

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

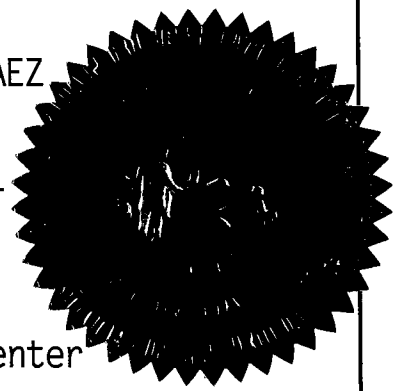
REVIEW OF FLORIDA POWER CORPORATION'S DOCKET NO. 000824-EI
EARNINGS, INCLUDING EFFECTS OF
PROPOSED ACQUISITION OF FLORIDA POWER
CORPORATION BY CAROLINA POWER & LIGHT.

REVIEW OF FLORIDA POWER & LIGHT DOCKET NO. 001148-EI
COMPANY'S PROPOSED MERGER WITH ENERGY
CORPORATION, THE FORMATION OF A FLORIDA
TRANSCO, AND THEIR EFFECT ON FLORIDA
POWER & LIGHT'S RETAIL RATES.

REVIEW OF TAMPA ELECTRIC COMPANY AND DOCKET NO. 010577-EI
IMPACT OF ITS PARTICIPATION IN
GRIDFLORIDA, A FLORIDA TRANSMISSION
COMPANY, ON TECO'S RETAIL RATEPAYERS.

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PROCEEDINGS: PREHEARING CONFERENCE
BEFORE: COMMISSIONER BRAULIO L. BAEZ
Prehearing Officer
DATE: Monday, September 17, 2001
TIME: Commenced at 1:30 p.m.
Concluded at 2:30 p.m.
PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida
REPORTED BY: KORETTA E. FLEMING, RPR
Official FPSC Reporter



1 APPEARANCES:

2 LEE L. WILLIS and JAMES D. BEASLEY, Ausley & McMullen,
3 Post Office Box 391, Tallahassee, Florida 32302 and HARRY LONG,
4 participating telephonically, Post Office Box 111, Tampa,
5 Florida 33601-0111, appearing on behalf of Tampa Electric
6 Company.

7 MATTHEW M. CHILDS, Steel, Hector, Davis, 215 S. Monroe
8 Street, Suite 601, Tallahassee, Florida 32301, appearing on
9 behalf of Florida Power & Light Company.

10 JON C. MOYLE, JR. and VICKIE GOMEZ, Moyle, Flanigan, Katz,
11 Raymond & Sheehan, The Perkins House, 118 North Gadsden Street,
12 Tallahassee, Florida 32301, appearing on behalf of CPV
13 Atlantic, Ltd. (CPV) and PG&E National Energy Group.

14 VICKI GORDON KAUFMAN and JOHN McWHIRTER, McWhirter,
15 Reeves, McGlothlin, Davidson, Decker, Kaufman, Arnold and
16 Steen, P.A., 117 South Gadsden Street, Tallahassee, Florida
17 32301, appearing on behalf of the Florida Industrial Power
18 Users Group (FIPUG).

19 JOSEPH A. MCGLOTHLIN, McWhirter, Reeves, McGlothlin,
20 Davidson, Decker, Kaufman, Arnold & Steen, P.A. Firm, 117
21 South Gadsden Street, Tallahassee, Florida 32301, appearing on
22 behalf of Reliant Energy Power Generation, Inc.

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1 APPEARANCES CONTINUED:

2 LESLIE J. PAUGH, Landers and Parsons, P.A., 310 West
3 College Avenue, Tallahassee, Florida 32301, appearing on behalf
4 of Mirant Americas Development, Duke Energy North America, and
5 Calpine Corporation.

6 JOHN ROGER HOWE, Deputy Public Counsel, Office of Public
7 Counsel, c/o The Florida Legislature, 111 W. Madison Street,
8 Suite 812, Tallahassee, Florida 32399, appearing on behalf of
9 the Citizens of the State of Florida.

10 MICHAEL B. TWOMEY, Post Office Box 5256, Tallahassee,
11 Florida 32314-5256, appearing on behalf of Thomas and Genevieve
12 Twomey, Buddy L. Hansen, and Sugarmill Woods Civic Association,
13 Inc.

14 PETER ANTONACCI, Gray, Harris & Robinson, P.A., 225 South
15 Adams Street, Tallahassee, Florida, appearing on behalf of
16 Dynegy Mid-Stream Services, Limited Partnership and Dynegy,
17 Inc.

18 WES STRICKLAND, Foley & Lardner, 300 Park Avenue East,
19 Tallahassee, Florida, appearing on behalf of Seminole Electric.

20 SEANN FRAZIER, Greenberg Traurig, 101 East College Avenue,
21 Tallahassee, Florida, appearing on behalf of Publix Super
22 Markets.

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1 APPEARANCES CONTINUED:

2 JAMES A. McGEE, Post Office Box 14042, St. Petersburg,
3 Florida 33733 and JAMES P. FAMA, LeBoeuf, Lamb, Greene &
4 MacRae, LLP, 1875 Connecticut Avenue, N.W., Suite 1200,
5 Washington, D. C., 20009, appearing on behalf of Florida Power
6 Corporation, participating telephonically.

7 DANIEL FRANK, Sutherland, Asbill & Brennan, 1275
8 Pennsylvania Avenue NW, Washington, D.C. 20004-2415, appearing
9 on behalf of the Walt Disney World Company, participating
10 telephonically.

11 NATALIE FUTCH and BILL BRYANT, Katz, Kutter Law Firm, 106
12 East College Avenue, 12th Floor, Tallahassee, Florida 32301,
13 appearing on behalf of Enron Corporation, participating
14 telephonically.

15 COCHRAN KEATING and BOB ELIAS, FPSC Division of Legal
16 Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida
17 32399-0850, 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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COMMISSIONER BAEZ: Call the prehearing to order.
Counsel, please read the Notice.

MR. KEATING: Pursuant to Notice issued August 20th, 2001, this time and place have been set for a Prehearing Conference in Docket Number 000824-EI, review of Florida Power Corporation's earnings, including effects of proposed acquisition of Florida Power Corporation by Carolina Power & Light; Docket Number 001148-EI, 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; and Docket Number 010577-EI, review of Tampa Electric Company and impact of its participation in GridFlorida, a Florida Transmission Company, on TECO's retail ratepayers.

COMMISSIONER BAEZ: Thank you. And before we start with the appearances, I want to ask those parties that are participating via telephone, there's probably a lot of you out there, as well as the many of us here. And for clarity's sake and just so the court reporter can keep track of who everyone is, before you speak can you please identify yourself. Each time you speak, please identify yourself. And with that we'll start with the people that are here, live, and in color.

Mr. Willis.

MR. WILLIS: I'm Lee L. Willis, appearing with James

FLORIDA PUBLIC SERVICE COMMISSION

1 D. Beasley, Post Office Box 391, Tallahassee, Florida 32302,
2 and Harry W. Long, Jr., Post Office Box 111 Tampa, Florida,
3 33601. Mr. Long is participating by telephone.

4 COMMISSIONER BAEZ: Okay, Mr. Long, your appearance
5 is noted already.

6 MR. LONG: Thank you, Commissioner.

7 MR. CHILDS: Matthew Childs of the firm of Steel,
8 Hector & Davis. I'm appearing on behalf of Florida Power &
9 Light Company.

10 MR. MOYLE: Jon Moyle, Jr., with the Moyle, Flanigan
11 law firm here in Tallahassee representing CPV Atlantic and PG&E
12 National Energy Group. With me today is another lawyer in our
13 firm, Vickie Gomez.

14 MS. KAUFMAN: Vicki Gordon Kaufman of the McWhirter
15 Reeves law firm on behalf of the Florida Industrial Power Users
16 Group. And I'd like to enter an appearance also for John
17 McWhirter.

18 COMMISSIONER BAEZ: Thank you. Mr. McGlothlin.

19 MR. MCGLOTHLIN: Joe McGlothlin of the McWhirter,
20 Reeves law firm on behalf of Reliant Energy Power Generation,
21 Inc. Reliant has filed interventions in all three dockets.

22 MS. PAUGH: Leslie Paugh, Landers & Parsons, on
23 behalf of Mirant Americas Development, Inc., Duke Energy North
24 America, and Calpine Corporation.

25 COMMISSIONER BAEZ: Thank you.

1 MR. HOWE: I'm Roger Howe with the Public Counsel's
2 Office appearing on behalf of the citizens in the state of
3 Florida. The address is as listed on the draft prehearing
4 order.

5 MR. TWOMEY: Michael B. Twomey, Post Office Box 5256,
6 Tallahassee, 32314-5256 on behalf of Thomas and Genevieve
7 Twomey, Buddy L. Hansen, and the Sugarmill Woods Civic
8 Association, Inc.

9 COMMISSIONER BAEZ: Thank you, Mr. Twomey. Is there
10 anyone else in the room physically that needs to enter an
11 appearance? Sir?

12 MR. ANTONACCI: Peter Antonacci, Gray, Harris &
13 Robinson, representing Dynegy and Dynegy Mid-Stream, Inc.

14 COMMISSIONER BAEZ: Did the court reporter get that?

15 COURT REPORTER: I got it, but everybody else needs
16 to come to the microphone.

17 COMMISSIONER BAEZ: If you'd please step up to a
18 microphone.

19 MR. STRICKLAND: Wes Strickland, Foley & Lardner, on
20 behalf of Seminole Electric.

21 COMMISSIONER BAEZ: Thank you.

22 MR. FRAZIER: Seann Frazier from Greenberg Traurig on
23 behalf of Publix Super Markets.

24 COMMISSIONER BAEZ: That takes care of everyone in
25 the room. On the phone, who's up?

1 MR. MCGEE: This is Jim McGee in St. Petersburg and
2 Jim Fama in Washington, D.C. appearing on behalf of Florida
3 Power Corporation. The names and addresses in the draft
4 prehearing order are correct.

5 COMMISSIONER BAEZ: Thank you, Mr. McGee. Next?
6 Anyone?

7 MR. FRANK: This is Dan Frank at Sutherland, Asbill &
8 Brennan in Washington, D.C., appearing on behalf of Walt Disney
9 World Company. The address information in the prehearing order
10 is correct, the draft prehearing order.

11 COMMISSIONER BAEZ: Thank you, Mr. Frank. Anyone
12 else?

13 MS. FUTCH: Natalie Futch on behalf of Enron
14 Corporation. I'm with Katz, Kutter law firm here in
15 Tallahassee, and the address and information is correct in the
16 prehearing order.

17 MR. BRYANT: And this is Bill Bryant. I'm with
18 Natalie.

19 COMMISSIONER BAEZ: I'm sorry, did you -- the party
20 you represent?

21 MR. BRYANT: Enron.

22 COMMISSIONER BAEZ: Thank you. Does that take care
23 of everyone? Anyone else on the phone? Thank you.

24 MR. KEATING: And Cochran Keating appearing on behalf
25 of Commission Staff.

1 COMMISSIONER BAEZ: All right. First thing's first.
2 We've got a lengthy draft document, and from the outset what I
3 want to suggest is that if any of the parties have any changes
4 that they need to make to their positions on any of the issues,
5 we won't be entertaining them here verbatim, if you could just
6 forward them to Staff counsel in writing, either via e-mail or
7 otherwise, we'll make sure and have those changes entered into
8 the draft.

9 Also, -- give me a moment. Staff, I have one change
10 to make on the prehearing procedures -- I'm sorry, on the
11 hearing procedures. I guess, it's Section 5. If we can enter
12 a statement that any changes or corrections to prefiled
13 testimony need to be made in writing and submitted in writing
14 beforehand, I think, it makes it a little bit more easier to
15 handle everything. We've got a lot of witnesses, so in the
16 interest of time, if no one has an objection.

17 MR. WILLIS: We don't have an objection to it,
18 Commissioner, but I take it that we would file an errata sheet,
19 just as you did in a recent hearing.

20 COMMISSIONER BAEZ: Exactly, Mr. Willis.

21 MR. WILLIS: And if something else came up, that we
22 wouldn't be precluded from making changes.

23 COMMISSIONER BAEZ: I'm sure that the Chairman will
24 be very liberal and will be ready to deal with changes as they
25 come up, but whatever you know walking through the door, please

1 -- thanks.

2 That's it for whatever questions or changes I needed
3 to suggest. And we -- given, you know, what I've already said
4 about the statements of positions, Mr. Willis, if you have, you
5 can go ahead and start.

6 MR. WILLIS: There is one thing I wanted to raise
7 from the outset. First of all, Staff has done a lot of work.
8 It's difficult, I know, to receive the work of so many
9 different parties and merge it into a prehearing document as
10 evidenced by the fact that this is over 100 pages long.

11 I was hoping that the order would have been more
12 consolidated than it is; that is, it sets out in somewhat of a
13 duplicative way the position statements of each of the
14 GridFlorida companies; for example, a basic position statement
15 is the same. We filed a joint pleading.

16 And the concern that I have is with a document of
17 this size, I'm afraid that it's going to lose some of its
18 impact as a guide or a road map to the hearing, not only for
19 the individual Commissioners but for anybody that's
20 participating, because it takes a lot of discipline and
21 reorientation everytime to keep the matters separate.

22 I would like, for example, if you look at the section
23 on Witnesses, if you looked at that and took it literally, it
24 would look like the joint -- the witnesses that are testifying
25 from the three companies are going to come to the stand three

1 different times, and I don't think any of us really expect that
2 to happen. The Order of Witnesses is usually a place where the
3 Chairman or whoever's following it to know what comes next, and
4 you couldn't really tell that from this.

5 Secondly, the positions on the issues of the three
6 GridFlorida companies are identical, except for some fairly
7 succinct changes on two issues. So, just making that change
8 just for one company would shrink the number of pages
9 considerably. And then, a lot of the order is referencing the
10 fact that a party has the same position in all three dockets by
11 stating the position in the first docket and then saying that
12 it was the same as in the previous docket.

13 I think, we also should take into consideration how
14 the Commission is going to decide the case; that is, if it were
15 decided in three separate dockets you would effectively have
16 made your decision once you finished the first docket, because
17 first of all, the issues are worded in a way that they effect
18 all three dockets. For example, Issue 1, the voluntary versus
19 mandatory, you're not going to make a different decision for
20 one company than you will for another, I don't believe.

21 So, I would just respectfully request us to give
22 consideration to collapsing this into a cohesive document that
23 would probably reduce the pages into something like 35 or 40
24 pages instead of 109. I think, there would be a lot of reader
25 inertia to even attacking this kind of a document.

1 COMMISSIONER BAEZ: I appreciate where you're coming
2 from and the word inertia is an interesting one when you take
3 this document into light. I know that my discussions with
4 Staff counsel had the tenor of trying to keep everything clear.
5 And while I do appreciate the fact that at least a few of the
6 issues that are set out to be considered, you're probably
7 correct; an answer for one becomes an answer for another, and
8 Issue 1 being a prime example.

9 But however, there are other issues farther down the
10 road that do have different sets of circumstances, and I think
11 that you've acknowledged that as well, so we're kind of stuck
12 in a -- at least in my mind, we're stuck in a situation where
13 we have to be -- we have to acknowledge that there are three
14 separate dockets, as well as acknowledge that there are some
15 issues pertaining to each of those dockets that are going to
16 have the same -- some blanket resolution across all of them.
17 And it really is to me, you know, one way or the other to be
18 doing it. And I think that having the order, even though it is
19 a little bit cumbersome, to have it a little clearer so that
20 when we're on -- when we're considering, you know, TECO's
21 docket that you have those -- that you have the position set
22 forward when we're discussing the other company's dockets.

23 Now, I don't know if there's something -- and
24 Mr. Elias or Mr. Keating you can jump in here anytime now, but
25 if there is something we could do to probably clarify sort of

1 where Mr. Willis is coming from without altering the document
2 too much, offer some kind of clarity to explain that witnesses
3 are coming up and they're addressing issues on, you know,
4 across the dockets all together so that we can remove some of
5 that type of confusion in the prehearing order.

6 MR. KEATING: Perhaps there could be some language
7 added in the Case Background.

8 COMMISSIONER BAEZ: I'm sorry?

9 MR. KEATING: Perhaps there could be language added
10 in the Case Background. Perhaps we could add some language to
11 that effect in the Witness section to explain that we don't
12 really expect that all these witnesses are going to come up on
13 three separate occasions. I haven't thought about it, the
14 exact wording we could use for that, but those are two places
15 in the order that come to mind.

16 COMMISSIONER BAEZ: Mr. Willis, that's sort of what I
17 would have in mind to address your concern, just to at least
18 make it clear to all that engage in reading this work hasn't
19 changed the normal course of how we're going to do -- how we're
20 going to let the hearings unfold.

21 MR. WILLIS: You've, obviously, thought about this in
22 advance and had some interaction --

23 COMMISSIONER BAEZ: I'm not saying that the solution
24 is the most perfect one or even the best one, but I think that
25 at this point what we can do is have some clarifying language

1 that addresses your concerns over whatever confusion may be
2 suggested by the way the document's been structured, you know,
3 I think that could -- that would be useful.

4 MR. WILLIS: Okay. One thing to consider just to the
5 Order of Witnesses to have a sentence or two to state that
6 after the joint witnesses, then state what the order of the
7 remaining witnesses are, because you can't really tell that
8 from this.

9 COMMISSIONER BAEZ: And I would also urge Staff to
10 take some extra time to brief as many Commissioners as may want
11 to be briefed so that they know what the game plan is once the
12 hearing comes to us. Thank you, Mr. Willis.

13 Mr. Childs?

14 MR. CHILDS: Well, I would just -- you know, I don't
15 want to revisit what you've already decided, but I think that
16 we have filed, for the most part, and tried our filing on our
17 prehearing statement so that we had one set of, you know, of
18 issues. There is one set of issues, generally, and one set of
19 positions. And the exceptions are really fairly minor. And I
20 would hope that as the case is considered by you and the other
21 Commissioners that it is remembered that there's not the
22 distinction between the utilities that the separation of the
23 dockets and the prehearing order might suggest.

24 COMMISSIONER BAEZ: I certainly will have that in
25 mind, but at the same time, I think, we also have to keep in

1 mind that there was a Commission decision not to consolidate
2 these dockets. And even though it may look for, for
3 efficiency's sake, that we are having witnesses show up on a,
4 quote, unquote, consolidated basis, that we do have to respect
5 at least the vote that the Commission took in not consolidating
6 the docket, so we don't want to break from that point and then
7 have it all morphed into some consolidated docket. I don't
8 think we need to be arguing that at this point, but I
9 appreciate your comments.

10 Mr. Moyle?

11 MR. MOYLE: I guess, in looking at the witnesses, I
12 just had a question that maybe we could save a little time now,
13 but there were a number of witnesses appearing as a panel.
14 I've never been involved in a panel witness type situation and
15 was wondering how that process would work, in particularly with
16 respect to possibly, you know, cross examination. Do you ask a
17 question of Witness A and Witness A answers or do you ask the
18 question of the panel? I'm unfamiliar with that practice and
19 was hoping to get some guidance.

20 COMMISSIONER BAEZ: You know, there are a few times
21 -- well, I'm ready to say that I've had very limited experience
22 with panel witnesses, and I believe that that's pretty much the
23 case. It's sort of a tandem responses, whoever is more capable
24 of answering the question, I think -- if Mr. Elias can
25 elucidate a little better or Mr. Keating what your expectation

1 is.

2 MR. KEATING: That's my understanding. And I don't
3 have any personal experience with a panel at a hearing. In a
4 deposition environment we've, essentially, asked questions and
5 the witness who felt most capable of answering has provided the
6 response.

7 COMMISSIONER BAEZ: In essence, the short answer is
8 you are asking questions to the panel.

9 MR. MOYLE: Okay. I guess, you probably wouldn't be
10 precluded if you had a particular question, because I think the
11 Staff has noticed some depositions upcoming if you had a
12 question of a particular witness, I guess, you'd be free to ask
13 that witness.

14 COMMISSIONER BAEZ: I think, you'd have that liberty.

15 MR. KEATING: I believe that three of the four panel
16 members are also an individual witness that have filed
17 individual testimony in these dockets as well so that, I
18 believe, all but one would be available for cross examination
19 as an individual witness.

20 MR. MOYLE: And the only point there is, I think,
21 some of them have on their individual testimony they're only
22 testifying to particular issues; whereas, their panel
23 discussion is broader.

24 COMMISSIONER BAEZ: Well -- and, I think, even
25 keeping that in mind, you'll have ample leave to -- if the

1 depositions were taken of a particular witness in regards to a,
2 quote, panel issue, you'd have leave to ask questions, specific
3 questions of the witnesses.

4 MR. MOYLE: I appreciate that clarification.

5 COMMISSIONER BAEZ: Ms. Kaufman.

6 MS. KAUFMAN: Thank you, Commissioner. We're fine
7 with the prehearing statement the way it is, and we appreciate
8 your efforts to continue to recognize the separation of the
9 three dockets.

10 COMMISSIONER BAEZ: Mr. McGlothlin.

11 MR. MCGLOTHLIN: Commissioner, I noticed that with
12 respect to the ruling on several petitions to intervene,
13 especially those that pertain to my client, it was limited to
14 Phase 1.

15 COMMISSIONER BAEZ: Yes, sir.

16 MR. MCGLOTHLIN: And I would like the clarification
17 that that's without prejudice for the ability to seek
18 intervention of Phase 2, if it appears that our interest would
19 warrant that. I don't know that my client would be interested
20 in doing that, but nether do I know how those issues are going
21 to be phrased or laid out.

22 COMMISSIONER BAEZ: Staff, do you have an -- I mean,
23 I know how I feel about it. I don't believe that it should be
24 with any prejudice; however, I would caution those that have
25 had their interventions limited to Phase 1 is that the

1 arguments better be really good, because we have taken into
2 account the longer view of Phase 2. I'm not comfortable with
3 closing that door with any finality right now, but I think that
4 it's got to be really good.

5 MR. McGLOTHLIN: I understand that. I just don't
6 want to be precluded in the event something --

7 COMMISSIONER BAEZ: Really good.

8 MR. McGLOTHLIN: Okay.

9 COMMISSIONER BAEZ: Ms. Paugh. Is that all? I'm
10 sorry.

11 MR. McGLOTHLIN: The other is far less significant,
12 but it's become a matter of convention in these prehearing
13 orders to limit post-hearing statements to 50 words. I find,
14 I'll bet other practitioners find that it's almost impossible
15 to articulate something that communicates anything meaningful
16 in 50 words. I understand the desire to prevent abuses, but if
17 you could see way clearer to giving us 75 words, I think, we'd
18 all profit.

19 COMMISSIONER BAEZ: You know, I was actually
20 expecting you to ask for 100, so 75 almost seems reasonable.
21 We'll grant that request.

22 Ms. Paugh?

23 MS. PAUGH: Subject to check of the position
24 statements set forth in the draft prehearing order, we have no
25 additional comments. I haven't had the opportunity to read all

1 of them yet.

2 COMMISSIONER BAEZ: Thank you and welcome back.

3 MS. PAUGH: Thank you.

4 COMMISSIONER BAEZ: Mr. Antonacci?

5 MR. ANTONACCI: Likewise, the comments made before
6 regarding intervention, I presume the motion to intervene,
7 Dynegy's motion to intervene in Phase 2 is held in abeyance or
8 may be renewed at the proper time if we so desire.

9 COMMISSIONER BAEZ: We'll take it under advisement.

10 MR. ANTONACCI: Thank you.

11 MR. HOWE: Commissioner Baez, I'm fine with
12 prehearing order as it's drafted.

13 COMMISSIONER BAEZ: Thank you, Mr. Howe. Mr. Twomey?

14 MR. TWOMEY: Same here, sir.

15 COMMISSIONER BAEZ: Thank you. Any of the other
16 ladies and gentlemen that have don't have a benefit of a seat
17 at the front bench? No comments, thank you. On the phone?

18 MR. BRYANT: None from Enron.

19 COMMISSIONER BAEZ: I'm sorry, Mr. Fama or Mr. McGee?

20 MR. FAMA: Your Honor, this is Jim Fama. I don't
21 believe we have any problems with the prehearing statement as
22 drafted. We have an issue we need to raise later when the time
23 is right.

24 COMMISSIONER BAEZ: Very well, Mr. Fama. Mr. Frank?

25 MR. FRANK: No. Walt Disney World is fine with the

1 prehearing order as drafted.

2 COMMISSIONER BAEZ: Thank you. Mr. Bryant or
3 Ms. Futch? I hope I'm getting everyone.

4 MR. BRYANT: It's fine with us.

5 COMMISSIONER BAEZ: You're okay?

6 MR. BRYANT: Yes.

7 COMMISSIONER BAEZ: Have I missed anyone? No. All
8 right. Moving on to some pending matters. Counsel?

9 MR. KEATING: I believe, at this point with the
10 ruling set forth on the petitions to intervene and a couple of
11 procedural motions as set forth in the draft prehearing order
12 there are only a handful of motions outstanding at this point
13 and pending, and those are listed on Pages 106 and 107 of the
14 draft prehearing order. The first is Publix Super Markets
15 petition to intervene. In the draft prehearing order it only
16 notes Docket 000824, but it's my understanding that they have
17 petitioned to intervene in that and in the Docket Number
18 001148, so those two are outstanding. I believe, the --

19 COMMISSIONER BAEZ: Well, let's take Publix -- let's
20 take them one at a time. We'll grant the motions to intervene
21 -- the petition to intervene in both dockets; however, I do
22 have a question. This is one of the parties that doesn't have
23 a limitation as to Phase 1 or Phase 2, correct?

24 MR. KEATING: I believe so.

25 COMMISSIONER BAEZ: Mr. Childs has something to say.

1 MR. CHILDS: I think, the time for us filing a
2 response to the Publix request to intervene has not yet run,
3 but the only comment I had on that is that I think they had
4 raised an issue in their petition to intervene related to a
5 specific question, like on merger, which you already addressed.
6 We do not concede that that's an appropriate area of inquiry,
7 that does not relate to this Phase 1 anyway, but I don't want
8 to just let it pass through that on granting intervention that
9 that distinction's been lost.

10 COMMISSIONER BAEZ: Very well, Mr. Childs.

11 MR. KEATING: And we have set the issues by order for
12 Phase 1, and I would along the same lines mention that Publix,
13 like any other intervenor, will take the cases and find it.

14 COMMISSIONER BAEZ: Correct. Thank you, Mr. Childs.
15 Mr. Keating.

16 MR. KEATING: Would you like to address the petition
17 to intervene at this time or shall we wait for responses to be
18 -- the time for responses to run?

19 COMMISSIONER BAEZ: Mr. Childs has represented that
20 they, if I'm not mistaken, they don't have an objection. I
21 mean, is that -- you're not --

22 MR. CHILDS: We're not going to state an objection --

23 COMMISSIONER BAEZ: With that clarification.

24 MR. CHILDS: -- with the clarification as to the
25 subject they raised on merger. I think that's the limitation

1 we had.

2 COMMISSIONER BAEZ: Who was the other --

3 MR. KEATING: The other docket is 000824. That
4 involves Florida Power Corporation. They're on the phone.

5 COMMISSIONER BAEZ: Mr. McGee, and I'm not rushing
6 you, we can hold this ruling until you've had your chance to
7 respond, if you so desire, but if you have anything to say
8 about that here, we can finish it here.

9 MR. MCGEE: On behalf of Florida Power, as Mr. Childs
10 mentioned, the case is the same with Florida Power that the
11 time for response has not run. We have no objection to
12 Publix's intervention in the Phase 1 proceeding. And if that
13 would expedite your ruling on matters here at the prehearing
14 conference, we'd be happy to go on with that aspect of it. As
15 to Phase 2, we would like the opportunity to have our full time
16 for response.

17 COMMISSIONER BAEZ: Very well. Then, what we're
18 going to do is we're going to grant the petition to intervene
19 as to Phase 1, and Publix will have the opportunity to petition
20 to intervene again and we'll take up Florida Power Corp.'s
21 issues at the appropriate time.

22 MR. MCGEE: Thank you.

23 COMMISSIONER BAEZ: Thank you, Mr. McGee.

24 Next I have CPV, motion for extension of time to
25 file.

1 MR. MOYLE: Commissioner, that's a motion that was
2 filed with respect to the prehearing statement. Through
3 inadvertent oversight, the prehearing statement was not filed
4 on Monday. I think, it was filed on Wednesday, and this is the
5 motion that accompanied it to provide for that brief extension.

6 COMMISSIONER BAEZ: Okay. Motion granted. I'm
7 sorry, Mr. Keating, you had --

8 MR. KEATING: I was just going to recommend that I
9 don't believe there'd be any objection.

10 COMMISSIONER BAEZ: Sorry, I didn't mean to cut you
11 off there.

12 MR. KEATING: That's fine.

13 COMMISSIONER BAEZ: Next we have PG&E.

14 MR. MOYLE: Same issue.

15 COMMISSIONER BAEZ: Same motion? Mr. Keating?

16 MR. KEATING: Again, we'd recommend that one.

17 COMMISSIONER BAEZ: Very well. Motion granted.

18 MR. KEATING: And, I believe, the contents of those
19 prehearing statements are reflected in the prehearing order as
20 well.

21 COMMISSIONER BAEZ: Are reflected in the prehearing
22 order, that's correct.

23 MR. MOYLE: Thank you.

24 COMMISSIONER BAEZ: And last we have a motion for
25 leave to file a prehearing statement on behalf of Seminole.

1 MR. KEATING: That's correct. I believe, Seminole's
2 petition to intervene was filed September 4th, and I think that
3 there was -- it is included in the ruling section of the draft
4 prehearing order.

5 COMMISSIONER BAEZ: Yes.

6 MR. KEATING: Again, if there's no objection, and I
7 understand that the motion for leave to file a prehearing
8 statement was filed just last Friday, so the response time
9 hasn't run, but if no party has an objection, I'd recommend
10 that it be granted.

11 COMMISSIONER BAEZ: Are there any objections at this
12 point?

13 MR. McGEE: None by Florida Power.

14 COMMISSIONER BAEZ: Mr. Willis or Mr. Childs?

15 MR. CHILDS: It has been filed, correct?

16 COMMISSIONER BAEZ: It has been filed.

17 MR. CHILDS: No objection.

18 COMMISSIONER BAEZ: No objection.

19 MR. WILLIS: No objection.

20 COMMISSIONER BAEZ: Thank you. Any other objections?
21 Seeing none, show the motion granted.

22 MR. KEATING: And with that motion granted the draft
23 prehearing order will reflect the contents of Seminole's
24 prehearing statement.

25 COMMISSIONER BAEZ: Excellent.

1 MR. STRICKLAND: Thank you.

2 COMMISSIONER BAEZ: Do we have any other pending
3 motions or other pending matters?

4 MR. KEATING: Just as a point of clarification, I
5 would recommend that the Petitions to Intervene that are listed
6 in the ruling section in the draft prehearing order, there be
7 an indication that they are granted as of this date.

8 COMMISSIONER BAEZ: Now, help me out here. Exactly
9 what is the import of having that date?

10 MR. KEATING: It's simply to clarify that they are
11 afforded full party status as of this date and that other
12 parties are required to file any papers, serve any papers on
13 those parties.

14 COMMISSIONER BAEZ: Very well. Let the Prehearing
15 Order show that clarification. And, I think, Mr. Elias, we had
16 discussed something on the timing of transcripts. We want to
17 get that out here while everybody's --

18 MR. ELIAS: Thank you, Commissioner. The case
19 assignment and scheduling report currently shows the
20 expectation that the transcripts will be available daily in
21 this docket. After consultation and consideration of the
22 schedule, it's our expectation that the transcript will be
23 available the early part of the week following the hearing, and
24 the post-hearing schedule may change slightly subject to other
25 considerations, as far as other events on the Commission's

1 calendar, but the decision date will be no later than November
2 15th or whatever 90 days after the last direct testimony was
3 filed is.

4 MR. CHILDS: Does that mean that you have to change
5 the date for briefs, because you've got that on the 11th, which
6 is the week that the --

7 MR. ELIAS: We'll look at that.

8 MR. CHILDS: Okay.

9 COMMISSIONER BAEZ: There is an expectation that the
10 post-hearing schedule will be adjusted accordingly.

11 MR. ELIAS: Yes.

12 COMMISSIONER BAEZ: So that will be something that we
13 can address after hearing. Is there anything else? Mr. Moyle?

14 MR. MOYLE: Just as a question, isn't it contemplated
15 that opening statements, parties will have the opportunity to
16 provide brief opening statements?

17 COMMISSIONER BAEZ: I want to say that it's covered
18 in the prehearing order. It should be, if it's not.

19 MR. KEATING: The prehearing order, and maybe this
20 isn't the best place to have it, it's at the end of the Case
21 Background indicates that opening statements, if any, shall not
22 exceed ten minutes per party.

23 COMMISSIONER BAEZ: So, you've got ten minutes,
24 Mr. Moyle.

25 MR. MOYLE: Okay, thank you.

1 COMMISSIONER BAEZ: Any other questions or comments?

2 MR. McGLOTHLIN: I just have one.

3 COMMISSIONER BAEZ: Yes.

4 MR. McGLOTHLIN: And I'm not sure I followed the
5 earlier conversation about the effective date of intervention.
6 Reliant has submitted testimony while its petition is pending,
7 I don't want there to be any argument as to whether we're
8 entitled to submit the testimony or not.

9 MR. ELIAS: There is none. Just to be doubly sure,
10 it's effective as of this date.

11 COMMISSIONER BAEZ: Does that answer -- are you
12 comfortable with that answer, Mr. McGlothlin?

13 MR. McGLOTHLIN: Yes.

14 COMMISSIONER BAEZ: Okay. I don't see anyone else
15 raising their hand. Anyone on-line has a comment or a question
16 before we adjourn?

17 MR. FAMA: Your Honor, this is Jim Fama for Florida
18 Power Corp. There is one issue we wanted to raise.

19 COMMISSIONER BAEZ: Yes, sir.

20 MR. FAMA: And it has to do -- it has to do with the
21 Southeast RTO mediation proceeding at FERC. And this is an
22 issue that we want to bring to your attention and to the
23 attention of Staff and the other parties in the case. We're
24 not looking for a ruling today. It's just something we thought
25 you ought to be aware of as the depositions and the hearing go

1 forward.

2 If you could bear with me for a minute and I will
3 explain. The Southeast mediation proceeding at FERC was
4 conducted under FERC's settlement procedures and the
5 alternative dispute resolution procedures that FERC has, and
6 those procedures are fairly straightforward and they state that
7 communications are not to be disclosed outside of the
8 mediation.

9 And typical of those kinds of procedures they also
10 indicate that communications are not to be used as evidence in
11 other cases. And these are the same sorts of rules that, I
12 think, your Commission uses in ADR cases and settlements, and
13 the mediator and Florida Power Corp. and the other joint
14 parties participating in the mediation at FERC are all bound by
15 this rule.

16 Unfortunately, Commissioner Baez, the mediator, when
17 she put out her mediation report on September 10th and filed it
18 with FERC in the docket and made it a public document the joint
19 companies believe that in doing that in her report she
20 disclosed some confidential communications made in the
21 settlement.

22 And we think that she did this, unfortunately, in
23 violation of FERC's rules. And we're going to be raising this
24 issue at FERC, but the reason I wanted to point it out today is
25 that the fact that she has made some disclosures about

1 communications that went on in that privileged settlement
2 discussion does not mean that now the joint companies or other
3 parties are free to start making these disclosures.

4 Putting it another way, Commissioner Baez, we don't
5 want to violate FERC's rules. We're bound by those rules not
6 to disclose what went on in that settlement, and we don't want
7 to waive our settlement privilege. Having said all this, I
8 think that we can handle these questions in the depositions and
9 the hearing as they come up on a case-by-case basis.

10 There are certainly lots of matters about the
11 Southeast RTO that can be discussed without divulging
12 confidential matter and communications that occurred in that
13 Southeast RTO proceeding, so I don't want to overstate the
14 problem, but I thought it was best that I bring it to your
15 attention and the attention of Staff and other parties today.

16 COMMISSIONER BAEZ: And I appreciate your comments,
17 Mr. Fama. I think at this point I suspect no one here has any
18 real appreciation over what the -- you know, what the situation
19 is and they haven't -- I know that Staff is still mulling over
20 what the impacts of the publication are going to be and how
21 that's going to be handled, but thank you for bringing it up
22 and, I think, you're correct in saying or at least suggesting
23 that it's something that we can handle on a case-by-case basis
24 and certainly as the issue arises.

25 Is that it for you?

1 MR. FAMA: That's fine. Thank you, Commissioner.

2 COMMISSIONER BAEZ: Very well. Thank you. And I
3 think, we're finished here, so we'll adjourn the prehearing.
4 Thank you all on-line and thank you all who are here.

5 MR. WILLIS: Commissioner, thank you very much for
6 your consideration allowing us to participate by phone.

7 COMMISSIONER BAEZ: Given the circumstances, I don't
8 see how we could have done anything else. Thank you.

9 (Prehearing concluded at 2:15 p.m.)

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1 STATE OF FLORIDA)
2 : CERTIFICATE OF REPORTER
3 COUNTY OF LEON)
4

5 I, KORETTA E. FLEMING, RPR, Official Commission
6 Reporter, do hereby certify that a Prehearing Conference was
7 heard at the time and place herein stated in Docket Numbers
8 000824-EI, 001148-EI, and 010577-EI, before Prehearing Office
9 Braulio L. Baez.

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

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

20 DATED this Monday, September 24, 2001.

21 
22 _____
23 KORETTA E. FLEMING, RPR
24 FPSC Official Commissioner Reporter
25 (850) 413-6734