

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 000824-EI

In the Matter of

REVIEW OF FLORIDA POWER
CORPORATION'S EARNINGS, INCLUDING
EFFECTS OF PROPOSED ACQUISITION
OF FLORIDA POWER CORPORATION
BY CAROLINA POWER & LIGHT



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PROCEEDINGS: HEARING

BEFORE: CHAIRMAN LILA A. JABER
COMMISSIONER J. TERRY DEASON
COMMISSIONER BRAULIO L. BAEZ
COMMISSIONER MICHAEL A. PALECKI
COMMISSIONER RUDOLPH "RUDY" BRADLEY

DATE: Wednesday, March 20, 2002

TIME: Commenced at 9:35 a.m.
Concluded at 9:55 a.m.

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

REPORTED BY: LINDA BOLES, RPR
Official FPSC Reporter
(850) 413-6734

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FLORIDA PUBLIC SERVICE COMMISSION

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FPSC-COMMISSION CLERK

1 APPEARANCES:

2 JAMES McGEE and H. WILLIAM HABERMEYER, JR, Post
3 Office Box 14042, St. Petersburg, Florida 33733-4042, appearing
4 on behalf of Florida Power Corporation.

5 JACK SHREVE, Public Counsel, and CHARLES J. BECK,
6 Deputy Public Counsel, Office of Public Counsel, c/o The
7 Florida Legislature, 111 W. Madison Street, Suite 812,
8 Tallahassee, Florida 32399, appearing on behalf of the Citizens
9 of the State of Florida.

10 VICKI GORDON KAUFMAN and JOHN W. McWHIRTER, JR,
11 McWhirter, Reeves, McGlothlin, Davidson, Dekker, Kaufman,
12 Arnold & Steen, 117 South Gadsden Street, Tallahassee, Florida,
13 appearing on behalf of Florida Industrial Power Users Group via
14 telephone.

15 THOMAS A. CLOUD, Gray, Harris & Robinson, P.A., 301
16 East Pine Street, Suite 1400, Orlando, Florida 32802,
17 appearing on behalf of Publix Super Markets, Inc.

18 MICHAEL B. TWOMEY, P. O. Box 5256, Tallahassee, Florida
19 32314-5256, appearing on behalf of Buddy Hansen and Sugarmill
20 Woods Civic Association, Inc.

21 MARY ANNE HELTON, ROBERT V. ELIAS, ADRIENNE E. VINING,
22 ROSANNE GERVASI and JENNIFER S. BRUBAKER, Florida Public
23 Service Commissioner, 2540 Shumard Oak Boulevard, Tallahassee,
24 Florida 32399-0850, appearing on behalf of the Commission
25 Staff.

P R O C E E D I N G S

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CHAIRMAN JABER: Good morning.

MS. HELTON: Good morning.

CHAIRMAN JABER: Let's go ahead and get started.

Ms. Helton, there is a notice to be read.

MS. HELTON: Pursuant to notice issued by the Commission on January the 25th, 2002, the hearing for Docket Number 000824-EI was called for this time and place. The purpose of the hearing is more fully set out in the notice.

CHAIRMAN JABER: Let's take appearances. Mr. Beck, are you the first person?

MR. BECK: Jack Shreve and Charlie Beck, Office of the Public Counsel, appearing on behalf of Florida citizens.

MR. MCGEE: James McGee, appearing on behalf of Florida Power Corporation.

MR. TWOMEY: Mike Twomey on behalf of Bud Hansen and Sugarmill Woods Association.

MR. CLOUD: Tom Cloud on behalf of Publix Super Markets, Inc.

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

CHAIRMAN JABER: Before we get to Staff, are there any other parties that need to make appearances? Okay. Staff?

MS. HELTON: Mary Anne Helton, Bob Elias, Rosanne Gervasi, Adrienne Vining and Jennifer Brubaker on behalf of the

1 Florida Public Service Commission.

2 CHAIRMAN JABER: Thank you. Ms. Helton, I understand
3 there are, there is a preliminary matter that we must take up
4 first this morning.

5 MS. HELTON: That's correct. This morning the
6 parties filed a Joint Motion To Postpone Scheduled Hearings.
7 It's my understanding that late yesterday afternoon they
8 reached a settlement of the, of the case in spirit and they
9 need time to put that to writing.

10 CHAIRMAN JABER: Okay. Let's see. Mr. Shreve, do
11 you want to sort of summarize the motion and bring us
12 up-to-date?

13 MR. SHREVE: Basically that's it. We'd just like to
14 have the hearing postponed. And I would want to mention that
15 we don't have all the parties on because we didn't realize
16 everybody was going, didn't think everybody would be able to be
17 here. I didn't understand that Mr. Twomey was going to be
18 here, and it's my understanding that he agrees with this motion
19 --

20 MR. TWOMEY: Yes.

21 MR. SHREVE: -- and would have signed on, if we'd
22 known he was going to be here.

23 Beyond that, we'd just like the time to go ahead and
24 put everything in writing.

25 CHAIRMAN JABER: All right. But your representation

1 is all the parties agree with the motion to postpone the
2 hearing?

3 MR. SHREVE: Yes. That's correct.

4 CHAIRMAN JABER: Commissioners, what's your pleasure?
5 I could take up a motion from one of you right now and we could
6 vote on this.

7 MS. HELTON: Chairman Jaber, before y'all vote --

8 CHAIRMAN JABER: Yes.

9 MS. HELTON: -- maybe, there's two things maybe we
10 should talk about. One is the date by which we should expect
11 to see a written settlement, and the other is if, on the off
12 chance, hopefully a very small percentage, that this does not
13 work out, would there be a waiver of the 12-month clock?

14 CHAIRMAN JABER: When does the 12-month period
15 expire, Ms. Helton?

16 MS. HELTON: It's June, June 18th.

17 COMMISSIONER JABER: Okay. And basically what you're
18 saying is if the Commission doesn't resolve ultimately the case
19 by June 18th, we'll need a waiver of the 12 months; right?

20 MS. HELTON: That's correct.

21 CHAIRMAN JABER: Florida Power Corporation, do you
22 understand what Staff is bringing to your attention?

23 MR. MCGEE: Exactly. Yes. I talked to Mr., to Bob
24 Elias, and he explained that to me and we're certainly willing
25 to cooperate on that.

1 CHAIRMAN JABER: And, Ms. Helton, with respect to
2 when the settlement will be put to writing, Mr. Shreve, Power
3 Corp, do you have any idea of when a written settlement will be
4 filed?

5 MR. SHREVE: Well, we're going to do that just as
6 soon as we can. We plan to work on it right away this week.

7 CHAIRMAN JABER: I'd just ask that you keep our Staff
8 posted.

9 MR. SHREVE: Be glad to. Certainly.

10 CHAIRMAN JABER: And obviously the prehearing officer
11 in the case through Staff.

12 Questions, Commissioners?

13 COMMISSIONER DEASON: No, Madam Chairman. Just let
14 me say that I think this is a very, very positive step. I know
15 that we have, the Commission has encouraged the parties to try
16 to reach a settlement, if possible, realizing that in some
17 cases it can be and in some cases it cannot. But apparently
18 it's obvious that a lot of hard work and effort have been put
19 into this and we anxiously await to see the final product.
20 And, of course, we will reserve judgment on that until we see
21 it. But given that all the parties agree that this hearing
22 needs to be delayed or hopefully eliminated altogether, I think
23 that we should grant the motion and give the parties sufficient
24 time to put the stipulation into writing and have it filed with
25 the Commission.

1 MR. McWHIRTER: Madam Chairman, I think it would be
2 helpful if you would give us a date certain. We've got hearing
3 dates scheduled for this proceeding. There are three days this
4 week and two days next week. I would suggest to you that you
5 give us a time when you want to see the written agreement. And
6 then if you don't get it by then, we go forward with the
7 hearings that are scheduled for next Wednesday.

8 CHAIRMAN JABER: Now, Mr. McWhirter, I understand why
9 you would ask that. Obviously there's, there is something to
10 be said about certainty. But I think it's premature to put
11 that sort of restriction on all of you.

12 I'm going to give you the flexibility to work out the
13 terms of the settlement and count on your professionalism to
14 bring this back to us as soon as possible. If we believe it's
15 taken longer than reasonable, the prehearing officer is quite
16 capable of issuing an order subsequent to the vote today. But
17 I think it's premature today.

18 COMMISSIONER BAEZ: Well, Madam Chairman, I was --
19 before Mr. McWhirter brought it up, I was going to, I was going
20 to offer up if it wouldn't be prudent to at least set a
21 preliminary date.

22 And here's my concerns. Schedules being what they
23 are, logistics being what they are, I think we, we've got a
24 critical mass here that we shouldn't, that we shouldn't let up
25 on. And I'm really, I'm concerned about letting go next week's

1 dates too easily. And, and it seems that in order to keep, in
2 order to keep all the effort moving, we can go ahead and, I'd
3 be willing to give 'til Friday as a preliminary date to have
4 something in writing back to the Commission. And, as you said,
5 the prehearing officer can, can also take over that
6 flexibility. I mean, if it needs to be extended on a
7 day-to-day basis or an extra couple of days or so on, but I
8 don't know that I'm too comfortable giving up next week's
9 dates. And, again, not strong feelings, but certainly just a
10 minor --

11 CHAIRMAN JABER: Obviously -- right. I mean,
12 obviously I've got a feeling for how the calendar looks, so I
13 don't share your concern about giving up those dates. I know
14 that my wonderful office -- JoAnn has thought through what
15 dates are available and there are dates available. We can work
16 through those issues.

17 But let me do this. Let me ask the parties, how much
18 time do you think you need? Is Friday an unreasonable
19 deadline?

20 MR. HABERMEYER: Madam Chair, Florida Power
21 Corporation, Bill Habermeyer. I would say that we're certainly
22 willing to work will all dispatch toward a date of Friday.

23 MR. SHREVE: I think that's true. I think all the
24 parties plan to expedite this. We want to get it in writing as
25 quickly as we can so that we know we have an understanding.

1 And, of course, beyond -- once we get that, I think then at
2 that point we'll wait for your approval of it and you'll let us
3 know when you want to take that up.

4 I don't see any problems with us being able to -- I
5 mean, if we were to not be able to put it in writing, we're
6 going to know quickly whether we can or not. I don't see any
7 problems at all. And I think we all want to expedite it.
8 We're going ahead and work on it right away.

9 CHAIRMAN JABER: Okay. All right. Well, let's,
10 Commissioners, in your motion -- and actually I think I heard
11 Commissioner Deason make a motion. Why don't we add also
12 Friday as the date, close of business, to file the settlement.

13 COMMISSIONER DEASON: And I guess --

14 MR. SHREVE: Commissioner, if I could, there may, and
15 this would not be a party for us -- I think it might be better
16 if we didn't have the date set by the Commission to file it
17 because I think Florida Power has some things that they, a
18 concern they have with notice given to the FCC. And I think we
19 have already discussed that and are trying to work around that.
20 I think if we could represent you by the end of, to you by the
21 end of the week that we have it in writing and then, then I
22 don't think the timing is a problem.

23 COMMISSIONER BAEZ: Well, Madam Chairman --

24 CHAIRMAN JABER: That goes to my point. That brings
25 us right back where we started. I'm not concerned about the

1 time frame.

2 COMMISSIONER BAEZ: I guess -- yeah. And all I
3 wanted to do was to try and create some or lend some kind of
4 guidance. I mean, my concern is over losing, over losing dates
5 that we already have set up and losing preparation time and
6 having to restart that whole thing in the event that the
7 settlement can't be reduced to writing within a reasonable
8 time. It's not my intent to put a hard and fast date on when,
9 when they have to have a filing, but certainly to let
10 everybody, I guess, let everybody be thinking about coming up
11 with a yea or nay, whether this is going to happen or not. And
12 I guess in the interest of not losing all the momentum that we
13 have now, you know, for a hearing, I hope that it doesn't get
14 to that and, given every representation that's been made here,
15 that may well be the case. But we certainly --

16 COMMISSIONER DEASON: Let me, let me ask this
17 question. Can we just leave it open with the understanding
18 that we're continuing this hearing until the 27th unless we
19 have a stipulation in writing? And if we do get one filed in
20 writing, well, then the hearing for the 27th and 28th would
21 also, would be, would be eliminated. Is that, would that meet
22 your concerns that we don't give up those two days next week?

23 COMMISSIONER BAEZ: Yeah. That seems to be a more
24 moderate way of saying, you know, make use of the time that you
25 have. I mean, we, in a way we're fortunate to have a split

1 hearing, have split hearing dates.

2 CHAIRMAN JABER: Commissioners, I can -- you know, I
3 can tell you that I'm not going to give up those dates. So
4 it's not like the dates are going anywhere. It's not that I
5 don't understand your concern. I guess I don't, I'm not fully
6 appreciating it. But it's not like those dates are going to go
7 away.

8 COMMISSIONER DEASON: I think it's more kind of just
9 notice at this point, recognizing that those dates have been
10 set and by granting this motion we're not eliminating that and
11 everybody is still on notice that unless a written stipulation
12 is filed, we will convene on, at 9:30 on the 27th and go
13 forward with a hearing.

14 COMMISSIONER BAEZ: I think that seems -- that takes
15 care of our concern.

16 MR. SHREVE: And we, we, of course, will keep -- if
17 we find out for some reason that we can't reduce it to writing,
18 that we have something we haven't agreed on, we'll notify you
19 and the Staff immediately. And even though we put it in
20 writing and have to time the date that we actually file it,
21 we'll keep you apprised of when we have it in writing and try
22 and also go ahead and give the Staff some advanced notice and
23 heads-up, as we have done in the past, so that they'll be a
24 little better prepared.

25 I really don't see any problem, and I think what

1 you're saying we can work around without any trouble at all and
2 we'll keep y'all apprised of that.

3 CHAIRMAN JABER: Okay. Sounds good.

4 MR. SHREVE: If I could, I would like to say one
5 thing. It's been good working with Mr. Habermeyer, Vinnie
6 Dolan and Jim McGee, and it has been a long, one of the longest
7 in trying to put together a settlement on this. And we're very
8 pleased, I think both sides are pleased with what we have. And
9 I would also like to mention that all the parties have been
10 very cooperative. John McWhirter really did well, Mike Twomey,
11 Ron LaFace, Tom Cloud. It's just been a good partnership in
12 working everything out. We appreciate the Commission's
13 indulgence at this time and we think we have a good product.

14 CHAIRMAN JABER: Thank you, Mr. Shreve.

15 MR. HABERMEYER: And in response, Madam Chair, I
16 would say that on our side we certainly also are pleased with
17 the encouragement that you have given us to move to this
18 settlement, I think that's been a key factor in how we've
19 proceeded, and also the cooperative extension on the part of
20 all the parties to this particular matter.

21 COMMISSIONER DEASON: Well, Madam Chairman, let me
22 say that I also would like to recognize, as we're recognizing
23 folks, our Staff. I think they have been an element in this
24 process to facilitate and I want to know that their work has
25 not gone unnoticed as well.

1 MR. SHREVE: As a matter of fact, I'd like to mention
2 one other thing, too, as long as we're at it.

3 The Commission opened this docket. This wasn't one
4 that anyone else brought someone in. So because you opened the
5 docket, we proceeded and worked through the case. I think all
6 the information has been provided and reviewed as you wanted.
7 You wanted to go over the information, called for the docket to
8 be opened. We've reviewed it, gone through it, and I think you
9 deserve the credit for that because we wouldn't be at this
10 point had you not opened the docket and working with the Staff.

11 And I would also like to thank Charlie Beck, Earl
12 Poucher and Don Hale of my office because they have been
13 putting this case together and allowed me to go ahead and work
14 on it. They deserve most of the credit from us.

15 But we appreciate you bringing the docket open and
16 giving us all an opportunity to work on it.

17 CHAIRMAN JABER: Thank you. There's been a motion.
18 I need a second.

19 COMMISSIONER BAEZ: Second.

20 CHAIRMAN JABER: Motion and a second to accept, to
21 actually grant the motion to postpone the scheduled hearing
22 with the informal understanding that if it doesn't work out and
23 settlement isn't reached, we'll pick up the hearing on
24 March 27th.

25 All those in favor, say aye. Opposed, nay.

1 (Simultaneous affirmative vote.)

2 CHAIRMAN JABER: This is approved unanimously.

3 Now it's my turn to say things to the parties and
4 Staff and to my colleagues. Good settlements are in the public
5 interest, and I'm expecting to see a good settlement because I
6 know the individual parties and the people that have
7 participated and I wouldn't expect anything less than a good
8 settlement.

9 I hope it works out; not for you all necessarily, but
10 for the citizens of the State of Florida. The fact is
11 settlements that are good benefit the consumer at the end of
12 the day because we spare them from costly litigation. So you
13 are to be commended.

14 But my colleagues are to be commended, too. The fact
15 is we did send a strong message, and I'm very proud of that
16 message, and it's one that we sent in a unified fashion. And
17 it doesn't get better than that.

18 Staff, you never let us down. You are absolutely
19 brilliant in your facilitation and your data gathering. You
20 need to keep up the good work and you need to know that we're
21 behind you in your efforts.

22 Good day. Hope to see you not on March 27th but on a
23 later day where we ultimately decide the settlement. Thanks.

24 (Hearing concluded at 9:55 a.m.)

25

1 STATE OF FLORIDA)

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CERTIFICATE OF REPORTER

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COUNTY OF LEON)

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I, LINDA BOLES, RPR, Official Commission
Reporter, do hereby certify that the foregoing proceeding was
6 heard at the time and place herein stated.

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7

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

9

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

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DATED THIS 21ST DAY OF MARCH, 2002.

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LINDA BOLES, RPR
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