

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

IN RE: DOCKET NO. 011365-EQ - Petition for approval
of amendment to cogeneration contract with
Bay County Resource and Recovery Facility by
Florida Power Corporation.

 **COPY**

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

PROCEEDINGS: AGENDA CONFERENCE

ITEM NUMBER: 12

DATE: Tuesday, March 19, 2002

PLACE: 4075 Esplanade Way, Room 148
Tallahassee, Florida

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PARTICIPANTS:

BOB ELIAS and JUDY HARLOW, FPSC Staff.
JIM MCGEE and ALLEN HONEY, Florida Power Corporation.
NEVIN ZIMMERMAN, Burke & Blue, on behalf of Bay County.

STAFF RECOMMENDATION

ISSUE 1: Should Florida Power Corporation's petition for approval of an amendment to the purchased power contract with the Bay County Resource Recovery Facility be approved?

RECOMMENDATION: Yes. The contract costs are currently above market costs and are expected to remain above market until 2013. The revised amendments will allow FPC to replace the contract's above market priced capacity in 2007. The revised amendment retains Bay County's contingent liability until the proposed contract termination date. This is consistent with the intent of Commission Order No. 19509, which guaranteed any payments from Bay County's contingent liability to FPC's ratepayers to compensate ratepayers for early capacity payments made to Bay County. The \$610,000 payment to Bay County should be recovered by FPC through the fuel and purchased power cost recovery clause.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If no protest is filed within 21 days of issuance of the order.

1 CHAIRMAN JABER: That takes us to Item No.
2 12.

3 MS. HARLOW: Commissioners, Item No. 12 is
4 staff's recommendation to approve Florida Power
5 Corporation's petition for approval of an
6 amendment to the Bay County cogeneration
7 contract.

8 Staff initially had some issues with the
9 first agreement that the parties brought before
10 the Commission. Since then we've had several
11 meetings with the parties. The amendment has
12 been renegotiated, and the bulk of staff's
13 concerns have been alleviated.

14 Staff and the parties are available for any
15 questions that you might have today.

16 CHAIRMAN JABER: Are you here to answer
17 questions?

18 MR. MCGEE: Yes, ma'am.

19 COMMISSIONER BRADLEY: I have a question.

20 MR. MCGEE: My name is Jim McGee, and I
21 have Mr. Allen Honey with me, who was involved
22 in the contract renegotiations. Other than
23 that, we support the staff's revised
24 recommendation.

25 CHAIRMAN JABER: From Bay County?

1 MR. ZIMMERMAN: I'm Nevin Zimmerman. I'm
2 the County Attorney from Bay County, and we
3 support the staff recommendation.

4 CHAIRMAN JABER: Thank you, sir.

5 Commissioners, do you have any questions?

6 COMMISSIONER BRADLEY: I do.

7 CHAIRMAN JABER: Commissioner Bradley?

8 COMMISSIONER BRADLEY: Would somebody be so
9 kind as to explain to me the consultant fee and
10 what that consists of?

11 MR. ZIMMERMAN: Bay County --

12 COMMISSIONER BRADLEY: To get to the heart
13 of the matter?

14 MR. ZIMMERMAN: Yes. Bay County retained
15 consultants to assist it in analyzing the
16 contract with Florida Power, and the consultants
17 were as listed there, three, my law firm, Burke
18 & Blue, who represents the County, BankAmerica,
19 and Morgan Keegan. And this analysis and
20 negotiations went on for over two years, and
21 that was a fee that Bay County was obligated to
22 pay the consultants. And during the
23 negotiations, it was negotiated that Florida
24 Power would actually compensate the County for
25 those fees that were incurred.

1 The County Commission had a hearing,
2 determined that it was in the best interests of
3 the County to shorten the length of the contract
4 as proposed to you, and also agreed to pay its
5 consultants and found the fees reasonable.

6 CHAIRMAN JABER: Any other questions?

7 COMMISSIONER DEASON: I have some
8 questions, Madam Chairman. I would like to
9 start off by looking at Exhibit C attached to
10 staff's recommendation. As I understand it,
11 this is pretty much the crux of the
12 determination by staff, that there is a positive
13 net present value associated with the buy-out.
14 And by positive net present value, I mean
15 savings to customers.

16 In this analysis, the column entitled
17 "Replacement and Added Costs" -- and, of course,
18 that begins with the \$610,000 which Commissioner
19 Bradley just inquired about. That's a known
20 cost. And then starting in the year 2007
21 through the termination of the original
22 contract, 2022, we see a series of cost numbers
23 which represented the cost associated with
24 replacing the capacity and energy from Bay
25 County; is that correct?

1 MS. HARLOW: Yes, sir.

2 COMMISSIONER DEASON: Okay. How were those
3 numbers derived?

4 MS. HARLOW: Those numbers were -- and I
5 may want to defer to Power Corp. on this if I
6 get hung up, but those numbers were derived
7 using the PROSYM analysis.

8 COMMISSIONER DEASON: I'm sorry. What
9 analysis?

10 MS. HARLOW: PROSYM is the software that
11 was used. It develops the cost based on Power
12 Corp.'s own system, as well as outside
13 purchases. And Power Corp. may want to
14 elaborate on that.

15 COMMISSIONER DEASON: Mr. McGee?

16 MR. MCGEE: I'll defer that to Mr. Honey.

17 MR. HONEY: This is consistent with most of
18 the analysis we do concerning ten-year site
19 plans, the same software that was used for that,
20 PROSYM. When we're looking at replacement cost,
21 historically we used PROMOD. Maybe you're more
22 familiar with that name, but PROSYM is the
23 replacement software that's now used in lieu of
24 PROMOD. PROMOD has been around for 20 years, I
25 think. That's the analysis you were typically

1 given.

2 COMMISSIONER DEASON: How confident are you
3 in these numbers?

4 MR. HONEY: Pretty confident. I mean, we
5 -- you know, as with any forecast, there's some
6 room for discretion. But we also compare it
7 against if we actually were to build out a
8 component of it, that the costs of a direct
9 build with no system support at all would be
10 marginally increased from those costs.

11 COMMISSIONER DEASON: Do you agree with
12 staff's statement that these are costs, both
13 replacement costs from within your own system
14 and outside sources?

15 MR. HONEY: well, the outside sources are
16 limited to what we basically have as firm
17 resources. It's not a statewide model. It's a
18 system resource model with the firm purchases
19 that we already have established, such as
20 Southern Company and other utilities.

21 COMMISSIONER DEASON: You have firm
22 purchases that can replace this through the year
23 2022?

24 MR. HONEY: At that point in time, the 11
25 megawatts will be part of the planning process.

1 And it's also distinctly possible that in that
2 year we would be open if Bay County continues to
3 operate to buy it at that point in time under
4 different circumstances.

5 COMMISSIONER DEASON: So you don't have
6 firm contracts in place right now to replace
7 this energy, or prospects for a firm contract?

8 MR. HONEY: We haven't specifically gone
9 and bought the resource. This is what the
10 system would -- the system says that we can do
11 this, and the system says that those are the
12 costs associated with replacing that capacity.

13 COMMISSIONER DEASON: The energy costs
14 under the existing contract, are those numbers
15 firm contractual numbers, or are those numbers
16 subject to fluctuation?

17 MR. HONEY: Those numbers float based on a
18 statewide avoided unit in 1995, and they float
19 based on a cap of system costs that are capped
20 at Big Bend 4 coal prices, which is a TECO
21 unit. Most of the units that were done in 1995
22 were based on a statewide avoided unit.

23 COMMISSIONER DEASON: So those energy costs
24 are contingent upon coal costs at Big Bend Unit
25 4?

1 MR. HONEY: Right. So both of those
2 columns, both of those columns, if they were to
3 vary -- or both of those columns would be
4 expected to probably vary in accordance with
5 each other, unless for whatever reason Big Bend
6 had a significant non-covariance with the rest
7 of the --

8 COMMISSIONER DEASON: Let me ask you this
9 question. If one were to assume or believe that
10 coal prices are going to be relatively stable
11 over the next 20 years and that gas prices are
12 going to go high, would this be a good deal?

13 MR. HONEY: There's a separation where, you
14 know, any deal could look odd. But, yes,
15 effectively, if that became so prevalent, then
16 people would begin to gassify coal, and they
17 would begin to operate coal. So it would even
18 hold up under a scenario where they became
19 widely diverse, because then what you would do
20 is gassify coal, and you would be able to
21 operate basically a different version of a coal
22 plant.

23 COMMISSIONER DEASON: And you would be able
24 to get gassified coal to replace 11 megawatts
25 from this unit on a cost-effective basis?

1 MR. HONEY: Well, am I telling you that --
2 both costs -- if we were to run into that
3 scenario, both sets of those columns, both
4 energy columns would go up significantly if we
5 found ourselves with that kind of variation in
6 prices. All I'm trying to tell you is that both
7 of those columns would go up and down together.
8 So if coal and gas were to diverge from each
9 other, both of those columns would diverge
10 fairly equivalently with each other.

11 COMMISSIONER DEASON: Staff, in your
12 analysis you indicated that you did a
13 sensitivity analysis and you came up with a band
14 of 30%. Can you explain how that applies to
15 your analysis?

16 MS. HARLOW: That analysis was done by
17 Florida Power Corp., and staff checked it for
18 accuracy, and we felt confident with that.

19 I would like to add something that I --

20 COMMISSIONER DEASON: Well, I want to see
21 how it applies to Exhibit C. What would you
22 change by 30% and still come up with a positive
23 net present value?

24 MS. HARLOW: You would change the
25 replacement and added cost column except for, of

1 course, the \$610,000.

2 COMMISSIONER DEASON: So every number in
3 that column could be increased by 30%, and would
4 you still have a positive net present value?

5 MS. HARLOW: It's 30% over time, sir. It's
6 got a growth factor in it.

7 COMMISSIONER DEASON: Okay. Well, then I
8 guess that's the critical number. What is the
9 growth factor assumed?

10 MR. HONEY: In that particular analysis, I
11 think, if I recall, it was 1 or 1-1/2%. In
12 terms of the long-term component, I believe it
13 was about -- it was either 1% or 1-1/2%. I'm
14 sorry. There's so many different analyses that
15 I deal with, I can't specifically recall on that
16 one.

17 MS. HARLOW: Commissioner Deason, there was
18 also an analysis done that compared this against
19 Hines, and it passed the test in that as well.

20 Another thing that alleviated our concern
21 somewhat -- we have the same concern you do on
22 the replacement power costs and the validity of
23 the assumptions on that. But one of the things
24 that alleviated my concern, and I regret not
25 putting this in the recommendation, is that this

1 contract is for so little megawatt-hours. As
2 you know, it's for -- excuse me, megawatts. As
3 you know, it's for 11 megawatts, and staff
4 believes that it's not necessary in every year
5 for Power Corp. to replace the full capacity.
6 If that's the case, that increases the strength
7 of the net present value.

8 COMMISSIONER DEASON: So you're saying that
9 the flexibility within the system the size of
10 Power Corp., that it may be possible within
11 certain time periods to actually absorb this
12 capacity in those existing resources?

13 MS. HARLOW: Yes, sir. Of course, we would
14 always want an analysis done with full
15 replacement capacity. That's typically how the
16 Commission has looked at these issues in the
17 past. And that kind of gives you a -- oh, it
18 gives you a level of comfort if the capacity did
19 have to be replaced in every year.

20 Another thing that staff was happy to see
21 in this is that, as you know, until 2013 in the
22 contract before, it's very reasonable to assume
23 that this contract is higher than market, and so
24 the savings at the tail end of the contract were
25 not there until 2013. This moves those savings

1 up so ratepayers feel savings much sooner in
2 2007.

3 COMMISSIONER DEASON: well, I find it a
4 little ironic. If we go back in history, at
5 that time we were betting that this was such a
6 cost-effective contract, we were willing to
7 front money up front and basically help finance
8 it on a going-forward basis. And the ratepayers
9 right now have paid more than -- in one sense,
10 more than they should have if it had not been
11 for the up-front advance financing. And now
12 we're willing to give up that benefit because
13 now we have new numbers, and we think that this
14 contract is not cost-effective.

15 And my concern is, we may get five years
16 down the road and say, "Man, we really wish we
17 had that 11 megawatts, because we wouldn't have
18 to pay any capacity charges on it whatsoever,
19 and it would really be a sweet deal."

20 It's all a crystal ball to some extent.
21 You're looking in the future and trying to --
22 and we were very confident -- I say we. I
23 wasn't on the Commission at that time. But in
24 '88, '89, whenever this contract was approved,
25 it was thought this is a great thing. And we

1 know that, you know, 10 years later it's not
2 such a great thing. And 10 years from now will
3 we be saying, "well, it was really a poor
4 decision to buy out that contract in 2002,
5 because we would have all this free capacity
6 now"?

7 And I guess that goes back to my question.
8 How comfortable, how confident is Power Corp. in
9 these numbers, and are you willing to take any
10 of the risk instead of putting 100% of the risk
11 on the ratepayer that your numbers are valid?
12 How confident are you that if these numbers do
13 grow in excess of 1-1/2% per year -- are you
14 willing to take that risk, or at least share
15 that risk with the customers?

16 MR. HONEY: well, the first thing that I
17 want to address to that is that it's not a
18 matter of being comfortable with whether these
19 numbers are going to grow at 1%, 2%, you know,
20 for that matter, even 3%. What you're looking
21 at is how one column is going to grow in
22 comparison to how the other column would have
23 grown. And so that differential is probably not
24 going to be that large and can probably not
25 separate that large.

1 I don't have the authority, and have not
2 been given the answer at this point in time as
3 to whether we would be willing to back that.
4 You know, given the arrangement, you know, there
5 is some savings there. What I posed my company
6 with the question of is, you know, if you were
7 allowed to take a portion of that savings, you
8 know, would you back that?

9 The problem with it usually is that when
10 we're asked to back something, we're asked to
11 back it if it goes negative, but if it ever goes
12 positive in the other direction, we're not given
13 the benefit.

14 COMMISSIONER DEASON: Well, let me say up
15 front that -- and I should have been more clear
16 in my question. I think that if you're willing
17 to take risk away from ratepayers and you're
18 confident that you can manage your system and do
19 it such that you create savings for customers,
20 you should also share in those savings.

21 And I would be much more comfortable if we
22 had a plan in front of us that came forward and
23 you indicated that we were willing to take some
24 of this risk with some concomitant return
25 benefit as a result of taking that risk. I

1 would have much more confidence that this is
2 going to be a moneymaker, a positive net present
3 value for customers, i.e., save customers money
4 in the long term.

5 I don't see that here. I just see you all
6 entered into a contract in '88 or '89, the
7 customers took 100% of the risk, it didn't turn
8 out to be too good of a contract, and now we're
9 trying to buy it out, and we're going to create
10 savings. And it probably will create savings.

11 But here again, you're saying, "But,
12 customers, you take 100% of the risk, and if
13 five years from now we don't have that 11
14 megawatts at zero capacity, sorry. We made a
15 bad decision again, but guess what, you pay
16 again." If there was some sharing, I would feel
17 much more confident.

18 MR. HONEY: I don't have the authority to
19 offer that today, but we have tried to evaluate
20 that, and I can't get the answer in the time
21 period that we have.

22 I think it is important to understand that
23 we're not really giving up that benefit. What
24 you're going to find yourself with is in the
25 nearer term -- I mean, I understand your concern

1 out in 2013 through 2021.

2 But there's two concerns that I have with
3 that. One is, A, you're accelerating -- under
4 this arrangement, you're accelerating those
5 benefits. In 2007, we have a pretty reasonable
6 feel for where prices are going to go,
7 particularly the differentials in here. We
8 don't see anything going too haywire with gas
9 versus coal.

10 So you're accelerating that benefit into
11 those customers from 2007 to 2012, giving them
12 almost an average of about 8 cents per thousand
13 kwh. So you're accelerating that benefit
14 forward. You're not really giving that benefit
15 up.

16 I understand if that price market line
17 moves that, you know, what we look at today as
18 3-1/2 cents out in those later years may not
19 materialize. It may be, you know, less than
20 that. But, you know, we're looking at it
21 against Hines. And when we look at against
22 Hines, it still comes out with a positive
23 present value.

24 COMMISSIONER DEASON: well, explain to me,
25 when you say you make that comparison with

1 Hines, exactly what type of analysis do you do
2 in that comparison?

3 MR. HONEY: Effectively, you take that same
4 exhibit, and instead of having the PROSYM
5 numbers, you put in your forecast of the Hines
6 costs.

7 COMMISSIONER DEASON: In the column for
8 replacement and added costs, you would put in --

9 MR. HONEY: That's your capacity and
10 energy, and that's where you get the sensitivity
11 analysis that we were looking at. You look at a
12 number that's about 18% higher.

13 COMMISSIONER DEASON: Higher than the
14 numbers -- I'm sorry.

15 MR. HONEY: The numbers we started from, so
16 you're 30% head room. The 18% still gives you
17 more head room from --

18 COMMISSIONER DEASON: So the Hines numbers
19 are 18% higher than the numbers in your column
20 in Exhibit C?

21 MR. HONEY: Roughly 18%. I mean, it's
22 different timing and stuff.

23 COMMISSIONER DEASON: So your own unit
24 shows higher numbers than what you're
25 forecasting.

1 MR. HONEY: But, remember, you're not
2 building necessarily Hines. You're doing a
3 whole system of units. You would not
4 necessarily replace Bay County with a Hines
5 unit. A combined cycle would not be the first
6 choice I would have necessarily, just all by
7 itself, to replace a garbage plant.

8 CHAIRMAN JABER: Let me ask a procedural
9 question. And, staff, feel free to jump in,
10 because I'm not really sure who to ask this of.

11 The parties to the original contract, are
12 you it? It was just Bay County and Power Corp.?

13 MR. ZIMMERMAN: Yes. There was an operator
14 that signed, but we are the parties. Right now
15 Montenay Power Corporation is the operator.

16 CHAIRMAN JABER: My concern has always been
17 that the group most affected is not signatory to
18 the stipulation, is not part of the stipulation.
19 In terms of -- just to borrow Commissioner
20 Deason's words, in terms of the risk being borne
21 by the consumers, I've always been troubled by
22 the fact that the consumers are not part of the
23 stipulation.

24 And again, also to focus on something
25 Commission Deason said, I understand, Power

1 Corp., that this is an agreement you have with
2 Bay County, and to some degree, to send you back
3 to the drawing board would have you going back
4 to the drawing board. But is it possible, if
5 this Commission allowed another two-week period,
6 to come back with a plan that would have some
7 sort of sharing mechanism proposed in addition
8 to what you've already encompassed?

9 MR. ZIMMERMAN: From the County's
10 perspective, if I could just speak briefly,
11 obviously, there's -- you know, Bay County,
12 represents ratepayers or taxpayers over there,
13 and they come at this with a perspective that's
14 unique to them, just as the Public Service
15 Commission looks at it from the ratepayers of
16 Florida Power's perspective.

17 But it is a contract, and it was negotiated
18 really with the encouragement of other state
19 agencies back in 1987 and 1988 when resource
20 recovery was popular and there were the
21 statewide avoided unit and the statewide
22 contracts to utilize.

23 The County Commission was reluctant to
24 enter into the contract as it is presented, and
25 it was reluctant because it felt that it was

1 giving the Florida Power ratepayers an
2 instantaneous benefit, instantaneous being once
3 the contract terminated, from 2006 through 2012,
4 and it was giving up a lot of money that it was
5 projected to receive by those capacity payments.
6 Those capacity payments were there because the
7 state law provided it back in 1987. It felt
8 that it should receive more money. The only
9 cash that it ultimately settled on were the
10 consultants' fees as far as a cash payment, but
11 it originally sought cash payments.

12 So to the extent that Bay -- so one of the
13 issues that you have to look at and that Florida
14 Power looked at is the certainty of receiving
15 savings -- more or less certainty of receiving
16 savings through 2012, is that offset by what may
17 happen in 2013. The County Commission analyzed
18 it and decided that they were willing to receive
19 less money for their taxpayers from 2007 to 2012
20 just to have the flexibility to enter the open
21 market in the future. Everyone looks at it from
22 their own perspective.

23 I don't know what the County Commission --
24 I'm sure they would entertain whatever the
25 parties wanted. They did go back a couple of

1 weeks ago and make an amendment concerning the
2 contingent liability issue that came up in
3 conversations with staff. But the staff
4 analysis was -- in one standpoint, it said it
5 would recommend that it be terminated today, and
6 then the other one was we don't know if it ought
7 to be terminated at all. But the compromise
8 which the County accepted was to leave the
9 contingent liability in place.

10 So that's a long answer, but I don't know
11 what the County Commission would do, and would
12 obviously take back anything, but we would
13 encourage you to approve it based upon the
14 recommendation.

15 CHAIRMAN JABER: Commissioners, what's
16 your pleasure?

17 Frankly, I could go forward. My concern --
18 one of concerns has been addressed with the
19 retention of the contingent liability. When
20 this was coming to agenda the first time, the
21 stipulation had -- Bay County had removed the
22 contingent liability clause, so I was very
23 pleased to see that come back in. But,
24 Commissioners, I'll defer to what your --

25 COMMISSIONER DEASON: Well, let me say

1 this. I think Bay County has acted very
2 professionally in this and has attempted to
3 address our concerns, and I want to express my
4 appreciation to the County for doing that. The
5 continuation of the potential liability, at
6 least through the determination, or the buy-out,
7 that certainly was a way to alleviate some
8 concerns at the Commission, and that's
9 appreciated.

10 I guess the question that I was raising and
11 directing to Power Corp. I don't think in any
12 way would affect Bay County. That was basically
13 if Power Corp. would be willing to assume some
14 of the risk that these savings actually would
15 materialize through the year 2022, with the
16 understanding that if they do, that they would
17 share in the savings. And if there are even
18 more savings that are shared, the customers
19 continue to benefit, and Power Corp.'s
20 stockholders would benefit even more.

21 MR. MCGEE: Commissioner, we aren't in a
22 position, Mr. Honey and I, right now to give you
23 a response to that. But from sort of a matter
24 of perspective, this is one step in kind of a
25 ongoing series of steps that Florida Power has

1 taken, because we understand that the ratepayers
2 bear the risk of a number of QF contracts that
3 Florida Power has entered into from the late
4 '80s through the mid '90s. Those have not
5 turned out as well as we would prefer.

6 And it's our feeling, and I think we have
7 always assumed that it's the expectation of the
8 Commission that while the risk for the payment
9 of all of those costs, those higher than the
10 preferred costs under those QF contracts, are on
11 the ratepayer, we have a duty to go out and try
12 and better that situation. So this contract,
13 like many of the settlements, renegotiations,
14 and in the case of the Tiger Bay facility, the
15 purchase of the whole operation, those were
16 intended to lessen the risk on the ratepayer,
17 not increase the risk.

18 That would be the case here. Right now the
19 ratepayers bear all of the risk of that
20 contract. What we think we've done is to lessen
21 the risk to the ratepayers. We have not asked
22 for an incentive on any of the savings that
23 we've realized in the past. The Tiger Bay one
24 comes to mind, and that was \$2 billion. That's
25 all flowing through to the ratepayers.

1 So I guess we're maybe taken aback a little
2 bit, because we're continuing with this
3 particular project like we have with many in the
4 past where we've tried to do something to
5 improve the situation of the ratepayer from a
6 cost recovery standpoint.

7 COMMISSIONER DEASON: Let me say this. And
8 I appreciate that, and I think that you are
9 trying to identify areas where costs can be
10 saved to the benefit of customers who, as you
11 correctly point out, have the responsibility of
12 paying these costs.

13 I guess my concern is that whether this
14 ends up with a positive net present value is
15 contingent upon cost numbers which are projected
16 out to the year 2022. And it appears to me that
17 there could be conceivably much risk associated
18 with those projections, and volatility, as
19 opposed to what exists now under contract, where
20 we know for a fact that beginning in the year
21 2013, there are going to be zero capacity
22 payments. That's a fact, contractual fact, no
23 risk associated with that.

24 MR. MCGEE: Right.

25 COMMISSIONER DEASON: In fact, there's a

1 lot of protection associated with that with the
2 liability that is built into the contract.

3 The energy associated with that contract,
4 if it is tied to coal at Big Bend 4, I'm very
5 confident that's going to be a very stable
6 number. Of course, that takes a little bit of
7 that crystal ball analysis or what makes you
8 feel good. But I see on one side of this
9 equation that there are either known costs or
10 relatively stable costs that we know the
11 customer is on the hook for. The savings are
12 projected on costs which a projected out, which
13 I don't have as much confidence in.

14 And I guess what I'm saying is, I would
15 have a lot more confidence in those numbers if
16 you showed you had a lot more confidence and
17 come in and say, "We're so confident that we're
18 willing to take 50% of the risk of this, but we
19 want 50% of the gain if it materializes."

20 It also gives you an incentive to go out
21 and to continue to operate your company
22 effectively and look for opportunities and get
23 the least cost -- I'm not saying that you don't
24 now, but if you have that incentive, you have
25 even more of an incentive to do that, which I

1 think ultimately works to the benefit of
2 customers. That's what I'm saying. I would
3 have referred seeing something of that nature.

4 Now, I throw out 50% and 50%. I don't know
5 if that's right, but some sharing somewhere that
6 shows that you've got confidence in these
7 numbers, because you're willing to put your
8 stockholders on -- to take some of the risk as
9 well, realizing that when stockholders take
10 risk, they look for a return, though, and I
11 understand that equation.

12 MR. MCGEE: We just recently filed a
13 petition for approval of another contract
14 amendment. It's actually a restructuring of
15 three existing contracts. And as I mentioned
16 before, we didn't really even consider a sharing
17 or an incentive mechanism, because this is just,
18 at least in our view, one more step in a series
19 of ones in the past.

20 If it is the Commission's preference that
21 we pursue that approach, I would take it then
22 that we should also give the same kind of
23 consideration to other --

24 COMMISSIONER DEASON: Well, first of all,
25 realize I'm just one Commissioner. I don't know

1 how my colleagues feel about it. They may be
2 very comfortable with this, and I can understand
3 if they are. I'm not -- and I'm not being
4 critical of staff's analysis either. I think
5 staff has been very thoughtful in their analysis
6 and put forth the best case that they think is
7 represented by these numbers.

8 I'm just saying I as one Commissioner would
9 at least like the option of saying -- of Power
10 Corp. putting together something and saying,
11 "And if you think sharing is appropriate, this
12 is what we're willing -- this is the amount of
13 risk we're willing to assume, and this is what
14 the sharing point should be." At least give an
15 option to the Commission to evaluate it. And if
16 nothing else, that speaks volumes as to how
17 confident you are in these numbers if you're
18 willing to take some of the risk yourself.

19 MR. HONEY: well, I appreciate what you're,
20 you know, sending out there, and that has not
21 been something we've considered, you know, in
22 the negotiations as an option that we have as a
23 company. So when that was one of the
24 suggestions on the staff recommendation, I did
25 ask that question to people, but, you know, it

1 takes time to get that kind of answer. That's
2 not a thought process we've traditionally had.
3 But when Jim said that we've tried to address --

4 CHAIRMAN JABER: We know that.

5 MR. HONEY: When Jim said --

6 CHAIRMAN JABER: How much time do you need
7 to go through that?

8 MR. HONEY: I'm sorry?

9 CHAIRMAN JABER: How much time do you need
10 to go through --

11 MR. HONEY: I don't know that it's possible
12 to get my company there. We've got a lot of
13 things in the process.

14 COMMISSIONER BRADLEY: Madam Chair.

15 MR. HONEY: But I want to address this risk
16 issue, because --

17 CHAIRMAN JABER: Go ahead and address that
18 issue, and then Commissioner Bradley has a
19 question.

20 MR. HONEY: Commissioner Deason, you bring
21 up a good point. You look at all of this, and
22 you say, "well, those look like very known
23 costs, and they feel very comfortable." But
24 what's being ignored here that concerns me
25 tremendously is the operational risks and the

1 risks of going to litigation.

2 You know, if we've learned anything from
3 the Lake County litigation that we just went
4 through not that long ago is that while we may
5 feel we're right and we may feel like the
6 contract protects us, those numbers that you're
7 looking at and those savings with zero capacity
8 payment, I guarantee you that the County has to
9 subsidize that plant to operate during that time
10 period, and that doesn't come at zero risk.
11 That has tremendous operational risk.

12 And what I view this whole analysis as
13 doing is accelerating the benefits forward so
14 that we actually eliminate the risk of what the
15 operational savings might be out in those future
16 years. In fact, we've brought it closer to the
17 near term, so we've eliminated that risk out in
18 2012, not that the prices are going to be wrong,
19 but that we might not realize those either from
20 failure of performance or failure through
21 litigation.

22 COMMISSIONER DEASON: But doesn't your
23 contract address failure to perform, and isn't
24 that part of the reason the liability account is
25 there, that you recoup the advance payments you

1 made in the early years?

2 MR. HONEY: Absolutely. And the one thing
3 that I learned from Lake, thinking that we were
4 absolutely clear on that one, was -- thinking
5 that we were 100% correct, and we did not
6 collect 100% of what we thought. In fact, we
7 collected nothing.

8 CHAIRMAN JABER: Commissioner Bradley, you
9 had a question?

10 COMMISSIONER BRADLEY: A comment. It seems
11 like we are much closer today than we were a
12 short time frame ago. I believe you were in the
13 process of making a motion, or am I incorrect?

14 CHAIRMAN JABER: Me? No, I was actually
15 asking for a motion or a next step, questions by
16 the Commissioners.

17 COMMISSIONER PALECKI: Well, I had one
18 further question I would like to ask Power
19 Corporation.

20 CHAIRMAN JABER: Go ahead.

21 COMMISSIONER PALECKI: Would you like to
22 have 30 days just to take that proposition back
23 to your company, not to modify the agreement
24 with Bay County, but just to find out if your
25 company would be interested in some sort of risk

1 sharing mechanism where you could also share in
2 the rewards if the prices do change to the
3 benefit of the ratepayers and the company?

4 MR. MCGEE: We can provide a response to
5 that question within 30 days.

6 MR. ZIMMERMAN: From Bay County's
7 perspective, as an observer and not over here
8 very often, that's all very interesting. We
9 would encourage you, though, if you could, go
10 ahead and approve this contract and keep all
11 that in mind for the future, rather than leave
12 Bay County hanging there while you work out,
13 from our perspective, some internal issues
14 concerning how the next contracts are going to
15 be dealt with.

16 CHAIRMAN JABER: No, I don't think we're
17 talking about the next contracts. But I think
18 your objection, your caution is the time delay
19 associated with Power Corp. --

20 MR. ZIMMERMAN: Yes, ma'am.

21 CHAIRMAN JABER: -- getting back to us.

22 MS. ZIMMERMAN: Yes, ma'am.

23 CHAIRMAN JABER: Because you do recognize
24 Commissioner Deason's questions and some of the
25 concerns raised by the Commissioners are really

1 requests to the company. We're not suggesting
2 that they go back and renegotiate with the
3 County. You do understand that?

4 MR. ZIMMERMAN: Yes, I understand that.

5 CHAIRMAN JABER: Commissioners, what's your
6 pleasure?

7 COMMISSIONER DEASON: Well, you know, it's
8 not my desire to continue this thing
9 indefinitely, and I know the County wants
10 closure on this. They need a decision, and they
11 need to be able to operate and plan accordingly.

12 You know, I'm willing to approve the
13 buy-out, but I think that Power Corp. should
14 consider a sharing plan. And if they will
15 commit that they will consider it and come back
16 to us with either a request or else notification
17 that they considered it and it's not the
18 appropriate thing to do and the reasons why it's
19 not appropriate, under those circumstances, I
20 could move that we approve staff's
21 recommendation.

22 COMMISSIONER BAEZ: And I would second
23 Commissioner Deason's motion in all its
24 respects. I mean, I think the idea that the
25 company has never thought about this before is

1 somehow -- I mean, I think you've put the burden
2 on yourselves to start thinking about it. And I
3 don't know in my mind how many of these types of
4 cases we have coming up. I'm pretty sure we're
5 not at the end of them, though. So for my
6 money, I would certainly expect to see some of
7 that kind of thought in the future.

8 COMMISSIONER DEASON: And let me reiterate
9 that this is -- my comments in no way are to be
10 as a negative reflection on Power Corp. I think
11 you have entered into these negotiations for
12 valid reasons, not the least of which is trying
13 to generate savings for your customers. So I
14 have no problem with that. I'm just thinking --
15 asking you to think a little bit outside of the
16 box and see if there's even a better way to do
17 this.

18 MR. MCGEE: And we will definitely explore
19 that internally, and we'll respond certainly
20 within the 30-day time frame that Commissioner
21 Palecki mentioned. And as I mentioned earlier,
22 we also have a form present right now from the
23 recent petition that we filed, and if that's
24 something to be pursued, we could go forward --

25 CHAIRMAN JABER: Well, actually, I wanted

1 to talk to you about that. The 30 days that
2 Commissioner Palecki is asking about addresses
3 this docket, and if you could respond to the
4 request within 30 days of today, that would be
5 great. But as it relates to your question
6 involving other petitions and future
7 proceedings, I think that we expect that the
8 thought process not only has been had, but
9 included in future petitions. So if you need to
10 modify the petition you've already filed, you
11 need to govern yourself accordingly.

12 But those approaches that take the risk
13 away from the consumer, if not completely, but
14 partially, those are things we're looking for
15 anyway, Mr. McGee. So the answer to your
16 question is, absolutely, going forward not only
17 should you think about it, but you should
18 include it.

19 MR. HONEY: And in the case of the one that
20 we just filed, because the energy is replaced,
21 it's not relevant to the one we filed. But
22 certainly anything that we do going forward,
23 we've got plenty on the table, and we would like
24 to --

25 CHAIRMAN JABER: Staff, you'll make that

1 same analysis, I'm sure.

2 MR. ELIAS: Yes.

3 COMMISSIONER DEASON: And let me add one
4 other thing. Since we are -- if the company
5 considers some type of risk sharing, benefit
6 sharing plan, it may be useful to get input from
7 the Public Counsel's office somewhere in your
8 consideration.

9 MR. ELIAS: Commissioner, there was a
10 comment made before about the fact that the
11 ratepayers ultimately haven't had an opportunity
12 to comment on this proposal, and I just want to
13 make you all aware that we as a matter of course
14 on these buy-out contracts ask all customer
15 groups that we're aware of to participate in any
16 meetings that we have on this subject. And, in
17 fact, both the Office of Public Counsel have
18 been invited to -- and FIPUG have been invited
19 to the meetings that we've had with the parties
20 to this docket over the course of --

21 COMMISSIONER DEASON: And I didn't mean to
22 insinuate that that didn't happen. And the fact
23 that Public Counsel is not here is not any
24 reflection. I'm sure that he has limited
25 resources and has to direct those in ways, and

1 maybe -- I can't try to -- the only thing I'm
2 saying is that when Power Corp. -- if they try
3 to come up with some type of a structure, if
4 they get input from the Public Counsel's Office,
5 fine. It may be helpful in the long term.

6 If nothing else, Public Counsel certainly
7 can come in and -- when a filing is made and a
8 proposal is put on the table, they can point out
9 good points or bad points about it, and it can
10 be part of the process. But obviously, Public
11 Counsel's office needs to be informed, and I
12 appreciate the fact that you make sure that they
13 are aware of these items when they're put forth.

14 MR. ELIAS: We would seek to give them an
15 opportunity to provide input before we ever
16 write a recommendation on something.

17 CHAIRMAN JABER: Okay. There has been
18 motion and a second on Item 12, with the
19 modification that in the next 30 days,
20 Mr. McGee, you will consider and respond to us
21 in writing about a sharing mechanism for this
22 docket.

23 Okay. All those in favor say aye.

24 (Simultaneous affirmative votes.)

25 CHAIRMAN JABER: Opposed, nay.

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(No response.)

CHAIRMAN JABER: Show Item 12 approved
unanimously.

(Conclusion of consideration of Item 12.)


CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, MARY ALLEN NEEL, do hereby certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter transcribed under my supervision; and that the foregoing pages numbered 1 through 38 are a true and correct transcription of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, or relative or employee of such attorney or counsel, or financially interested in the action.

DATED THIS 25st day of March, 2002.



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