretion of the Company per year for each twelve months of the term of this Stipulation and Settlement which shall be applied to reduce nuclear and/or fossil production plant in service. The amortization will be separate and apart from normal depreciation, and existing depreciation practices and resulting depreciation rates will not be adjusted, either before, during or after the term hereof to

eliminate the effect of the additional amortization amount recorded.

3. FPL will reduce its base rates by \$350 million. The base rate reduction will be reflected on FPL's customer bills by reducing the base rate energy charge by .420 cents per kWh. FPL will begin applying the lower base rate energy charge required by this Stipulation and Settlement to meter readings made on and after the Implementation Date.

4. Effective on the Implementation Date, FPL's authorized return on equity range on a prospective basis will be 10.00% to 12.00% with a midpoint of 11.00% for all regulatory purposes; it being understood that during the term of this Stipulation and Settlement the achieved return on equity may, from time to time, be outside the authorized range and the sharing mechanism herein described is intended to be the appropriate and exclusive mechanism to address that circumstance. FPL's adjusted equity ratio will be capped at 55.83% as included in FPL's projected 1998 Rate of Return Report for surveillance purposes. The adjusted equity ratio equals common equity divided by the sum of common equity, preferred equity, debt and off-balance sheet obligations. The amount used for off-balance sheet obligations will be calculated per the Standard & Poor's methodology as used in its August 1998 credit report.

5. No party to this Stipulation and Settlement will request, support, or seek to impose a change in the application of any provision hereof. OPC, FIPUG and the Coalition will neither seek nor support any additional reduction in FPL's base rates and charges, including interim rate decreases, to take effect for three years from the Implementation Date unless such reduction is initiated by FPL. FPL will not petition for an increase in its base rates and charges, including interim rate increases, to take effect before three years from the Implementation Date. Other than with respect to the environmental cost recovery clause as herein addressed, FPL will not use the various cost recovery clauses to recover new capital items which traditionally and historically would be recoverable through base rates.

6. During the term of this Stipulation and Settlement revenues which are above the levels stated herein will be shared between FPL and its retail electric utility customers--it being expressly understood and agreed that the mechanism for earnings sharing herein established is not intended to be a vehicle for "rate case" type inquiry concerning expenses, investment and financial results of operations. For the first 12 months beginning with the Implementation Date, FPL's retail base rate revenues in excess of \$3.400 billion up to \$3.556 billion will be shared between FPL and its customers on a one-third/two-thirds basis, one-third to be retained by FPL and two-thirds to be refunded to its

customers. Retail base rate revenues above \$3.556 billion for the first 12-month period will be refunded to FPL's customers. For the second 12-month period, retail base rate revenues in excess of \$3.450 billion up to \$3.606 billion will be subject to the same one-third/two-thirds sharing between FPL and its customers. Retail base rate revenues above \$3.606 billion for the second 12-month period will be refunded to FPL customers. For the third and final 12-month period, retail base rate revenues in excess of \$3.500 billion up to \$3.656 billion will be subject to the same one-third/two-thirds sharing between FPL and its customers. Retail base rate revenues above \$3.656 billion for the third 12-month period will be refunded to FPL's customers. Because implementation of this Stipulation and Settlement may not begin on the first day of a calendar month, the three resulting 12 month periods used to calculate potential refunds may each include two partial calendar months. Revenues for these two partial calendar months will be calculated by multiplying total revenues for the full calendar month by the ratio of days the Stipulation and Settlement is in effect in the partial calendar month, or days to complete the applicable twelve month period, as the case may be, to the total days in that calendar month.

All refunds will be paid with interest at the 30-day commercial paper rate as specified in Rule 25-6.109, Florida Administrative Code, to customers of record during the last three



months of each applicable 12-month period based on their proportionate share of kWh usage for the 12-month period. For purposes of calculating interest only, it will be assumed that revenues to be refunded were collected evenly throughout the preceding 12-month period at the rate of one-twelfth per month. All refunds with interest will be in the form of a credit on the customers' bills beginning with the first day of the first billing cycle of the second month after the end of the applicable twelve month period. Refunds to former customers will be completed as expeditiously as reasonably possible.

7. FPL's recovery of costs through the environmental cost recovery docket will be phased out over a three-year period beginning January 1, 2000. FPL will be allowed to recover its otherwise eligible and prudent environmental costs, including true-up amounts, in 2000 up to \$12.8 million. For 2001, FPL will be allowed to recover its otherwise eligible and prudent environmental costs, including true-up amounts, up to \$6.4 million. For 2002, FPL will not be allowed to recover any costs through the environmental cost recovery docket. FPL may, however, petition to recover in 2003 prudent environmental costs incurred after the expiration of the three-year term of this Stipulation and Settlement in 2002.

8. During the term of this Stipulation and Settlement, accruals for nuclear decommissioning and fossil dismantlement

expense will be capped at the level previously approved by the Commission in Order No. PSC-95-1531-FOF-EI in Dockets Nos. 941350-EI and 941352-EI as amended by Order No. PSC-95-1531A-FOF-EI and Order No. PSC-95-1532-FOF-EI in Docket No. 941343-EI. In addition, the Protests or Petitions on Proposed Agency Action by FIPUG and the Coalition of Order No. PSC-99-0073-FOF-EI will be withdrawn and that Order will be made final. Thereafter, depreciation rates as addressed in Order No. PSC-99-0073-FOF-EI will not be exceeded for the term of this Stipulation and Settlement.

9. The construction costs associated with the Ft. Myers and Sanford plant repowering projects will be treated as CWIP in rate base and AFUDC will not be accrued on these projects.

10. This Stipulation and Settlement is contingent on approval in its entirety by the Florida Public Service Commission. This Stipulation and Settlement will resolve all matters in this Docket pursuant to and in accordance with Section 120.57(4), Florida Statutes (1997). This Docket will be closed effective on the date the Florida Public Service Commission Order approving this Stipulation and Settlement is final.

11. This Stipulation and Settlement, dated as of March 10, 1999, may be executed in counterpart originals and a facsimile of an original signature shall be deemed an original.

In Witness Whereof, the Parties evidence their acceptance and agreement with the provisions of this Stipulation and Settlement by their signature.

Florida Power & Light Company  
9250 West Flagler Street  
Miami, Florida 33174

Office of Public Counsel  
111 West Madison Street  
Suite 810  
Tallahassee, FL 32399

Steel Hector & Davis LLP

By:

  
Matthew M. Childs, P.A.

By:

  
Jack Shreve

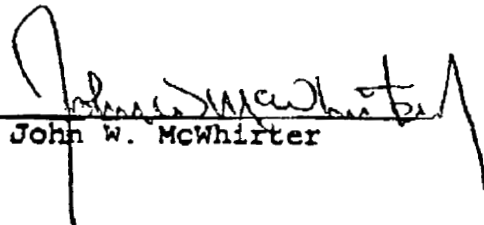
Florida Industrial  
Power Users Group

The Coalition for  
Equitable Rates

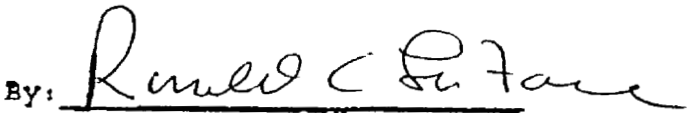
John W. McWhirter, Jr., Esq.  
McWhirter, Reeves, McGlothlin,  
Davidson, Decker, Kaufman  
Arnold & Steen, P.A.  
P. O. Box 3350  
Tampa, FL 33601-3350

Ronald C. LaFace, Esq.  
Seann M. Frazier, Esq.  
Greenberg, Traurig, P.A.  
101 East College Avenue  
Tallahassee, FL 32301

By:

  
John W. McWhirter

By:

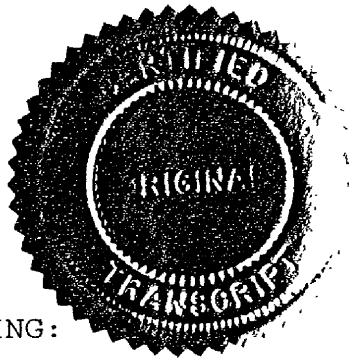
  
Ronald C. LaFace

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
TALLAHASSEE, FLORIDA

IN RE: Petition by The Citizens of the State of Florida for  
a full revenue requirements rate case for Florida Power &  
Light Company.

DOCKET NO. 990067-EI

BEFORE:



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

PROCEEDING:

AGENDA CONFERENCE

ITEM NUMBER:

10A\*\*

DATE:

March 16, 1999

PLACE:

4075 Esplanade Way, Room 148  
Tallahassee, Florida

JANE FAUROT, RPR  
P.O. BOX 10751  
TALLAHASSEE, FLORIDA 32302  
(850) 561-5598

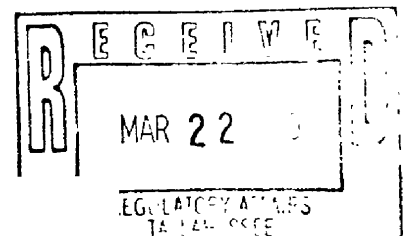


Exhibit D

## APPEARANCES:

JACK SHREVE, Esquire, representing OPC  
RON LAFACE, Esquire, representing Coalition for  
Equitable Rates  
JOHN McWHIRTER, Esquire, representing FIPUG  
MATTHEW CHILDS, Esquire, and Mr. Evanson representing  
FPL

STAFF RECOMMENDATION

Issue 1: Should the Commission approve the Stipulation entered into by Florida Power & Light Company (FPL), OPC, the Florida Industrial Power Users Group (FIPUG), and the Coalition for Equitable Rates (the Coalition)?

Primary Recommendation: Yes. The Stipulation should be approved.

Alternative Recommendation: No. The stipulation should not be approved.

Issue 2: Should this docket be closed?

Recommendation: Yes. Absent a timely appeal of the Commission's final order, no further Commission action will be required and the docket should be closed.

P R O C E E D I N G S

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CHAIRMAN GARCIA: All right. So we are going to begin the agenda today on Item Number 10A. Very good. All right, we'll hear from staff to introduce this and then we'll go to Mr. Shreve and --

COMMISSION STAFF: I'm not sure I want to do it, Chairman Garcia, but as you can see we have quite a panel of guests here today, you might want to hear from the parties to get an overview of the stipulation. That's why we're here. We have a recommendation, a primary and alternative recommendation. One supporting the stipulation, one supporting the concept of going to a rate case.

CHAIRMAN GARCIA: Okay.

COMMISSION STAFF: We didn't have a lot of time to analyze this and, therefore, we have basically tried to identify areas of concern or areas that needed we thought special attention from the Commission, so I would suggest you get an overview from the parties. We could delve into why the primary is --

CHAIRMAN GARCIA: Very good, and I'm sure they'll make a commentary on those issues. Mr. Shreve.

MR. SHREVE: I would like to be able to reply to the staff recommendation because there are some things

1 in there that I think are practically improper when  
2 you take into consideration the past actions of the  
3 staff of the Public Service Commission. But a brief  
4 overview of our settlement is a \$350 million rate cut  
5 with a safety net or cap and a sharing above certain  
6 revenue figures.

7 We've moved to a revenue cap because of past  
8 actions of the staff and the Public Service Commission  
9 when we have had settlement agreements that have been  
10 interpreted in a way that they were not intended, so  
11 we have moved to a revenue cap so that we would be  
12 assured of getting certain sharing for the customers.

13 I think basically everything has been discussed,  
14 we feel that we have a good settlement here. I would  
15 like an opportunity to reply when the staff discusses  
16 their recommendations. I think the president of  
17 Florida Power & Light would like to make a couple of  
18 comments. We feel that we have accomplished something  
19 here for the people of the State of Florida, for all  
20 of the customers of Florida Power & Light, and would  
21 like to have it approved.

22 CHAIRMAN GARCIA: Thank you, Mr. Shreve.

23 MR. EVANSON: Well, I am delighted to be here to  
24 urge your approval of this agreement with the Office  
25 of Public Council. The agreement includes rate cuts

1 that will benefit our customers by over  
2 \$1 billion during a three-year term.

3 First, let me express my appreciation to Jack  
4 Shreve. This agreement would not have been possible  
5 without his leadership, his knowledge, determination  
6 and resolve to reach a fair and balanced settlement  
7 without going through a costly time consuming  
8 adversarial rate case was really the key to reaching  
9 the settlement. And I'd also like to thank FIPUG and  
10 the Coalition for Affordable and Equitable Rates for  
11 supporting the settlement. And I'd also like to thank  
12 the staff of the Public Service Commission for the  
13 work that they did with us last year in trying to  
14 resolve a number of these issues.

15 Now, let just say a few words about the rate  
16 reductions. They do amount to \$350 million a year or  
17 about \$1 million a day, and every customer from the  
18 residential to the large commercial industrial will  
19 see a significant reduction of rates, on average more  
20 than 6 percent. Residential customers will save about  
21 \$5 a month or \$60 a year.

22 The last time our prices were this low was in  
23 October of 1983, sixteen years ago, and in real terms  
24 our prices are the lowest they've ever been since the  
25 history of the company. And as you know, we go back



1 to 1925. And, furthermore, under the agreement  
2 customers can see additional savings in the form of  
3 special rebates if our annual revenues exceed certain  
4 threshold amounts.

5 Now, I would have to ask what makes rate  
6 reductions of this magnitude possible. And quite  
7 simply, I think it's the dedicated work of our own FPL  
8 employees over the entire decade of the 1990s in  
9 lowering our cost structure and improving performance  
10 and operations. We have significantly reduced our  
11 operating and maintenance expenses. On a unit of  
12 output basis per kilowatt hour they are down 33  
13 percent since 1990.

14 But we've done a lot more than control costs.  
15 Our operations are generally the best that they've  
16 ever been. For example, last year our fossil units  
17 operated at 94 percent availability, which were the  
18 best for comparable plants in the United States. And  
19 back in 1990 their availability was 77 percent. Our  
20 nuclear plants operated at 93 percent availability  
21 versus 67 percent back in 1990. And at year end,  
22 Turkey Point was ranked number one in the country by  
23 the World Association of Nuclear Operators, and St.  
24 Lucie was ranked number three at that time. So the  
25 best nuclear facilities, dual plants in the country.

1                   And, as you know, we've been making  
2                   significant improvements in reliability of our  
3                   systems. Last year we decreased the time the average  
4                   customer was without power by 27 percent, and I can  
5                   assure you we are absolutely committed to continue  
6                   making improvements in reliability. So while our  
7                   employees have been working harder and smarter over  
8                   this period, these rate reductions also would not have  
9                   been possible without sound regulation. And over a  
10                  number of years this Commission has set the regulatory  
11                  tone and framework with the view toward the long-term  
12                  benefit of Floridians, and I think your approval of  
13                  our special amortization program is a good example of  
14                  that.

15                 So, in my opinion, this agreement demonstrates  
16                 that regulation in Florida work and that you don't  
17                 need deregulation to lower prices. We've really  
18                 proven that. And if you look to California, which  
19                 some people hold up as the model to deregulation,  
20                 California customers will be paying 42 percent more  
21                 than our customers after this is approved. So I would  
22                 urge quick action of the Commission in approving the  
23                 settlement and thank you for allowing me to make these  
24                 comments.

25                 MR. LAFACE: Mr. Chairman, Ron LaFace

1 representing the Coalition for Equitable Rates. I  
2 would also like to urge the Commission to approve this  
3 settlement. The way the settlement is structured the  
4 rate cut goes into effect the day after approval,  
5 which means a million dollars day start accruing to  
6 the benefit of customers of Florida Power & Light  
7 tomorrow and will show up on their first bill thirty  
8 days out from that.

9 And I would like to also say that there is some  
10 question on the staff's part, but remember the first  
11 case we intervened on was the return on equity  
12 case and the staff recommendation in that case would  
13 not have any rate reductions until the year 2000.  
14 That's \$700 million later, so we're very anxious to  
15 effectuate this settlement and appreciate the --

16 (Inaudible).

17 MR. LAFACE: No, sir.

18 MR. McWHIRTER: Mr. Chairman, I too urge you most  
19 earnestly to approve this settlement, this magnificent  
20 settlement. And great credit goes to Jack Shreve. He  
21 has done things that I think are phenomenal and far  
22 better than I think we could have achieved without  
23 him. He has carried the ball and done a marvelous  
24 job.

25 I don't want to undersell your staff, because

1 your staff laid the predicate for what has gone after  
2 that. Your staff developed the information that has  
3 enabled us to see what was going on in Florida Power &  
4 Light's operation and triggered Mr. LaFace and I  
5 protesting your last settlement, and Jack, like a  
6 white knight on a golden steed, ran forward, took the  
7 ball, and produced this magnificent settlement. And I  
8 think he deserves great applause.

9 Every joyous group has to have I guess one  
10 curmudgeon and that happens to be me in this instance.  
11 And it's not because of the recommendation, it's  
12 because of the post-settlement comments made by Mr.  
13 Evans. And I just -- in the same arena where those  
14 comments were made, I think it appropriate to say,  
15 hmmm, are you sure that's true?

16 He says that this settlement proves that  
17 regulation works. Actually, the settlement proves  
18 that regulation doesn't work. Your staff's ultimate  
19 recommendation said we would like to have a full rate  
20 review and full understanding of Florida Power &  
21 Light's operation. It acknowledged, however, and this  
22 is the problem with regulation, that when we performed  
23 that study this million dollar a day rate reduction  
24 won't start happening for probably eight months to a  
25 year. So if went through the normal regulatory

1 process, without the settlement, it would happen much  
2 later, and that's why we approved the settlement  
3 without having all the information in hand.

4 The other comment made was that Florida customers  
5 on average are doing better than states where there is  
6 competition, and cites California. I was intrigued by  
7 that when they first made the comment last week, and I  
8 went back to the internet and I pulled down the  
9 Department of Energy study, and it turns out that the  
10 average residential customer of the Florida Power &  
11 Light system actually pays 60 percent more than the  
12 average residential customer of San Diego.

13 COMMISSIONER CLARK: Mr. McWhirter --

14 CHAIRMAN GARCIA: Isn't that based on usage?

15 COMMISSIONER CLARK: -- is that the bill or the  
16 rate?

17 MR. MCWHIRTER: It's based on the bill. And the  
18 bill is -- and the customer -- let me say this to you,  
19 the customers are concerned about the bill, not the  
20 rate. I don't care if I'm charged 50 cents a kilowatt  
21 hour if I only have to pay \$10.

22 COMMISSIONER CLARK: Well, that's not how  
23 Californians felt about it. They ultimately cared  
24 about the rates, and that's why they have  
25 deregulation.

1 MR. McWHIRTER: That's right. Those California  
2 citizens who paid less than the Florida Power & Light  
3 customers sponsored and fostered --

4 CHAIRMAN GARCIA: Mr. McWhirter, when we can  
5 regulate the weather in Florida, I'm sure that that  
6 will be an issue that will come before us. But maybe  
7 we can move on with this.

8 MR. McWHIRTER: But I will conclude my remarks by  
9 saying I applaud Florida Power & Light in the way it  
10 has responded. It has done a good job. I just don't  
11 think we need to get into the side issues of whether  
12 regulation is working or not. Regulation does need to  
13 be studied. You're doing a good job, and I hope  
14 you'll keep regulating, and I hope you'll keep doing  
15 the same good job you are today.

16 CHAIRMAN GARCIA: We'll hear from staff, and I'll  
17 take objection to the comments of Jack Shreve dressed  
18 in white on a golden steed. I always see him more as  
19 a Don Quixote type figure defending Florida's  
20 ratepayers, and he always has been a --

21 MR. McWHIRTER: Mr. Chairman, he would rather be  
22 dressed in gold. It's now totally appropriate that  
23 Florida Power & Light owns windmills.

24 CHAIRMAN GARCIA: Tim. I mean, we've all read  
25 it. I think we've read the primary and the

1 alternative, and I think maybe you could tee them up  
2 and if Commissioners have questions, because we don't  
3 have any questions or any parties there, so just tee  
4 them up and then while the Commissioners ask questions  
5 specifically.

6 MR. DEVLIN: I could give just a prelude, we  
7 don't have to go into a lot of detail. But the main  
8 thing was the trade off between the stipulation and  
9 all the benefits associated with it are significant,  
10 in my opinion, and going to a rate case, what might  
11 happen in a rate case eight to twelve months down the  
12 road. And that's what we're trying to articulate in  
13 our recommendation. And we can go any direction you  
14 want to go to do that.

15 I mean, my position is that there is just too  
16 much up front benefits to risk what could happen  
17 twelve months from now.

18 CHAIRMAN GARCIA: Okay.

19 MR. DEVLIN: In a rate case there may be more or  
20 may be less in terms of a rate reduction, and I'm not  
21 sure, there is a certain element of uncertainty there.  
22 And then the other part, the other basis of my  
23 recommendation, is the Commission based on Bob Elias'  
24 interpretation, still reserves the authority to  
25 interject itself if earnings get out of line. That's

1 the basis of the primary recommendation.

2 But, again, I think it's really important, so you  
3 might want to talk a little bit about the alternative  
4 recommendation, but also it's really important to deal  
5 with areas that we think need clarifying.

6 CHAIRMAN GARCIA: I'm sorry?

7 MR. DEVLIN: Areas that we think need clarifying,  
8 and we have them listed throughout the recommendation.  
9 Perhaps we can go through those one at a time. Or do  
10 you want to -- maybe you want to hear a few comments  
11 about the alternative recommendation before we do  
12 that.

13 CHAIRMAN GARCIA: All right. Beth.

14 MS. SALAK: I'm representing alternative staff,  
15 and our position is basically that we believe that  
16 FPL, while we appreciate all the work Mr. Shreve has  
17 done and we agree that an upfront rate reduction of  
18 \$350 million is extremely hard to recommend against,  
19 but we believe there are benefits associated with  
20 reviewing FP&L's earnings. We believe that the person  
21 -- Mr. Shreve has proposed to go for a full revenue  
22 requirements case would give us the opportunity to  
23 look at that there is the possibility of a different  
24 outcome at the end of the rate case. Perhaps to a  
25 greater long-term benefit of the customers, and we're



1 suggesting that (inaudible).

2 CHAIRMAN GARCIA: Okay, thank you. Yes, Mr.  
3 Shreve.

4 MR. SHREVE: I probably want to speak to that,  
5 too. The staff did not mention the possibility of the  
6 -- if you go through a full-blown rate case that there  
7 will be less benefits to the customers, and should you  
8 continue the staff recommendation in view of  
9 write-offs that they've had, there probably would be a  
10 great deal less.

11 The staff of the Public Service Commission and  
12 the Public Service Commission have had the opportunity  
13 to bring a full-blown rate case at anytime they wanted  
14 to and have neglected to do it. Have on contrary made  
15 it a purpose to agree with Florida Power & Light in  
16 the last ROE docket that was filed by them to put  
17 forth a plan that would have extended through the year  
18 2000 without any rate case.

19 I think it's very strange that they would come  
20 forward at this time and say they would rather have  
21 this particular settlement killed and go through a  
22 rate case when they have neglected and hesitated to go  
23 through a rate case when they could have gotten these  
24 benefits at any time they wanted to.

25 We've watched it through '97, '98, '99, and 2000,

1 and then an extension in '99 on through the year 2000  
2 of the third agreement. They also did not mention  
3 that we have a safety net on this that you would not  
4 have in a rate case. There would be no money subject  
5 to refund held after a rate case, you would have to  
6 wait until you had a history and see how much could be  
7 refunded. We have a safety net in place above a  
8 certain amount of revenue that would give a refund to  
9 the customers.

10 There are other -- there was also a comment, and  
11 we've gone on now to the alternative recommendation,  
12 about the way the benefits were divided among the  
13 customers. We divided the benefits exactly the same  
14 way the Public Service Commission and the Public  
15 Service Commission staff recommended in the last FP&L  
16 rate cut, which took affect in January of 1990, which  
17 was based on a per kilowatt hour basis. Their  
18 recommendation in Gulf Power today is based on a per  
19 kilowatt hour basis, and the last St. Lucie nuclear  
20 plant, which was an increase, a very large increase  
21 was based on a per kilowatt hour basis.

22 This is an excellent settlement. It is much --  
23 we have been four or five years of staff  
24 recommendations and agreeing with Florida Power &  
25 Light without passing on any rate cuts to the

1 customers. I think this should be approved. It's a  
2 \$350 million rate cut, with the possibility of refunds  
3 for the customers.

4 CHAIRMAN GARCIA: Okay. Commissioners, do you  
5 have any questions, or would you like to work it  
6 through -- Mr. Devlin said he wanted to touch on some  
7 issues that he wanted clarified, but if you would  
8 rather just ask them questions and then have them go  
9 through it.

10 COMMISSIONER DEASON: My personal preference  
11 would be allow Mr. Devlin to go through the areas that  
12 he thinks need some clarification.

13 CHAIRMAN GARCIA: Okay.

14 MR. DEVLIN: Thank you, Mr. Chairman. If you  
15 could turn to Page 3, and we may have to shuttle some  
16 staff back and forth, I don't have all the answers  
17 here, but I just think these areas need to be touched  
18 upon.

19 And the first area is, you know, what happens to  
20 the current expense plan up to the point where rate  
21 reductions would take place in the event that the  
22 Commission approves this situation. And we just want  
23 to point out that that is still an area that we  
24 haven't resolved yet, and how the expense plan would  
25 work up through, let's say, April 15th of this year.

1 There is some 50 to \$70 million at stake here, so --

2 COMMISSIONER DEASON: Let me -- if we're going to  
3 take these one-by-one, I'll ask questions now if  
4 that's okay.

5 CHAIRMAN GARCIA: Absolutely.

6 COMMISSIONER DEASON: Is it your concern that the  
7 stipulation -- I know the stipulation addresses the  
8 fact that the amortization would cease with the  
9 implementation of the settlement, correct?

10 MR. DEVLIN: Right.

11 COMMISSIONER DEASON: And staff doesn't have a  
12 problem with that concept, it's just a question of  
13 clarification as to how you calculate what the  
14 amortization would be from the beginning of this year  
15 to the implementation of the settlement, correct?

16 MR. DEVLIN: That's correct. There is a  
17 disagreement right now apparently, at least an  
18 ambiguity between some of the staff. We haven't had a  
19 chance to work it out at this point.

20 COMMISSIONER DEASON: Okay. I guess if there is  
21 -- I guess this raises kind of a general question. No  
22 matter how well-crafted the stipulation is going to  
23 be, at some point there is probably going to be some  
24 question. That's just the way it is with anything  
25 that you write down in paper, whether it be

1           legislation or a rate case order or whatever, there is  
2           going to be questions. And I guess my question, and  
3           I'll address it to the parties, if there is a  
4           situation and maybe this is a good example, when it  
5           comes to the Commission to implement something under  
6           the settlement and there is a legitimate difference of  
7           opinion as to what the stipulation provides, how do we  
8           reconcile that?

9                   How do we address -- because this is something  
10           that's going to have to be done, a dollar amount is  
11           going to have to be calculated, and apparently there  
12           is some disagreement between our staff and the  
13           company. How do we go about calculating that number  
14           and still be fair to the essence of the stipulation?

15                   COMMISSION STAFF: If there is any disagreement  
16           the Commission would ultimately make the decision to  
17           resolve that disagreement. As long as it comes out to  
18           \$1.1 billion I think we can work around everything  
19           else.

20                   COMMISSIONER DEASON: Mr. Childs.

21                   COMMISSION STAFF: I think Mr. Childs has --

22                   MR. CHILDS: Well, you know, I assume that the  
23           matters that are not addressed by the stipulation  
24           would be addressed by the Commission, and I happen to  
25           think that this is a matter that is not addressed by

1 the stipulation.

2 CHAIRMAN GARCIA: I'm sorry, Mr. Childs, I didn't  
3 hear the last thing you just said. If you could bring  
4 the mike a little bit closer. Thank you.

5 MR. CHILDS: Sorry. This is not a matter that is  
6 addressed by the stipulation. The stipulation  
7 addresses when you seek the amount if there is any  
8 question at all is under that separate arrangement,  
9 and with all due respect, I don't think there is a  
10 disagreement. I think FPL is proposing to do what it  
11 has been doing for the last number of years, that has  
12 been given to the staff and the staff has reviewed.  
13 They may have a different point of view at this time,  
14 but I think basically it's a separate issue, it's not  
15 part of the stipulation and settlement.

16 COMMISSIONER JACOBS: Can we bring a  
17 recommendation back onto that docket then, under the  
18 prior docket? Is that how we do that?

19 MR. CHILDS: I would think that if there is a  
20 question as to the amount that is expensed under that  
21 prior docket that it would be addressed in that  
22 docket.

23 CHAIRMAN GARCIA: Okay. Mr. Devlin, is that  
24 satisfactory to you?

25 MR. DEVLIN: Yes, sir. I didn't hear everything

1 that was said, I apologize, but one of the things --  
2 in the interest of time, this could be grueling to go  
3 through each of one of our items, and most of them are  
4 not significant in materiality, and what we could do  
5 is if the Commissioners had any areas that they wanted  
6 to --

7 CHAIRMAN GARCIA: I think that might be more --

8 MR. DEVLIN: Otherwise, we're going to interpret  
9 the stipulation the way we have it laid out in our  
10 recommendation.

11 CHAIRMAN GARCIA: Okay.

12 MR. DEVLIN: And that would be what would be in  
13 the order.

14 CHAIRMAN GARCIA: Very good. And I don't think  
15 the parties have any problem with that. Good. All  
16 right. So, Commissioners, do you have any questions?

17 Commissioner Jacobs.

18 COMMISSIONER JACOBS: The point came up, and I  
19 think it's a valid point, it was raised by Mr. Shreve  
20 on the allocation issue. And that is that we have --  
21 we have historically looked at users in how we do  
22 that. Help me understand what the trade-offs are?

23 MR. DEVLIN: Basically, the issue we raised with  
24 regard to the allocation is that in a full  
25 requirements proceeding costs are allocated to rate

1 classes -- well, base rate costs largely are allocated  
2 based on each class' contribution to the peak demand.  
3 The way the reduction is proposed to be allocated is  
4 on an energy basis, which is kind of a mismatch, and  
5 that's what we were pointing out.

6 For example, in the cost recovery clauses, such  
7 as the capacity cost recovery clause, where they  
8 recover demand related production plant costs, we do  
9 use a demand allocator to allocate those costs to the  
10 customers. So it was the staff's belief that it would  
11 be more appropriate to use a demand allocator to, in  
12 effect, allocate the reduction.

13 Mr. Shreve is correct, we have done reductions in  
14 the past on a per kilowatt hour basis, but I believe  
15 that it would be more appropriate to use the demand  
16 allocator, so basically that's what we want to bring  
17 to the Commission's attention with that particular  
18 concern.

19 COMMISSIONER JACOBS: One of your principal  
20 issues was simply that we need to study to find out  
21 what the final allocation -- to determine the  
22 allocations of cost.

23 MR. DEVLIN: Well, neither a demand allocator or  
24 a pure energy allocator would be strictly correct. In  
25 order to be strictly theoretically correct you would



1 have to do a full requirements rate case, conduct a  
2 cost of service study. So any method of allocating  
3 the reduction in the absence of a full cost study is  
4 going to be an estimate, it's not going to be  
5 theoretically correct.

6 The staff just believes that it would be more  
7 equitable since a large portion of those costs that  
8 are recovered through base rates are allocated on a  
9 demand basis as opposed to an energy basis that it  
10 would be more correct to use as a demand allocator in  
11 order to spread that decrease among the classes.

12 COMMISSIONER DEASON: Mr. Chairman --

13 CHAIRMAN GARCIA: Yes.

14 COMMISSIONER DEASON: -- I'm sorry, I don't mean  
15 to cut off the questions, but I would like to provide  
16 a comment in this regard. First of all, let me say  
17 that I appreciate staff raising the issue. Obviously  
18 it's their responsibility to try to identify all areas  
19 that raise a legitimate question or areas that appear  
20 to be ambiguous and get it on the table and let us  
21 have an opportunity to explore it and make sure that  
22 we're comfortable with them.

23 Let me say that I'm comfortable with what is in  
24 the stipulation, the way the rate reduction is to be  
25 allocated between the customer classes. And the

1           reason I say that is that, first of all, I think it's  
2           paramount for the Commission to place this stipulation  
3           in context. That is, it is a negotiated settlement.  
4           All the parties brought something to the table, all  
5           the parties wanted something, and I'm sure all the  
6           parties in getting something probably gave up  
7           something. And that's just the way that process  
8           works. So it's very difficult for us to go beyond  
9           that. And that to me on it's surface the way -- using  
10          a kilowatt hour basis serves two other purposes. One,  
11          I think it is simplistic, and it is easy for customers  
12          to understand, and it's the same rate per kilowatt  
13          hour.

14                 Now, I understand that there are reasons to use  
15          demand allocators when we go to a rate proceeding, but  
16          we're not in a rate proceeding. And staff has just  
17          indicated any time you do a cost of service study  
18          there is estimates involved in that, as well, and it  
19          is not a precise science. If we went a rate case,  
20          those -- we could have a different cost of service  
21          study and it could be entirely different.

22                 There is just so many unknowns, and we know that  
23          there are positive benefits to be gained right now. I  
24          don't have a -- I personally, as one Commissioner,  
25          don't have a problem with the kilowatt hour concept.

1           COMMISSIONER JACOBS: I think where I am is, I do  
2           want to make sure that we give proper deference, and I  
3           think that there has been substantial efforts and I  
4           want to applaud the effort that has been given, and I  
5           don't mean to cast anything on that. The only concern  
6           I have is, ultimately this is -- by the end of the  
7           third year on this we'll find ourselves in a position  
8           where we have no further intelligence about how to do  
9           -- where we are and where we go from there.

10           I think the parties have done a great job here.  
11           In the essence of time, let me make a suggestion here.  
12           It is my understanding that we could do a cost of  
13           service study on our own motion, and I'm reading  
14           staff's -- staff's recommendation that we retain that  
15           authority. Under that interpretation I would be  
16           willing to move forward today, but clearly registering  
17           my intent to place additional focus on this particular  
18           issue under that authority. And I think it would be  
19           fair to the parties to make note that if we approve  
20           this stipulation I'm very concerned about the analysis  
21           done by staff as to the potential authority that we  
22           have going forward and this would be an issue that I  
23           would think would be primary under that.

24           MR. SHREVE: I think there is a concern as to  
25           what happens at the end of the three-year time frame,

1 and I think all of us, including Florida Power & Light  
2 and the other parties, understand that we're going to  
3 have to be ready at the end of that time to make some  
4 move, whether we're going to be happy with the rates  
5 at that time, or whether or not we're going to be  
6 going forward for another additional rate cut, or  
7 whether Florida Power & Light after this rate cut  
8 might be coming in after their other investments for a  
9 rate increase.

10 Your staff and this Commission hasn't had a cost  
11 of study done in a long time, and this Commission has  
12 made exactly the same type of division or allocation  
13 as to what we did in this case. We're all going to  
14 have to be watching that.

15 I really think it's a little bit strange that the  
16 Commission staff would come up with this, pointing  
17 something out. I don't know what they're  
18 recommending. Although it's not in the  
19 recommendation, it's in Mr. Devlin's recommendation to  
20 approve it, and I appreciate Mr. Devlin's thoughts and  
21 what he has said, and I think he is exactly correct in  
22 what he has said, but then to come out with something  
23 that's just taking a shot while not recommending  
24 turning it down is nothing more than a shot.

25 They know -- they know or should know that this

1 is the same policy this Commission has been carrying  
2 out in the recent past. As of today in their own  
3 recommendation they're recommending that. I guess  
4 he's criticizing the Gulf Power recommendation of the  
5 staff. If he's recommending going through a  
6 full-blown rate case, then we're talking about not  
7 getting this benefit for quite some time for the  
8 customers.

9 COMMISSIONER JACOBS: Let me be clear. And I  
10 don't want to speak for any other Commissioner, but I  
11 think the benefits of this agreement are substantial  
12 and deserve full consideration. And my concern, while  
13 weighed against those benefits I don't think today  
14 measure up to canceling those benefits. But what I  
15 want to be real clear about is that ultimately we will  
16 face that moment of truth. And when we approach that  
17 moment of truth we ought to do so with the information  
18 that's necessary to make that decision. And the  
19 argument that we should continue a practice simply  
20 because it is a practice, while having some merit, I  
21 think has limited merit if we have the opportunity to  
22 come with full information and with knowledge about  
23 how to make that decision. So that's my point. My  
24 point it not to denounce or take away any credit from  
25 what you've done.

1           MR. SHREVE: No, and I don't have any problem  
2 with your view of this. The problem I have is with  
3 the staff of the Public Service Commission. What you  
4 might as well understand is, I feel that all of the  
5 customers should benefit from this settlement, and I  
6 think they do. I am the one person that has always  
7 advocated for the residential ratepayer to try and  
8 make sure that they were treated fairly, and I think  
9 they are.

10           COMMISSIONER JACOBS: I think that's true.

11           MR. SHREVE: But for the staff to take a shot  
12 like this, while not really recommending anything.  
13 Now, what your saying is we should go through this  
14 cost of study service when we have a full-blown rate  
15 case. I don't think there is any doubt about that,  
16 but when we talk about going through that you're  
17 talking about evidence and information put on by  
18 Florida Power & Light, by FIPUG, by the retail  
19 federation. You're talking about a full-blown  
20 procedure that is going to be time consuming. And I  
21 guess what really bothers me is that they would come  
22 out with something like this, while on the other hand  
23 going exactly the opposite way, and I think it's  
24 nothing more than a shot by staff that has not taken  
25 action like this in the past.

1 CHAIRMAN GARCIA: Thank you, Mr. Shreve.

2 MR. DEVLIN: If I could respond to that.

3 MR. LAFACE: Mr. Chairman, just for edification  
4 of the Commission, when Mr. Shreve lost his knighthood  
5 with me was when I tried to get more of a settlement  
6 for my client and he told me I couldn't get it because  
7 the Commission had done it this way in the past two  
8 cases. So I wanted more than we got.

9 CHAIRMAN GARCIA: I understand that, and I think  
10 we're getting into an issue here that --

11 COMMISSIONER DEASON: And that's my point  
12 precisely. I'm sure that -- I was not a party to  
13 those negotiations, but I'm sure that there was a lot  
14 of give and take, and it's very difficult to insert  
15 ourselves behind those negotiations and if the end  
16 result on the surface appears fair and reasonable, I  
17 don't think that we need to take it further than that,  
18 and that's why I'm comfortable with it.

19 CHAIRMAN GARCIA: If there are --

20 Mr. Chairman, I do have one other question, and  
21 if I get -- and I don't mean to cut off the debate,  
22 but I have one other question, and then after that  
23 question I'm prepared to make a motion.

24 CHAIRMAN GARCIA: Okay.

25 COMMISSIONER DEASON: The question that I have

1 concerns the potential for an amortization amount and  
2 the way it could be booked to a separate reserve  
3 account and how that could have an effect on the  
4 appreciation rates. I'm not saying I have a problem  
5 with that, I just want to understand at least from  
6 staff's prospective what that language in the  
7 stipulation means.

8 COMMISSION STAFF: Staff is concerned that in the  
9 future when depreciation rates are reset at the end of  
10 the stipulation period, the amount that has the extra  
11 amortization will not be included in the calculations  
12 of the rate and will result in rates that are not  
13 theoretically what we would like to see.

14 COMMISSIONER DEASON: But if there is to be extra  
15 amortization that's at the discretion of the company,  
16 that's 200 million per year, is that correct?

17 COMMISSION STAFF: Right, that's correct.

18 COMMISSIONER DEASON: Okay, alright. And the  
19 last question I have concerns -- and I think this has  
20 probably already been answered, but I just want to  
21 confirm it. This Commission would obviously continue  
22 to have our jurisdiction over quality of service.  
23 And, first of all, I want to say I agree with Mr.  
24 Evanson that the company has identified an area, and  
25 they have made a concerted effort to address



1 reliability and outages and things of that nature and  
2 information that I've seen reported has shown a  
3 tremendous increase in that area and an expenditure of  
4 great resources on the company's part to make those  
5 improvements. So I'm not saying that there is a  
6 problem with all these services, I just wanted to make  
7 sure that the Commission would still have our  
8 jurisdiction over quality of service even after this  
9 settlement is approved. Is that correct?

10 MR. DEVLIN: Yes.

11 COMMISSIONER DEASON: Okay. With that Mr.  
12 Chairman, I'd like to make a motion that we approve  
13 our primary staff recommendation, which would be to  
14 approve the settlement agreement. Let me be the first  
15 to congratulate the parties in reaching this  
16 settlement. I think it is in its magnitude -- this  
17 is historic in the magnitude of this, but I also want  
18 to congratulate our staff. I think they laid a lot of  
19 predicate work.

20 I think this Commission to some extent needs to  
21 realize that we have endeavored over a number of years  
22 to try to eliminate a lot of cost. A lot of those are  
23 regulatory costs. Tried to get depreciation in  
24 agreement with where it should be, there were  
25 deficiencies in the past. We've taken those efforts,

1 and I think we're seeing the fruits of those efforts  
2 now.

3 And I also agree with Mr. Evanson that the  
4 management and employees of the company have taken a  
5 great deal of effort to maintain a high quality of  
6 service with fewer people and try to obviously work  
7 under a tighter budget. So I think everyone should be  
8 congratulated. I want to make sure that everyone is,  
9 because I feel very good about this settlement and  
10 this stipulation. I think that there are going to be  
11 tremendous benefits which are going to be obtained  
12 almost immediately, and that is probably the biggest  
13 benefit of this settlement. And with those remarks I  
14 would move approval.

15 COMMISSIONER CLARK: Second.

16 MR. EVANSON: Before you vote, I had one last  
17 thing I wanted to say. And I'm sorry to interrupt you  
18 at this point, but there was earlier comments that I  
19 wanted to address so that there was no  
20 misunderstanding in the settlement.

21 CHAIRMAN GARCIA: Okay.

22 MR. EVANSON: I think it was said that to take  
23 the staff recommendation as settlement, to take  
24 everything in the staff recommendation as being  
25 (inaudible) settlement, and with all due respect, we

1 take exception to that, and urge you that the  
2 settlement is the settlement, that's the document  
3 before you. One of the suggestions, and there was  
4 some time spent on this in the recommendation, is that  
5 to the Commission's authority with respect to a  
6 settlement and your continuing jurisdiction. To me  
7 that's a matter that the Commission's jurisdiction and  
8 it's authority is what it is. I'm a little reluctant  
9 to accept a gloss on that jurisdiction as a condition  
10 of approval of the settlement. And, you know, I think  
11 the idea of telling the Commission that it has to come  
12 back and review rates to determine if they are  
13 reasonable or not is a time when the staff is  
14 suggesting to you that you should be looking to return  
15 on equity as opposed to the mechanism in the  
16 settlement which is based on revenue for sharing, and  
17 that's an important point. I do think that the  
18 staff's legal analysis may need to be updated to  
19 reflect the decision of the Supreme Court where we  
20 challenged a decision by this Commission on very much  
21 similar grounds when you approved a standard offer  
22 contract for purchase of some cogenerators for thirty  
23 years. And said that once you made that decision you  
24 weren't going to redo the decision. And we said,  
25 well, you know, things change. And the court said you

1,           can't make that decision.  And that's thirty years.  
2           Here we have a three-year settlement where we're  
3           proposing what the mechanism is.  All of the parties  
4           have accepted that.  I don't think we should debate at  
5           this point what the Commission's authority is, but I  
6           think that we ought to --

7                   CHAIRMAN GARCIA:  You're simply saying that the  
8           Commission's authority is what the Commission's  
9           authority is.

10                   MR. EVANSON:  It is, and we are asking you to  
11           approve this stipulation which says that you will look  
12           to revenues in future years as the basis to determine  
13           what should be done in terms of refunds to customers.

14                   COMMISSIONER CLARK:  Under the stipulation.  And  
15           if we would have any authority beyond that we would  
16           debate that at that time?  I guess -- the issue that I  
17           would guess that staff has brought up is that can we  
18           bind future Commissions.

19                   MR. EVANSON:  And what I'm suggesting to you is  
20           that when I said I think that what they wrote needs to  
21           be read in connection with the decision by the Supreme  
22           Court in 1993 that said you could make a decision on  
23           prudence and have that decision last for thirty years.  
24           And I'm saying that we submit to you that the benefits  
25           of this transaction is a three-year deal, but it's a

1 prudent deal and the mechanism ought to at least last  
2 for three years.

3 COMMISSIONER CLARK: By approving it we are  
4 saying that it will last three years.

5 MR. EVANSON: That's right.

6 COMMISSIONER JACOBS: I interpreted it -- correct  
7 me if I'm wrong, but I thought I interpreted it fairly  
8 -- like it was a broader concern on staff, and that  
9 was that we were deviating from the historical  
10 practice of looking at rate of authorized return. And  
11 in doing so by accepting this agreement we might be  
12 restricting our ability to do so in the future for  
13 this particular company. Is that correct?

14 MR. CHILDS: Yes. The Commission's charge is to  
15 establish rates which are fair, just, and reasonable  
16 --

17 (Simultaneous conversation.)

18 MR. CHILDS: I'm sorry, I didn't --

19 COMMISSIONER JACOBS: We use the range of that  
20 vehicle.

21 MR. CHILDS: Historically, yes.

22 COMMISSIONER JACOBS: And now we're going to be  
23 using revenues.'

24 MR. CHILDS: The parties have agreed to use  
25 revenues as a basis to decide whether the rates of

1 Florida Power & Light company are fair, just, and  
2 reasonable.

3 COMMISSIONER JACOBS: And so the concern is to  
4 what extent during the course of this agreement we  
5 have the authority to look at this company from the  
6 context of the authorized range.

7 MR. CHILDS: Well, I would say that it's just a  
8 little bit broader than that, and that is tie it back  
9 to the question of whether the rates are fair, just,  
10 and reasonable on a going-forward basis, and not just  
11 a particular numeric authorized or achieved return on  
12 equity.

13 CHAIRMAN GARCIA: Okay. Mr. Shreve.

14 COMMISSIONER JACOBS: Let me ask a question again  
15 real quick. Now, Mr. Chiles, your argument would be  
16 that we have that jurisdiction, but you wouldn't want  
17 to -- you would want it always to be interpreted in  
18 the context of the language of this agreement?

19 MR. CHILDS: That's right. That you have looked  
20 at it and said that for this company under these  
21 circumstances this settlement is good and we approve  
22 it and we know what it means.

23 CHAIRMAN GARCIA: But you in no way, Mr. Childs,  
24 are saying that we would give up our jurisdiction --

25 MR. CHILDS: I'm not saying you give up your

1 jurisdiction, no, but I'm saying when you exercise it  
2 now in approving it you are exercising your  
3 jurisdiction and saying you think that it is an  
4 appropriate settlement.

5 CHAIRMAN GARCIA: Correct.

6 MR. ELIAS: And if I could just quote through --

7 CHAIRMAN GARCIA: Mr. Elias, excuse me for a  
8 second. Mr. Shreve had asked to speak.

9 MR. SHREVE: Mr. Elias said that we're  
10 determining what is fair and reasonable rates by a  
11 revenue mechanism. The revenue mechanism is  
12 determining the possibility of a refund that in a rate  
13 case you would not have. The company has given us  
14 that safety net, so to speak. That is now on a  
15 revenue basis, and the reason it's on a revenue basis  
16 is because in the past we have put in some language  
17 that said the issues would be the same as in the last  
18 rate case.

19 We did that in the Tampa Electric settlement, and  
20 the staff said, well, no, that's not really what you  
21 meant when you said that. So now we're taking away  
22 that and we're not going to lose that benefit for the  
23 customers anymore. We're saying above a certain  
24 amount of revenue there is a refund available. We  
25 have also put in here a range of 10 to 12 with a

1 midpoint of 11, which is lower than the staff of the  
2 Public Service Commission agreed to with Florida Power  
3 & Light. That range is for all purposes. We have  
4 determined what the rates are under this and we under  
5 this settlement cannot change what your authority is.  
6 We went through the same thing with the Florida Power  
7 settlement. We can bind ourselves, but we're not  
8 trying to change what your authority is. If you have  
9 it, you have it; if you don't, you don't.

10 CHAIRMAN GARCIA: I don't think anyone disagrees  
11 with that, Mr. Elias, and I don't think you do,  
12 either.

13 MR. ELIAS: Good.

14 CHAIRMAN GARCIA: With that said, we have a  
15 motion and a second by Commissioner Clark.

16 COMMISSIONER CLARK: Mr. Chairman, I would  
17 indicate that I really can't add anything beyond what  
18 Commissioner Deason said, only that I don't think I  
19 would like to negotiate with Mr. Shreve under any  
20 circumstances.

21 MR. CHILDS: Mr. Chairman, the approval though  
22 should just be a simple approval of the settlement,  
23 not going into a forty page discourse from staff.

24 COMMISSIONER DEASON: Let me clarify my motion,  
25 okay? I did technically move approval of the primary.



1           Maybe I misspoke. I want to approve the stipulation  
2           and the stipulation provides what the stipulation  
3           provides. Our jurisdiction is what our jurisdiction  
4           is, okay? And we're not giving up any of our  
5           jurisdiction, in my opinion. We can't. I mean, our  
6           jurisdiction is what it is by law and we can't, you  
7           know, change that.

8           But I wanted it understood that my motion tried  
9           to include the clarification that we discussed here  
10          today, and I guess that's when I said move primary.  
11          I'm willing to move approval of the stipulation  
12          consistent with the discussion that has taken place  
13          here today.

14          CHAIRMAN GARCIA: And I think the parties openly  
15          said that clearly if there was any discussion on these  
16          issues this is the forum --

17          COMMISSIONER DEASON: And that's the  
18          clarification I want to make sure is that as I  
19          indicated earlier, no matter how well-crafted a  
20          stipulation is, or an order from this Commission,  
21          whatever, in the future there may be a question and  
22          that this Commission is going to ultimately have to  
23          decide that interpretation if it comes to that.  
24          Hopefully, everything will go so smoothly there is no  
25          controversy whatsoever. But in the event that there

1 is, that's still resides with the Commission.

2 CHAIRMAN GARCIA: All right. We have a motion  
3 and Commissioner Clark agrees with that, and seconds  
4 it --

5 COMMISSIONER JACOBS: One very brief point. I  
6 would be interested in hearing from staff and from the  
7 parties to contact -- not today, but I'll be  
8 interested in understanding the extent which we can  
9 look at doing a cost of service study outside of a  
10 rate case.

11 CHAIRMAN GARCIA: Okay. Commissioner Johnson,  
12 did you want to say anything before we call the vote?

13 COMMISSIONER JOHNSON: I agree with all the  
14 comments made by Commissioner Deason. In the first  
15 instance, I was prepared to move staff with the  
16 clarifications that they were suggesting that we do  
17 upfront, but understanding that we have continuing  
18 jurisdiction. To the extent that there is ambiguity  
19 that needs to be resolved, I'm sure it will be back  
20 before us. With that, I'm in favor of the motion.

21 CHAIRMAN GARCIA: Very good. I'm going to move  
22 -- I'm going to vote with Commissioner Deason on this.  
23 I want to again express -- first of all, I want to  
24 commend staff. I think today that the message  
25 unfortunately wasn't as clear as it should have been

1 from staff, but I think you're trying to be honest  
2 with your position. However, I think what Jack Shreve  
3 did for Florida ratepayers today under very difficult  
4 circumstances and in a very complex way, I think  
5 Commissioner Deason called it simplistic, but I hope  
6 it's not that, it's exactly the opposite.

7 COMMISSIONER DEASON: No, I was referring simply  
8 to the kilowatt hour concept. I mean, that's easy for  
9 customers and for us to understand.

10 CHAIRMAN GARCIA: It's even easy for me. I can  
11 even understand it, which I think is great. And I  
12 think today staff -- I think staff put the ball in  
13 play, and Jack Shreve I think scored a touchdown for  
14 Florida ratepayers today, and I think he is to be  
15 commended. I think the company's willingness to  
16 negotiate is to be commended, and the parties came  
17 together here. Clearly this is good for Florida, and  
18 I want to say that I may have some problems with Mr.  
19 Evanson's definition of competition in California, but  
20 we'll discuss that on another occasion.

21 That said, we have a motion and a second. All  
22 those in favor signify by saying aye.

23 (Unanimous affirmative vote).

24 CHAIRMAN GARCIA: All those opposed. Show it  
25 approved 5-0. Commission will take a -- Commissioner,

1           yes?

2                   MR. SHREVE:  If I could, I would like to thank  
3           the Commission for their consideration of this in such  
4           a hurry.  We think the ratepayers are going to benefit  
5           by your actions.  I would like to thank all the  
6           parties.  It's been a pleasure to work with them.  
7           We've had a lot of arguments and hard discussions, but  
8           we do feel that this is really in the best interest of  
9           the ratepayers and thanks to you for helping us get  
10          this up and get this benefit to them in a hurry.

11                   CHAIRMAN GARCIA:  Thank you, Mr. Shreve.

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CERTIFICATE OF REPORTER

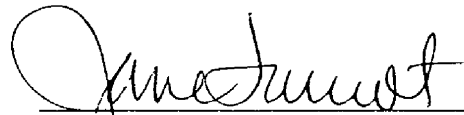
STATE OF FLORIDA )

COUNTY OF LEON )

I, JANE FAUROT, RPR, do hereby certify that the foregoing proceeding was transcribed from cassette tape, and the foregoing pages number 1 through 41 are a true and correct record of the proceedings.

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

DATED THIS 21<sup>st</sup> day of March, 1999.



JANE FAUROT, RPR  
P. O. Box 10751  
Tallahassee, Florida 32302