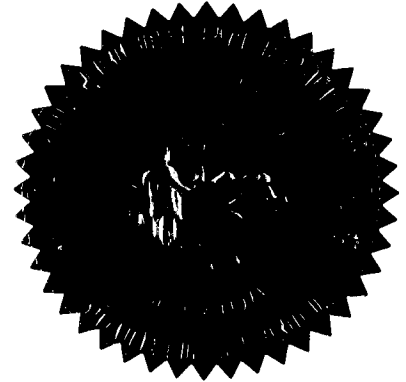


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 010827-EI

In the Matter of

PETITION BY GULF POWER COMPANY FOR
APPROVAL OF PURCHASED POWER
ARRANGEMENT REGARDING SMITH
UNIT 3 FOR COST RECOVERY CLAUSES
DEALING WITH PURCHASED CAPACITY
AND PURCHASED ENERGY.



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13	PROCEEDINGS:	STATUS CONFERENCE
14		
15	BEFORE:	COMMISSIONER BRAULIO L. BAEZ Prehearing Officer
16		
17	DATE:	Friday, July 13, 2001
18	TIME:	Commenced at 1:30 p.m. Concluded at 2:25 p.m.
19	PLACE:	Betty Easley Conference Center Room 152 4075 Esplanade Way Tallahassee, Florida
20		
21	REPORTED BY:	KORETTA E. STANFORD, RPR Official FPSC Reporter (850) 413-6734
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FLORIDA PUBLIC SERVICE COMMISSION

DOCUMENT NUMBER-DATE

08949 JUL 23 2001

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1 APPEARANCES:

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4 12950, Pensacola, Florida 32576-2950, appearing on behalf of
5 Gulf Power Company.

6 JOHN McWHIRTER, McWhirter Reeves Law Firm,
7 400 North Tampa Street, Suite 2450, Tampa, Florida
8 33601-3350, appearing on behalf of Florida
9 Industrial Power Users Group.

10 JACK SHREVE and ROB VANDIVER, Office of
11 Public Counsel, 111 West Madison Street, Room 812,
12 Tallahassee, Florida 32399-1400, appearing on behalf
13 of the Citizens of the State of Florida.

14 ROBERT ELIAS and MARLENE STERN, FPSC
15 Division of Legal Services, 2540 Shumard Oak
16 Boulevard, Tallahassee, Florida 32399-0870,
17 appearing on behalf of the Commission Staff.

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P R O C E E D I N G S

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2 COMMISSIONER BAEZ: All right. We'll call this
3 prehearing to order. Counsel, would you read the notice,
4 please.

5 MS. STERN: By notice issued on July 6th, 2001, this
6 time and place were set for a status conference in docket
7 010827-EI.

8 COMMISSIONER BAEZ: We'll take appearances.

9 MR. STONE: Jeffrey Stone of the law firm Beggs &
10 Lane representing Gulf Power Company.

11 MR. McWHIRTER: John McWhirter of the law firm
12 McWhirter, Reeves & McGlothlin representing the Florida
13 Industrial Power Users Group.

14 MR. VANDIVER: Rob Vandiver and Jack Shreve appearing
15 on behalf of the citizens of the state of Florida.

16 MS. STERN: Marlene Stern on behalf of the Commission
17 Staff.

18 COMMISSIONER BAEZ: Okay. No other appearances? All
19 right. What are we doing here today? Are we just doing
20 scheduling?

21 MS. STERN: At the last agenda conference where we
22 took up the motion for expedited treatment, it was decided that
23 between then and now the parties should get together and see if
24 they could reach a mutually acceptable expedited schedule. If
25 so, at this meeting you know, that would just be aired and, you

1 know, approved or not approved by yourself. If we couldn't
2 reach a mutually acceptable schedule, then we'd present the
3 schedules to you and a decision would have to be made on how to
4 proceed. So, that's what we have to decide today.

5 COMMISSIONER BAEZ: And it looks, from what I've got
6 in front of me, we have -- but for one item, have a pretty set
7 schedule that everyone can --

8 MS. STERN: Yeah. Staff and Gulf have been able to
9 agree on a lot of the scheduling for a hearing on September
10 5th.

11 COMMISSIONER BAEZ: Mm-hmm.

12 MS. STERN: We differ with respect to when the
13 intervenor testimony is filed, when the Staff testimony is
14 filed, and when the rebuttal testimony and prehearing
15 statements are filed. In addition, Staff and Gulf agree that
16 on August 1st, we should reconvene -- today we should decide on
17 two hearing dates and we should reconvene on August 1st to see
18 which of the two we can meet.

19 COMMISSIONER BAEZ: All right. Mr. Stone, do you
20 have any comments opening up?

21 MR. STONE: That summarizes fairly well. What we had
22 done when we had met with Staff and the other parties last -- a
23 week ago yesterday is we had -- Staff had produced a proposed
24 schedule and we submitted an alternative to that proposed
25 schedule last Friday. What I understand, Staff has added a

proposed schedule that is their September 5th schedule. It differs slightly from our alternative. We've tweaked our alternative a little bit to take into account that the rehearing date we originally proposed apparently wasn't available, and so that had to be changed.

And so, what Staff has handed out contains our two versions. Our preferred alternative would be a hearing on August 31st. If that just can't be done, accommodated on the calendar, then we have a schedule that would work for a September 5th hearing date. And that was our second alternative.

And we did agree that based on how effective we had been in expediting our responses to discovery and getting information to Staff and the parties that we'd be able to evaluate on August 1st whether or not we could accommodate the hearing, the expedited hearing, that Gulf has preferred.

COMMISSIONER BAEZ: So, as you see it, I'm showing -- I'm sorry, Ms. Stern, you gave me two differences that you had and we'll move along in a second, but I just wanted to --

MS. STERN: Okay. Two differences between -- for the '5th hearing date, Gulf has proposed alternative hearing dates of the 5th and August 31st. We've proposed the 5th and the 10th of September.

COMMISSIONER BAEZ: And I don't think we're -- I mean, if I understand the way our dates and schedules are, I

1 don't think we're talking about an August 31st anymore. I
2 mean, you do -- does the company realize that?

3 MR. STONE: I understand that that would require
4 moving another hearing.

5 COMMISSIONER BAEZ: Yeah. We've pretty much had to
6 move things around to be able to make 9/5. So, if we can just
7 try and concentrate on that.

8 MR. STONE: Okay.

9 COMMISSIONER BAEZ: I'm sorry, you were saying?

10 MS. STERN: Okay. So, the differences between Gulf's
11 9/5 schedule and ours is that Gulf proposes intervenor
12 testimony be submitted on August 15th, then Staff testimony on
13 August 17th, then rebuttal on August 22nd. Our problem with
14 that is it only leaves two days for Staff testimony, and it
15 only leaves one day between when rebuttal is submitted --
16 prehearing statements are submitted at the same time as
17 rebuttal on our schedules, both of them, but under Gulf's
18 schedule, prehearing statements would be submitted on the 22nd
19 and we'd need to get an order, a draft prehearing order, out by
20 the 23rd to you for the prehearing conference on the morning of
21 August 24th.

22 Now, in Staff's schedule on 9/5, to eliminate that,
23 we didn't like that two days between intervenor testimony and
24 Staff testimony, so we bumped up the intervenor testimony to
25 August 9th, we bumped up Staff testimony by one day to August

1 16th, and then the rebuttal and prehearing statements, we
2 bumped them up one day, so we have two days to get the
3 prehearing order together. The issue with Staff testimony is
4 Staff is not supposed to put in testimony unless there's
5 something that has to be put in the record that isn't already.

6 COMMISSIONER BAEZ: Right. Mr. McWhirter?

7 MR. McWHIRTER: Well, Mr. Hearing Officer, the
8 utility knows what it's doing, it has its case in order and it
9 presents its case and testimony all at the same time. In this
10 case, it's immediately apparent that the testimony was
11 narrative in size and type and scope and it didn't have any
12 detail. And then we had to go through the exercise of getting
13 through the confidentiality. And we have not, even as of this
14 date, employed an intervenor because we didn't know that the
15 nature of the case would rise to the level in which industrial
16 persons would want to intervene at all.

17 We're slowly getting into that information, and the
18 trouble with hiring outside consultants who are unfamiliar with
19 the circumstances is that when you tell them that you've got to
20 have meaningful testimony done in, you know, three weeks maybe,
21 they consider that an affront to their ability to perform and
22 they can't do the kind of creditworthy job that you would
23 expect from them.

24 So, I thought we were making a major concession when
25 we agreed to get it done by August 15th, and now that's been

1 cut back another week, essentially. You know, we can try. We
2 may just not be able to present any testimony, have to rely on
3 cross examination. This is an expedited case with a unique
4 idea. The rate case has now been filed and that will move with
5 deliberate speed.

6 I've distinguished this to what the Commission has
7 done with Florida Power & Light and Florida Power. You
8 determined in March that you wanted MFRs. Well, the MFRs --
9 filing MFRs are not even going to be done until November the --
10 middle of November, so it takes time to do a decent job in
11 putting together a creditworthy case, and the period's just too
12 short.

13 COMMISSIONER BAEZ: Thank you, Mr. McWhirter. Mr.
14 Vandiver -- or, I'm sorry, Mr. Shreve.

15 MR. SHREVE: I'll just take part of it. You know, I
16 agree with Mr. McWhirter completely, and this is really a
17 strange case where we're having to -- we don't even know what
18 consultants to hire at this point. The company knew, had all
19 the information, knew where they wanted to go and they should
20 have filed their case up front so that we'd have something to
21 reply to.

22 I have never heard of us or intervenors or the Staff
23 having to make their case and develop their information through
24 discovery. It just shouldn't be done. Their case should stand
25 on its own. They shouldn't even be allowed to file anything --

1 I mean, to -- unless they refile, they shouldn't even be
2 allowed to put any additional information in over what they've
3 already put in; yet we're on such a tight time frame, there's
4 no way to respond. We don't even know which consultants to
5 hire. We don't have the numbers. They should have put all the
6 numbers in justifying their case in the first place. We filed
7 a motion to dismiss, we'd like to have that heard. I don't see
8 any way to proceed --

9 COMMISSIONER BAEZ: We don't have the motion to
10 dismiss before us today, though.

11 MR. SHREVE: Well, I know, but we're talking about a
12 status. Perhaps we should rule on the motion to dismiss before
13 we go ahead and set any other dates or anything.

14 COMMISSIONER BAEZ: Then, we're blowing a day here.

15 MR. SHREVE: Well --

16 COMMISSIONER BAEZ: I mean --

17 MR. SHREVE: No, I understand.

18 COMMISSIONER BAEZ: Understand that we're all under
19 some time constraints, and I think that one of the concepts
20 that's going to get tested here is how much we can -- how
21 evenly and how fairly we can spread the pain in all of this.

22 MR. SHREVE: Well, the pain is caused by Gulf not
23 properly filing in the first place, and I don't know that that
24 really should be spread around. That's their responsibility
25 when they came in and asked for the case.

1 COMMISSIONER BAEZ: I'm not disagreeing with you
2 entirely, but at the same time, you know, the Commission did
3 make a decision to expedite it, and I think that somehow we've
4 thrown ourselves into the same pot, and we all have to find a
5 way to make it work after the vote and the decision's already
6 been made. I think, you know, we're a little passed that now.
7 We're going to try and do the best -- everybody's got to try
8 and do the best that they can.

9 MR. SHREVE: We want as much time as we possibly can,
10 might even go back to the way it used to be when the Staff
11 filed at the same time the intervenors did, then they wouldn't
12 need any extra time.

13 COMMISSIONER BAEZ: I appreciate that you need as
14 much time as possible, and I think that that's what we're going
15 to try and work out today. You know, what we're looking at is
16 proposed hearing dates, and I think we're just going to have to
17 start squeezing and see who -- you know, where we find an
18 adequate amount of time in light of all the constraints that
19 we're working with. Mr. Vandiver. Thank you, Mr. Shreve.

20 MR. VANDIVER: Just very briefly, one of the
21 principle things that we're talking about now is a comparison
22 of the rate base and the PPA. This is a discovery document.
23 There's no testimony supporting this comparison. We don't know
24 what that testimony's going to look like. It's just a
25 discovery document out there.

1 We don't know when that's going to be forthcoming, we
2 don't know who's going to file that testimony. That puts us in
3 a very difficult position. It puts us in the position of
4 having to prove a negative. We don't know when that's going to
5 be forthcoming. We're just kind of out there. That puts us in
6 a very difficult position witness-wise.

7 With this very truncated schedule, filing testimony
8 on August 9th, we're kind of behind the eight ball, and so you
9 can appreciate our situation. And Gulf Power is, I know,
10 trying very hard to get the discovery. We got some this
11 morning. There's more to come. We're just in a very difficult
12 posture.

13 COMMISSIONER BAEZ: I don't think you're alone,
14 though.

15 MR. VANDIVER: I think, all the parties are in this
16 situation. We also want to waive the issue of whether or not
17 the uniform rules and the APA even permit a bench decision.
18 The fuel adjustment has an exemption from the APA. I don't
19 think this proceeding does, so I just want to raise that and I
20 want to raise it early. I want to raise these procedural
21 things early.

22 COMMISSIONER BAEZ: Appreciate that.

23 MR. VANDIVER: I want to bring them to your
24 attention, and we just want to raise these things and bring
25 them to your attention, because we think this is a novel

1 proceeding. It's an important decision. It's one that may
2 need consideration of some legal issues. We're concerned about
3 perhaps missing the opportunity to file a legal brief at the
4 back end. The bench decision might preclude that. We're very
5 concerned about the due process implications.

6 COMMISSIONER BAEZ: Staff, have you looked into the
7 possibility of -- I mean, the applicability of the uniform
8 rules or whether we do have the discretion to render a bench
9 decision, because that was part of working the -- working the
10 timelines, as I recall.

11 MS. STERN: Right. No, we have not looked into that.

12 COMMISSIONER BAEZ: Okay. You're going to have to
13 get back to us with that and also, I think, Mr. Vandiver does
14 raise an interesting question as to briefs, so if you can kind
15 of look into that and get back --

16 MR. VANDIVER: Just to continue my thought, I just
17 want to have an opportunity at some point to address those
18 legal issues before the Commission. I think that's our due
19 process right. I'd like to have that right in some forum
20 before the Commission. We also want the opportunity, at some
21 point, convenient procedural point, for the Commission. I know
22 that you all have made some decisions. We respect those
23 decisions. We do want an opportunity at some point where it
24 fits in convenient to your schedule to argue our motion to
25 dismiss, and I don't know if Mr. Shreve has anything to add.

1 MR. SHREVE: I think, the primary thing would be what
2 points are we supposed to go after on our testimony? Gulf has
3 not filed anything showing that this is more beneficial to the
4 ratepayers than having it in the rate base. We need that
5 information. I suppose that's a decision that's going to be
6 made by the Commission, but it's really not up in front of us
7 at this point.

8 COMMISSIONER BAEZ: Mr. Elias, you were getting ready
9 to --

10 MR. ELIAS: I was just going to say as to the
11 question of a bench decision, to my knowledge the Commission
12 has never addressed whether a bench decision, over the
13 objection of a party, is consistent with the Administrative
14 Procedures Act. I'm not aware that it's ever been raised in
15 any industry. I mean, we've talked about it before and --

16 COMMISSIONER BAEZ: It would seem to me we need to be
17 prepared.

18 MR. ELIAS: Yes. I spoke very briefly with
19 Mr. Vandiver about it, but I think it's beyond the scope of
20 what we need today but, yeah, we're well aware we have to be
21 prepared to address that question in a timely manner.

22 MR. VANDIVER: I simply wanted to raise it because
23 this is on such a fast track. We had this opportunity before
24 the prehearing officer, I wanted to bring it to your attention
25 early and often in abundance of --

1 COMMISSIONER BAEZ: I appreciate that you did. I
2 mean, this is the type of reaction, attitude that we need to
3 employ. Doesn't mean I like it any, but it's -- I understand
4 where you're coming from, Mr. Vandiver.

5 Staff, question. Trying to reconcile, trying to
6 address this difference in dates, I mean, I appreciate OPC and
7 FIPUG's position that it seems at this point even though
8 everybody's time is truncated that they are not getting -- you
9 know, that somehow they're losing more days than most and
10 perhaps without the best of reasons, and I'm just wondering
11 this August 9th date, what day is that?

12 MR. ELIAS: Thursday, I believe.

13 MS. STERN: August 9th is a Thursday. And we can
14 look at narrowing that gap between intervenor and Staff between
15 August 9th and August 15th. Okay, so August 9th is a Thursday,
16 August 15th is the following Wednesday. I would think we'd
17 want at least to have that weekend in between and if they --
18 well, they'd want that weekend, too, that's the problem.

19 MR. STONE: Commissioner, perhaps I could offer a
20 discussion, and it may be that this will not be viewed
21 favorably by all the parties, but I would like to suggest that
22 perhaps what we can accomplish is to leave the dates closer to
23 what we had proposed except with regard to rebuttal and maybe
24 if we slid the rebuttal -- moved the Staff testimony to August
25 21st, leaving the intervenors on August 15th, and then allowed

1 us to supply our rebuttal by August 28th, that would be still a
2 week before the hearing.

3 It would be after the prehearing conference, but it
4 would seem to me if the direct testimony of all the parties is
5 available before the prehearing conference, obviously, we know
6 what the scope of rebuttal has to be limited to, because it has
7 to be limited to the direct testimony of intervenor and Staff.
8 And so, the fact that the rebuttal testimony is filed after the
9 prehearing conference shouldn't be an unsurmountable problem
10 and that would still allow to keep a September 5th hearing
11 date.

12 COMMISSIONER BAEZ: And it leaves the intervenors
13 with as much time as possible.

14 MR. STONE: It keeps the schedule that we originally
15 were working towards and it gives Staff a little bit more time
16 after the intervenor.

17 COMMISSIONER BAEZ: Staff, I know you have very
18 little time to consider this.

19 MS. STERN: Well, a prehearing conference, my thought
20 is you're -- that's when you -- you should come out of a
21 prehearing conference knowing exactly what you're facing going
22 into the hearing. With rebuttal not submitted until
23 afterwards, you're at a disadvantage.

24 COMMISSIONER BAEZ: How are you at a disadvantage? I
25 mean, precisely.

1 MS. STERN: Well, it depends on what's in the
2 rebuttal. You may or may not be at a disadvantage.

3 COMMISSIONER BAEZ: Well, is it fair -- is
4 Mr. Stone's assessment of it not accurate enough, I mean, for
5 our purposes right now?

6 MR. ELIAS: What is in the rebuttal testimony
7 certainly might influence the position that a party might want
8 to take on an issue. The second thing is that we do have a
9 holiday. Is the 27th a Friday?

10 COMMISSIONER BAEZ: I apologize. I don't have a
11 calendar with me.

12 MS. STERN: It's a Monday. August 27th is a Monday.

13 MR. STONE: I have August -- okay, August 27th is a
14 Monday, yes. I thought I said August 28th is rebuttal, which
15 is a Tuesday, and the holiday is the following Monday,
16 September 3rd.

17 MS. STERN: Okay.

18 MR. ELIAS: If we were to do something that close to
19 the hearing -- well, there's several things. First of all,
20 obviously, it's going to have an impact on the party's ability
21 to prepare their cases for the hearing, having a new filing
22 less than a week before.

23 The second thing is the question of discovery, both
24 in terms of any documents that are relied on by anyone
25 sponsoring rebuttal testimony and then the opportunity to

1 fairly and fully depose that individual. It just seems to me
2 like in a case like this where -- that that could really pose
3 problems in terms of giving all the parties the fullest and
4 fairest opportunity to make presentations that reflect their
5 view of the case. Let me suggest an alternative.

6 COMMISSIONER BAEZ: Mr. Elias, before you --

7 MR. ELIAS: Okay.

8 COMMISSIONER BAEZ: Before we move on to another
9 alternative, Mr. Shreve, did you have something to add?

10 MR. SHREVE: Well, I guess, one thing, and I suppose
11 it's what Mr. Stone is saying, too, is the company has their
12 entire case filed at this point. Their entire direct case has
13 been filed, and they're not entitled to embellish at all in
14 rebuttal or in discovery -- something beeped. I don't know
15 what it was -- as much time as -- did the Commission vote on a
16 specific time or just to expedite the hearings?

17 COMMISSIONER BAEZ: Just to expedite the hearing, and
18 this is something that we're working -- I mean, my
19 understanding is --

20 MS. STERN: Well, the Commission voted to explore
21 expediting the hearing, and we were directed to see what we
22 could come up with.

23 COMMISSIONER BAEZ: Correct.

24 MS. STERN: And now you see what we've come up with.
25 This is our exploration of expediting the hearing.

1 COMMISSIONER BAEZ: Correct.

2 MS. STERN: And -- that's all.

3 MR. SHREVE: I suppose the primary issue that we're
4 going to be taking up in this hearing is whether or not --
5 where the benefits are. Is it more beneficial to the ratepayer
6 to keep the plan in rate base or to spin it off with a PPA? I
7 don't see that information before us at this point. And Gulf's
8 direct case is filed, so I just think we need as much time as
9 possible and, particularly, if we're going to have to be
10 relying on discovery to get the information we need to properly
11 represent the people of the state.

12 COMMISSIONER BAEZ: Now, if I understand you
13 correctly, then, based on Mr. Stone's suggestion it only really
14 affects the rebuttal. You're not in favor of that kind of --
15 you're not in favor of gaining time on the front end and losing
16 time on the back end, at least that's what it seems to me
17 that --

18 MR. SHREVE: Well, I guess, what I'm saying is we
19 need whatever time we can get. We have to go out and hire
20 consultants. As Mr. McWhirter was saying we don't even know
21 who to hire at this point and what experts we're supposed to be
22 looking for in which fields we're supposed to be looking for.

23 COMMISSIONER BAEZ: Mr. Shreve, if it causes you
24 trouble to agree with what Mr. Stone is saying -- I mean, is
25 it --

1 MR. SHREVE: I guess, the only thing I agree with
2 Mr. Stone is that they've filed their entire direct case at
3 this point.

4 COMMISSIONER BAEZ: The extra week that you're
5 picking up, I mean, is that better --

6 MR. SHREVE: Than nothing.

7 COMMISSIONER BAEZ: That is better than nothing --

8 MR. SHREVE: Mm-hmm.

9 COMMISSIONER BAEZ: I mean, going back to the dates
10 that we had -- Mr. McWhirter.

11 MR. McWHIRTER: Mr. Baez, Mr. Shreve and Mr. Elias
12 hit on something that strikes a harmonious chord with me, and
13 that is historically the Staff and the intervenors filed their
14 testimony on the same date.

15 MR. SHREVE: That's right.

16 MR. McWHIRTER: When you think about it, the Staff is
17 really not involved in dealing with responding to the
18 intervenor's testimony, they are responding to the case in
19 chief. And if there's anything that comes up in the
20 intervenor's testimony that would give the Staff heartburn,
21 there's always the opportunity for rebuttal.

22 In essence, the period from -- that they're -- the
23 period between the time intervenor testimony is due and the
24 Staff's testimony is due is about the same period you could
25 have for rebuttal, and you could achieve the same purpose and

1 enable us to give you a more credible case.

2 COMMISSIONER BAEZ: Mr. Elias.

3 MR. ELIAS: I disagree with one point there and that
4 is that, you know, we're not just responding to the case in
5 chief. We're trying to make sure that all relevant points of
6 view are before the Commission in assessing the merits of the
7 petition.

8 MR. McWHIRTER: I agree with that.

9 MR. ELIAS: And there may be another alternative
10 besides what the petitioner and what the intervenors may say
11 needs to be before the Commission. Having said that, what I
12 was going to suggest before was that in this limited
13 circumstance we make the filing date for intervenor and Staff
14 testimony the same, probably the 17th with rebuttal testimony
15 filed on the 21st and with the understanding that we'd probably
16 at least make some -- try to get some sort of understanding of
17 what issues you intend to address so that we can make sure that
18 the waterfront is covered. And to the extent that there's
19 something in there, we may be looking to supplement the
20 testimony that's filed, if we think that there is something
21 necessary for the Commission to make a fully-informed decision.

22 COMMISSIONER BAEZ: Okay. And we can -- that's a
23 decision that comes later, if it arises, if the need arises.

24 MR. ELIAS: I just want to say, you know, with those
25 caveats, I think, we can do something to --

1 COMMISSIONER BAEZ: I'm sorry, restate that again.

2 You're moving both -- have intervenor testimony on the 17th --

3 MR. ELIAS: Yes.

4 COMMISSIONER BAEZ: Along with Staff testimony?

5 MR. ELIAS: Yes.

6 COMMISSIONER BAEZ: And no other dates are altered?

7 MR. ELIAS: No.

8 MS. STERN: Well, yeah. No, we'd want rebuttal on
9 the 21st, so we'd have more than a day to do the draft
10 prehearing order. So, we'd want Staff and intervenor on 8/17,
11 rebuttal and prehearing statements on 8/21, and then the
12 prehearing conference on 8/24.

13 MR. ELIAS: Okay.

14 COMMISSIONER BAEZ: All right. We're going to go
15 around one more time. I mean, I've got to tell you, this
16 somehow strikes a balance with everyone, and it seems like
17 Staff is taking the biggest hit which, unfortunately, to me
18 seems fair. I mean, I hate to say that but, Mr. Stone, do you
19 have the dates that they're proposing?

20 MR. STONE: I have the dates that they're proposing,
21 and I can live with those dates.

22 COMMISSIONER BAEZ: Okay. Mr. McWhirter.

23 MR. McWHIRTER: That's fine with me, your honor.

24 COMMISSIONER BAEZ: You have your time?

25 MR. VANDIVER: Subject to the caveats of --

1 COMMISSIONER BAEZ: Subject to the caveats as stated
2 by Mr. Vandiver on other issues, on other procedural issues,
3 I'm sorry, yes.

4 MR. ELIAS: All I was going to say, you know, I kind
5 of alluded to it earlier, but with this kind of time frame, and
6 this is something for the parties to address, I believe that
7 the orderly presentation the evidence requires that, one, all
8 witnesses be made available for deposition in a timely manner,
9 and probably that's something that needs to be agreed to ahead
10 of time so that people don't get boxed in.

11 And then, the second thing goes for any documents
12 that they rely on or confer to or consider in their testimony,
13 that those be made available in as timely a fashion as possible
14 so that people don't have to read the testimony, then ask for
15 discovery responses, and then not have that information
16 available at the time that they're going to depose the
17 witnesses or use it to meet that testimony.

18 COMMISSIONER BAEZ: Well -- and I would -- I think,
19 you're absolutely correct, Mr. Elias, and I would echo it from
20 the bench. This rubberband is stretched really, really tight,
21 so I think everybody should keep that in mind and try to adhere
22 to the spirit of this speeding train and, you know, try and get
23 everything done on time in a timely manner.

24 I had told Staff in conversations prior to this we
25 cannot afford getting into a back and forth of, you know, there

1 is no second call on this. I mean, if something is not
2 provided by the date requested, you know, they're going to come
3 to the prehearing officer and then there's going to be -- you
4 know, we're going to have to address it that way. And I would
5 rather it didn't happen that way because that, too, has a point
6 of -- and I'm looking at the company specifically on this.

7 MR. STONE: Commissioner, I think, we've evidenced
8 good faith in that regard. We met with the parties last
9 Thursday. We got some preliminary questions. We started
10 working on those. We got 18 out of 50, I think, responded to
11 this morning and we're working towards meeting the July 19th
12 deadline.

13 COMMISSIONER BAEZ: Mr. Stone, so far, so good. I
14 just urge you to keep it up --

15 MR. STONE: The pressure's on. We're --

16 COMMISSIONER BAEZ: The pressure is on, that's
17 absolutely right.

18 MR. STONE: Absolutely.

19 COMMISSIONER BAEZ: Okay.

20 MR. McWHIRTER: Mr. Baez?

21 COMMISSIONER BAEZ: Yes.

22 MR. McWHIRTER: The principle issue in this case is
23 one on the merits as to whether it's more advantageous to the
24 consumers to have this planned in the rate base or to purchase
25 power through a contract with an affiliated company. We have a

1 very complex situation in that the basic information to make
2 the comparison is all confidential. So when you plan to go to
3 a hearing and address the merits with confidential information
4 we're going to have to give a lot of pre-thought to how you're
5 going to perform in-camera sessions so that everyone can be
6 well satisfied that the Commission does, in fact, have a fair
7 opportunity to evaluate all the available evidence.

8 And, I think, this would be a good opportunity just
9 to brainstorm that thought a little bit as to how we're going
10 to do it and enable you to go forward rapidly but at the same
11 time protect what you ought to keep secret. Have you given any
12 thought to that?

13 MR. STONE: Well -- and this sort of touches on some
14 of the concerns Mr. Shreve has also raised. One of the reasons
15 our testimony was filed the way it was filed when we filed it
16 was to get at least that much before the parties as soon as
17 possible. We needed -- and we've had, I think, a healthy
18 dialogue over the last several weeks trying to get information
19 that people feel they need to evaluate the reasonableness of
20 this proposal. And we're trying to be forthcoming with that as
21 rapidly as possible.

22 And we think we've been fairly successful in that
23 regard in terms of getting information to people. I'm very
24 pleased by the fact that Mr. McWhirter and his partners have
25 signed nondiscovery agreements allowing us to get information

1 to them of a confidential nature so they can at least be
2 evaluating it. We have worked out a system that, I think, has
3 proved satisfactory to the office of public counsel so they
4 have access to confidential documents, and so we are working in
5 that regard.

6 In terms of the mechanics of handling the hearing
7 itself, I'll be candid with you. I haven't had a time to
8 really focus on that, because I've been focusing on making sure
9 I got the information out in a timely fashion. I do think it
10 warrants some consideration, whether the time frame is to do
11 that brainstorming today or at some future date is a question
12 that needs to be resolved.

13 COMMISSIONER BAEZ: I agree with Mr. McWhirter that
14 it's something that needs to be resolved. I also agree with
15 you that perhaps now is not the time to be doing that. I
16 think, we could benefit from a lot more discussion amongst the
17 parties to do it. I did have a question for staff counsel,
18 however. Seeing that Mr. McWhirter has raised the issue, I
19 mean, is an in-camera procedure something that's contemplated
20 in an order on procedure or is that --

21 MR. ELIAS: In the procedural order there is language
22 that addresses how confidential information is to be used at
23 hearing in terms of assuring that, one, the hearing remains
24 open to the public and, two, the integrity of any confidential
25 information is maintained.

1 COMMISSIONER BAEZ: So, regardless, -- I mean, I
2 guess, my question went more to based on whatever agreements or
3 understandings are reached among the parties, and that includes
4 the Staff, is there going to be something over and above what
5 the -- is it contemplated to have something over and above what
6 the standard language on procedure is?

7 MR. ELIAS: Possibly, depending on the particular
8 nature of the information being discussed.

9 COMMISSIONER BAEZ: I guess, I would direct you all
10 to keep that in mind as you go discussing when the order is
11 issued. Mr. Shreve, you were poised to --

12 MR. SHREVE: Mr. Stone -- I'm glad that Mr. Stone
13 mentioned something I hadn't thought about that one of the
14 reasons this case was filed the way it was is because the
15 confidential information that had to be forthcoming in
16 discovery, which brings me back to a problem that I have
17 concerning the testimony and rebuttal.

18 If that information should have been in the company's
19 direct case, I wish they would go ahead or there was something
20 to have them go ahead and file the proper testimony with the
21 numbers, with something that we could come out and address
22 rather than us being in a position of taking discovery and then
23 coming out for the first time with the numbers trying to undo
24 whatever assumption is out there.

25 And it puts us in a position of really putting on the

1 case first and then Gulf at a later time coming in and having a
2 rebuttal when we really -- in fact, if we're going to be the
3 ones having to put the case on should be the ones with
4 rebuttal. Gulf should go ahead, I think, and put their cards
5 on the table and say what the numbers are so that we'll have
6 something to address. Then, you'd be in the proper frame to
7 have rebuttal after that. That's where -- and we're in a
8 position at this point, as I see it, of trying to put on the
9 first part of the case.

10 MR. STONE: I disagree with Mr. Shreve's assessment.
11 Back on June 29th, we provided, pursuant to a request for a
12 document from the Staff, we provided numbers pursuant to a
13 request for confidential treatment. As soon as Mr. Shreve's
14 office filed a proper request for production we were able to
15 get that same confidential document to his office. The problem
16 is that because of the constraints that Mr. Shreve operates
17 under, we can't give him a confidential document until he asks
18 for it pursuant to discovery.

19 COMMISSIONER BAEZ: Have you met that? I mean, have
20 you --

21 MR. SHREVE: We're okay on the discovery, but
22 Mr. Stone is exactly right, they did provide that confidential
23 document, and we got it. The problem is it should be in their
24 testimony. They should have a witness out there testifying to
25 that, not putting the Staff and our office in the position of

1 taking that and then coming forward with the first case.

2 MR. STONE: Well -- and I don't think you're going
3 forward with the first case. I think, we've gone forward with
4 the first case. I believe that we're trying to identify
5 information that is helpful to the Commission to resolve this
6 case and providing that information to the parties and to the
7 Commission in as timely a fashion as we can do it, and we're
8 working towards meeting those deadlines before any intervenor
9 or Staff testimony is due. And what I would submit to you is
10 that all I can do is if I have a confidential exhibit attached
11 to a witness' testimony, I have to submit it under request for
12 confidential treatment. Mr. Shreve doesn't get that document
13 until he asks for discovery anyway.

14 MR. SHREVE: I'll wait.

15 MS. STERN: Can I --

16 MR. STONE: I'm sorry.

17 MR. SHREVE: I'll wait. File the testimony.

18 COMMISSIONER BAEZ: Mr. --

19 MS. STERN: Well, I think, we -- we sort of have to
20 agree with the office of public counsel on this that, you know,
21 Gulf was supposed to file its case in chief originally. This
22 creates more of a problem with confidentiality, and we're even
23 having a problem, and this is just to make you aware, that
24 there are arguments to be made that what we get in discovery
25 Gulf is not even entitled to use in their case. If we ask for

1 it in discovery, they can't make it part of their case. It's
2 up to us to introduce it.

3 MR. STONE: That has never been the case before in
4 all the years I've been practicing before this Commission. We
5 have been allowed to supplement testimony with discovery
6 responses for as long as I can remember.

7 I'm very surprised to hear that position being taken
8 today but, regardless, we're working to get the information to
9 the Commission that it needs to be able to evaluate this and, I
10 think, we're putting form over substance here in terms of what
11 we're trying to accomplish.

12 Clearly, we have the burden of proof. We intend to
13 meet that burden of proof. I don't think it's a case where the
14 public counsel or the intervenors or the Staff has to go
15 forward first and they get rebuttal. We have the burden, we
16 certainly are entitled to rebuttal, but by the same token, I
17 think -- you know, I do not recall any rules that say that when
18 we filed this petition we had to file testimony in the time
19 frame that we filed testimony.

20 We did that in an effort to get information before
21 the parties in as timely a fashion as we could in order to get
22 this process started so that we could have the healthy dialogue
23 to get the information everybody needs to evaluate this case.
24 That's what we've been working towards.

25 I don't know of a rule that said we had to file our

1 testimony, either with our petition or within three weeks of
2 filing our petition, which is what we did. We're trying to be
3 in a good faith position to ask for expedited treatment. We
4 have shortened our discovery time frame much shorter than the
5 rules allow in order to meet that, and so I think we really are
6 putting form over substance to say that because these
7 confidential documents weren't attached to the testimony that
8 we filed back in mid June that somehow we're not meeting our
9 burden in this case.

10 The hearing is not until September 5th, if this
11 schedule's adopted. There's another status conference on
12 August 1st, and I'm hopeful that given the healthy dialogue
13 we've had thus far that if we can continue that over the next
14 three weeks that when we come to August 1st everyone will be
15 comfortable with the hearing on September 5th and we'll be able
16 to move forward in that basis.

17 COMMISSIONER BAEZ: Mr. Shreve, help me understand,
18 if there is a way or as a result you get the information, you
19 get the confidential information that you need --

20 MR. SHREVE: Commissioner, I hadn't been complaining
21 about that. Mr. Stone was the one that raised that. We've
22 gotten the information. We don't have a problem with the way
23 we've gotten it. What I have a problem with is the information
24 is out there, I don't understand why Mr. Stone didn't file it
25 with testimony and who's going to sponsor the information, who

1 are we to question about it? I would assume that Mr. Stone has
2 filed all of the testimony he intends to file.

3 MR. STONE: Mr. Shreve has made that statement
4 several times. I've stayed silent, because this is not the
5 time to respond to that, but I will tell you this: At the
6 meeting yesterday, the confidential document was the subject of
7 the meeting. We had the witnesses there that are sponsoring
8 that information. There was an opportunity to interview those
9 witnesses for several hours. We met and we had a good healthy
10 dialogue in terms of sharing information.

11 Mr. Shreve is not unaware of who the witnesses are
12 that are sponsoring the confidential information. He is not
13 unaware of the confidential information that has been filed in
14 support of our position. He has all that information. I know
15 Mr. Shreve is very -- is ready to move forward with this, but I
16 think we're trying to put the cart before the horse here. And
17 what he's really doing is he's continuing to argue his motion
18 to dismiss, which we've already said we're not going to argue
19 today.

20 COMMISSIONER BAEZ: One last shot, Mr. Shreve.

21 MR. SHREVE: Mr. Stone gives an awful lot of reasons
22 for I'm doing what I'm doing. Why didn't they just go ahead
23 and file their case? They're making it now supposedly with
24 that, and it puts us in a position of scheduling rebuttal as to
25 who should be doing it. I think, we're in a position of having

1 to come forward with the first numbers in testimony. There's
2 none there right now.

3 COMMISSIONER BAEZ: Mr. Shreve, it sounds from the
4 outset that the points that you're making are in lament. Is it
5 something -- I mean, we are past -- you're asking me a question
6 why didn't they file it earlier? Well -- there may be an
7 answer to that. Why didn't they just do that? There may be an
8 answer, and I don't know that I can give it to you.

9 MR. SHREVE: Okay. I'm not asking why they didn't
10 file it earlier. It hasn't been filed at all. And we're going
11 to be put in a position of having rebuttal. That's the point
12 I'm arguing right now. They will have rebuttal to the case we
13 put forward. Okay.

14 COMMISSIONER BAEZ: Ms. Stern, do you --

15 MS. STERN: I think, he's correct. I think, we're --
16 I think it's Staff's posi--

17 COMMISSIONER BAEZ: We're not going to decide that
18 now.

19 MS. STERN: What?

20 COMMISSIONER BAEZ: We're not going to decide that
21 now. I mean, the truth is we're trying to explore expediting,
22 and this is what we're going to do today --

23 MS. STERN: Okay.

24 COMMISSIONER BAEZ: -- we're going to set time for a
25 motion to dismiss. I think -- I can tell you right now that's

1 probably more properly before the entire Commission, so that's
2 how we're going to handle that.

3 MS. STERN: Mm-hmm.

4 COMMISSIONER BAEZ: I'm sorry, I interrupted you.

5 MS. STERN: I was just going to suggest that -- I was
6 just going to see if you thought it might be appropriate to go
7 before the whole Commission, and we'll be shooting for the next
8 agenda.

9 COMMISSIONER BAEZ: So I got ahead of you. Okay.
10 Yeah, I think, the next agenda is a good goal to have. In the
11 meantime, I think that the numbers or the dates as proposed by
12 Mr. Elias are the most appropriate at this time, so if we can
13 incorporate that into an order on procedure; and also,
14 Mr. Elias, keeping in mind what we had discussed about
15 in-camera, in case I would direct the parties to get together
16 and try and discuss this further, what additional procedures on
17 confidentiality is going to have to take place and be included
18 in the order? And you can forward that to me so that I can
19 review it.

20 MS. STERN: Okay. Can I just --

21 COMMISSIONER BAEZ: Anything else?

22 MS. STERN: -- ask you to address one more detail --

23 COMMISSIONER BAEZ: Sure.

24 MS. STERN: -- for the sake of the record? We had
25 proposed -- Gulf's schedule for September 5th ends with a bench

1 decision. Our schedule leaves the option of a bench decision
2 or going through with the regular briefs, recommendation, and
3 decision at an agenda conference.

4 COMMISSIONER BAEZ: On the 16th? Is that -- am I
5 reading the right form here?

6 MS. STERN: Right, on the 16th. So, what I would
7 suggest is that we leave the option in at this point.

8 COMMISSIONER BAEZ: I think, at this point it's
9 appropriate to leave the option in, because we're not making a
10 decision on whether we're going to have a bench -- whether we
11 can even have a bench decision or not --

12 MS. STERN: Right.

13 COMMISSIONER BAEZ: -- until that particular legal
14 question is answered. And so, for the time being, we'll leave
15 the additional dates in. And at some point, you know, based on
16 whatever legal conclusions on that issue we arrive, you're
17 going to have to come to a decision on whether those -- you
18 know, that outside date is acceptable. I know that at this
19 point it's not but, you know, you're going to have a chance to
20 reconsider that.

21 MR. STONE: I understand that, Commissioner. And the
22 reason we had proposed our dates is that, quite frankly, we
23 were hoping that would be -- that everyone would be working
24 towards a bench decision if, ultimately, the Commission -- I
25 just didn't want the Commission to be in a position that on

1 September 5th it said, "Well, we didn't notice this as being a
2 potential bench decision and, therefore, we can't do a bench
3 decision.

4 COMMISSIONER BAEZ: I understand that and, I think,
5 the Staff can do whatever is necessary to maintain all those
6 options open. I mean, I just -- I don't see a reason to
7 determine whether we're going to have a bench decision or not
8 right now, because there seems to be a question as to whether
9 the rules would permit it or not.

10 MS. STERN: One last thing just for the record. We
11 had proposed meeting again -- both Gulf -- Gulf had proposed
12 meeting again on August 1st and Staff agreed with that for a
13 status conference to decide between two possible hearing dates.
14 Gulf proposed 8/31 and 9/5, we proposed 9/5 and 9/19. It's
15 Staff's recommendation at this point that we keep the 8/1
16 status conference. At that point we decide between 9/5 and
17 9/19.

18 COMMISSIONER BAEZ: If we have to revise and it's
19 acceptable and doable for the parties, if we have to revise the
20 schedule at that time, based on our progress, that'll be fine,
21 so --

22 MS. STERN: We want to leave that hearing date open,
23 the 19th. We want to make sure we --

24 COMMISSIONER BAEZ: Right, and that's something that
25 we can continue to do. Don't -- we're not going to make any

1 changes to the Commissioners' schedules or to any reserve dates
2 that we have now based on a decision to go with Mr. Elias's
3 proposed timeline. We're only going to use that proposed
4 timeline. I guess that's going to stay fluid, to some extent,
5 depending on the 8/1 meeting. And whatever progress has been
6 made up until that point it's going to become pretty evident to
7 everyone whether we're going to be able to do this at all or
8 not, so I would leave that date -- I'm sorry.

9 MR. STONE: Commissioner, I agree with what you're
10 saying. I just need to clarify one point and that is when we
11 had proposed alternatives of August 31 or September 5th, what
12 we were proposing is either one of those -- is the expedited
13 date for a hearing.

14 We are not -- you know, we are optimistic that we are
15 going to be able to -- because the pressure's on us to keep
16 delivering the discovery and to keep meeting those needs so
17 that when we come to a status conference on August 1st it will
18 not be a problem agreeing to the hearing date on September 5th.

19 If, for some reason, the Commissioner's decision on
20 August 1st is not to support a September 5th hearing date, I'm
21 not suggesting to you that we can live with the September 19th
22 date at this point.

23 COMMISSIONER BAEZ: And I'm not suggesting to you
24 that you have to. That's why I said you're going to -- I mean,
25 we -- there's going to have to be a determination made on

1 August 1st, I suppose, whether we can meet an expedited
2 schedule or not based on the progress we've made so far. Now,
3 the only thing that I've instructed Staff to do is to keep
4 those dates open.

5 I mean, for your purposes they may not exist. I
6 mean, if you want to proceed on a do-or-die basis with
7 September 5th, that's your choice. We are keeping the dates
8 open, because there's always that chance that you all may think
9 better of it.

10 MR. STONE: And we appreciate that, and we want those
11 dates kept open, I just didn't want --

12 COMMISSIONER BAEZ: It's actually for your benefit.

13 MR. STONE: I just didn't want from my statement
14 today to be implied that we can live with the 19th. That
15 decision will be made on the 1st.

16 COMMISSIONER BAEZ: And, I think, everyone else
17 understands it, too.

18 Mr. McWhirter.

19 MR. McWHIRTER: Mr. Baez, historically, to my
20 recollection when we used to have general rate cases, when a
21 utility filed its rate case it would simultaneously file its
22 MFRs. And I saw on your docket sheet that there was a rate
23 case filed by Gulf last Monday, and I don't know who the --

24 MR. STONE: Commissioner Baez, I think, I can address
25 that. That's a mistake on the docket sheet.

1 MR. McWHIRTER: I see.

2 MR. STONE: What we had filed, and it was filed last
3 year, was a test year letter, notification letter. We have not
4 filed a rate case.

5 COMMISSIONER BAEZ: That was my understanding as
6 well, Mr. McWhirter. We're at least still on track with that.

7 MR. McWHIRTER: Good. Well, that's good, but my
8 comment was going to be, obviously, a lot of work has gone into
9 those MFRs already, because Gulf had to have that information
10 in order to make the determination that buying the power from
11 an affiliated company was a better deal for the ratepayers, so
12 it would be helpful if Gulf could quickly file the MFRs that go
13 along with that. Obviously, you can't --

14 COMMISSIONER BAEZ: Before they file the rate case?

15 MR. McWHIRTER: No. They couldn't go forward with
16 the rate case until the test year is determined so they can't
17 do MFRs until they have a test year, but I would --

18 COMMISSIONER BAEZ: You want them to show the MFRs
19 before --

20 MR. STONE: I can't show them to him before they're
21 ready.

22 COMMISSIONER BAEZ: I appreciate that.

23 MR. SHREVE: Pardon me. Maybe I misunderstood what
24 Mr. McWhirter was talking about. I thought he was talking
25 about the calculations for this particular purchase, yeah,

1 which they're bound to have done or they wouldn't have filed in
2 the first place.

3 MR. McWHIRTER: Yeah. As Mr. Vandiver pointed out in
4 our first meeting, in order to make a logical comparison, you'd
5 you have to say, well, here's what would happen under a rate
6 case on one side and here's what happens on the contract on the
7 other side. Gulf has already done that study, because they
8 made the determination that it's better for the consumers to
9 buy this power from its affiliated company than to own the
10 power plant.

11 So, the only thing that's missing is we don't know
12 what test year is being used so that they can come up with the
13 information to put into the pigeonholes and the MFRs, so I
14 would urge the Commission, if this could be passed back to have
15 whoever is assigned to that docket, to quickly set the test
16 year and then let Gulf get its MFRs in right away.

17 COMMISSIONER BAEZ: Mr. Elias, I've got to confess --

18 MR. ELIAS: How about we take --

19 COMMISSIONER BAEZ: -- I'm not sure I know what
20 Mr. McWhirter's talking about, but --

21 MR. ELIAS: -- we take that suggestion under
22 advisement and leave it at that.

23 COMMISSIONER BAEZ: Do we have anything else?

24 COURT REPORTER: Microphone.

25 COMMISSIONER BAEZ: Oh, I'm sorry, Koretta.

1 Do we have anything else?

2 MR. ELIAS: One other thing, and this is just
3 procedural in terms of the August 1st status conference and the
4 sufficiency of the notice, my suggestion would be that we
5 continue this status conference to a time certain on August
6 1st.

7 COMMISSIONER BAEZ: And do you have a time certain?

8 MR. ELIAS: Marlene's checking on that now, and I
9 guess it's --

10 COMMISSIONER BAEZ: Shall I get up and dance and
11 entertain until she gets back?

12 MR. ELIAS: Well, you know, actually, you're the band
13 leader, so you can pick the time.

14 COMMISSIONER BAEZ: Is that right? Well, I don't --
15 all right. I have a calendar here.

16 MR. ELIAS: The only thing that's on the schedule for
17 that day is a hearing in Room 148 at 9:30 that you are not
18 assigned to.

19 COMMISSIONER BAEZ: That I am not assigned to,
20 fortunately. From the looks of this calendar, I'm available in
21 the morning, as of the morning, and we can -- you know, it
22 looks like we can reserve this room, so if you want to continue
23 this particular prehearing to the time certain of 9:30 August
24 1st in this room is that sufficient?

25 MR. ELIAS: That's sufficient.

1 COMMISSIONER BAEZ: Okay. If there's nothing else,
2 then we're in recess.

3 MR. McWHIRTER: Thank you, sir.

4 COMMISSIONER BAEZ: Thank you for coming.

5 MR. SHREVE: Thank you.

6 (Status Conference concluded at 2:23 p.m.)

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

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5 I, KORETTA E. STANFORD, RPR, Official Commission
6 Reporter, do hereby certify that a Prehearing Conference was
heard at the time and place herein stated.

7 IT IS FURTHER CERTIFIED that I stenographically
8 reported the said proceedings; that the same has been
transcribed under my direct supervision; and that this
9 transcript constitutes a true transcription of my notes of said
proceedings.

10 I FURTHER CERTIFY that I am not a relative, employee,
11 attorney or counsel of any of the parties, nor am I a relative
or employee of any of the parties' attorneys or counsel
12 connected with the action, nor am I financially interested in
the action.

13 DATED this Monday, July 23, 2001.

14

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KORETTA E. STANFORD, RPR
FPSC Official Commissioner Reporter
(850) 413-6734

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