

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 010002-EG

In the Matter of
ENERGY CONSERVATION COST
RECOVERY PLAN.

ELECTRONIC VERSIONS OF THIS TRANSCRIPT ARE
A CONVENIENCE COPY ONLY AND ARE NOT
THE OFFICIAL TRANSCRIPT OF THE HEARING,
THE .PDF VERSION INCLUDES PREFILED TESTIMONY



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER LILA A. JABER
 Prehearing Officer

DATE: Thursday, November 8, 2001

TIME: Commenced at 9:30 a.m.
 Concluded 1:35 p.m.

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

REPORTED BY: JANE FAUROT, RPR
 Chief, Office of Hearing Reporter Services
 FPSC Division of Commission Clerk and
 Administrative Services
 (850) 413-6732

DOCUMENT NUMBER - DATE
14361 NOV 13 2001
FPSC-COMMISSION CLERK

1 APPEARANCES:

2 JOHN McWHIRTER, JR., and VICKI GORDON
3 KAUFMAN, McWhirter, Reeves, McGlothlin, Davidson,
4 Rief and Bakas, 117 South Calhoun Street, Suite 716,
5 Tallahassee, Florida 32301, appearing on behalf of
6 Florida Industrial Power Users Group (FIPUG).

7 JAMES A. McGEE, Florida Power Corporation,
8 Post Office Box 14042, St. Petersburg, Florida
9 33733-4042, appearing on behalf of Florida Power
10 Corporation (FPC).

11 CHARLES A. GUYTON, Steel, Hector & Davis,
12 LLP, 215 South Monroe Street, Suite 601,
13 Tallahassee, Florida 32301, appearing on behalf of
14 Florida Power and Light Company (FPL).

15 JEFFREY A. STONE and RUSSELL A. BADDERS,
16 Beggs & Lane, 700 Blount Building, 3 West Garden
17 Street, Post Office Box 12950, Pensacola, Florida
18 32576-2950, appearing on behalf of Gulf Power
19 Company (GULF).

20 LEE L. WILLIS and JAMES D. BEASLEY, Ausley
21 & McMullen, Post Office Box 391, Tallahassee,
22 Florida 32302, appearing on behalf of Tampa Electric
23 Company (TECO).

24 NORMAN H. HORTON, JR., and FLOYD SELF,
25 Messer, Caparello & Self, PA, 215 South Monroe

1 Street, Suite 701, Post Office Box 1876,
2 Tallahassee, Florida 32302-1876, appearing on behalf
3 of Florida Public Utilities Company (FPUC).

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 APPEARANCES CONTINUED:

2 ROBERT VANDIVER, Deputy Public Counsel,
3 Office of Public Counsel, 111 West Madison Street,
4 Room 812, Tallahassee, Florida 32399-1400, appearing
5 on behalf of the Citizens of the State of Florida.

6 MARLENE K. STERN, Florida Public Service
7 Commission, Division of Legal Services, 2540 Shumard
8 Oak Boulevard, Tallahassee, Florida 32399-0870,
9 appearing on behalf of the Commission Staff.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MS. STERN: The next docket is 02.

COMMISSIONER JABER: All right. Docket 02. Let's take appearances.

Ms. Kaufman, are you appearing on behalf of Mr. McWhirter?

MS. KAUFMAN: John McWhirter and Vicki Gordon Kaufman of the McWhirter Reeves law firm on behalf of the Florida Industrial Power Users Group.

MR. VANDIVER: Robert Vandiver appearing on behalf of the citizens of the State of Florida.

COMMISSIONER JABER: Mr. Vandiver, do you need a chair?

MR. VANDIVER: I'm sharing with Mr. Guyton.

COMMISSIONER JABER: All right. Ms. Kaufman, are you entering -- Staff, FIPUG is listed twice. That's just a mistake, right?

MS. KAUFMAN: I think it's because there are different addresses for Mr. McWhirter and myself.

COMMISSIONER JABER: Why don't we show just one appearance for FIPUG. Pick an address, Ms. Kaufman, and tell us.

MS. KAUFMAN: We will pick the Tallahassee address.

COMMISSIONER JABER: Okay. Mr. McGee.

MR. MCGEE: James McGee, Post Office Box 14042, St.

1 Petersburg, 33733, appearing on behalf of Florida Power
2 Corporation.

3 COMMISSIONER JABER: Thank you.

4 MR. GUYTON: Charles A. Guyton of the law firm of
5 Steel, Hector and Davis, appearing on behalf of Florida Power
6 and Light Company.

7 MR. HORTON: Norman H. Horton, Jr., on behalf of
8 Florida Public Utilities Company.

9 MR. STONE: Jeffrey A. Stone, that is J-E-F-F-R-E-Y,
10 of the law firm Beggs and Lane, P.O. Box 12950, Pensacola,
11 Florida, appearing on behalf of Gulf Power Company.

12 MR. BEASLEY: I'm James D. Beasley appearing with
13 Lee L. Willis, both of the law firm of Ausley and McMullen,
14 representing Tampa Electric Company.

15 COMMISSIONER JABER: Ms. Stern.

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

18 COMMISSIONER JABER: Okay. In the same fashion we
19 handled the previous dockets, Ms. Stern, are there preliminary
20 matters, changes to this draft that you would like to bring to
21 our attention?

22 MS. STERN: With respect to FPC, they have proposed
23 an issue that is identified as 2A.

24 MR. McGEE: MR. McGEE: Yes.

25 MS. STERN: I was wondering if we can agree that that

1 is subsumed in another issue.

2 MR. MCGEE: Yes, we can.

3 MS. STERN: And we will delete then 2A.

4 MR. MCGEE: Yes.

5 MS. STERN: Just delete that.

6 COMMISSIONER JABER: So Issue 2A will be deleted and
7 the position will be incorporated into which issue?

8 MS. STERN: Issue 1.

9 COMMISSIONER JABER: Okay. Thanks, Ms. Stern.
10 What else?

11 MS. STERN: Does FPC have a witness for Issue 7 or
12 can we agree that that issue is not needed, as well?

13 MR. MCGEE: Yes. I believe that issue is not needed.
14 Those costs were never included in the filing that Florida
15 Power made.

16 COMMISSIONER JABER: So Issue 7 can be dropped?

17 MS. STERN: Yes. We are in -- the draft prehearing
18 order that we are looking at now shows that staff does not have
19 the same position as FPL in Issue 2. At this time staff wants
20 to adopt the same position as FPL. We are in agreement with
21 FPL on Issue 2, so we would like the final prehearing order to
22 reflect that.

23 COMMISSIONER JABER: And does that result in a
24 possible stipulation, or that's just a change -- you are only
25 in agreement with FPL, not with the other parties?

1 MS. STERN: We are in agreement with all the other
2 parties except FPUC, Marianna, where there is a minor
3 difference in the numerical value, but we believe that our
4 value is correct.

5 COMMISSIONER JABER: So as it relates to all other
6 parties, is there a possible stipulation?

7 MS. STERN: Yes.

8 COMMISSIONER JABER: And you will make a note of that
9 in the prehearing order?

10 MS. STERN: Yes.

11 COMMISSIONER JABER: Great.

12 MS. STERN: I believe that there is a stipulation for
13 Issue -- I believe all parties are in agreement on Issue 3.

14 MR. McGEE: There is no position shown for Florida
15 Power on that issue, but we adopt staff's position.

16 MS. STERN: Okay. On Issue 5A, staff has taken a
17 position on whether or not TECO should be allowed to recover
18 for the billboard advertising, and I believe that TECO is in
19 agreement with our position.

20 MR. BEASLEY: That is correct.

21 MS. STERN: Okay. So we will, for TECO's position,
22 substitute in staff's language.

23 COMMISSIONER JABER: So you have a stipulation on
24 Issue 5A?

25 MS. STERN: Well, we are not sure if FIPUG and OPC

1 are in agreement.

2 MR. BEASLEY: That was, I believe, a staff-related
3 issue that was identified.

4 MS. STERN: Yes, staff identified this issue.

5 COMMISSIONER JABER: Mr. Vandiver, it looks like you
6 have taken a preliminary position in the negative. Have you
7 thought about this issue a little bit further?

8 MR. VANDIVER: I'm willing to stipulate this issue.

9 COMMISSIONER JABER: Ms. Kaufman. Thank you, Mr.
10 Vandiver.

11 Ms. Kaufman.

12 MS. KAUFMAN: FIPUG would just like to take no
13 position on this issue.

14 COMMISSIONER JABER: Thank you.

15 Staff, you have got a stipulation on Issue 5A with
16 FIPUG taking no position and OPC agreeing with yours.

17 MS. STERN: Okay.

18 MR. BEASLEY: I have one minor correction on 5B, if
19 you are proceeding to that next.

20 MS. STERN: Okay.

21 MR. BEASLEY: In Tampa Electric's position, the last
22 line, the last part of that line it says per kWh, if I could
23 change that to per kW.

24 MR. VANDIVER: Commissioner Jaber, could I just have
25 mine as no position.

1 COMMISSIONER JABER: Yes, absolutely. For the
2 record, though, let me be clear. We need to go back to Issue
3 5A and reflect that OPC, like FIPUG, has no position on Issue
4 5A.

5 So, Staff, you have a stipulation with OPC and FIPUG
6 not taking a position.

7 5B. Mr. Beasley has made a correction to TECO's
8 position. Did you get it, Staff?

9 MS. STERN: Yes.

10 COMMISSIONER JABER: Any other changes to 5B?

11 MS. STERN: Staff's position is not listed under
12 Issue 5B, but staff agrees with TECO, so we will have a
13 stipulation there.

14 COMMISSIONER JABER: All right.

15 MS. STERN: We are in agreement with Florida Power
16 and Light on Issue 6. All the other parties take no position,
17 so there is a stipulation there. Issue 7 was deleted. Issues
18 8 and 9 there is disagreement on. We will be trying to reach
19 some agreement with Florida Public Utilities between now and
20 the hearing.

21 MR. HORTON: Commissioner.

22 COMMISSIONER JABER: Yes.

23 MR. HORTON: I think I did provide staff with our
24 position on that yesterday. It was reflected in a copy I got,
25 but our position is not reflected in the draft that I picked up

1 over here on the table. If we can just --

2 COMMISSIONER JABER: Why don't you for the -- because
3 I don't have your position, either, Mr. Horton, why don't you
4 read your position for Issue 8 into the record for us.

5 MR. HORTON: Sure. Our position on Issue 8 is, yes,
6 promotional merchandise is distributed to residential and
7 commercial customers to promote and build various good cents
8 programs. The merchandise is provided together with a name and
9 contact information for a company official so that additional
10 information can be provided. This has proven to be an
11 effective, efficient means to promote the good cents programs
12 and is consistent with the requirements of the Commission. I
13 may have picked up a bad copy over there, but it wasn't in the
14 draft that I picked up.

15 COMMISSIONER JABER: I didn't have it, either, but
16 that's all right. Staff, you have got the position?

17 MS. STERN: Yes.

18 COMMISSIONER JABER: Great. Incorporate that into
19 the draft. Does that change your position at all?

20 MS. STERN: No. Staff has no position at this time.

21 COMMISSIONER JABER: Are you waiting on some
22 outstanding discovery, is that it?

23 MS. STERN: Well, we are going to have a meeting
24 and -- no, there is no outstanding discovery at this time.

25 COMMISSIONER JABER: You just want additional time to

1 talk to the company and the parties, is that it?

2 MS. STERN: Yes.

3 COMMISSIONER JABER: All right. If there are changes
4 from now until the order is issued, you have got my permission
5 to reflect that in the prehearing order.

6 MS. STERN: Okay.

7 COMMISSIONER JABER: And if there is a stipulation
8 that can be reached, just reflect that, too.

9 MS. STERN: Well, there is the possibility that we
10 will be conducting depositions on Friday.

11 COMMISSIONER JABER: When does the discovery cutoff
12 date end?

13 MS. STERN: If we don't reach the agreement tomorrow?

14 COMMISSIONER JABER: What is the discovery cutoff
15 period?

16 MS. STERN: That is past the discovery cutoff period,
17 which was the 8th. The 6th, I'm sorry.

18 COMMISSIONER JABER: So I need to extend the
19 discovery cutoff period to allow staff to depose a witness
20 related to Issue 8?

21 MS. STERN: Well, I was thinking that if there was an
22 agreement -- if FPUC had agreed, then there wasn't a need for
23 an extension. In other words, if FPUC agreed to depositions,
24 that was okay, but --

25 COMMISSIONER JABER: Just to play it safe, I think

1 it's a date that is established in the order on procedures, so
2 just for the purposes of the record, I will allow that the
3 discovery period be extended for the sole purpose of allowing
4 depositions on this issue.

5 MR. HORTON: And, Commissioner, we have no objection
6 to that. It was a matter of scheduling or staff would have
7 done it earlier.

8 COMMISSIONER JABER: Great. Thank you. Issue 9.

9 MR. HORTON: Commissioner, that is the same
10 situation. FPUC has provided a position on that. I can read
11 it. This one is a little bit shorter. Our position on 9 is
12 yes, the defaulted loan expenses relate to loans to two
13 customers whose have initiated bankruptcy proceedings. FPUC
14 has filed claims for amounts due and will continue to seek
15 recovery of the amounts, but has taken appropriate action with
16 respect to the expenses.

17 COMMISSIONER JABER: Staff, you have the new
18 position?

19 MS. STERN: No, no position at this time.

20 COMMISSIONER JABER: But you have the company's new
21 position written down someplace?

22 MS. STERN: Yes.

23 COMMISSIONER JABER: Mr. Vandiver, on Issue 8 you
24 have said no. On Issue 9 you have got no position at this
25 time.

1 MR. VANDIVER: That is correct.

2 COMMISSIONER JABER: You have taken a position on
3 Issue 8 and might be participating in the discovery? All
4 right. Issue 9, are you waiting on additional discovery or
5 should that reflect that you are not going to take a position
6 at all?

7 MR. VANDIVER: I'm not going to take a position at
8 all.

9 COMMISSIONER JABER: Okay. So for Issue 9 OPC is no
10 position.

11 MR. VANDIVER: Yes, ma'am.

12 COMMISSIONER JABER: Staff, if there are additional
13 changes to Issue 9 you have got my permission to make those
14 changes.

15 MS. STERN: Okay. There is one last thing, we have
16 three confidentiality requests under review at this time. We
17 anticipate getting orders to you by Monday. Staff has reviewed
18 these and recommends that the confidentiality requests be
19 granted, and the orders will be to you by Monday.

20 COMMISSIONER JABER: Is this something that I can
21 rule on today, or do you have a preference for issuing a
22 written order separate from today's?

23 MS. STERN: We would like to issue a written order on
24 the first filing, FPL's filing of May 15th, 2001, but I believe
25 it's fine, we have no objection if you would like to rule on

1 the June 29th filing and the July 20th filing at this time.

2 COMMISSIONER JABER: Is there objection to the FPL
3 request for confidentiality classification that was filed on
4 June 29th? Okay. Seeing no objection, that filing is granted.
5 Any objection to the July 20th, FPL first request for extension
6 of confidential classification? No objection. Seeing no
7 objection, the July 20th request has been granted.

8 MS. STERN: And that is all that staff has on this
9 docket.

10 MR. STONE: Commissioner Jaber, on Page 5, the order
11 of witnesses, Mr. McCarthy is listed as being responsible for
12 Issue 4, which I understand has been dropped. To avoid
13 confusion in the prehearing you may want to drop that from his
14 list of issues.

15 COMMISSIONER JABER: Yes, we will make that change,
16 Mr. Stone. Thank you.

17 What about reflecting, Staff, which witnesses'
18 testimony can be inserted into the record without cross
19 examination in the same fashion we have handled it in previous
20 dockets.

21 MS. STERN: Yes.

22 COMMISSIONER JABER: Now, saying all of that,
23 parties, it looks like all of these witnesses might be able to
24 be stipulated into the record without cross?

25 MR. HORTON: I don't think Mr. Peacock could be with

1 Florida Public Utilities. Not at this time anyway. I wish he
2 could.

3 COMMISSIONER JABER: Mr. Horton, you will just get
4 with staff and let them know?

5 MR. HORTON: Yes, ma'am.

6 MR. GUYTON: Commissioner Jaber, there are two
7 matters for FPL that I might bring to your attention.
8 There are parenthetical notes on Page 5 as to Witnesses
9 Reynolds and Green as to issues, and Mr. Reynolds' testimony
10 addresses Issues 1 and 2, and Mr. Green's testimony addresses
11 Issue 2.

12 COMMISSIONER JABER: Yes.

13 Mr. Guyton, does that mean you want the references to
14 Issues 3 and 6 gone?

15 MR. GUYTON: Yes.

16 COMMISSIONER JABER: Thank you.

17 MR. GUYTON: And on the next page on FPL's basic
18 position, if we might change the word "proposed" to "revised"
19 to indicate that it is the revised factors.

20 COMMISSIONER JABER: Any other changes?

21 MR. GUYTON: Those are the only two. Thank you,
22 Commissioner.

23 COMMISSIONER JABER: All right. Florida Power
24 Corporation, there is a reference to Issues 2A and 7 on
25 Page 5.

1 MR. MCGEE: Those were the matters we addressed
2 earlier. Issue 2A has been subsumed, and Issue 7 has been
3 deleted.

4 MR. MCGEE: Staff, make that change.
5 Florida Public.

6 MR. HORTON: Mr. Peacock will be addressing
7 Issues 8 and 9.

8 COMMISSIONER JABER: All right. Staff, any other
9 changes, corrections?

10 MR. HORTON: Commissioner, I have on Page 8 for
11 Florida Public Utilities, I think at the top of the page just
12 above Issue 2, I think Marianna and Fernandina numbers are
13 reversed in that.

14 COMMISSIONER JABER: Staff, you are just going to
15 switch the numbers for Marianna and Fernandina on Issue 1?

16 MS. STERN: Yes.

17 MR. STONE: Commissioner Jaber, may I inquire, if
18 there is a stipulation as to a company's issues and if that is
19 handled at the hearing itself on the 20th, I assume there will
20 be no need for the post-hearing statement of issues and
21 positions as described in Roman numeral IV?

22 COMMISSIONER JABER: That's right. What we usually
23 do is a Commissioner will make a motion to accept the
24 stipulations, we will rule on them, and there will be no need
25 for briefs.

1 Now, Public Counsel, do me a favor, and after the
2 prehearing -- of course you could do it now if you want, but
3 after the prehearing, for the issues where you have listed no
4 position at this time, you will probably end up changing them
5 to no position or agrees with someone, so --

6 MS. STERN: Sure, I can do that.

7 COMMISSIONER JABER: Thank you.

8 MR. BEASLEY: Commissioner, could I confirm that Mr.
9 Bryant and Mr. Winter are excused from the hearing?

10 COMMISSIONER JABER: You can as it relates to me.
11 But staff will need a week or so to check with the other
12 Commissioners' offices and make sure that they don't have
13 questions.

14 MR. BEASLEY: Thank you.

15 COMMISSIONER JABER: And, Staff, just handle it the
16 way we have handled that procedure in the past.

17 MS. STERN: Yes.

18 COMMISSIONER JABER: Let the parties know as soon as
19 possible. And, four of the Commissioners are here today.

20 MS. STERN: Okay.

21 MR. GUYTON: Commissioner Jaber, I assume that your
22 earlier instruction as to excusing counsel in the 03 dockets is
23 applicable, as well.

24 COMMISSIONER JABER: Absolutely. I don't see any
25 other changes, staff.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

MS. STERN: Okay.

COMMISSIONER JABER: Thank you.

(Hearing concluded at 1:35 p.m.)

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

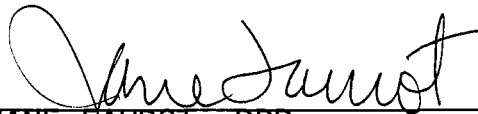
CERTIFICATE OF REPORTER

4
5 I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter
6 Services, FPSC Division of Commission Clerk and Administrative
7 Services, do hereby certify that the foregoing proceeding was
8 heard at the time and place herein stated.

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

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

19 DATED THIS 13TH DAY OF NOVEMBER, 2001.

20
21 

22 _____
23 JANE FAUROT, RPR
24 Chief, Office of Hearing Reporter Services
25 FPSC Division of Commission Clerk and
Administrative Services
(850) 413-6732