

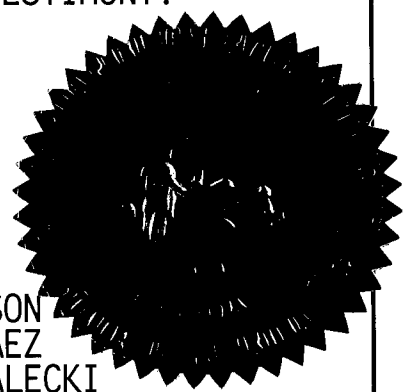
BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 010949-EI

In the Matter of:

REQUEST FOR RATE INCREASE BY  
GULF POWER COMPANY.

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PROCEEDINGS: SPECIAL AGENDA CONFERENCE

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

DATE: Friday, April 26, 2002

TIME: Commenced at 9:35 a.m.  
Concluded at 1:55 p.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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FPSC COMMISSION CLERK

1 PARTICIPATING:

2 HAROLD McLEAN, General Counsel, MARLENE STERN and MARY  
3 ANNE HELTON, Florida Public Service Commission, General  
4 Counsel's Office, representing the Commission Staff.

5 DALE MAILHOT, LEE ROMIG, CONNIE KUMMER, PETE LESTER,  
6 DAVID WHEELER, MIKE HAFF, SID MATLOCK, DANIEL LEE, KATHY  
7 KAPROTH, CHRISTINE ROMIG, BILL McNULTY, SAM MERTA, SHANNON  
8 HUDSON and TODD BOHRMANN, Florida Public Service Commission,  
9 Division of Economic Regulation.

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## P R O C E E D I N G S

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2 CHAIRMAN JABER: Let's go ahead and start the special  
3 agenda conference. This is a petition for a rate increase by  
4 Gulf Power Company.

5 Staff, do you want to introduce the item?

6 MS. STERN: By notice published on April 5th, 2002,  
7 this time and place were set for a special agenda conference in  
8 Docket Number 010949-EI. The purpose of the conference is for  
9 the Commission to consider and make a decision regarding Gulf  
10 Power Company's request for a rate increase.

11 CHAIRMAN JABER: You have two corrections and you've  
12 got a recommended order of issues for us to follow?

13 MS. STERN: We have the recommended order of issues.  
14 We suggest that the issues be taken up in numerical order,  
15 except, with three exceptions.

16 When we get to Issue 9A, after we do Issue 9A, we  
17 recommend taking up Issue 72 out of order and then, after that,  
18 continuing on with 9B. When we get to Issue 88, we recommend  
19 skipping it and taking up Issue 89 and backtracking to address  
20 Issue 88.

21 We recommend taking up Issues 125, 3, 34 and 37 last  
22 and, of those four issues, we recommend taking up Issue 125  
23 first.

24 CHAIRMAN JABER: Okay. Staff, I -- that's all fine  
25 with me. And, Commissioners, I welcome your input. But on the

1 incentive proposal, my preference is we take 125, 3, 34, 35 and  
2 37 together.

3 MS. STERN: Okay. And --

4 CHAIRMAN JABER: And, you know, we can discuss the  
5 order of those issues when we get to them.

6 Go ahead, Commissioner Bradley.

7 COMMISSIONER BRADLEY: Would you repeat that again,  
8 the order?

9 CHAIRMAN JABER: Sure. For -- first, Staff is  
10 recommending we take 9A, 72, 9B, and then 88 and 89, with 89  
11 going first, and then 125, 3, 34, 35 and 37 last --

12 COMMISSIONER BRADLEY: Okay.

13 CHAIRMAN JABER: -- that group last.

14 COMMISSIONER BRADLEY: Okay.

15 MS. STERN: We -- there is one change from the  
16 published recommendation.

17 For Issue 125 the Office of Public Counsel filed a  
18 Motion For Oral Argument. They have since then orally  
19 withdrawn the Motion For Oral Argument. So Staff recommends  
20 that there be no oral argument.

21 CHAIRMAN JABER: Okay. And I would note this is  
22 post-hearing, so participation is limited to Commissioners and  
23 Staff.

24 All right. Take us through the recommendation.

25 MS. STERN: Okay. Starting with Issue 1.

1 COMMISSIONER DEASON: Madam Chairman, let me ask a  
2 question. We have a number of stipulated issues, which the  
3 parties are to be congratulated for.

4 I need my memory refreshed. Did we address the  
5 stipulated issues at hearing and those items have already been  
6 resolved? I think that I recall some discussion along those  
7 lines, and it was my understanding that all stipulated issues  
8 have actually been addressed by the Commission.

9 MS. STERN: That's correct.

10 COMMISSIONER DEASON: So in the recommendation where  
11 we see an issue has been stipulated, there's no need for a vote  
12 today; correct?

13 MS. STERN: That's correct.

14 COMMISSIONER DEASON: Okay.

15 CHAIRMAN JABER: Issue 1.

16 MR. ROMIG: Commissioners, Issue 1 is the, is the  
17 company's projected test year ending May 2003.

18 COMMISSIONER BRADLEY: Excuse me. Excuse me. Maybe  
19 something is wrong with my hearing this morning, but could you  
20 all speak into the microphone and --

21 MR. ROMIG: Yes, sir.

22 COMMISSIONER BRADLEY: I'm not hearing very well this  
23 morning maybe.

24 CHAIRMAN JABER: It's the microphone system. There's  
25 nothing wrong with your hearing. I always have -- or maybe

1 there's something wrong with both of our hearing. Please speak  
2 right into the microphone.

3 MR. ROMIG: Okay. We'll try this. And Issue 1 is  
4 whether the company's projected test year ending May 2003 is  
5 reasonable, and Staff recommends that, that that is a  
6 reasonable test year with the adjustments as proposed in other  
7 issues.

8 CHAIRMAN JABER: Commissioners, are there questions  
9 on this --

10 COMMISSIONER DEASON: No questions. I'd move Staff's  
11 recommendation in Issue 1.

12 CHAIRMAN JABER: There's been a motion.

13 COMMISSIONER PALECKI: Second.

14 CHAIRMAN JABER: There's been a motion and a second.  
15 All those in favor of approving Issue 1, say aye.

16 (Simultaneous affirmative vote.)

17 CHAIRMAN JABER: Issue 1 is approved unanimously.

18 Issue 2 -- Issue 3. I'm sorry. That will be taken  
19 up later. What's the next issue?

20 MS. STERN: Issue 4, 5 -- Issue 6 is, "Should an  
21 adjustment be made to production related additions included  
22 in" --

23 CHAIRMAN JABER: Commissioners, any questions on  
24 Issue 6?

25 COMMISSIONER DEASON: Move Staff.

1 COMMISSIONER PALECKI: Second.

2 CHAIRMAN JABER: All those in favor, say aye.

3 (Simultaneous affirmative vote.)

4 CHAIRMAN JABER: Issue 6 is approved unanimously.

5 Issue 7.

6 COMMISSIONER DEASON: If there are no questions, I

7 can move Staff.

8 COMMISSIONER PALECKI: Second.

9 CHAIRMAN JABER: Motion and a second. All those in  
10 favor, say aye.

11 (Simultaneous affirmative vote.)

12 CHAIRMAN JABER: Issue 7 is approved unanimously.

13 Issue 8.

14 COMMISSIONER DEASON: Madam Chairman, if there are no  
15 questions, I can move Staff.

16 COMMISSIONER PALECKI: Second.

17 CHAIRMAN JABER: There's been a motion and a second  
18 on Issue 8. All those in favor, say aye.

19 (Simultaneous affirmative vote.)

20 CHAIRMAN JABER: Issue 8 is approved.

21 Now, Staff, only stop us when there are corrections.

22 That brings us to 9A.

23 COMMISSIONER BAEZ: That's one of the ones that are  
24 held off.

25 CHAIRMAN JABER: Yeah. But I think we can take --

1 this is where they want us to take 9A and then 72 and then 9B.

2 MR. ROMIG: That's correct.

3 CHAIRMAN JABER: Okay. Go ahead and introduce this  
4 item, Lee.

5 MR. ROMIG: Issue 9A is whether the deferral of the  
6 return on the third floor should be allowed in rate base. And  
7 Staff is recommending that the deferral be allowed in rate base  
8 and that the balance should be reduced \$610,000 to reflect  
9 additional amortization that was booked subsequent to when the  
10 MFRs were filed, and to use the four-year amortization period  
11 instead of the three-year period as proposed by the company.

12 CHAIRMAN JABER: Commissioners, do you have any  
13 questions on 9A?

14 COMMISSIONER DEASON: Madam Chairman, I have no  
15 questions. I think Staff's taken a very balanced approach to  
16 this item and I can move their recommendation.

17 COMMISSIONER PALECKI: Second.

18 CHAIRMAN JABER: There's been a motion and a second  
19 on 9A. All those in favor, say aye.

20 (Simultaneous affirmative vote.)

21 CHAIRMAN JABER: 9A is approved unanimously.

22 We should go to Issue 72, which is on Page --

23 MS. STERN: 135.

24 CHAIRMAN JABER: -- 135.

25 MR. ROMIG: Issue 72 is the, where we recommend that



1 the four-year amortization period be utilized instead of the  
2 three, which was covered in Issue 9A.

3 In addition, we're also recommending that Gulf be  
4 allowed to continue to have the discretion to amortize up to an  
5 additional million dollars per year in amortization or charges  
6 against the amount until it's fully extinguished, which is  
7 consistent, which was approved in the, the stipulation and  
8 order, the 992131.

9 CHAIRMAN JABER: Questions?

10 MR. ROMIG: They were given the discretion to charge  
11 an additional \$1 million.

12 COMMISSIONER DEASON: Madam Chairman, I have a  
13 question about this.

14 CHAIRMAN JABER: Go ahead.

15 COMMISSIONER DEASON: I -- well, first of all, let me  
16 say that the discretion to the company to amortize this in a  
17 more rapid fashion, I certainly don't have any, any problems  
18 with that.

19 I guess my question is what is the incentive for Gulf  
20 to do that? I mean, before they were operating under an  
21 incentive plan and I think there was some natural incentive for  
22 them to, to perhaps do this.

23 What is, what is the -- has Staff thought about  
24 whether there's any incentive for the company to do this, which  
25 I think would be a good thing if they chose to do so, but what

1 is their incentive to do that?

2 MR. ROMIG: Well, the only thing would be to  
3 extinguish, you know, get it off the balance sheet at the  
4 earliest, earliest time, speed up the recovery or the --

5 MR. MAILHOT: I mean, essentially if the company has  
6 earnings, you know, has adequate earnings in 2002 or 2003 and  
7 at some point that they would like to write this off, I mean,  
8 they can somewhat control the fact that they can take a million  
9 dollars in expense this year and avoid that million dollars,  
10 you know, somewhere down the road, say in year three or four.  
11 I mean, it's, it's just an opportunity for them to basically,  
12 you know, control their destiny to a certain extent.

13 COMMISSIONER DEASON: So we agree this is an item  
14 that would be to the company's benefit and the ratepayers'  
15 benefit if it were eliminated out of the, off the balance sheet  
16 and out of the rate base as quickly as possible.

17 MR. MAILHOT: That's correct. We've recommended and  
18 y'all have approved the early amortization of a number of  
19 regulatory assets for companies that have not been under an  
20 incentive plan. So, I mean, there's nothing unusual about  
21 this.

22 COMMISSIONER DEASON: What is the -- if, if the  
23 additional amortization were taken at the rate of \$1 million  
24 per year, how many, how long would it take before it would be  
25 eliminated?

1 MR. MAILHOT: If they took an additional \$1 million a  
2 year?

3 COMMISSIONER DEASON: Yes.

4 MR. MAILHOT: Probably in less than two years.

5 MR. ROMIG: Less than two.

6 COMMISSIONER DEASON: We're setting it on a four-year  
7 amortization anyway, are we not?

8 MR. MAILHOT: Four years. Right.

9 COMMISSIONER DEASON: Madam Chairman, I have no  
10 further questions.

11 CHAIRMAN JABER: Do we have a motion?

12 COMMISSIONER BAEZ: Second.

13 CHAIRMAN JABER: Do we have a motion?

14 COMMISSIONER PALECKI: I would move Staff's  
15 recommendation.

16 COMMISSIONER BAEZ: Second. Sorry.

17 CHAIRMAN JABER: Okay. There's been a motion and a  
18 second. All those in favor, say aye.

19 (Simultaneous affirmative vote.)

20 CHAIRMAN JABER: Show that issue approved  
21 unanimously.

22 Now, Staff, what's the next issue?

23 MR. ROMIG: Issue 9B is the third floor itself, and  
24 we're recommending that the third floor be included in rate  
25 base and depreciation would just, would now pick up and carry

1 forward.

2 COMMISSIONER DEASON: It would just be depreciated as  
3 any other plant item; correct?

4 MR. ROMIG: Right.

5 COMMISSIONER DEASON: According to its proper  
6 depreciation rate.

7 MR. ROMIG: Yes, sir. Right.

8 COMMISSIONER DEASON: Move Staff.

9 COMMISSIONER PALECKI: Second.

10 CHAIRMAN JABER: There's been a motion and a second  
11 on Issue 9B. All those in favor, say aye.

12 (Simultaneous affirmative vote.)

13 CHAIRMAN JABER: 9B is approved unanimously.

14 And the next issue is 12. Now the security  
15 measures -- I guess it doesn't matter, but there are two issues  
16 on security, Ms. Stern; right?

17 MS. STERN: Yes.

18 CHAIRMAN JABER: But they're also independent, so we  
19 can vote on them when we get --

20 MS. STERN: Right. Yes.

21 CHAIRMAN JABER: Okay. Issue 12, Commissioners,  
22 question or a motion?

23 COMMISSIONER DEASON: I have no --

24 COMMISSIONER PALECKI: I would move Staff's -- I'm  
25 sorry.

1 COMMISSIONER DEASON: No. I said I had no questions.  
2 If you'll make a motion, I can second it.

3 COMMISSIONER PALECKI: I move Staff's recommendation.

4 COMMISSIONER DEASON: Second.

5 CHAIRMAN JABER: There's been a motion and a second  
6 on Issue 12. All those in favor, say aye.

7 (Simultaneous affirmative vote.)

8 CHAIRMAN JABER: Show Issue 12 approved.

9 Issue 13. Commissioners, do you want this  
10 introduced? Do you have questions?

11 COMMISSIONER DEASON: I don't believe I have a  
12 question, but I think it may be helpful if the Staff would  
13 introduce this item.

14 MR. LEE: Yes. This issue concerns whether  
15 capitalized items currently recovered through ECRC should be  
16 moving through rate base. Staff reviewed the statute and  
17 believes the Commission has the discretion, but we don't  
18 believe there's, there's any evidence to demonstrate that by  
19 moving that into rate base there's any customer benefit. So  
20 we'd recommend keeping the current practice and not moving that  
21 into rate base.

22 CHAIRMAN JABER: Confirm something for me. I need to  
23 understand what happens to those items when they're in the  
24 clause and what happens to them when they remain in rate base.

25 The reality is when the item is fully depreciated,

1 regardless of the plant item, when it's fully depreciated and  
2 it's been in rate base, it doesn't get removed from rate base  
3 unless there's a rate proceeding.

4 On the other hand, when you're looking at those plant  
5 items via the clause through the trueup process every year, you  
6 can remove items that are fully depreciated.

7 MR. LEE: That's correct. If, if that item has 30  
8 years, and so roughly if there's no new project in 50 years,  
9 the customer only, you know, pays about half.

10 CHAIRMAN JABER: So the reality is if a, if a company  
11 doesn't file a rate case, that item could remain in rate base.

12 MR. LEE: That's correct.

13 CHAIRMAN JABER: Unless, of course, we initiate some  
14 sort of proceeding. But that would be an overearnings  
15 proceeding based on surveillance.

16 MR. LEE: That's correct.

17 CHAIRMAN JABER: Okay. So there is a, there is a  
18 real benefit to the consumers to have the item go through the  
19 clause.

20 MR. LEE: Yeah. I think the difference between ECRC  
21 and the base rate is the base rate has a lag and ECRC doesn't.  
22 The lag sometimes can benefit the customer. It depends on how  
23 the company earns, the earnings situation, I think.

24 CHAIRMAN JABER: Okay. Commissioners, that was the  
25 only question I had on Issue 13. Do you have questions or a

1 motion?

2 COMMISSIONER PALECKI: I can move Staff's  
3 recommendation on Issue 13.

4 COMMISSIONER DEASON: Second.

5 CHAIRMAN JABER: Motion and a second on Issue 13.  
6 All those in favor, say aye.

7 (Simultaneous affirmative vote.)

8 CHAIRMAN JABER: Issue 13 is approved unanimously.  
9 Issue 16.

10 MR. MAILHOT: Issue 16 is a fallout issue. And I  
11 believe based on your prior votes there probably wouldn't be  
12 any change.

13 CHAIRMAN JABER: So do you want us to -- should we go  
14 ahead and approve these fallout issues and recognize at the end  
15 that perhaps our decision will affect the fallout issues?

16 MR. ROMIG: We could have Issue 6 before that would  
17 be addressed which would impact this fallout issue. So I'd  
18 probably suggest that we just wait on this until --

19 MR. MAILHOT: Just wait on this.

20 CHAIRMAN JABER: Okay. Will someone keep a list of  
21 the issues we're coming back to? So this is the first one,  
22 Issue 16.

23 All right. Issue 18.

24 COMMISSIONER DEASON: Is this a fallout issue as well  
25 or not?

1 MR. ROMIG: Fallout issue.

2 CHAIRMAN JABER: It is. Okay. So we'll come back to  
3 18.

4 MR. BOHRMANN: Commissioners, Issue 24 is regarding  
5 the level of fuel inventory for Gulf Power. Staff recommends  
6 no adjustments are necessary to that amount.

7 COMMISSIONER DEASON: Move Staff.

8 COMMISSIONER PALECKI: Second.

9 CHAIRMAN JABER: There's been a motion and a second  
10 on Issue 24. All those in favor, say aye.

11 (Simultaneous affirmative vote.)

12 CHAIRMAN JABER: Issue 24 is approved unanimously.  
13 Issue 25.

14 MR. ROMIG: Issue 25 is a fallout. There were no  
15 adjustments to working capital allowance, so you can vote on  
16 that one.

17 CHAIRMAN JABER: Okay. We can or we should wait?

18 MR. ROMIG: We can. There have been no adjustments  
19 to the working capital allowance, so.

20 CHAIRMAN JABER: Okay. Commissioners, do I have a  
21 motion on Issue 25?

22 COMMISSIONER DEASON: Move Staff.

23 COMMISSIONER PALECKI: Second.

24 CHAIRMAN JABER: There's been a motion and a second  
25 on Issue 25. All those in favor, say aye.



1 (Simultaneous affirmative vote.)

2 CHAIRMAN JABER: Issue 25 is approved unanimously.  
3 Issue 27 is fallout.

4 MR. ROMIG: Issue 27, we will wait on that one  
5 because that will be depending on if there's anything after 16  
6 and 18.

7 CHAIRMAN JABER: Okay. Commissioners, that's the  
8 rate base issue, so we'll come back to that.  
9 Issue 29.

10 COMMISSIONER DEASON: Move Staff.

11 COMMISSIONER PALECKI: Second.

12 CHAIRMAN JABER: There's been a motion and a second  
13 on Issue 21. All those in favor, say aye.

14 COMMISSIONER DEASON: 29?

15 CHAIRMAN JABER: I'm sorry. I was on 29. What were  
16 you on?

17 COMMISSIONER DEASON: I misunderstood you. I thought  
18 you said 21. I'm sorry.

19 No objection.

20 CHAIRMAN JABER: Okay. All those in favor of  
21 approving Issue 29, say aye.

22 (Simultaneous affirmative vote.)

23 CHAIRMAN JABER: Issue 29 is approved unanimously.  
24 Issue 30.

25 COMMISSIONER DEASON: Move Staff.

1 COMMISSIONER PALECKI: Second.

2 CHAIRMAN JABER: There's been a motion and a second  
3 on Issue 30. All those in favor, say aye.

4 (Simultaneous affirmative vote.)

5 CHAIRMAN JABER: Issue 30 is approved.

6 Issue 31. Questions, Commissioners?

7 COMMISSIONER DEASON: Well, I -- there -- Staff, you  
8 made some adjustments, did you not, to -- do we need to go back  
9 to a previous issue?

10 MR. MAILHOT: Yes. On Issue 30, we need to wait on  
11 that until y'all vote on a return on equity because the cost  
12 rate in Issue 30 that's reflected there is based on Staff's  
13 recommended cost rate.

14 COMMISSIONER DEASON: I mean, but there's no issue  
15 there. I mean, the fact remains that when we do our return on  
16 equity, you just plug that in and whatever number falls out  
17 falls out.

18 MR. MAILHOT: Right. Exactly.

19 COMMISSIONER DEASON: So do we actually need to come  
20 back and confirm that or --

21 CHAIRMAN JABER: No. What I intend to do,  
22 Mr. Mailhot, is at the very end of our vote just give you  
23 authority to make the adjustments that fall out of the  
24 decisions that we make. I think that's cleaner than  
25 reconsidering this issue, opening it up again.

1 MR. MAILHOT: Okay. Okay.

2 CHAIRMAN JABER: But do not let me forget to have one  
3 of us make that motion for you.

4 MR. MAILHOT: Okay.

5 COMMISSIONER DEASON: So are we going to come back  
6 then to Issue 30?

7 CHAIRMAN JABER: No.

8 COMMISSIONER DEASON: Okay. We can go ahead and  
9 dispose of 30 then?

10 CHAIRMAN JABER: Yes.

11 COMMISSIONER DEASON: Very well.

12 CHAIRMAN JABER: And you had a question on 31,  
13 Commissioner?

14 COMMISSIONER DEASON: Well, I was just trying to  
15 understand -- refresh my memory. Staff, did you make some  
16 adjustments to the reconciliation as it was originally filed?

17 MS. ROMIG: On Issue 31 there were no adjustments  
18 made to -- well, there was an adjustment made to the  
19 reconciliation as it was originally filed because of  
20 Mr. Labrato's Exhibit 2 to his deposition, which is Exhibit 11,  
21 part of the record. I think that other than that, that was the  
22 only one that I recall that we made.

23 COMMISSIONER DEASON: Well, I'm trying to understand.  
24 Did the company in their original reconciliation do -- did they  
25 do, in your opinion, do something improper that you adjusted

1 for?

2 MS. ROMIG: They had left -- I'd have -- let me  
3 refresh my memory. Can we come back to this one, please?

4 COMMISSIONER DEASON: I have no objection to  
5 temporarily passing this, this one.

6 CHAIRMAN JABER: Okay. We'll come back to Issue 31.

7 MS. ROMIG: Thank you.

8 CHAIRMAN JABER: Okay. That takes us to -- 36 is a  
9 fallout issue, Mr. Mailhot, isn't it?

10 COMMISSIONER DEASON: It's overall rate of return is  
11 dependent upon other considerations?

12 MR. MAILHOT: Yes.

13 CHAIRMAN JABER: Okay. So we'll come back to 36.

14 By my calculation we're on Issue 40. Staff, do you  
15 agree with that?

16 MS. STERN: Yes.

17 CHAIRMAN JABER: Issue 40, Commissioners?

18 COMMISSIONER DEASON: Madam Chairman, if there are no  
19 questions, I can move Staff's recommendation.

20 COMMISSIONER PALECKI: Second.

21 CHAIRMAN JABER: There's been a motion and a second  
22 on Issue 40. All those in favor, say aye.

23 (Simultaneous affirmative vote.)

24 CHAIRMAN JABER: Issue 40 is approved.

25 Issue 41, fallout?

1 MR. MAILHOT: Right.

2 CHAIRMAN JABER: Come back to 41.

3 47 is the second security issue, and I think we can  
4 vote on that one, Commissioners.

5 COMMISSIONER DEASON: I'd move Staff on Issue 47.

6 COMMISSIONER PALECKI: Second.

7 CHAIRMAN JABER: There's been a motion and a second  
8 on Issue 47. All those in favor, say aye.

9 (Simultaneous affirmative vote.)

10 CHAIRMAN JABER: Issue 47 is approved.

11 Issue 48, advertising expenses.

12 COMMISSIONER PALECKI: Madam Chairman, I'd like to  
13 discuss Issue 48.

14 I agree with Staff's recommendation on the level of  
15 advertising expenses. However, I don't agree with the  
16 processes that have been traditionally followed by the  
17 Commission. I don't agree that Gulf should be prohibited from  
18 using a reasonable level of advertising expenses to develop  
19 confidence in the utility or to enhance, enhance its image. I  
20 believe that the scrutiny to which this Commission reviews each  
21 and every ad in order to determine whether its message is image  
22 enhancing amounts to micromanagement of the utility, and I  
23 don't believe that this is a good use of this Commission's  
24 resources.

25 The Staff recommendation makes it clear that if Gulf

1 simply placed a good sense logo somewhere in its image  
2 enhancing ads, the ads would be considered to have a  
3 conservation message and thereby qualify for cost recovery.  
4 Given that there's obviously a way around our prohibition on  
5 image enhancing ads, I think this detailed review is an  
6 unnecessary exercise. I believe that the customers' concerns  
7 are with the number of dollars spent and not on niceties such  
8 as a good sense logo on the ad.

9 I've done a little bit of calculation on my own. I  
10 took the dollar amount approved by the Staff, which is  
11 \$595,000, and I divided it or divided the total number of  
12 existing retail customers into that dollar amount. The number  
13 I came up with was \$1.59 per year, and that does not include  
14 the projections for growth that have been calculated and  
15 accepted by Staff. So the actual dollar amount per year on  
16 advertising being recommended is somewhere around \$1.50 per  
17 year. I believe that that's reasonable.

18 I believe that this Commission needs to get out of  
19 the business of micromanagement, and I think we have to stop  
20 this detailed review of every single ad that is put together by  
21 the companies and just approve or disapprove a dollar amount.  
22 Because I think that's what the customer is concerned about:  
23 What are the dollars that are being spent?

24 CHAIRMAN JABER: Commissioners, that's --  
25 Commissioner Palecki is asking for dialogue on this issue.

1           COMMISSIONER DEASON: Well, let me see if I -- you're  
2 saying that you do not oppose the Staff recommended adjustment  
3 to set what you consider to be a reasonable level of  
4 advertising. You're really taking issue with the level of  
5 scrutiny and detailed review that takes place by the Staff.

6           COMMISSIONER PALECKI: That's correct. And even if  
7 this, the rest of the Commission were to move Staff's  
8 recommendation, I would concur with that decision, but I would  
9 write a separate opinion as to what I believe are processes  
10 that are not the best uses of this Commission's resources. I  
11 simply think that we have to determine what is a reasonable  
12 amount of advertising expense for each utility and then let the  
13 utility spend those dollars as it deems fit. But for us to  
14 review every single ad in every rate case I think is a waste of  
15 the Commission's resources. I also think it's a  
16 micromanagement of the utility. I believe that these utilities  
17 know better than us as Commissioners what is a good use of  
18 those advertising dollars, and I think Gulf knows that much  
19 better than I do.

20           CHAIRMAN JABER: Commissioners, I have a different  
21 concern, just to complicate it a little bit further.

22           My fundamental concern was removing image enhancing  
23 ads from rate base completely because, on the one hand, we  
24 don't want companies to not be prudent in how they use  
25 advertising. On the other hand, there is an expectation that

1 these companies are forming relationships, long-lasting  
2 relationships with their consumers and establishing a  
3 relationship with the community that allows the consumer to  
4 gain trust in the company. And that isn't necessarily tied to  
5 conservation or to any program that is offered by the company,  
6 but inherently it is because if I want the customer to take  
7 note of the conservation message and all of the other messages  
8 that the company may be advertising at the moment, whether it's  
9 a change in billing or programs that are offered, there has to  
10 be that fundamental trust. And I guess I've been looking at  
11 image enhancement advertisement as the opportunity the company  
12 has to gain that trust with the customer and improve consumer  
13 relations.

14 I've gone back and forth with this issue because the  
15 other side of what I just said is, well, where do you draw the  
16 line? When does it become image enhancing for the purpose of  
17 gaining trust with the consumer and when does it get abused?

18 So, again, I'm open for dialogue. I don't have  
19 strong feelings on this issue one way or the other.

20 COMMISSIONER BAEZ: I'm wondering if, along the lines  
21 of what Commissioner Palecki seems to be suggesting at least,  
22 maybe my hearing is off, too, but if what, if what we're  
23 suggesting is perhaps looking at a top-down approach where  
24 there might be some benchmarking or some zone of reasonableness  
25 based on industry, some industry information or something like



1 that, that kind of creates some presumption, it would seem  
2 similar to what we do now with the rest of the filings. You  
3 know, this number is fine because it's in line, it's in line  
4 with some sort of objective measurement, and then from there on  
5 up then there is some level of scrutiny. I mean, personally I  
6 find it a little difficult to, to say something is unreasonable  
7 without actually having seen it. In a practical sense there  
8 has to be some kind of review. I don't know what, I don't know  
9 what it is. I mean, I'd be willing to explore what other, what  
10 different methods there might be. But it seems that you're  
11 going to have to draw a conclusion at some point, even, even  
12 with this benchmark or whatever we would call it, I don't think  
13 a -- some, some review mechanism is, it would seem to me, would  
14 be necessary.

15 CHAIRMAN JABER: The other thing to keep in mind,  
16 Commissioner Palecki -- because I remember your questions from  
17 the hearing and the idea of establishing sort of a cap. If, in  
18 working through this issue, if we could also keep in mind not  
19 to establish that benchmark too low as to inhibit advertisement  
20 when necessary. Now you would, you would think the company  
21 would go forward with whatever advertising is necessary, they  
22 just wouldn't be able to recoup.

23 COMMISSIONER PALECKI: I agree. I think there is a  
24 certain level of advertising that is necessary to inform your  
25 customers of the fact that your rates are lower than, than

1 those rates in most of the rest of the country. I think  
2 there's information that the utility can impart to its  
3 customers. It does develop trust. At the same time, I think  
4 that customers don't like to be inundated with a large number  
5 of advertisements because I think they feel when they see those  
6 ads that this utility is spending my dollars.

7 I know in the City of Tallahassee both of our  
8 hospitals spend a tremendous amount of money in advertising.  
9 And every time I see one of those ads on TV, it kind of makes  
10 me angry because when you're sick, you need to go to the  
11 hospital. And I don't really see that it's necessary to spend  
12 those dollars and I see that the dollars they're spending are  
13 mine, the dollars that I've spent when I've gone to the  
14 hospital.

15 So I think there's a very careful line that needs to  
16 be drawn and we have to kind of make a recognition of what is  
17 reasonable and what is excessive. But I think once we decide  
18 what's reasonable, then it's up to the utility to determine how  
19 it spends those dollars and how it wants to communicate with  
20 its own customers.

21 COMMISSIONER DEASON: Madam Chairman, maybe I can add  
22 my perspective. I certainly understand Commissioner Palecki's  
23 reasoning, and I guess there is a little bit of frustration in  
24 trying to do the detailed review that's necessary and it can be  
25 perhaps viewed as micromanaging.

1           But I believe that customers view advertising as an  
2 expenditure that is perhaps not necessary by a regulated  
3 utility, perhaps like Commissioner Palecki thinks that a  
4 hospital perhaps doesn't need to be engaging in such  
5 advertising.

6           I get a great deal of comfort when I'm confronted by  
7 a customer who's complaining about a regulated utility's  
8 advertising indicating that we do a detailed review and we do  
9 not allow recovery of what is considered image enhancing  
10 advertising, only advertising which is informative or required  
11 for energy conservation, safety related, educational. And I  
12 know sometimes there's a little bit of gray area as to how you  
13 put an expenditure in one category or another. So I take  
14 comfort in that, in that review.

15           Let me say this though. I think that, that -- I'm  
16 not saying that it's inappropriate for a utility to engage in  
17 advertising. I think it probably is appropriate. And what's  
18 going to happen is that they may not get rate base recovery,  
19 but it, and it may to some extent benefit the customer, but at  
20 the same time I think it also benefits their stockholders. And  
21 I think that if we have a healthy utility which is given a  
22 reasonable return on equity and they, if they feel that it's  
23 necessary to engage in this type advertising, it's the type of  
24 expense that can be, be taken from the return on equity portion  
25 of a company without harming the company, and they can choose.

1 We're not saying that a company cannot engage in advertising.  
2 It's just a question of whether we're going to allow what we  
3 consider to be image enhancing to be included in base rates and  
4 passed along to customers.

5           So I find some comfort in these, in the analysis that  
6 Staff has engaged in. I think it's, it's worthwhile to be able  
7 to indicate to customers, yes, advertising by a regulated  
8 utility is questionable; some we think is important and we  
9 allow recovery, others, that we don't. And just encourage the  
10 utility that if they think there is benefit to be derived, go  
11 forward with it, just realize that it's not going to  
12 necessarily be included in, in your rates.

13           I also understand the argument, Commissioner, that  
14 perhaps we should just define what we consider to be a  
15 reasonable amount of advertising and just allow the company the  
16 discretion to engage in that type of advertising. That has  
17 some merit.

18           But at the same time then I think we lose the review  
19 and perhaps there would be an overemphasis on types of  
20 advertising which we think is not as beneficial as other types  
21 of advertising. So I just have some, some misgivings about the  
22 approach that you're advocating. Those are my thoughts.

23           COMMISSIONER BAEZ: Madam Chairman, just one, one  
24 thought that occurred to me, and just to echo somewhat what  
25 Commissioner Deason has said.

1           I mean, personally, if there's a better way of doing  
2 it, I, I would like to find it. My concern is that once, once  
3 you say this level of advertising is reasonable, you know, that  
4 X amount of advertising dollars is reasonable and it's left to  
5 the company's discretion, and this is no knock on the company,  
6 I think they would, they would behave exactly as you would  
7 expect a for-profit entity to behave, the only thing that  
8 you're doing, it seems to me, in practice is establishing the  
9 limit of, the limit of dollars that you will accept for the  
10 most questionable of advertising. I mean, the type of  
11 advertising that in another day or that yesterday would have,  
12 would have met with disallowance. And, and then, then let's  
13 argue about conservation, you know, let's argue about the  
14 conservation advertising later.

15           I mean, I think it creates situations where we can  
16 gain, where we can gain the process or where the process can be  
17 gained somewhat to wind up allowing what would normally not be  
18 allowed. But, again, you know, I think it's something that  
19 bears exploring. I mean, I don't like micromanaging as much as  
20 the next guy, but I think we have to do it -- you know, let's  
21 use a little bit of common sense.

22           And just on something the Chairman said, maybe, maybe  
23 the solution is to put the bench -- if, if you were going to go  
24 a benchmark route, then let's set the benchmark low so that  
25 we're not putting those initial dollars at risk, those initial

1 ratepayer dollars at risk. But, again, if there's a better  
2 way, let's try and find it. Nevertheless, I'm comfortable with  
3 what we're doing now.

4 COMMISSIONER DEASON: Let me say one thing further  
5 and then maybe Commissioner Palecki wants to respond. Let me  
6 make one thing clear. I'm not finding any particular fault  
7 with the way Gulf Power is going about in their advertising,  
8 the particulars ads that I reviewed and how they, the message  
9 they've tried to give. I'm just -- it's just a question of who  
10 pays.

11 And I get certain satisfaction or comfort out of the  
12 review that Staff has undertaken in this regard, and I think  
13 that the amount that we're recommending through Staff's  
14 analysis is certainly reasonable and that's why I tend to  
15 support Staff's recommendation.

16 COMMISSIONER PALECKI: I'd just like to say that the,  
17 that my opinion to a great extent comes from my experience  
18 working for a natural gas utility. And I don't want to  
19 criticize our auditors at all. I think they're doing an  
20 excellent job, they're extremely conscientious, and I know how  
21 much time and effort our auditors take in reviewing all of  
22 these ads.

23 And I know that for the utility I worked for they  
24 spent a great deal of time reviewing these ads. I have to  
25 admit that it is that review to some extent that has formed my

1 opinion today, and perhaps the fact that for the utility I  
2 worked for we had oven mitts that were distributed in the  
3 schools where we had an educational natural gas class, and our  
4 oven mitts were disallowed by the Commission Staff's review.

5 CHAIRMAN JABER: And you never got over that.

6 COMMISSIONER DEASON: I've never gotten over those  
7 oven mitts.

8 But I just want you to know where I'm coming from on  
9 this. And I want the Commission Staff to know that I do  
10 appreciate the level of effort and all the work that they do  
11 put into their review and their audits.

12 CHAIRMAN JABER: Commissioner Palecki, I'm going to  
13 ask for a motion from one of you in a few minutes. But the  
14 other thing to keep in mind is although we asked those  
15 questions at the hearing, they really were Commissioner  
16 questions of the witness, and the whole idea of benchmarking  
17 and where it should be set and how it should be set up really  
18 was not vetted through the hearing process. So that's another  
19 thing, you know, to keep in mind, that we don't, the record or  
20 lack thereof is a concern.

21 Commissioners, a motion?

22 COMMISSIONER BAEZ: I can move it, Madam Chairman.

23 CHAIRMAN JABER: There's been a motion to move Staff  
24 on Issue 48.

25 COMMISSIONER DEASON: Second.

1 CHAIRMAN JABER: There's been a motion and a second.  
2 All those in favor of approving Issue 48, say aye.

3 (Simultaneous affirmative vote.)

4 COMMISSIONER PALECKI: Madam Chairman, I concur with  
5 the majority opinion and I would like to write my own very  
6 brief concurrence on this issue.

7 CHAIRMAN JABER: Okay. Thank you, Commissioner  
8 Palecki. That resolves Issue 48.

9 MS. STERN: Madam Chairman?

10 CHAIRMAN JABER: Yes.

11 MS. STERN: Staff is ready to go back to Issue 31, if  
12 you want to go back there at this time.

13 CHAIRMAN JABER: Hang on. Commissioner Deason,  
14 what's your preference? Do you want to go ahead and --

15 COMMISSIONER DEASON: Sure. We can go back to 31. I  
16 think it'll just take a moment.

17 MR. LESTER: On Issue 31 the company filed an exhibit  
18 that revised its projected capital structure to reflect the  
19 completion of debt issuance, and so that resulted in the  
20 stipulated debt cost rates. And we've had some change on the  
21 balances for short-term, long-term debt. And so in reconciling  
22 rate base and capital structure we made those adjustments.

23 COMMISSIONER DEASON: So it was basically there was  
24 an update filed by Gulf and you recognized that and made some,  
25 some reconciling adjustments?



1 MR. LESTER: Yes, sir.

2 COMMISSIONER DEASON: I'd move Staff.

3 COMMISSIONER BAEZ: Second.

4 CHAIRMAN JABER: Okay. There's been a motion and a  
5 second on Issue 31. All those in favor, say aye.

6 (Simultaneous affirmative vote.)

7 CHAIRMAN JABER: Issue 31 is approved. That takes us  
8 to Issue 50, which is on Page 91.

9 MS. ROMIG: Yes. Issue 50 addresses accrual for  
10 incentive compensation, and Staff recommends that there be an  
11 accrual for incentive compensation based on the compensation  
12 plan implemented in Year 2000.

13 COMMISSIONER DEASON: Move Staff.

14 COMMISSIONER PALECKI: Second.

15 CHAIRMAN JABER: Motion and a second on Issue 50.  
16 All those in favor, say aye.

17 (Simultaneous affirmative vote.)

18 CHAIRMAN JABER: Issue 50 is approved.

19 50A. Any questions, Commissioners? Motion?

20 COMMISSIONER DEASON: Move Staff.

21 COMMISSIONER PALECKI: Second.

22 CHAIRMAN JABER: Motion and a second on 50A. All  
23 those in favor, say aye.

24 (Simultaneous affirmative vote.)

25 CHAIRMAN JABER: Issue 50A is approved.

1 51. Questions?

2 COMMISSIONER DEASON: I can move Staff.

3 COMMISSIONER PALECKI: Second.

4 CHAIRMAN JABER: Motion and a second on 51. All  
5 those in favor, say aye.

6 (Simultaneous affirmative vote.)

7 CHAIRMAN JABER: Issue 51 is approved.

8 Issue 54. Introduce Issue 54, please, Staff.

9 MS. STERN: Issue 54 is whether adjustments should be  
10 made for the net operating income effects of transactions with  
11 affiliated companies for Gulf. Staff's recommendation is that  
12 adjustments not be made.

13 COMMISSIONER JABER: I had a question. I need to  
14 better understand what, Ms. Dismukes' testimony. Staff, you  
15 take the position that there was some picking and choosing of  
16 the transactions and you've done that apples-to-apples  
17 comparison in your view. Can you just walk me through?

18 MS. MERTA: Yes, Commissioner. Ms. Dismukes chose to  
19 update the allocation factors for just one company, a new  
20 company that began operations in 2001. Staff believes that in  
21 order to have a level playing field, that all of the company's  
22 statistics should have been updated to, to the same level of  
23 the same year. That, that way you would, the cost could be  
24 more fairly allocated and, you know, that would be a matching  
25 principle, having all of the companies updated to the same

1 level.

2           The allocation factors that were used in the MFRs  
3 were based on 1999 data, which was the most recent historical  
4 data available to the company at the time they updated their or  
5 at the time they filed their MFRs. Ms. Dismukes attempted to  
6 estimate and project data to modify the factors for the new  
7 company, SPC, to 2003 level.

8           CHAIRMAN JABER: There were errors related to whether  
9 items belonged below the line, capitalized them below the line.

10          MS. MERTA: That's correct.

11          CHAIRMAN JABER: And I understand the effect -- I  
12 understand there is an effect from the errors, but what exactly  
13 were the errors? What did she take below the line? Actually  
14 it was that she didn't put things below the line; right?

15          MS. MERTA: Actually what she did was allocate the --  
16 the pot of money that was to be allocated included not only  
17 expenses, but also items that should have been capitalized and  
18 items that are recorded below the line. And she allocated the  
19 complete amount above the line so that some of the, some of the  
20 costs that she allocated as expenses were actually capital  
21 items and some should have been recorded below the line.

22          CHAIRMAN JABER: And the result of that is operating  
23 expenses look higher than they are?

24          MS. MERTA: That's correct for all of the companies.

25          CHAIRMAN JABER: Commissioners, do you have any

1 questions or a motion?

2 COMMISSIONER DEASON: Move Staff.

3 COMMISSIONER PALECKI: Second.

4 CHAIRMAN JABER: There's been a motion and a second  
5 on Issue 54. All those in favor, say aye.

6 (Simultaneous affirmative vote.)

7 CHAIRMAN JABER: Issue 54 is approved.

8 Issue 55.

9 COMMISSIONER DEASON: Move Staff.

10 COMMISSIONER BAEZ: Second.

11 CHAIRMAN JABER: Motion and a second on Issue 55.

12 All those in favor, say aye.

13 (Simultaneous affirmative vote.)

14 CHAIRMAN JABER: Issue 55 is approved.

15 Issue 58, rate case expense. Staff, I have -- well,  
16 Commissioners, do you have questions? I do have one question  
17 on Issue 58. Really this is sort of to help me understand how  
18 the Staff in the electric industry looks at legal expenses and  
19 how, you know, we might look at that review in other  
20 industries, and I just want to make clear in my mind that you  
21 use -- I know that there is a Supreme Court case that suggests  
22 the Commission has broad discretion in addressing rate case  
23 expense, Ms. Stern.

24 MS. STERN: Yes. There, there's -- yes, there is.

25 You want the cite for that case?

1 CHAIRMAN JABER: I just need to know is that the  
2 standard you all have used here? Because it seems like there  
3 was something missing in this analysis. And that's not as a  
4 criticism. I'm just -- I'm looking for the standard you all  
5 used to determine rate case expense in this case.

6 MS. STERN: The standard from a legal perspective is  
7 that the Commission has broad discretion in deciding what rate  
8 case expense should be allowed.

9 CHAIRMAN JABER: And that's the standard set forth in  
10 that case?

11 MS. STERN: Yes.

12 CHAIRMAN JABER: And what is that case?

13 MS. STERN: Meadowbrook Utility Systems,  
14 Incorporated, versus the Florida Public Service Commission.  
15 And, also, it's not a Supreme Court case. It's a First  
16 District Court of Appeals case. It's 518 So.2d 362.

17 CHAIRMAN JABER: Okay. And as it relates to the  
18 outside consultants, you're recommending that \$40,000 not be  
19 allowed. And why is that?

20 MS. STERN: Well, because the rate case -- we didn't  
21 think there was adequate justification for the \$40,000, it was  
22 just a number that Gulf submitted, and the facts showed that  
23 the rate case was cut short by three days. So given those,  
24 those two pieces of information, Staff weighed the three days  
25 more heavily.

1           CHAIRMAN JABER: So are you saying we've saved the  
2 ratepayers the burden of some of the rate case expense because  
3 we were able to finish the hearing in two days as opposed to  
4 five?

5           MS. STERN: Yes.

6           CHAIRMAN JABER: What are the other expenses that  
7 might be cut, for lack of a better word, because the hearing  
8 process was expedited?

9           MS. STERN: Well, there was paid overtime I believe  
10 we cut and meals and travel.

11          CHAIRMAN JABER: And have you incorporated all of  
12 those reductions in this issue?

13          MS. STERN: Yes, I believe we have. Yes.

14          CHAIRMAN JABER: Okay. Commissioners, any questions  
15 on this issue?

16          COMMISSIONER DEASON: Move Staff.

17          COMMISSIONER PALECKI: Second.

18          CHAIRMAN JABER: There's been a motion and a second  
19 on Issue 58. All those in favor, say aye.

20                 (Simultaneous affirmative vote.)

21          CHAIRMAN JABER: Staff, make sure you add the cases,  
22 the legal standard for that issue in the order.

23          MS. STERN: Okay.

24          CHAIRMAN JABER: Issue 59.

25          MR. HAFF: Commissioners, Issue 59, Staff recommends

1 an adjustment be made to a marketing expense for the removal of  
2 costs associated with Gulf's Electric Water Heater Conversion  
3 Program.

4 COMMISSIONER PALECKI: I move Staff on Issue 59.

5 COMMISSIONER DEASON: Madam Chairman, I have a  
6 question on this item.

7 CHAIRMAN JABER: Go ahead, Commissioner Deason.

8 COMMISSIONER DEASON: I guess the difficulty I'm  
9 having is I recall the discussion that we had at the hearing on  
10 this particular matter. It was Gulf's position, and I think  
11 they provided evidence in the record, that this program was  
12 cost-effective. Even though it was not part of conservation  
13 per se because it didn't reduce peak load or reduce a kilowatt  
14 hour consumption, that it was cost-effective in that this  
15 program had the effect of reducing the rates or the bills of,  
16 of customers, both participating and non, and nonparticipating.

17 So if it is cost -- first of all, does Staff agree  
18 that it is cost-effective or not? And then if you do agree  
19 that it's cost-effective, that it meets that standard, why are  
20 you recommending disallowance?

21 MR. HAFF: I will, I will grant that it's  
22 cost-effective using the analysis that Gulf used. However, the  
23 analysis that Gulf used is one that we apply to conservation  
24 programs; an analysis that compares the cost of a conservation  
25 program against the cost of avoiding building a power plant

1 that that conservation program energy and demand would save.  
2 This was analyzed as though it were a conservation program.  
3 Gulf hasn't called it a conservation program and it's not a  
4 conservation program. In fact, it increases energy and demand.

5 So to answer your question, the analysis Gulf used,  
6 yes, it's cost-effective, but I wouldn't have -- I'd have to  
7 call it a conservation program to analyze it that way.

8 COMMISSIONER DEASON: Let's just back up a second. I  
9 don't follow that. If -- a cost-effective methodology is a  
10 cost-effective methodology. That's one of the criteria that we  
11 apply before we approve a conservation program and allow those  
12 costs to be passed through the clause.

13 MR. HAFF: Right.

14 COMMISSIONER DEASON: But the test itself, the  
15 mechanics of what you analyzed, whether an initiative is  
16 cost-effective, it's still valid whether it's a conservation  
17 program or some other initiative, is it not?

18 MR. HAFF: Yeah. I've -- in my experience I've never  
19 looked at something that's not conservation and used the RIM  
20 test to analyze its cost-effectiveness.

21 COMMISSIONER DEASON: Let's analyze what makes it  
22 cost-effective. The fact remains that under this program,  
23 Gulf, as I recall their testimony, they indicated that it  
24 enabled them to more efficiently use the resources that they  
25 have in place. It improved their load factor, which is a good



1 thing. What that means is you're, you have more through-put  
2 for basically the same amount of, of capacity.

3 Now as I recall, I believe there was a small, there  
4 was a small effect upon coincident peak demand of some -- I  
5 think .25 kW --

6 MR. HAFF: Yes. Right.

7 COMMISSIONER DEASON: -- per customer. But for that  
8 .25 kW per customer, you were generating in excess of 4,000  
9 kilowatt hours per customer; correct?

10 MR. HAFF: That's correct.

11 COMMISSIONER DEASON: That seems like a heck of a  
12 deal.

13 MR. HAFF: Well, and the reason it's cost-effective  
14 using a RIM test or a conservation program analysis is because  
15 you're spreading the cost of this program over more kilowatt  
16 hours; whereas, when we're analyzing conservation programs,  
17 you're typically reducing energy and demand and are offsetting  
18 the cost of the program against the avoided cost of building a  
19 power plant. This isn't avoiding power plant at all. And the  
20 reason it's cost-effective in this analysis is because you're  
21 selling more energy.

22 COMMISSIONER DEASON: We may not be avoiding a power  
23 plant, but we're sure using the ones that we have a lot more  
24 efficiently to the benefit of the general body of ratepayers;  
25 is that true?

1 MR. HAFF: Yeah. That's correct. I guess that --  
2 getting to your second issue, if it's cost-effective, why are  
3 we recommending denial? I see it more as using ratepayer money  
4 to, for competitive purposes, competing against natural gas.  
5 And, you know, you all are aware of the Commission policy  
6 regarding expenses like this going through a conservation cost  
7 recovery clause, and they haven't obviously requested putting  
8 something like this through ECC. Or actually something like  
9 this -- in 1999 they had a heat pump program that increased  
10 energy and was replacing gas with electric and, after a  
11 hearing, you all denied cost recovery of that. And I just see  
12 this water heater program as an extension of, of Gulf doing the  
13 same thing. In my mind, if they want to do this program, let  
14 them use their stockholder money. I don't -- just it violates  
15 FEECA and I think that's --

16 CHAIRMAN JABER: Mr. Haff, when -- is there a cost  
17 associated, like a fixed cost associated with converting the  
18 electric water heater customers to, gas to electric?

19 MR. HAFF: Is there a fixed cost?

20 CHAIRMAN JABER: Uh-huh.

21 MR. HAFF: Well, there's a water heater. You mean  
22 the equipment cost?

23 CHAIRMAN JABER: Uh-huh.

24 MR. HAFF: Yeah. The equipment cost is, I recall is  
25 about \$150, but it's free to the customer.

1           CHAIRMAN JABER: Well, that's what I'm trying to  
2 understand. How -- there is a cost that the customer creates  
3 from migrating from gas to electric. And are you saying that  
4 the customer that has chosen to migrate to electric does not  
5 pay anything; it's sort of a free service?

6           MR. HAFF: It's a free service.

7           CHAIRMAN JABER: All right. Where does that cost  
8 show up in rates, or does it?

9           MR. HAFF: In marketing, marketing expenses.  
10 \$116,000.

11           CHAIRMAN JABER: Okay. So said another way, are the  
12 general body of ratepayers taking up the cost of gas customers  
13 converting to electric?

14           MR. HAFF: Yes.

15           CHAIRMAN JABER: How great is that a year?

16           MR. HAFF: I'm sorry. Say that again.

17           CHAIRMAN JABER: How much of that expense is put in  
18 rates?

19           MR. HAFF: It wasn't in the last rate case which we  
20 had a number of years ago. This program dates back to, I  
21 believe, 1997. And it's shown up in surveillance as a base  
22 rate expense for surveillance, but it's never been approved for  
23 base rate recovery on a going-forward basis.

24           CHAIRMAN JABER: I'm just trying to get a better  
25 handle on how much we're really talking about, what effect.

1 MR. HAFF: It's, in my mind it's less the dollar  
2 impact as it is a policy. You'd be setting a policy of  
3 allowing utilities to use ratepayer money for, for these  
4 purposes.

5 CHAIRMAN JABER: But, see, that goes to the heart of  
6 Commissioner Deason's point.

7 MR. HAFF: Right.

8 CHAIRMAN JABER: If, as a matter of policy, the more  
9 electric customers you add to this system, that there's this,  
10 that there are economies of scale and efficiencies that benefit  
11 the entire body of ratepayers, that's why I'm trying to get my  
12 handle on the net effect, and might those benefits outweigh the  
13 costs?

14 MR. HAFF: Those benefits I don't think were  
15 quantified in this case. I can't give you a dollar amount.  
16 Qualitatively I guess there is a benefit. You know, of course,  
17 there's a benefit to improving the load factor of a utility  
18 system. I understand that perfectly and I agree with it.

19 COMMISSIONER BAEZ: Are there other ways of  
20 increasing load factor?

21 MR. HAFF: Reducing -- well, yeah. Selling more  
22 energy is the main --

23 COMMISSIONER BAEZ: Is the only way? I guess,  
24 Commissioners, here's, here's my -- I have a question later  
25 about FEECA. But, you know, if we're drawing a distinction on

1 how you use ratepayer money in order to make your plants run  
2 more efficiently, aren't there other examples that are done  
3 today as a matter of, as a matter of course that, that we don't  
4 subject to this same kind of scrutiny?

5 MR. HAFF: Well, when -- yeah. The conservation  
6 programs we have now are primarily demand reducing. So by  
7 reducing peak demand -- you know, when we do reserve margin  
8 calculations for utilities, they're based on peak demand. So  
9 if you're able to reduce that peak demand, that same amount of  
10 power plant can serve more energy as the utility grows.

11 COMMISSIONER BAEZ: You keep saying conservation.  
12 And I know perhaps it's kind of hard to get out of that, but if  
13 everybody recognizes that this isn't a conservation program and  
14 it hasn't been presented as such, why is FEECA even applicable?  
15 Why does the fact that it would potentially violate FEECA  
16 matter, if it's not a conservation program?

17 MR. HAFF: Well, because it increases energy and  
18 demand.

19 COMMISSIONER BAEZ: So then anything that, anything  
20 that, that a company, that a utility would do that increased  
21 energy and demand would be a violation of the law?

22 MR. HAFF: Well, no. Here there's a choice, I  
23 believe; a choice to either let these customers keep their old,  
24 I call it old, gas water heating technologies, or to give them  
25 an electric water heater to increase energy and demand.

1           And you're correct, Commissioner, I keep bringing up  
2 conservation. This isn't a conservation program. But to me it  
3 was presented -- in trying to justify it, Gulf compared it to a  
4 conservation using the conservation program cost-effectiveness  
5 test that we use to evaluate conservation programs, and I, I  
6 guess, took issue with comparing it that way.

7           COMMISSIONER PALECKI: Well, could I jump in here? I  
8 think that what we're talking about here is a load that is very  
9 attractive to either a natural gas or an electric utility. The  
10 hot water heating load is the highest of load factors of almost  
11 any other appliance because it's seven days a week, 24 hours a  
12 day, 365 days a year. It increases the revenues of the natural  
13 gas company, it increases the revenues of the electric company.

14           Now the issue here is should the general body of  
15 ratepayers help to promote the conversion of natural gas water  
16 heaters to electric because then, because it's a good load  
17 factor, it makes the utility more profitable.

18           Now on the gas side there's the same --

19           COMMISSIONER DEASON: I don't think it's necessarily  
20 more profitable. It just makes it more efficient.

21           COMMISSIONER PALECKI: More efficient.

22           COMMISSIONER BAEZ: And the two can co-exist. I  
23 mean, it's not, they're not mutually exclusive.

24           COMMISSIONER PALECKI: What we have is we have gas  
25 companies on one side spending their ratepayers' dollars and

1 electric companies on the other side spending their ratepayers'  
2 dollars to convert each other from one to the other. Now is  
3 that good for society?

4           There's another issue here, and I think it's  
5 something that Mike came close to touching on but didn't quite.  
6 When we have natural gas hot water, we burn gas and we make hot  
7 water. When we have electric hot water, we burn gas to boil  
8 water in a turbine to turn a generator to make the electrons  
9 move along a wire that are then sent to a house, the electrons  
10 create friction and then heat the hot water. It's a less  
11 efficient process to have the natural gas create electricity  
12 and then make hot water. So if we're looking at all of  
13 society, I think it's very difficult to justify using Gulf's  
14 ratepayers' money to promote a program that would convert gas  
15 hot water heaters to electric hot water heaters.

16           CHAIRMAN JABER: Commissioners, other questions or a  
17 motion?

18           COMMISSIONER DEASON: Yeah. I have a question for  
19 Staff. There is a motion. I don't think it's been seconded  
20 yet.

21           COMMISSIONER BAEZ: Is there a motion?

22           COMMISSIONER PALECKI: Yes, I had made a motion.

23           CHAIRMAN JABER: Oh, okay. Thank you.

24           COMMISSIONER DEASON: But the question I have to  
25 Staff is that if we accept your recommendation, then do we, do

1 we need to go in then to what Gulf has projected to be their  
2 kilowatt hour sales, thus their billing determinants, and go  
3 and recalculate that with the assumption that this marketing is  
4 not going to take place, this additional 4,000 plus kilowatt  
5 hours per customer who would utilize this program is not going  
6 to utilize the program and, therefore, we have to increase  
7 everybody's rates a small amount because we have less billing  
8 determinants?

9 MR. HAFF: I'm going to ask Ms. Kummer to answer that  
10 one.

11 MS. KUMMER: And the answer is we just didn't think  
12 about it.

13 COMMISSIONER DEASON: If we're going to be  
14 intellectually honest, wouldn't you think we needed to make  
15 that adjustment as well?

16 MS. KUMMER: If we wanted to be absolutely correct  
17 and if the forecast were as precise as we sometimes like to  
18 think it is, that's probably correct. I don't know exactly  
19 what the projected usage is.

20 COMMISSIONER DEASON: And we may be lost in rounding  
21 when we get to the broad scope. I don't know.

22 MS. KUMMER: I don't know either, Commissioner. Like  
23 I said, we just didn't look at that. We could certainly take a  
24 look at that before the next agenda, if you'd like. I don't  
25 know that we can --



1           COMMISSIONER DEASON: I guess I raised the question  
2 to bring out what I consider to be the crux of the issue in  
3 front of us today, and that is what is cost-effective for Gulf  
4 Power's electric customers? This program is cost-effective, it  
5 increases sales and through-put through existing facilities,  
6 recognizing there is a small increment on coincident peak  
7 demand, we better utilize the facilities, we get more billing  
8 determinants, it costs less per kilowatt hour to every customer  
9 for Gulf to be engaged in this program. That's what the  
10 evidence shows and that's what I've got to make my, base my  
11 decision on.

12           And I think that if we follow your recommendation, to  
13 be correct, we're going to have to go back in and redo the  
14 billing determinants and see if it does have an impact on the  
15 actual determination of rates to customers.

16           MS. KUMMER: Would you like to wait on this item and  
17 see if we can do those numbers for you, just table this one for  
18 a moment and go on?

19           COMMISSIONER DEASON: No. I don't wish to do that at  
20 this point. We do have a motion. I want to see if there's a  
21 second to the motion.

22           COMMISSIONER PALECKI: I'd like to make one further  
23 comment.

24           CHAIRMAN JABER: Commissioner Palecki.

25           COMMISSIONER PALECKI: And that is we're talking

1 about Gulf Power's ratepayers. Gulf Power's ratepayers are the  
2 same ratepayers who are the natural gas customers whose rates  
3 will go up if they lose all of these hot water heaters. So  
4 when all is said and done, I think the equation that needs to  
5 be worked out is where will the ratepayers be in their combined  
6 natural gas and electric bill?

7           Because if Gulf is successful in promoting this  
8 program and taking all of these hot water heaters and  
9 converting them to electric, these gas companies are going to  
10 raise their gas rates substantially.

11           On the other hand, if the gas companies are able to  
12 convert a lot of the electric hot water heaters to natural gas,  
13 the gas companies will be able to lower their gas rates.

14           So these customers won't really benefit from this  
15 program across the board. They'll benefit on the electric side  
16 and they will be hurt on the gas side. And that's why I have a  
17 problem with this program and why I support the Staff's  
18 recommendation.

19           CHAIRMAN JABER: Okay. Let me ask a question of  
20 Staff just to get this straight in my mind. It keeps coming  
21 back to the impact question. I don't have a solid handle on  
22 what we're talking about per customer. We're using loosely  
23 there will be an increase in electric rates. I'm -- you know,  
24 just bare naivete here. \$116,695, that adjustment, when I  
25 think of, think about the entire customer base for Gulf Power,

1 I'm thinking this is insignificant and we should not use  
2 loosely that there will be an increase to the electric  
3 customer. So I don't need you to necessarily go back and  
4 recalculate billing determinants or any of that, but based on  
5 your experience -- I don't think it's a right statement to say  
6 that there will be an increase in the electric rates. That's  
7 first. I want you to comment.

8 But the second thing is to the degree we see a huge  
9 migration and an effect on rates, but I don't know how there  
10 would be unless they come in for a rate case again, but to the  
11 degree there is some sort of negative effect to their general  
12 body of ratepayers, is there anything that prohibits us from  
13 looking at the program again?

14 MR. HAFF: I'll answer your first question. As far  
15 as the impact of this \$116,695, I imagine it'll get lost in  
16 setting the rates. In my mind, bringing it to you, it's more,  
17 it's just the policy direction that you want to go. If this  
18 program is approved, you may see all of the electric companies  
19 beginning to do programs like this and putting them in base  
20 rates. And it's -- the question is is this the policy that you  
21 as a Commission want to, want to accept?

22 CHAIRMAN JABER: But, see, and that wasn't the  
23 question before us at the hearing. And to the degree you think  
24 it's a policy question outside this case, I would invite us,  
25 Commissioners, to think about it a little bit more.

1           But in terms -- I'm, you know, looking at this from a  
2 very narrow perspective. I'm looking at the dollars and the  
3 impact and the effect of this recommendation on the customer.

4           Commissioner Bradley?

5           COMMISSIONER BRADLEY: Yes. Thank you, Madam Chair.  
6 I've listened to the argument and I'm trying to make a decision  
7 about Staff's recommendation. And the issue that keeps coming  
8 back to my mind is the issue of competition between gas and  
9 electric. And I've always believed that when there's  
10 competition, prices don't necessarily go up. They come down  
11 and that additional bells and whistles get introduced in order  
12 to attract a customer to one concept or to the other. And it  
13 seems to me that if there's competition between gas and the  
14 electric, it's to the consumers' advantage, not to the  
15 consumers' disadvantage to have competition between electric  
16 and gas companies for heating and water heating. It seems to  
17 me that this is going to create competition between two  
18 competing but different utilities.

19           And I'm not taking a stand one way or the other. I'm  
20 more or less making a comment. And I don't -- and I'm just  
21 trying to figure out how the cost of electric, electricity goes  
22 up if there's going to be competition between gas and electric  
23 for these two competing entities.

24           CHAIRMAN JABER: Your point would be that to the  
25 degree this electric company in particular, because that's the

1 only case we have in front of us, goes out aggressively  
2 marketing the conversion program from gas to electric, that the  
3 gas companies will appropriately respond to competitive  
4 pressures and, therefore, rates overall are kept low or --

5 COMMISSIONER BRADLEY: Right.

6 CHAIRMAN JABER: -- they don't respond and they lose  
7 out.

8 COMMISSIONER PALECKI: Commissioners, I have no  
9 problem whatsoever with Gulf Power Company spending this level  
10 of dollars to compete. I have a problem with Gulf Power  
11 Company spending ratepayer dollars and that the ratepayers have  
12 to pay for this promotion.

13 To me it doesn't make sense when in the scheme of  
14 things the customers are the same. It's the gas customer and  
15 the electric customer, they're the same people. I think that  
16 Gulf should be welcome to spend this level of dollars. There  
17 is very healthy competition ongoing that has been ongoing for  
18 the last ten years between the gas industry and the electric  
19 industry in Gulf Power's territory. My sole problem is with  
20 the ratepayers being asked to pay for these promotions.

21 CHAIRMAN JABER: Okay. Commissioner Palecki, you  
22 have a motion to approve Staff's recommendation. Is there a  
23 second? Motion dies for lack of a second.

24 COMMISSIONER DEASON: Commissioner, I'd like to make  
25 a motion.

1 CHAIRMAN JABER: Go ahead.

2 COMMISSIONER DEASON: I want -- I would move that we  
3 deny Staff's recommendation, and this would be the reason.

4 We have evidence in the record that shows this, these  
5 expenditures are cost-effective. Now I think Gulf has the  
6 ongoing burden to continue to demonstrate that this level of  
7 expenditure achieves the desired result. And if it does  
8 not and they do not receive -- if they do not achieve those  
9 results and the program does not become cost-effective, I think  
10 they have an obligation to terminate it. And I think we have  
11 an obligation to continue to monitor it.

12 If there is competition out there and the gas  
13 companies respond such that this program does not achieve its  
14 results, I think that -- and it does no, and it becomes  
15 non-cost-effective, that we either disallow it in a future  
16 proceeding or we ask Gulf to recognize that or to show cause  
17 then why they don't come in and terminate the program themselves.

18 I'd also point out that it is not just a question of  
19 the same electric customer and the same gas customer. They are  
20 not the same. Gas is not available to all customers. And if I  
21 were an electric customer, which I am, I'm not an electric  
22 customer of Gulf but I live in an area of the state typical of  
23 what Gulf Power serves, and there are a number of customers,  
24 they've got big Florida Gas transmission lines that go across  
25 their counties but there's not a single person that lives in

1 that county that has access to retail residential natural gas  
2 service, their only option is electric. And if they can get  
3 electricity more cheaply because Gulf takes an aggressive  
4 program to make sure that their facilities are better utilized  
5 and more efficient, I think that is the proper use of those  
6 electric company customers' funds.

7 So I would move we deny Staff, recognize that there's  
8 an ongoing burden on Gulf to continue to demonstrate the  
9 cost-effectiveness of this program, and that we allow the  
10 recovery of this level of marketing expense.

11 CHAIRMAN JABER: Commissioner Deason, can I dialogue  
12 with you about taking it, sort of kicking it up to a different  
13 level and see what your reaction would be?

14 To the degree getting more customers on the system  
15 creates better economies of scale, better efficiencies,  
16 contributes to the load, how do you feel about, when they reach  
17 a certain level, sharing that benefit somehow with the  
18 consumer? In other words, could there ever -- and, again, I  
19 come back to \$117,000 is so insignificant considering the  
20 customer base. It will -- it might be years before we get to  
21 that point. But if it all goes well, I envision a point where  
22 you could actually convert so many customers that there's a  
23 real benefit to the system that might be measurable. And maybe  
24 it's just as simple as encouraging Gulf to come up with adding  
25 to the program such that the electric customers share in the

1 benefit, whether through lower rates at some point, whether  
2 through a one-time refund.

3 COMMISSIONER DEASON: Well, I think the customer is  
4 getting the benefit right now in this proceeding in that I  
5 would assume that Gulf's billing determinants, their  
6 projections are based upon the assumption that this, since they  
7 have been engaging in this activity in the past and there have  
8 been customers who have utilized this promotion, that it would  
9 continue in the future. So we have more billing determinants  
10 out there upon which we use to calculate the rates. So the  
11 benefit -- that's where I think the benefit is there. And if  
12 that's not in their billing determinants, then we need to make  
13 an adjustment to increase the billing determinants. But I  
14 just, I would think that since this is just a continuation of  
15 an ongoing program, that the projected billing determinants  
16 already have the impact of this.

17 CHAIRMAN JABER: You're thinking more billing  
18 determinants, more people to spread the rates across?

19 COMMISSIONER DEASON: Correct.

20 CHAIRMAN JABER: But I'm trying to -- I've listened  
21 to Commissioner Palecki and what I'm trying to address is a  
22 little bit different.

23 To the degree the conversion costs are borne upfront,  
24 whether they're significant or not, by the current electric  
25 users, you know, should, should there be an additional



1 recognition that there is a benefit for that expense that's  
2 been carried by the current electric users? And maybe I'm  
3 thinking off base, but --

4 COMMISSIONER BRADLEY: Well --

5 CHAIRMAN JABER: Commissioner Bradley?

6 COMMISSIONER BRADLEY: Madam Chair, I think that your  
7 suggestion addresses all of the concerns that have been  
8 discussed, Commissioner Deason's concerns and Commissioner  
9 Palecki's concerns, and I think that's an excellent compromise.

10 CHAIRMAN JABER: Yeah. I don't know if we can get  
11 there.

12 COMMISSIONER PALECKI: Well, I would just want to  
13 make sure that the Commissioners are all aware that this  
14 Commission has approved dollars on the gas industry side as a  
15 conservation program to convert electric hot water heaters over  
16 to natural gas. And I'm just concerned that if we approve  
17 dollars for gas conversions as conservation, and that's as  
18 electric conservation to avoid building additional power  
19 plants, and then we approve ratepayer dollars on the electric  
20 side to convert natural gas over to electric, we're doing two  
21 things. One, we're wasting ratepayer dollars and, two, we're  
22 giving very conflicting signals.

23 COMMISSIONER DEASON: Let me respond to that quickly.  
24 The way that that does not present a problem for me,  
25 Commissioner, is this, is that we're aggressively pursuing an

1 option for customers. And those customers that are in a  
2 beneficial position and have the choice of choosing between  
3 electric and gas, which is not all electric customers but  
4 probably all gas customers have a choice between gas and  
5 electric, but for those customers who are in that position and  
6 can choose and they're presented with these options, I've got  
7 this promotion over here or I've got this promotion over there,  
8 let me choose, let the market determine what's best for that  
9 customer. And if gas is truly the best option and the gas  
10 company can come forward with a promotion which, which  
11 economically pursues that option, that's what the customer is  
12 going to choose. And what that means is that Gulf's program no  
13 longer becomes cost-effective because they're expending  
14 \$100,000 plus in promoting this but nobody is signing up and,  
15 therefore, it is no longer a cost-effective expenditure and  
16 those funds, they should no longer be expended for that purpose  
17 because the customer has chosen, the market has said what's  
18 best for their interests. And so whatever program continues to  
19 be cost-effective is the one that wins and should continue to  
20 be, have those expenditures paid for by customers.

21           So to some extent it's, it's like Commissioner  
22 Bradley says, let competition take place and let the customer  
23 choose, and whoever can do the best to meet customers' needs is  
24 the one that's going to prevail.

25           CHAIRMAN JABER: Commissioner Bradley, you had a

1 comment or --

2 COMMISSIONER BRADLEY: No. I pass.

3 CHAIRMAN JABER: Okay. Go ahead.

4 COMMISSIONER BAEZ: No. That's okay. You.

5 CHAIRMAN JABER: Staff, obviously what I'm thinking  
6 about is not even discussed in the record, so I'm not  
7 suggesting we pursue it here because I understand the legal  
8 restrictions. But do you see where I'm going with it? To the  
9 degree that companies respond to competitive pressures by  
10 aggressively pursuing these programs and it creates a wonderful  
11 windfall for the company, which is fine, how do you create a  
12 program that actually gets money back to the consumers for the,  
13 for the fact that they've carried the initial conversion costs?

14 MS. KUMMER: I understand where you're going with it.  
15 I'm just not sure that the dollars we're talking about here are  
16 going to be something that we could even measure in that  
17 regard.

18 CHAIRMAN JABER: Okay.

19 COMMISSIONER DEASON: Let me say one thing further,  
20 that I think your general question though goes to some issues  
21 that we're going to address later on. That is, how do you put  
22 into a process a system which rewards the company for taking  
23 such initiatives and increasing the efficiencies of their  
24 system and their stockholders be rewarded as well as their  
25 customers be rewarded? And that's really a broader scope, a

1 broader scope policy issue that we need to deal with at some  
2 point.

3 CHAIRMAN JABER: There's been a motion by  
4 Commissioner Deason to deny Staff's recommendation and clearly  
5 put the burden on the company to indicate that the program  
6 results and the efficiencies that they believe that it does,  
7 that the program is cost-effective, and put the burden on the  
8 company to show -- when it is not cost-effective, to come back  
9 and request that the program be terminated.

10 COMMISSIONER DEASON: And I would suggest to  
11 management here at the Commission that this is something that  
12 probably we could send auditors in on a routine basis to  
13 monitor the, this particular program.

14 COMMISSIONER BAEZ: Madam Chairman, I'm going to  
15 second the motion. And I want to say two things.

16 It's an interesting issue because it's kind of  
17 blurred the line. And we've talked a lot about the competitive  
18 motivations and, and all of that. However, that's not, that's  
19 not before us. And I think that maybe another issue is whether  
20 we do consider, how we consider the expenditure of ratepayer  
21 funds in order to seek efficiencies, which is among the  
22 obligations that a utility has to begin with, efficiencies in  
23 their system.

24 And I guess the trouble that I've had during all this  
25 discussion is, you know, what difference does it make if in

1 seeking that objective, and I know that there's a line where  
2 you cross it, but if in seeking that objective you either use a  
3 different kind of lubricant on your parts or you, or you spend  
4 a marketing dollar that achieves that same, that achieves that  
5 same result. To me that's micromanaging.

6 And, you know, you could say, well, we can choose  
7 alternatives that don't, that don't bring competitive forces  
8 into play. But to me they're a play in everything, in  
9 everything you do. And maybe that's a discussion that we leave  
10 for a later date. But in my mind I think it only -- you know,  
11 it just became, it just became a management decision in seeking  
12 a certain objective. Now if it -- does it have competitive  
13 ramifications? Yeah. Probably. I think Commissioner Bradley  
14 said it correctly: That's going to have an effect, that's  
15 going to force some kind of response on the gas companies'  
16 issues, and I suspect that it won't be, won't necessarily be to  
17 the detriment of the ratepayers, potential customers  
18 necessarily. So we'll wait and see what that is. With that, I  
19 can second.

20 CHAIRMAN JABER: Okay. There's been a motion and a  
21 second to resolve Issue 59 by Commissioner Deason's motion.  
22 All those in favor, say aye.

23 CHAIRMAN JABER: Aye.

24 COMMISSIONER BRADLEY: Aye.

25 COMMISSIONER BAEZ: Aye.

1 COMMISSIONER DEASON: Aye.

2 CHAIRMAN JABER: Opposed?

3 COMMISSIONER PALECKI: Nay.

4 CHAIRMAN JABER: Okay. That takes us to Issue 62.

5 MR. HAFF: Yes. Commissioners, in Issue 62 Staff is  
6 recommending no adjustment to production expense for the  
7 projected test year.

8 CHAIRMAN JABER: Commissioners, a motion on 62?

9 COMMISSIONER DEASON: Move Staff.

10 COMMISSIONER PALECKI: Second.

11 CHAIRMAN JABER: Motion and a second on 62. All  
12 those in favor, say aye.

13 (Simultaneous affirmative vote.)

14 CHAIRMAN JABER: 64.

15 COMMISSIONER DEASON: If there are no questions, I  
16 can move Staff.

17 COMMISSIONER PALECKI: Second.

18 CHAIRMAN JABER: Motion and a second on Issue 64.

19 All those in favor, say aye.

20 (Simultaneous affirmative vote.)

21 CHAIRMAN JABER: Issue 64 is approved unanimously.  
22 Issue 65.

23 COMMISSIONER DEASON: Move Staff.

24 COMMISSIONER BAEZ: Second.

25 CHAIRMAN JABER: There's been a motion and a second

1 on Issue 65. All those in favor, say aye.

2 (Simultaneous affirmative vote.)

3 CHAIRMAN JABER: Issue 65 is approved.

4 Issue 66, tree trimming. Commissioners, do you have  
5 questions?

6 COMMISSIONER DEASON: I have kind of a broad  
7 question. If now is appropriate, I'll ask it.

8 CHAIRMAN JABER: Yeah. I have one, too. It might  
9 be -- go ahead.

10 COMMISSIONER DEASON: Well, I guess my overriding  
11 question is -- and I've reviewed the analysis and I appreciate  
12 the, all of the analysis that Staff did in the issue in the  
13 various positions that were presented by the parties, and it  
14 appears that Staff's come up with a balanced approach. But my  
15 question is is Staff confident that this level of tree trimming  
16 is going to maintain or even improve the reliability of service  
17 which is provided to Gulf's, Gulf's customers? That's the  
18 question.

19 MR. MATLOCK: Yes, sir. Staff's position is that  
20 that --

21 COMMISSIONER DEASON: Could you bring the microphone  
22 a little closer? Thank you.

23 MR. MATLOCK: That level of tree trimming activity  
24 and expense will cause the degree of reliability to, to be  
25 maintained on behalf, on behalf of the customers.

1 COMMISSIONER BRADLEY: Comment.

2 CHAIRMAN JABER: Go ahead, Commissioner Bradley.

3 COMMISSIONER BRADLEY: And I need Staff to help me  
4 understand this.

5 If, if we're having population growth up in Gulf's  
6 service area and if we reduce their annual tree trimming  
7 budget, I'm trying to figure out how they will be able to  
8 maintain their current level and deal with maybe new and  
9 expanded tree trimming needs. And also I'm trying to factor in  
10 or figure out just based upon some information that was brought  
11 to us in another case how they would be able to respond to an  
12 emergency if they have less in their budget to deal with tree  
13 trimming from a preventative standpoint as well as a  
14 reactionary standpoint.

15 MR. MATLOCK: Well, this, this level of expense is,  
16 is brought forward from 1998, which was a year in which they  
17 had a lot more tree trimming performed than in the two years  
18 that followed. It's brought forward with population,  
19 population increases as part of what was used to adjust the  
20 1998 actual number.

21 On this -- this recommended level of expenses is, is  
22 greater than, greater than all the levels over the last ten  
23 years except one.

24 CHAIRMAN JABER: Commissioners, my, my question  
25 really went to -- it was a big picture sort of question. I



1 don't want to get in the posture of telling the company how to,  
2 this company or any other company how to meet the reliability  
3 standards. Because what if it really shouldn't be a three-year  
4 cycle in some areas, it should be a one-year cycle? I really  
5 want to -- I want to be able to more appropriately set forth  
6 the reliability standard and then say you shall meet that and  
7 also exceed it. So my concern is not so much with how Staff  
8 has addressed this issue, because I don't know what the  
9 appropriate expense should be because I'm not out there  
10 trimming trees, so I don't know what the expense should be.  
11 And I know seven years sounds too long, but I also know that  
12 three years may not be appropriate for a given area. I also  
13 know that you, you have documented and the hearing indicated  
14 that there were some reliability problems, outages in  
15 particular, when the company reduced its tree trimming cycle.  
16 Mr. McNulty?

17 MR. McNULTY: Yes. I was just going to mention that  
18 in terms of the broader picture that you're seeking here, a  
19 stipulated item in this proceeding is the adequacy of, of  
20 Gulf's service. And so we've recognized that they have a  
21 reliable service at this time. It's not -- that's not in  
22 dispute.

23 What is, what has happened is that there has been a  
24 recent decline in the actual number of dollars spent. And I  
25 believe that the company has indicated that, you know, that

1 reliability may be in jeopardy in the future. The amount of  
2 dollars that we're actually recommending in this case are more  
3 than that which was actually budgeted in the last year, last  
4 few years. So it's actually exceeding the number of dollars  
5 and would bring them back, as Mr. Matlock has indicated, back  
6 to the 1998 level of spending after factoring in customer  
7 growth and inflation. So we think because we have a stipulated  
8 issue with adequacy of service, this brings us back to a level  
9 of reliability that this company has already been recognized as  
10 having a handle on.

11 CHAIRMAN JABER: Okay. Commissioners, I think my  
12 overall concern can be addressed in the later issues. So is  
13 there a motion or any other questions?

14 COMMISSIONER DEASON: I move Staff's recommendation.

15 COMMISSIONER BAEZ: Second.

16 CHAIRMAN JABER: There's been a motion and a second  
17 on Issue 66. All those in favor, say aye.

18 (Simultaneous affirmative vote.)

19 CHAIRMAN JABER: Issue 67.

20 COMMISSIONER BAEZ: Move it.

21 COMMISSIONER DEASON: Move Staff.

22 CHAIRMAN JABER: Motion and a second on Issue 67.

23 All those in favor, say aye.

24 (Simultaneous affirmative vote.)

25 CHAIRMAN JABER: Issue 68.

1 COMMISSIONER DEASON: I would move Staff on 68.

2 COMMISSIONER PALECKI: Second.

3 CHAIRMAN JABER: Motion and a second on 68. All  
4 those in favor, say aye.

5 (Simultaneous affirmative vote.)

6 CHAIRMAN JABER: Issue 68 is approved.

7 71A. Commissioners, do you need a break or do you  
8 want to keep plugging along until maybe we get to the last  
9 group? You need a break?

10 COMMISSIONER DEASON: Let's take a break.

11 CHAIRMAN JABER: Let's take a ten-minute break.

12 (Recess taken.)

13 COMMISSIONER JABER: Okay. Commissioners, are we  
14 ready to get started? If I'm correct, we're on 71A, Staff?

15 MR. MAILHOT: Commissioners -- yes, if we could  
16 though, Issues 16 and 18, we had held off on those until y'all  
17 decided on Issue 64. And since you've now approved Issue 64, I  
18 would ask that you go back and approve Issues 16 and 18, which  
19 were plant reserve issues, they were fallout issues.

20 CHAIRMAN JABER: Thank you, Mr. Mailhot.

21 Issue 16 is on Page 44, Commissioners.

22 COMMISSIONER DEASON: There's no change; is that  
23 correct?

24 MR. MAILHOT: Correct.

25 COMMISSIONER DEASON: Okay. Move Staff.

1 COMMISSIONER BAEZ: Second.

2 CHAIRMAN JABER: There's been a motion and a second  
3 on Issue 16. All those in favor, say aye.

4 (Simultaneous affirmative vote.)

5 CHAIRMAN JABER: Issue 16 is approved.

6 Issue 18 is on Page 46.

7 COMMISSIONER DEASON: And, likewise, there's no  
8 change there?

9 MR. MAILHOT: That's correct.

10 COMMISSIONER DEASON: Move Staff.

11 COMMISSIONER BAEZ: Second.

12 CHAIRMAN JABER: There's been a motion and a second  
13 on Issue 18. All those in favor, say aye.

14 (Simultaneous affirmative vote.)

15 CHAIRMAN JABER: Issue 18 is approved.

16 71A, Page 131.

17 COMMISSIONER DEASON: Move Staff.

18 COMMISSIONER PALECKI: Second.

19 CHAIRMAN JABER: Motion and a second on 71A. All  
20 those in favor, say aye.

21 (Simultaneous affirmative vote.)

22 CHAIRMAN JABER: 71A is approved.

23 71B.

24 COMMISSIONER DEASON: Move Staff.

25 COMMISSIONER PALECKI: Second.

1 CHAIRMAN JABER: Motion and a second on 71B. All  
2 those in favor, say aye.

3 (Simultaneous affirmative vote.)

4 CHAIRMAN JABER: 71B is approved.

5 We've addressed 72.

6 Issue 75, depreciation expense.

7 COMMISSIONER DEASON: This is a fallout issue, is it  
8 not?

9 MS. STERN: Yes, sir.

10 CHAIRMAN JABER: Okay. We'll add 75 to the list to  
11 come back to.

12 79 will be a fallout? No? Taxes other than income.

13 MR. MAILHOT: Issue -- okay. I'm sorry. On Issue  
14 75, even though it's a fallout issue, you voted on all the  
15 other relevant issues, so you can approve Issue 75.

16 COMMISSIONER DEASON: I'm sorry. Which issue can we  
17 approve?

18 MR. MAILHOT: Issue 75, depreciation expense. It is  
19 a fallout issue, but you've already approved all the --

20 COMMISSIONER DEASON: So all the prerequisites have  
21 already been done?

22 MR. MAILHOT: That's correct.

23 COMMISSIONER DEASON: So is there any change to your  
24 recommendation?

25 MR. MAILHOT: No.

1 COMMISSIONER DEASON: I move Staff on Issue 75.

2 COMMISSIONER BAEZ: Second.

3 CHAIRMAN JABER: Motion and a second on Issue 75.

4 All those in favor, say aye.

5 (Simultaneous affirmative vote.)

6 CHAIRMAN JABER: Issue 75 is approved.

7 Now what about 79?

8 MR. MAILHOT: On Issue 79 we have a small correction.

9 It's taxes other than income taxes. The Staff had recommended  
10 a reduction of \$1,251,000. The correct reduction was in a memo  
11 that we gave you the other day, which is \$1,206,000. Okay.

12 And what that does to the -- would you like me to actually make  
13 the correction to the recommendation statement?

14 CHAIRMAN JABER: I'm sorry. Hang on. This is on  
15 Issue 79, Dale?

16 MR. MAILHOT: Yes. Issue 79, embedded in Issue 79 on  
17 Page 141 --

18 CHAIRMAN JABER: Thank you.

19 MR. MAILHOT: -- is an adjustment, a Staff  
20 adjustment.

21 CHAIRMAN JABER: To property taxes?

22 MR. MAILHOT: Yes. And we're making a correction to  
23 that, to that adjustment.

24 COMMISSIONER DEASON: I guess the question -- what  
25 happens if -- I know that there's litigation pending; correct?

1 MR. MAILHOT: Yes.

2 COMMISSIONER DEASON: Okay. And we hope that Gulf  
3 prevails. What if Gulf does not prevail?

4 MS. ROMIG: Commissioner, if Gulf does not prevail, I  
5 guess they would have to petition the Commission for recovery  
6 of it.

7 COMMISSIONER DEASON: They would either have to  
8 petition for recovery or we would just make the assumption that  
9 it's something that -- that rate setting is not that precise  
10 and that it'd just have to be absorbed within current operating  
11 margins. I guess we could deal with that at the time. I guess  
12 it would be up to Gulf to come forward, analyze and come  
13 forward with a petition.

14 MR. MAILHOT: Right. At this point in time we're  
15 making this recommendation based on the best knowledge we have.

16 COMMISSIONER DEASON: And the amount is in excess of  
17 a million dollars?

18 MR. MAILHOT: Yes. It's \$1,251,000 is the system  
19 amount.

20 COMMISSIONER DEASON: Well, I guess that, you know,  
21 we need to make a decision based upon the best information that  
22 we have. And the tax has not yet had to be paid; correct?

23 MS. ROMIG: Right.

24 MR. MAILHOT: That's correct.

25 COMMISSIONER DEASON: We don't know if it is ever

1 going to have to be paid. And if Gulf prevails in its  
2 position, it will not have to be paid; correct?

3 MR. MAILHOT: That's correct.

4 COMMISSIONER DEASON: But from what I understand,  
5 Staff, is that you're amenable to having -- if Gulf feels it's  
6 necessary to come in with a limited scope proceeding or a  
7 petition of some sort to recognize that they pursued this and  
8 that they were unsuccessful in their litigation, that it's  
9 something that could be reviewed in an expedited manner,  
10 obviously with participation by other interested parties.

11 MR. MAILHOT: Right.

12 COMMISSIONER DEASON: Do we know what the time frame  
13 is associated with this litigation?

14 MR. MAILHOT: I'm not sure.

15 MS. STERN: No, not at this point. Associated with  
16 the litigation?

17 COMMISSIONER DEASON: Yeah.

18 MS. STERN: It's pending before the Supreme Court  
19 now. As of the day that we filed the recommendation the court  
20 hadn't made a decision on whether or not it had jurisdiction.  
21 It just hadn't considered the case yet. And I asked the clerk  
22 there how, if she had any idea how long it would be and she  
23 didn't.

24 CHAIRMAN JABER: It's pending, it's pending where?

25 MS. STERN: Before the Supreme Court, I believe.



1           CHAIRMAN JABER: Okay. And so it hasn't even reached  
2 the oral argument stage yet?

3           MS. STERN: No. Unless something's happened in the  
4 past two weeks.

5           COMMISSIONER DEASON: See, I guess I'm torn on the  
6 issue because on one hand we need to base information on the  
7 best information, make decisions based upon the best  
8 information that we have, but at the same time I don't want to  
9 be sending signals to companies to, to not pursue aggressive  
10 tax positions. I assume that -- explain the background. Is  
11 this litigation, was it instituted -- it was instituted by whom  
12 and for what reason?

13           MS. STERN: Well, Gulf, I believe, petitioned the  
14 county board of county commissioners to see, to not pay the  
15 tax, the property tax on Smith Unit 3. And they said, okay, we  
16 don't think you have to, we think you're exempt. Then the  
17 property appraiser challenged that and that went to lower court  
18 and Gulf prevailed. You know, they agreed -- well, they agreed  
19 that Gulf didn't have to pay the property tax. It was appealed  
20 again by the property appraiser to the First District Court of  
21 Appeal and the, the court decided that Gulf still did not have  
22 to pay the property tax. The property appraiser then appealed  
23 it to the Supreme Court. And the Supreme Court doesn't have to  
24 hear the case at all. The intended final court for this type  
25 of subject matter is the First District Court of Appeal. The

1 First District Court of Appeal has what they call like mandated  
2 it out. They have no more jurisdiction over it, which means  
3 that the decision is, has legal effect, which means that Gulf  
4 doesn't have to pay at this point.

5 CHAIRMAN JABER: Commissioner Bradley?

6 COMMISSIONER BRADLEY: I'm just wondering if, if that  
7 position was taken by the county commission because of the fact  
8 that they see Gulf as, as a major, major economic development  
9 entity in the area and if they were trying to make an  
10 investment in the economic growth of the area by reducing  
11 Gulf's tax liability.

12 MS. STERN: Yes. I understand. The -- I -- the  
13 First District Court of Appeal opinion turned on the definition  
14 of whether or not electricity was tangible property. And  
15 there's a lot of, apparently there's a lot of case law on that.  
16 I don't -- it seems to me that this is not a novel argument. I  
17 think that --

18 COMMISSIONER BRADLEY: Well, I can understand why the  
19 property appraiser would, would take that position because his  
20 position is to -- well, he's just doing what, he or she is just  
21 doing what their office dictates. But I'm just wondering if  
22 the county, again, if the county commission wasn't considering  
23 some, some other factors.

24 MS. STERN: I am not entirely sure what the county  
25 commission was considering. It may be that they're perfectly,

1 you know, entitled to consider economic development. You know,  
2 it may be that they did consider it, that that's a legitimate  
3 consideration.

4 CHAIRMAN JABER: Commissioners, just so you know  
5 where I would be coming from on this issue, I agree  
6 wholeheartedly with OPC's position on this issue. And I don't  
7 know -- I'm just reading from the brief. It says that Gulf has  
8 filed this rate case on the assumption that it did not obtain  
9 the exemption. Gulf apparently filed this way based on the  
10 possible chance that it might lose the appeal. This assumption  
11 is exactly opposite of what it ought to be. It should be  
12 assumed that Gulf has the exemption, which it does. And, you  
13 know, I would, just from my perspective, I look at these rate  
14 cases as a snapshot in time based on the test year that was  
15 selected by the company. And as it stands with the test year  
16 selected by the company, they have the exemption. That doesn't  
17 preclude Gulf Power from filing something at a later time  
18 showing a change in circumstances, and that evaluation would be  
19 made, I would suppose, on, of their review of the entire  
20 earnings level.

21 COMMISSIONER DEASON: Well, I just -- I, Madam  
22 Chairman, I tend to agree with that. And I think Staff's  
23 recommendation is probably the best approach. I just don't  
24 want the decision to be interpreted as we're not supportive of  
25 companies pursuing aggressive positions and exemptions and

1 things that, which help the, the ratepayers.

2 CHAIRMAN JABER: Right. Absolutely.

3 COMMISSIONER DEASON: So I -- with that understanding  
4 and with the understanding that if Gulf does not prevail, that  
5 they have the ability to make a filing with the Commission and  
6 that it would be reviewed on an expeditious manner with full  
7 participation by everyone involved, with that understanding, I  
8 could move Staff's recommendation.

9 COMMISSIONER PALECKI: Second.

10 CHAIRMAN JABER: Okay. There's been a motion on  
11 Issue 79 and a second. All those in favor, say aye.

12 (Simultaneous affirmative vote.)

13 CHAIRMAN JABER: Issue 71 is approved.

14 Issue 81. There's a small change on Issue 81.

15 MR. MAILHOT: Yes. Within, within Issue 81 -- 81 is,  
16 it's partially a fallout issue, but it's also, embedded in  
17 there is another calculation. And the calculation that we made  
18 is --

19 CHAIRMAN JABER: Excuse me, Mr. Mailhot. I'm glad  
20 you said that. Actually we should probably make sure to  
21 reflect that Issue 79 was approved with the modification you  
22 made.

23 MR. MAILHOT: Okay. Anyway, in Issue 81, Issue 81 is  
24 both a fallout issue and embedded in it is a calculation.  
25 Within the calculation Staff has a small correction which

1 results in an increase in income tax of \$20,000 in the income  
2 tax expense. We cannot give you a final answer on this issue  
3 because it is a fallout. And since you have voted on some of  
4 the other issues to make changes, we'll just have to calculate  
5 this later.

6 CHAIRMAN JABER: Okay. But let me be clear on what  
7 your correction is. The correction is that income tax expense  
8 should be increased by \$20,000?

9 MR. MAILHOT: Right. In addition, there will be  
10 other effects due to the fallout.

11 CHAIRMAN JABER: Okay. All right. So we'll come  
12 back to Issue 81.

13 Issue 82.

14 MR. MAILHOT: Issue 82 is a fallout issue.

15 CHAIRMAN JABER: The same would be for Issue 82.  
16 Issue 84.

17 MR. MAILHOT: Is also a fallout issue.

18 CHAIRMAN JABER: But isn't there a correction or do  
19 you want to take that up when we come back to the issue?

20 MR. MAILHOT: We have to come back to it because  
21 it'll depend -- based on what you voted on other issues, we  
22 can't calculate a number at this point.

23 CHAIRMAN JABER: Okay. We'll come back to 84.  
24 Issue 88. You need to introduce this item.

25 COMMISSIONER DEASON: Did we want to do 89 before 88

1 or was I mistaken on that?

2 CHAIRMAN JABER: Oh, thank you, Commissioner.

3 MS. STERN: We recommended taking 89 first and then  
4 88, if that was your question.

5 MS. KUMMER: Commissioners, Issue 89 concerns the  
6 allocation of certain distribution costs in the cost of service  
7 methodology.

8 Gulf has proposed the minimum distribution system,  
9 which allocates more, which classifies more costs as customer  
10 related, which results in more costs being allocated on a  
11 customer basis in the cost of service study.

12 Staff is recommending that you retain the methodology  
13 used in Gulf's last rate case, which allocates only the service  
14 drop in the meter on a customer basis.

15 CHAIRMAN JABER: Commissioners, questions?

16 COMMISSIONER PALECKI: I can move Staff's  
17 recommendation.

18 COMMISSIONER DEASON: I can second it.

19 CHAIRMAN JABER: There's been a motion and a second  
20 on Issue 89. All those in favor, say aye.

21 (Simultaneous affirmative vote.)

22 CHAIRMAN JABER: Issue 89 is approved unanimously.  
23 Issue 88.

24 MR. WHEELER: Commissioners, Issue 88 addresses the  
25 appropriate cost of service methodology to be used in designing

1 Gulf's rates. The Staff has recommended a study that does not  
2 utilize an MDS method. And based on the vote in Issue 89,  
3 Staff's recommended study is the study that's contained in a  
4 late-filed deposition exhibit to Gulf Witness Robert McGee,  
5 Exhibit 2, Attachment 4B to that deposition.

6 This study basically --

7 COMMISSIONER DEASON: Was that Exhibit 2 or 20?

8 MR. WHEELER: It's hearing Exhibit 20. It was --

9 COMMISSIONER DEASON: Oh, okay.

10 MR. WHEELER: -- Late-Filed Deposition Exhibit 2.

11 COMMISSIONER DEASON: Okay. I got you. They were  
12 one and the same, Hearing Exhibit 20 and Late-Filed Deposition  
13 Exhibit 2 are the same.

14 MR. WHEELER: Correct. The -- just briefly, the  
15 difference between the late-filed exhibit study and the study  
16 filed in the initial MFR filing had to do with the development  
17 of some of the demands for the OS-I, OS-I and II and OS-IV rate  
18 schedules. There were some problems that Staff had with the  
19 methodology that was used.

20 The company has stipulated in Issue 87 that the  
21 development of NCP and 12CP demands that are used in this study  
22 are appropriate. So basically this study again does not  
23 utilize the MDS as Staff had proposed and it makes certain  
24 corrections to the lighting rate classes, which make a fairly  
25 minor difference from the study that was originally filed.

1 CHAIRMAN JABER: Questions on Issue 88?

2 COMMISSIONER DEASON: The lighting class adjustment  
3 that you've made, are they, are they, what are they, more like  
4 corrections, or are there some difference in philosophy and, if  
5 there is a difference, what is the difference?

6 MR. WHEELER: Okay. Basically there were, there were  
7 three changes. In developing the demands for lighting, the  
8 12CP demands dictate to a large extent how much production  
9 plant-related costs are allocated to the rate classes.

10 Gulf, in their filing, used a historical 1999 level  
11 of 12CP contribution for the OS-I and 2 and the OS-IV lighting  
12 classes. Based on the variability that can occur in terms of  
13 whether the lights are on or off peak, the Commission or the  
14 Staff preferred a method which used a five-year average in  
15 order to kind of level out the variability that can occur  
16 because street lighting is kind of a strange load in that it's  
17 either all on or it's all off based on whether the sun is  
18 shining or not.

19 So based on when the system peaks occur, you have to  
20 look at each system peak hour and decide were the lights on or  
21 were they off? And by using a single snapshot year of 1999,  
22 you don't get as good a picture of the kind of average load  
23 responsibility for the lighting class. So we asked them to  
24 rerun the study using a five-year average. That five-year  
25 average was also used for the OS-IV, which is recreational



1 lighting.

2 And the last change was that the, in the process of  
3 discovery, Gulf found out that they made a mistake in  
4 developing the NCP allocators which are used to allocate  
5 distribution plant costs.

6 So those were the three corrections that were  
7 incorporated in Staff's recommended study.

8 COMMISSIONER DEASON: Move Staff.

9 CHAIRMAN JABER: There's been a motion.

10 COMMISSIONER PALECKI: Second.

11 CHAIRMAN JABER: And a second on Issue 88. All those  
12 in favor, say aye.

13 (Simultaneous affirmative vote.)

14 Issue 88 is approved.

15 Issue 90.

16 MR. WHEELER: Issue 90 concerns how the revenues will  
17 be allocated among the rate classes, the revenue increase  
18 granted by the Commission will be allocated among the rate  
19 classes.

20 Staff's recommended spread of the increase is  
21 contained in Attachment 6 to the recommendation. Staff's  
22 recommended spread of the revenues basically is based on the,  
23 the historic two constraints that the Commission has imposed.

24 Well, first of all, the Commission has historically  
25 allocated the increase so as to move each class's rate of

1 return closer to parity. And when I say parity, I mean closer  
2 to the system-wide rate of return. So a parity ratio of one  
3 for a rate class would indicate that they are recovering  
4 exactly the system rate of return. In other words, they're  
5 recovering exactly the cost to serve them as indicated in the  
6 cost of service study.

7           Staff's recommended spread of the increase is based  
8 on the Staff recommended total overall revenue increase of  
9 \$49.7 million, and it's also based on the non-MDS cost of  
10 service study. In other words, these rate base and line  
11 numbers are based on a non-MDS study.

12           Gulf's proposed spread of the revenues did utilize  
13 the MDS method and, of course, their spread was based on their  
14 requested revenue increase of \$69.9 million.

15           So Staff believes that their proposed spread of the  
16 revenues does move each class closer to parity and it does not  
17 violate the constraints that the Commission traditionally tries  
18 to remain within. And those constraints are that no rate class  
19 should receive a decrease in a case in which an increase is  
20 granted, and also that no class receives an increase greater  
21 than 1.5 times the system average increase with adjustment  
22 clauses.

23           And in this case if you look at Attachment 10 or  
24 Attachment 6 on Column 10, you'll see the overall increase  
25 proposed by Staff is 8.2 percent. So the goal in this case is

1 to not give any class an increase greater than 1.5 times that  
2 rate, which would be 12.1 percent.

3 And I would also mention that the Staff's increase  
4 does not incorporate the correction to the revenue requirement  
5 that was made in earlier issues and, of course, it will change  
6 based on the Commission vote on the overall revenue  
7 requirement.

8 CHAIRMAN JABER: Commissioners, did you have any  
9 questions?

10 COMMISSIONER PALECKI: I move Staff on Issue 90.

11 COMMISSIONER DEASON: Well, let me ask a question,  
12 and it may be just more clarifying than anything else.

13 But for the residential class the current index is  
14 .91. And your recommended increase is such that it would go to  
15 an index of 1.02, which is in excess of one, and to achieve  
16 that there's going to be an 11 percent overall increase. Why  
17 is it necessary to increase the residential to an index above  
18 one, given that there's going to be such a large percentage  
19 increase that you're recommending to do that?

20 MR. WHEELER: Well, the reason you have to do that is  
21 because most of the dollars are in the residential class. If  
22 you look at -- in terms of the total revenues collected,  
23 sometimes it's not possible to bring everyone to exactly one  
24 within the constraints that we traditionally adhere to.  
25 There's simply not enough dollars to allocate the various

1 places to bring everyone to exactly one, and it's kind of an  
2 iterative process where you kind of play with the numbers.

3 But if you brought residential all the way to one,  
4 you would run into the problem that you had increased dollars  
5 that if you tried to spread it to the other classes, you would  
6 violate the constraints for some of the other classes. So you  
7 --

8 COMMISSIONER DEASON: Where it increases above 1.5  
9 times?

10 MR. WHEELER: Correct. And, again --

11 COMMISSIONER DEASON: Which classes are subject to  
12 that constraint that you had to, to exercise that constraint to  
13 avoid violating it?

14 MR. WHEELER: Well, there's not a simple answer to  
15 that question because until you start playing with the numbers  
16 and seeing what it does, it's hard to give you a simple answer  
17 on that.

18 I would note that if you notice the final line of  
19 that column, the SBS, RTP and PX rate classes, Staff is  
20 recommending no increase, and that's because they're in excess  
21 currently 1.92, which is substantially above parity.

22 CHAIRMAN JABER: 1.29? It's one point --

23 MR. WHEELER: No. I'm talking about the present,  
24 Column 4, the present index is 1.92.

25 CHAIRMAN JABER: Okay.

1 MR. WHEELER: After the increase it drops to 1.29.  
2 But we were also constrained with regard to the CSA.

3 If you'll see the CSA contract class, which was,  
4 these are contracts that were signed pursuant to the  
5 commercial/industrial service rider, their rate of return is  
6 actually negative. But due to the fact that they entered into  
7 long-term contracts with these customers that were deemed to be  
8 prudent, we couldn't allocate an increase to that particular  
9 class. So there were constraints. I understand in a perfect  
10 world it would be nice to bring everyone to one. But just the  
11 nature of the mathematics, it wasn't possible to do that in  
12 this case. And I didn't really fully understand that until I  
13 sat down and worked with a spreadsheet. But mainly it has to  
14 do with the fact that so many of the dollars have to come from  
15 residential because that's where most of the revenues are and  
16 most of the customers. So sometimes you're constrained to  
17 bringing them exactly to one because you've got dollars left  
18 over that you have to recover somewhere, and you can't put them  
19 out of the other classes without making their rates go way up.

20 COMMISSIONER DEASON: There's been a motion. I can  
21 second it.

22 CHAIRMAN JABER: There's been a motion and a second  
23 on Issue 90. All those in favor, say aye.

24 (Simultaneous affirmative vote.)

25 CHAIRMAN JABER: Issue 90 is approved.

1 Issue 91.

2 COMMISSIONER DEASON: We're going to do that one in  
3 May, aren't we?

4 CHAIRMAN JABER: Sorry?

5 COMMISSIONER DEASON: This is, this is one of the  
6 issues we're going to do at the subsequent agenda conference, I  
7 believe. 91, isn't that one of them?

8 CHAIRMAN JABER: Demand charges --

9 MS. STERN: Yes. That has to be addressed at the May  
10 8th agenda.

11 CHAIRMAN JABER: Oh, okay. Is that the first one  
12 we've had, first issue we've hit like that?

13 COMMISSIONER DEASON: Uh-huh.

14 CHAIRMAN JABER: Okay.

15 MS. STERN: 92 has to be the May 8th agenda as well.

16 CHAIRMAN JABER: I'm just trying to keep track of the  
17 issues.

18 93.

19 MS. HUDSON: Commissioners, Issue 93 relates to what  
20 are the appropriate customer charges for Gulf utility. Staff  
21 is proposing a \$10 charge for RS and RSVP, a \$13 charge for GS  
22 and OS-IV, reducing the GSD and GSDT and GST closer to unit  
23 cost by decreasing those charges. LP and LPT, decreasing those  
24 charges close to unit cost because metering costs have gone  
25 down with those classes, and remain, leaving PX and PXT and RTP

1 the same.

2 CHAIRMAN JABER: Commissioners, do you have any  
3 questions?

4 COMMISSIONER DEASON: Some of the customer classes  
5 are seeing a decrease in customer charges. Is it just --  
6 you're just comparing the current charges to what you believe  
7 current costs are. And if the current costs are significantly  
8 below the current charges, you're recommending decreases; is  
9 that correct?

10 MS. HUDSON: Yes. To get them closer to unit costs.

11 COMMISSIONER DEASON: And what about the, the last  
12 item, the RTP? What is RTP?

13 MR. WHEELER: That's the real time pricing rate  
14 schedule. The reason we decided not to -- we went with Gulf's  
15 proposed charge, which was to basically maintain the current  
16 charges, that we weren't recommending an increase to that  
17 class. And if we change the customer charge, we'll have to  
18 change the other charges to make it up somewhere else. So  
19 Staff believed that it was appropriate as proposed by the  
20 company just to leave it alone. The customer charge for that  
21 class is a fairly trivial amount anyway. These are large,  
22 large customers.

23 COMMISSIONER DEASON: Okay. Move Staff.

24 COMMISSIONER PALECKI: Second.

25 CHAIRMAN JABER: There's been a motion and a second

1 on Issue 93. All those in favor, say aye.

2 (Simultaneous affirmative vote.)

3 CHAIRMAN JABER: Issue 93 is approved.

4 MS. STERN: Madam Chairman?

5 CHAIRMAN JABER: Yes.

6 MS. STERN: I believe that the issues between the  
7 last one and 125 are either stipulated or have to be taken up  
8 at the May 8th agenda.

9 CHAIRMAN JABER: Okay.

10 MS. STERN: 97, 98 and 99 need to be taken up at the  
11 May 8th agenda. The remainder are stipulated.

12 CHAIRMAN JABER: Okay.

13 MS. STERN: So it appears --

14 CHAIRMAN JABER: Thank you, Ms. Stern. Let's go back  
15 then to -- is it appropriate now, Ms. Stern, to go back to 25,  
16 27, 36, 41, 81, 82 and 84?

17 MS. STERN: Yes.

18 MR. MAILHOT: Some of them we can, some of them we  
19 can go back to. 25 --

20 CHAIRMAN JABER: Was that consistent with your list,  
21 Dale?

22 MR. MAILHOT: I have 25 -- 25 was already approved.  
23 The next one I had on my list was 27 --

24 CHAIRMAN JABER: Let me make sure.

25 MR. MAILHOT: -- which is the total rate base.



1 CHAIRMAN JABER: Yes.

2 MR. MAILHOT: Okay. That, you've approved all the  
3 issues prior to that, so you can approve it as-is.

4 CHAIRMAN JABER: With the modifications that are  
5 necessary.

6 MR. MAILHOT: As fallout. Yes.

7 CHAIRMAN JABER: Okay. Commissioners, Issue 27.

8 COMMISSIONER DEASON: Are there any changes?

9 MR. MAILHOT: There are no changes to 27.

10 COMMISSIONER DEASON: All right. I can move Staff.

11 COMMISSIONER PALECKI: Second.

12 CHAIRMAN JABER: Wait a second. There are no changes  
13 to 27? What about the, the issue on the water heater? That  
14 didn't affect this issue?

15 MR. MAILHOT: No. This is rate base.

16 CHAIRMAN JABER: Okay. So there's been a motion on  
17 Issue 27. Was there a second? And a second. All those in  
18 favor, say aye.

19 (Simultaneous affirmative vote.)

20 CHAIRMAN JABER: Issue 27 is approved unanimously.  
21 36.

22 MR. MAILHOT: What I have is Issues 30 and 36 are  
23 both dependent on your vote on ROE, so you cannot vote on those  
24 yet.

25 CHAIRMAN JABER: Okay. Now, remember, 30 we voted

1 on. We just need to come back and allow you to adjust it for  
2 the fallout.

3 MR. MAILHOT: For the cost rate. Yeah.

4 CHAIRMAN JABER: Right. 41.

5 MR. MAILHOT: Issues 41, 81, 82 and 84 are fallout  
6 issues, and we have to recalculate those numbers because you  
7 voted for something different on one of the issues. So we  
8 cannot give you a number now. It's one of those you have to  
9 give us the authority to calculate later.

10 CHAIRMAN JABER: And is it better to let, to let you  
11 deal with that at the May 8th agenda or no?

12 MR. MAILHOT: We would rather just have the authority  
13 to do it as opposed to coming back to that agenda.

14 CHAIRMAN JABER: Okay. Okay. 84.

15 COMMISSIONER PALECKI: Madam Chairman, perhaps on the  
16 last --

17 MR. MAILHOT: I'm sorry. 84, 84 is also one of those  
18 fallout issues that you have to wait.

19 CHAIRMAN JABER: Okay. Commissioner Palecki?

20 COMMISSIONER PALECKI: I was thinking that perhaps  
21 the appropriate way to deal with this would be to move Staff on  
22 each of those issues and have the Commission vote on those  
23 issues, with recognition that the number will be the fallout  
24 based upon what we've decided previously.

25 CHAIRMAN JABER: I like that idea. That's a motion,

1 Commissioner Palecki?

2 COMMISSIONER PALECKI: Yes, on each of those fallout  
3 issues.

4 COMMISSIONER DEASON: Second.

5 CHAIRMAN JABER: And a second.

6 COMMISSIONER DEASON: Yes.

7 CHAIRMAN JABER: All those in favor of resolving 36,  
8 41, 81, 82 and 84 by recognizing that we are approving Staff's  
9 recommendation, giving them authority to make the fallout  
10 adjustments, all those in favor, say aye.

11 (Simultaneous affirmative vote.)

12 CHAIRMAN JABER: Okay. That resolves those.

13 COMMISSIONER BRADLEY: Give me the numbers again.

14 CHAIRMAN JABER: Sure. And, Staff, correct me.

15 Okay? Those issues would be 36 --

16 COMMISSIONER DEASON: Wait just a second. 36, that's  
17 overall rate of return, is it not?

18 MR. MAILHOT: Yes.

19 COMMISSIONER DEASON: We're going to need return on  
20 equity to calculate that, aren't we?

21 MR. MAILHOT: Right. That'll be dependent on --

22 COMMISSIONER DEASON: So we're just going to -- when  
23 we -- after we do that calculation, you're just going to --

24 MR. MAILHOT: Right.

25 COMMISSIONER DEASON: Okay. Fine. I understand.

1 Yes.

2 CHAIRMAN JABER: Is that acceptable?

3 COMMISSIONER DEASON: Sure.

4 CHAIRMAN JABER: Okay. So those issues would be 36,  
5 41, 81, 82 and 84.

6 Okay. Now, Staff, if I'm not mistaken, that leaves  
7 us with 3, 34, 35, 37 and 125.

8 MS. STERN: Yes, that's correct.

9 CHAIRMAN JABER: And Staff's recommendation is that  
10 we take up 125 first. Commissioners, I don't really have a  
11 preference and I'll leave it up to you.

12 But I do though want to tell you that -- I want to go  
13 ahead and disclose for purposes of discussion some of the  
14 philosophical concerns I have so that after you have your  
15 dialogue -- I don't want to create an element of surprise for  
16 any of you.

17 It is not a secret that I think that incentive-based  
18 approaches where they are feasible are part of the new  
19 regulatory model. And certainly we've seen the benefits of  
20 incentive-based approaches in everything we've done as a team  
21 and certainly in the past with the prior Commissions.

22 I am concerned though in making sure we create  
23 incentive-based models that are done correctly. My preference  
24 is always that they are incentive-based approaches that are  
25 reached upon consensus of all the parties, certainly with the

1 consumer advocates. I always want to make sure that to the  
2 degree there isn't consensus those are incentive-based  
3 approaches, that we have approved based on adequate record  
4 support and perhaps competing models and competing testimony  
5 and approaches that are well vetted and dialogued at the  
6 hearing. I also want to make sure that our new mission  
7 statement and the philosophy that we have articulated time and  
8 time again is used consistently. And I don't want to ever  
9 create an incentive-based model that is just incentive-based  
10 for the, for the purpose of saying that we've done it. I want  
11 to make sure that when we create incentive-based models, we  
12 have done it for the benefit of the consumer, we have put in  
13 balance in those models, there are carrots where appropriate  
14 and there are sticks where appropriate, that rewards and  
15 penalties are, are set forth in those models with measurables  
16 and goals.

17           And saying all of that, I don't want to stifle your  
18 communication about these issues, but I also don't want to  
19 create an element of surprise for you. I am not going to  
20 support what's in Late-Filed Exhibit 25 today.

21           What I would support is direction to the parties to  
22 come back with an incentive-based approach that hopefully  
23 covers what we dialogued today, one that can be a process that  
24 hopefully is reached through consensus. And if it's not,  
25 that's okay. It can be reached through a hearing process where

1 all due process can be afforded to all the parties. And, you  
2 know, and I don't think that's far from what the company is  
3 requesting actually.

4           The other thing I would ask us to remember is all of  
5 these incentive-based approaches need to be for the benefit of  
6 the consumer. And a part of what was missing here in Exhibit  
7 25 that troubles me perhaps the most is we couldn't get  
8 consumer input on the proposal as it was filed, as opposed to  
9 like some of the prior to incentive-based plans we've recently  
10 considered with Power & Light and Power Corp, the consumer  
11 advocate was right there at the table and able to dialogue with  
12 the citizens of the State of Florida and help them see what the  
13 benefits of the incentive-based program and what, what they  
14 would directly see from the approach. That's missing here.

15           So with that, I'll leave it open for discussion, and  
16 I'm certainly open to the order of issues you want to take.

17           COMMISSIONER DEASON: What is Staff's suggested order  
18 that we proceed?

19           MS. STERN: Staff suggests we take Issue 125 first  
20 because Staff recommends in that issue that the late-filed  
21 exhibit not be admitted into the record.

22           If it is admitted into the record, that should be  
23 taken into consideration when we discuss Issues 3, 34, 35 and  
24 37. So that's why Staff recommended 125 first.

25           With respect to the rest of the issues, 3, 34, 35 and

1 37, it doesn't matter so much what order those are addressed  
2 in.

3 COMMISSIONER BRADLEY: Well --

4 COMMISSIONER DEASON: All right. Did we do 125?

5 CHAIRMAN JABER: There's been a request to take up  
6 Issue 125. Commissioner Bradley, you've got some comments?

7 COMMISSIONER BRADLEY: Well, just based upon your  
8 comments I was going to make a motion, and based upon what  
9 Staff just said.

10 CHAIRMAN JABER: Let's make sure there are no  
11 questions before you take up the motion.

12 COMMISSIONER BRADLEY: Okay.

13 COMMISSIONER BAEZ: Are we on 125? Where are we?

14 CHAIRMAN JABER: Actually there's been a request to  
15 take Issue 125. Is your motion on Issue 125?

16 COMMISSIONER BRADLEY: Well, no. My recommendation  
17 was just the opposite, was to follow Staff's recommendation.

18 CHAIRMAN JABER: Okay. Let me make sure I -- then  
19 maybe I --

20 COMMISSIONER BRADLEY: Staff is saying we should take  
21 it up.

22 MS. STERN: It's Staff's suggestion that we take up  
23 Issue 125 first.

24 CHAIRMAN JABER: Okay. Let's do it. 125.

25 Now on 125, Staff, is the real issue should the

1 objection to the exhibit be granted or denied? It seems like  
2 there are two real issues in this one.

3 MS. STERN: Yes, there are. The issue, as we stated  
4 it in the recommendation, is should the incentive earning  
5 sharing plan be approved. And really in order to approve it,  
6 the first threshold that has to be crossed is is it admissible  
7 into the evidentiary record? And then once that decision is  
8 made, a decision should be made on whether or not to approve  
9 the plan.

10 CHAIRMAN JABER: Right. Commissioners, it seems to  
11 me, and Legal needs to correct me if I'm wrong, but it seems to  
12 me the foundation question is should that exhibit be allowed  
13 into the record?

14 COMMISSIONER DEASON: Just let me offer a thought.  
15 First of all, let me say that I appreciated Mr. Bowden when he  
16 was on the witness stand coming forward with a proposal in  
17 general terms, and I appreciate the great amount of effort that  
18 went into filing the late-filed exhibit. In reviewing that, I  
19 think that there are some, some good thoughts contained  
20 therein, but I'm uncomfortable moving forward on it today.

21 And one of the reasons is that I think it is an area  
22 that needs further review. But I'm concerned, also, with the  
23 sanctity of the record, the sanctity of the process. We've got  
24 two major players, two major parties, the Office of Public  
25 Counsel and FIPUG, who have filed objections to the exhibit



1 primarily based upon the grounds that -- I'm not trying to put  
2 words in their mouth -- but this really didn't afford them due  
3 process. And, you know, whether it did or did not, if they  
4 feel that it did not, I think that that raises some, some  
5 questions about the process that we have here, and I don't, I'm  
6 really not comfortable going there. I'm much more comfortable  
7 in having that exhibit or something like it come forward in the  
8 form of a petition, give parties an opportunity to intervene,  
9 request discovery, have testimony filed and maybe counter  
10 testimony, go that process. I would be much more comfortable  
11 doing that than trying to either vote up or down what's  
12 contained in this late-filed exhibit here today.

13           COMMISSIONER BAEZ: Commissioner Deason, I would  
14 agree with you. I think voting it up or down in an absolute  
15 sense kind of sends the wrong message. And I, too, recall  
16 Mr. Bowden's testimony and I also recall there being a lot of  
17 enthusiasm or enthusiastic questioning and discussion. And I  
18 would tell you that at least for my part to the extent that I  
19 was curious about exploring those possibilities, that hasn't  
20 diminished one bit.

21           But I do share -- and you alluded to, to problems  
22 with our process here. I think sometimes when questions get  
23 asked from the bench and, you know, they, they tend to take  
24 tangents, and I don't mean that in a bad way, but there's  
25 something obviously that strikes our curiosity and that winds

1 up being, you know, that culminates in a request for a  
2 late-filed exhibit and often times with nothing more.

3 So I think that certainly an incentive plan like the  
4 one that has been contemplated, has been proposed could  
5 definitely benefit from the full participation of all, of all  
6 the stakeholders in this, not the least of which is our Staff  
7 and Public Counsel, along with the company.

8 So if, if what you're intimating or proposing is to  
9 have, you know, sort of peel this issue off, not, not let it be  
10 decided one way or another here -- and I guess I would look to  
11 Legal to say how we do that cleanly -- but to kind of peel it  
12 off and hold it off on its own so that it can receive the  
13 proper consideration, I would support that.

14 CHAIRMAN JABER: Legal, is there a way -- isn't there  
15 a way to grant the objection to the exhibit but on our own  
16 motion require, request that Gulf file a petition with a, with  
17 a proposal for an incentive plan that incorporates what we've  
18 articulated, but basically a new process that's started so that  
19 intervening parties can also comment?

20 MS. STERN: Yes. I think that that can be  
21 accomplished fairly easily. I think you would just have to  
22 make a motion. Well, you could dispose of the current proposal  
23 in this docket by moving Staff on Issue 125. Then on --

24 COMMISSIONER JABER: No. That's not what I'm saying.

25 MS. STERN: No? Okay.

1 CHAIRMAN JABER: I don't think -- if we decide on the  
2 objection, I don't think you reach the fundamental request  
3 filed by the company on the plan because the plan is  
4 encompassed in Late-Filed Exhibit 25. So if we grant Public  
5 Counsel's objection or sustain, if we sustain Public Counsel's  
6 objection to Exhibit 25, then that in effect takes it out of  
7 this hearing.

8 MS. STERN: Okay. Yes.

9 CHAIRMAN JABER: Mr. McLean, don't let me mess up  
10 this process. What I'm trying to do is get this sharing plan  
11 out of the way so that the Commissioners can have an open  
12 dialogue on what they would like to see come back.

13 MR. McLEAN: I think it's well within your discretion  
14 to invite the company to file such a plan, if you or even if  
15 you don't deal with this particular exhibit. It is within your  
16 discretion to invite them to do so.

17 CHAIRMAN JABER: Okay. But we have an objection  
18 that's been filed, so don't we need to rule on the objection?

19 MR. McLEAN: Yes, ma'am. I think so.

20 CHAIRMAN JABER: Commissioner Bradley?

21 COMMISSIONER BRADLEY: Well, I do have a motion.

22 CHAIRMAN JABER: Go for it. Are we ready? Yes.

23 COMMISSIONER DEASON: Before the motion, let me say  
24 one thing, kind of get it out on the table, kind of in the same  
25 vein as you, Madam Chair.

1           When I gave my thoughts on this particular issue and  
2 this late-filed exhibit and the concerns I have with the record  
3 and the process, let me say that on some of these other issues  
4 I don't necessarily feel so constrained because I think that  
5 this Commission has utilized our ability in past proceedings to  
6 recognize superior performance or lacking performance in  
7 previous situations, and we basically have done that by looking  
8 at perhaps changing the return on equity to some degree. And  
9 so I'm still open when it comes to that. I don't think that,  
10 that because we don't take action on 125 or we basically delay  
11 that, that prevents us necessarily from doing something else  
12 within the record that is in this proceeding. So I want to  
13 fully explore that. I don't think we're deciding that by  
14 voting on 125, or at least I don't think we are. I want to  
15 explore that with other Commissioners when we get to those  
16 issues.

17           CHAIRMAN JABER: Right. It was not my intent, which  
18 is why I keep bringing it back to that exhibit, but,  
19 absolutely, it was not my intent to tie this somehow to the  
20 other issues. We're focused right now on 125.

21           Commissioner, before you make your motion, sort of  
22 just based on the discussion in anticipation of what your  
23 motion might be, could we also talk about whether this actually  
24 has to go to a hearing?

25           I don't want to foreclose the opportunity of a PAA

1 process. Certainly, if we give the company enough time to file  
2 a request and incentive plan, I don't want to foreclose the  
3 thought that it might be handled through a PAA or a joint plan  
4 that's filed by all the parties. I don't want to jump to the  
5 conclusion that it has to get to hearing right away.

6 COMMISSIONER PALECKI: I agree completely. And I  
7 would just point out that in both Florida Power & Light and  
8 Power Corp rate cases that incentive plans were agreed upon by  
9 stipulation. And it's quite possible we could end up with  
10 another stipulation on an incentive plan for Gulf Power.

11 CHAIRMAN JABER: Commissioner Bradley, go ahead. I  
12 apologize for all the interruptions.

13 COMMISSIONER BRADLEY: Thank you, Madam Chair. What  
14 I would like to move to do is to move to approve Staff's  
15 recommendation as it relates to developing an earnings share  
16 plan that will measure future performance. And what I also  
17 would like to do is to encourage the parties to work together,  
18 particularly the Office of Public Counsel and Gulf.

19 Another comment is that Jack has developed some of  
20 the most, some of the best incentive plans in the country and  
21 his plans have greatly benefited the customers and the  
22 ratepayers. And I just would like to also acknowledge the fact  
23 that I look forward to hearing your thoughts and views in the  
24 future. But by all means, I would move to take Staff's  
25 recommendation.

1 CHAIRMAN JABER: Are you amenable to a friendly  
2 amendment that would actually suggest a time frame for when we  
3 would want to see --

4 COMMISSIONER BRADLEY: By all means.

5 CHAIRMAN JABER: -- a plan? Commissioners, I'd love  
6 some feedback on this one. In the plan that we are not going  
7 to consider now because it's not, we recognize it's not in the  
8 record, but Gulf suggests 30 days. I think a more realistic  
9 time frame is closer to 90 days. That would give the  
10 Intervenors and Staff a better opportunity to sit down with the  
11 company and, and walk through some of these issues. So I was  
12 thinking --

13 COMMISSIONER BAEZ: I have a question.

14 CHAIRMAN JABER: Go ahead, Commissioner.

15 COMMISSIONER BAEZ: Just to clarify your thinking.  
16 Is it your, is it your contemplation that there's going to be  
17 further discussion as to what you would like to see, further  
18 guidance as to what you would, the Commission would like to  
19 see --

20 CHAIRMAN JABER: Yes.

21 COMMISSIONER BAEZ: -- in a filing whenever it  
22 occurs? Because I think the opportunity still exists -- and,  
23 again, depending on what you add or subtract, there may be a  
24 strawman available, you know.

25 CHAIRMAN JABER: That's true.

1           COMMISSIONER BAEZ: I mean, I don't know that that  
2 would affect -- the number that popped into my head was 90  
3 days.

4           CHAIRMAN JABER: All right.

5           COMMISSIONER BAEZ: That may be enough, that may be  
6 more than enough, if we acknowledge that there might be a, you  
7 know, at the end of the discussion that there might be a  
8 strawman available out there from where everyone can just  
9 break, break ground and start working on a, on a, you know, on  
10 an agreeable proposal. But that's just a thought. I don't  
11 know that it's out there, frankly.

12          CHAIRMAN JABER: Right. So are you thinking to come  
13 back to, to the time frame after we have some more discussion  
14 on what we'd like to see in a plan or are you saying 90 days  
15 seems like a good time frame?

16          COMMISSIONER BAEZ: 90, I'm comfortable myself with  
17 90 days. I just wanted to throw out the thought that perhaps  
18 based on further discussions that we're going to have on other  
19 issues that are coming up, just to throw the thought out that  
20 there might be something available out there. A starting  
21 point, I mean, a discussion piece.

22          CHAIRMAN JABER: Yeah. Absolutely. What I  
23 envisioned, just sort of jumping ahead, was that what has  
24 currently been filed could, could actually be the strawman, but  
25 for us to provide additional guidance on, on what we'd like to

1 see based on this record, based on the experiences we've had in  
2 the last four or five months, and sort of help facilitate the  
3 discussion among the company and the Intervenors by giving them  
4 additional direction.

5 COMMISSIONER BRADLEY: So Commissioner Baez is  
6 offering an amendment to the amendment?

7 COMMISSIONER BAEZ: I don't know that it needs to be  
8 an amendment necessarily. I guess I want to -- I would like to  
9 find a motion that is consistent with at least the thought  
10 certainly that I've heard is that we don't, we don't want to  
11 take up even the merits of this plan right now. And so in an  
12 effort to kind of keep it viable, if it is viable at all, given  
13 whatever additional guidance is going to be given, then maybe I  
14 just wanted to bring up the possibility of starting off with a  
15 strawman. And if this, and if the company's proposal is it,  
16 that's fine. I just, I don't think we need to discount it.

17 CHAIRMAN JABER: Okay. Commissioner Bradley, I think  
18 the cleanest way, and, again, Legal needs to correct us if  
19 we're wrong, but the cleanest way to make the motion would be  
20 to grant, to sustain the objection made by FIPUG and OPC that  
21 Exhibit 25 should not be admitted into the record. And that  
22 leaves up to the company whether they want to use their  
23 proposal as the strawman.

24 COMMISSIONER BRADLEY: Uh-huh. Okay.

25 CHAIRMAN JABER: And then, in addition, your motion



1 could include a request or a direction to the company to file  
2 an incentive plan consistent with our discussion today within  
3 90 days.

4 COMMISSIONER BRADLEY: I would be -- that would be  
5 acceptable.

6 CHAIRMAN JABER: Okay. And that would be the motion.

7 COMMISSIONER BRADLEY: Yes.

8 COMMISSIONER BAEZ: I can second.

9 COMMISSIONER PALECKI: I second.

10 CHAIRMAN JABER: Commissioner Deason, this is all  
11 okay? All right. There's a motion and a second to resolve  
12 Issue 125 as we just articulated, because I don't think I could  
13 do it again. All those in favor, say aye.

14 (Simultaneous affirmative vote.)

15 CHAIRMAN JABER: Okay. Issue 125 is addressed.

16 Now, Commissioner Deason, we should go back to what  
17 you said, start with Issue 3.

18 COMMISSIONER DEASON: Is that Staff's preference,  
19 Issue 3?

20 MR. LEE: Commissioners, we believe the penalty  
21 mechanism can be addressed in that mechanism as well in Gulf's  
22 proposal in that proceeding in a separate docket.

23 MS. STERN: Can I just mention one detail?

24 CHAIRMAN JABER: Yes.

25 MS. STERN: I guess there's a question of whether or

1 not it should be taken up, the new proposal that Gulf will file  
2 within 90 days should be taken up as a continuation of this  
3 docket, 010949, or in a separate docket. And Gulf expressed a  
4 preference for making it a Phase 2 of this docket. I'm not  
5 sure from, that from a purely legal perspective it matters that  
6 much.

7 CHAIRMAN JABER: I'm all for closing dockets and  
8 opening dockets when someone files a petition. But,  
9 Commissioners, I'll be flexible. I like -- because, you know,  
10 if they change their mind and decide not to file a petition or  
11 they can't reach consensus or whatever, we don't have to come  
12 back and close this docket.

13 COMMISSIONER DEASON: Is there some procedural reason  
14 that Gulf presented as to why it's preferable to do one or the  
15 other?

16 MS. STERN: Not that was really stated in their  
17 filing. It might just have been for the sake of continuity  
18 they're proposing 30 days, let's just get this over with. They  
19 didn't really say. And I can't think of a particular reason  
20 why it would benefit one way or the other.

21 COMMISSIONER DEASON: Madam Chair, particularly since  
22 we have sustained the objections to the exhibit, I don't  
23 really, I think that we can just close this chapter and open a  
24 new one with a new docket, if that's acceptable. I --

25 COMMISSIONER BRADLEY: I do have some comments that

1 I'd like to make about Issue 3 though.

2 CHAIRMAN JABER: Go ahead. Go ahead. About the  
3 what?

4 COMMISSIONER BRADLEY: About Issue 3.

5 CHAIRMAN JABER: Oh, yeah. But you're okay with  
6 closing this docket and allowing a new one to be open when --

7 COMMISSIONER BRADLEY: Yes.

8 CHAIRMAN JABER: Okay. All right. Now we're on  
9 Issue 3.

10 COMMISSIONER BRADLEY: And I think these, these  
11 comments are somewhat based on, on some comments that I made  
12 when we had the initial hearing. And I, as I said, I would  
13 like to make a few comments.

14 Both Issue 3 and 34 address performance-based  
15 incentives. Issue 3 addresses incentive mechanisms for future  
16 performances. Issue 34 addresses incentive mechanisms for the  
17 past or current performance.

18 Staff recommends denying incentive plans for both  
19 past and future performance. Staff also recommends considering  
20 both issues in a separate docket. I agree with Staff that we  
21 should consider establishing an incentive mechanism to incent  
22 for future performance in a separate proceeding. I also agree  
23 that the incentive plan should include a reward and a penalty  
24 mechanism.

25 Also, I want to complement Staff on being bold and

1 innovative in their thinking, and I hope that the parties will  
2 or can work together and bring us their ideas and concepts  
3 ideally in the form of a stipulated agreement with Public  
4 Counsel.

5           But I disagree with Staff's analysis on Issue 34. I  
6 think that we can and should reward or punish companies for  
7 past performance, and I will discuss my thoughts at the  
8 appropriate time as it relates to Issue 34. I don't know if  
9 it's appropriate right now, but I would like just to state that  
10 I can move Staff on Issue 3, but only as it relates to  
11 establishing a separate docket to look at performance rewards  
12 and penalties for future performance.

13           COMMISSIONER DEASON: Second.

14           CHAIRMAN JABER: Hang on a second. Let me digest  
15 what you just said.

16           Okay. Let me understand, Commissioner Bradley,  
17 because I think you're sort of, you're wanting to, you agree  
18 with Staff on the second part and not on the first part. But I  
19 don't, I don't see where you're saying different things.

20           Staff is saying an incentive mechanism that has  
21 rewards and penalties is appropriate; you shouldn't have one  
22 without the other. So really you agree with Staff; right?

23           COMMISSIONER BRADLEY: Yes.

24           CHAIRMAN JABER: Okay. So your motion is to approve  
25 Staff entirely on Issue 3.

1 COMMISSIONER BRADLEY: Yes.

2 CHAIRMAN JABER: Okay. And that was the --

3 COMMISSIONER DEASON: And that's the second, yes.

4 CHAIRMAN JABER: Okay. Motion and a second on Issue

5 3. All those in favor, say aye.

6 (Simultaneous affirmative vote.)

7 CHAIRMAN JABER: Okay. Issue 3 is approved

8 unanimously.

9 That takes us to Issue 34. And -- go ahead.

10 MS. STERN: I was going to say maybe we should take  
11 Issue 35 because that's the appropriate ROE. Set the, figure  
12 out what the appropriate ROE should be absent any kind of  
13 consideration of performance just based on the financial  
14 analyses done, and then, once that's determined, decide whether  
15 or not to change that.

16 CHAIRMAN JABER: I think the Commissioners want to  
17 discuss the mechanism as it relates to Issue 34 first and then  
18 establish the ROE next.

19 MS. STERN: Oh, okay.

20 CHAIRMAN JABER: So, Commissioner Bradley, you said  
21 you had some comments on Issue 34?

22 COMMISSIONER BRADLEY: Well, my comments are related  
23 to Issues 34, 35 and 37.

24 CHAIRMAN JABER: Okay.

25 COMMISSIONER BRADLEY: In Issue 34, the question is

1 whether we can or should look at Gulf's performance in  
2 determining and setting the return on equity in the authorized  
3 range. If the law doesn't allow us to look at the past  
4 performance in the context of a rate case, then we can, then  
5 when can we ever look at it?

6 I assume that was the reason that we held the  
7 customer hearings and looked at reliability and quality of  
8 service issues. If customers had shown up complaining at the  
9 customer service hearings and if Gulf had been nonresponsive to  
10 their complaints, then we would be assessing a penalty. In  
11 fact, I would be the first to vote on a penalty.

12 So why can't we look at Gulf's past performance in  
13 this case? Gulf has not had any customer infractions in more  
14 than three years, and at the customer service hearings every  
15 customer had something good to say.

16 We just approved a stipulation that maintains Florida  
17 Power's authorized midpoint of 12 percent. While Florida Power  
18 has made improvements, their quality of service does not  
19 compare to Gulf's, as indicated by, by what we heard at the  
20 hearings in Clearwater and in St. Pete. Plus, while Florida  
21 Power's rates were decreased, Gulf's rates will still be among  
22 the lowest in the state. It seems only fair to me that we set  
23 Gulf's midpoint at a comparable level to Florida Power.

24 Also, I think that we need to expand the range on  
25 both the high and the low side. Gulf's average range is 11 to

1 13, with a midpoint of 12. My office spoke with Staff and  
2 confirmed that after Smith Unit 3 went online, the midpoint was  
3 adjusted from 11.5 to 12. Staff also advised that the midpoint  
4 was 12 for most of the '90s. I think that we should keep the  
5 midpoint at 12 and expand the range by 50 basis points on each  
6 side. So we would have a 10.5 to a 13.5 range, with a midpoint  
7 of 12. This will cause Gulf to assume the risks associated  
8 with increased costs and it will incent them to be more  
9 efficient. This is the ultimate customer benefit. It doesn't  
10 cause the revenue requirement to change, yet it sees the right  
11 signal for continuing efficiency.

12 Let me be very clear about what I'm saying. The  
13 13 percent return that Gulf is requesting is too high, but I  
14 also think that Staff's recommendation is too low based upon  
15 Gulf's performance. We need to balance the public interest and  
16 come up with something fair that is fair to all. I would also  
17 like to see a performance bonus for past performance. The  
18 question is can we add the past performance bonus to the  
19 12 percent midpoint?

20 CHAIRMAN JABER: The range -- give me that range  
21 again.

22 COMMISSIONER BRADLEY: Gulf's range currently is 11  
23 to 13, with a midpoint of 12.

24 CHAIRMAN JABER: And you think it should be -- what  
25 was the next sentence?

1           COMMISSIONER BRADLEY: I would, I think that we  
2 should keep the midpoint at 12 and expand the range by 50 basis  
3 points on each side, so that we would have a 10.5 to a 13.5  
4 range, with a midpoint of 12.

5           CHAIRMAN JABER: Okay. Staff, here are my questions  
6 on this issue, and Commissioner Bradley just sort of reinforced  
7 my concern for me as it relates to past performance, Legal, as  
8 it relates to past performance and penalties, that's clearly  
9 articulated in the statute by the Legislature. The Commission  
10 has to ensure that companies maintain sufficient quality of  
11 service and, if they don't, we have clear statutory authority  
12 to show cause, impose penalties.

13           Tell me where our statutory authority is for, absent  
14 a stipulated process, where there are, there is clear statutory  
15 authority, and I'd even settle for broad statutory authority,  
16 to reward a company for past performance.

17           MS. STERN: Can I answer that or is -- the --  
18 there's -- we're allowed to -- when we set the range on ROE, it  
19 has to be fair and reasonable. And there's case law on how,  
20 that says we can consider, when we have a rate case, we can  
21 consider the company's past performance in setting the range on  
22 ROE.

23           Staff's concern here was not that we didn't have  
24 legal authority; it was that we don't have the quantitative  
25 criteria to know just how good their past performance was.



1           CHAIRMAN JABER: I understand that. I'm asking about  
2 legal authority, because I think you've answered my question.  
3 If I want to recognize a company's good past performance, it's  
4 your, it's your legal analysis that I can do that with a  
5 finding that having that cushion on ROE is, results in an ROE  
6 that's fair, just and reasonable. Is that what you just said?

7           MS. STERN: Yes, I believe so.

8           MR. McLEAN: Commissioner, let me add something to  
9 that. You can't give them higher rates today for what they did  
10 in the past, absent a presumption that you expect them to  
11 continue to do well. What you predict about their future  
12 performance can certainly be based upon your observations in  
13 the past.

14           And let me add this, that this is at the kernel of  
15 what you do. You're deciding to what, to what extent this  
16 enterprise is going to be profitable, you're sitting as a  
17 surrogate for the free marketplace, and it's an area in which I  
18 believe you have the widest discretion.

19           I think that your legal concern there was one of the  
20 retroactive ratemaking, and I don't see it like that. I see  
21 that --

22           CHAIRMAN JABER: No, actually it wasn't. We're not  
23 retroactive ratemaking at all. I want to know where my clear  
24 statutory authority is to reward a company for past performance  
25 when that past performance is performance that meets the

1 statutory obligations of providing good quality of service.

2 MR. McLEAN: I don't think you have it. I think that  
3 you have the authority to predict future performance based upon  
4 past performance. Past performance, as we all say, is the best  
5 predictor of future performance. So when you see that they  
6 have performed well in the past, you may want to engage the  
7 presumption that they'll perform well in the future and set  
8 rates on a going-forward basis on that presumption.

9 CHAIRMAN JABER: Okay. See, that is extremely  
10 helpful to me because I want to be clear as it relates to this  
11 record, we would not be adding 50 basis points or, or anything  
12 else to recognize the company for past performance in meeting  
13 their statutory obligations to provide good quality of service.  
14 It's that we would be creating a performance standard that we  
15 can measure going forward. It's, the performance standard is  
16 you will meet your statutory obligations and excel.

17 MR. McLEAN: Yes, ma'am. And if you -- I take it  
18 that Mr. Bradley's view is that because they have performed  
19 extraordinarily in the past, that they will continue to do so  
20 and that your rates set on a going-forward basis should be  
21 based upon that.

22 CHAIRMAN JABER: Okay.

23 MR. McLEAN: Because the law does not, as you  
24 observed, permit you to reward them for past performance which  
25 may not recur in the future.

1 CHAIRMAN JABER: Okay. Commissioners, any other --

2 COMMISSIONER DEASON: Well, let me ask this question.  
3 What about the reverse situation? What if a company comes  
4 before us and we find that they have acted inappropriately in  
5 the past or have done things which were not in the customers'  
6 best interest or their quality of service was lacking in the  
7 past and we want to send this company a message that past  
8 behavior needs to change on a going-forward basis, is that  
9 where we hang our statutory authority is that it's not  
10 necessarily a penalty, but that is to a signal that in the  
11 future you get your house in order and because of that we're  
12 going to lower your return on equity on a going-forward basis?  
13 How does that mesh?

14 MR. McLEAN: Well, I think, I think it is the same.  
15 The law prevents you from changing rates retroactively for any  
16 number of reasons; one of which is wanting performance, and one  
17 of which is extraordinary performance.

18 I think that you may say that you're penalizing the  
19 company for past performance, but in a legal sense what you're  
20 doing is engaging in some sort of presumption that that  
21 performance had better increase and the penalty, and the, and  
22 the incentive that you give them to increase it is a lower  
23 return, a lower profitability for the future. And it is based,  
24 I think, on a tacit assumption that their substandard  
25 performance in the past will continue into the future.

1 Otherwise, it gets too close to retroactive ratemaking.

2 Now there's a knit (phonetic) that we could talk  
3 about, which is at some point when you subject money to refund  
4 or something like that, you can certainly remedy that on a  
5 going-forward basis.

6 But the Commission has authority to set rates for the  
7 future and only for the future, not for the past. So, again, I  
8 believe that there's a tacit assumption when you observe their  
9 past performance that it will continue into the future.

10 CHAIRMAN JABER: Okay. Commissioner Baez, I know you  
11 have a question. May I just follow-up before I lose the  
12 thought?

13 Now you referenced the part of our law that allows,  
14 that actually requires us to reduce ROE for poor quality of  
15 service. I know that's specifically delineated in the water  
16 statutes. Is that also contained in the electric statutes,  
17 rate of return on equity can be reduced because of poor quality  
18 of service?

19 MR. LEE: I think we, we do have rules that it's more  
20 like reactive approach. If they are not providing quality of  
21 service, then we intervene and make sure they, they improve and  
22 provide adequate service. We do have a provision there. And  
23 in terms of that --

24 CHAIRMAN JABER: Let me -- I'm sorry to interrupt  
25 you, but it's a pure legal question and I need that answered.

1 And if we need to take a break so that legal staff can go get  
2 their statutes, you just need to let me know.

3 MS. STERN: Would you repeat the question, please?

4 CHAIRMAN JABER: I want to know if there is clear  
5 statutory authority in the electric statutes that gives the  
6 Commission authority to reduce ROE for poor quality of service?  
7 I know that language exists in the water statutes. My question  
8 is does that similar language exist in electric?

9 We're going to take a ten-minute break.

10 (Recess taken.)

11 CHAIRMAN JABER: Okay. Are we ready to reconvene?

12 My question, Ms. Stern --

13 MS. STERN: Okay. In Chapter 367 there's express  
14 authority, "If the Commission finds that a utility has failed  
15 to provide its customers with water or wastewater service that  
16 meets the standards promulgated by the Department of  
17 Environmental Protection or the Water Management Districts, the  
18 Commission may reduce the utility's return on equity until the  
19 standards are met." There's nothing that explicit in Chapter  
20 366 governing electric utilities.

21 CHAIRMAN JABER: Is there anything -- here's the  
22 second question. Is there anything in 366 at all that governs  
23 quality of service?

24 MS. STERN: Well, the utilities are obligated to  
25 provide adequate service and the Commission is required to

1 ensure that they provide adequate service. And with respect to  
2 the rate of return, you have to ensure that they have a  
3 reasonable rate of return so that they can provide adequate  
4 service.

5 CHAIRMAN JABER: Right. So Section -- Chapter 366  
6 has a provision on quality of service or does, or it does not?

7 MS. HELTON: I don't think it's as specific as it is  
8 in the 367.

9 In 366.03 it says, "Each public utility shall furnish  
10 to each person applying therefore reasonably sufficient,  
11 adequate and efficient service upon terms as required by the  
12 Commission."

13 CHAIRMAN JABER: Thank you, Ms. Helton.

14 Now, Commissioners, my fundamental question is to  
15 Legal: Do we have the statutory authority to establish rates  
16 that include a reward based on past performance? I need to get  
17 past that so I can catch up with the Commissioners.

18 MR. McLEAN: Commissioner, I'll -- let me take a stab  
19 at it. Statutory authority as construed by the courts, the  
20 answer is yes. Now but I need to make a qualification. Bear  
21 with me for a moment.

22 If a hypothetical utility improvidently buys a truck  
23 in 1999 and you make that finding today, you can't, you can't  
24 adjust future rates based upon that improvidence in the past,  
25 unless you engage a presumption that they'll continue on that

1 way in the future. And the same is true of the level of  
2 management and quality of service and so forth. You can't  
3 design future rates based upon past performance without a  
4 presumption or a finding that that kind of behavior will  
5 continue into the future.

6 I have to tell you that in this very utility, in  
7 Gulf, that argument was made by Gulf to the Supreme Court, and  
8 the Supreme Court didn't exactly buy it. But I believe that  
9 case is distinguishable. That Supreme Court case is based upon  
10 the record that was before it at that time. There was no  
11 articulation of any presumption or anything else. So I think  
12 it's distinguishable.

13 But I believe that a basic precept of ratemaking is  
14 that rates are set on a going-forward basis and what's behind  
15 us is behind us. You can reward good performance in the past  
16 or you can penalize, using the word advisedly, past performance  
17 in future rates only if you believe that that kind of behavior  
18 is going to continue.

19 CHAIRMAN JABER: In fact, we should actually make  
20 that a requirement.

21 MR. McLEAN: I believe that you should. And just to  
22 make sure that everybody knows what I'm talking about in this  
23 case, if the Commission finds that Gulf has behaved well in the  
24 past and, and believes that they'll continue that into the  
25 future, you can reward them in future rates. If you believe

1 that they have behaved badly in the past and you believe that  
2 that behavior is going to continue, then you can recognize that  
3 in future rates. What you can't do is design future rates on  
4 past performance without tying the two notions together by a  
5 presumption that that behavior will continue. I believe that  
6 you run afoul of retroactive ratemaking if you do what I just  
7 said.

8 COMMISSIONER PALECKI: Mr. McLean, in the 1989 Gulf  
9 rate case, the Commission reduced Gulf Power's ROE for a time  
10 certain. Is that in line with, with your philosophy that  
11 you're not making the adjustment for future rates in that it  
12 was for a time certain, there was a presumption that their  
13 management would then within that time period correct the prior  
14 situation?

15 MR. McLEAN: That's the way I distinguish and  
16 recognize the authority of that case. But it is also true in  
17 the course of human events that we don't always focus on that  
18 particular issue at that particular time. Yes, I believe that  
19 if you analyze that case, the belief at that time and the way,  
20 the reason the Court signed off on that is because the  
21 Commission believed that if the company were penalized for some  
22 period of time, that that behavior would correct and then there  
23 would be no need to penalize in the future. I think there's an  
24 implicit finding that that's the case.

25 COMMISSIONER PALECKI: Thank you.



1           MR. McLEAN: But I do want to emphasize this. It's  
2 my understanding of the Staff recommendation here that it is  
3 not guided so much by legal considerations as the very  
4 practical consideration of whether there is a reliable device  
5 by which you can measure Gulf's performance in the past as an  
6 indicator of future performance. I think that's what the Staff  
7 recommendation is based on. It's not really based on this,  
8 this fairly tightly defined legal consideration.

9           My fear is that if you reward a company based upon  
10 past performance, that you will engage in retroactive  
11 ratemaking, unless you indulge the presumption that past  
12 performance will continue into the future at least for a time.

13           CHAIRMAN JABER: Yeah. I appreciate your  
14 clarification. I just couldn't get to the practical policy  
15 considerations, nor did I think we needed to, if we didn't have  
16 the authority to change ROE.

17           MR. McLEAN: I understand, Madam Chairman. Thank  
18 you.

19           COMMISSIONER DEASON: Let me make an observation and,  
20 Mr. McLean, see if it -- I think it meshes with your legal  
21 argument.

22           When you determine the cost of capital, that's fairly  
23 subjective, and we try to analyze it to the best extent that we  
24 can and we usually set a range and say that, you know, earnings  
25 within, anywhere within this range is reasonable.

1           I've also -- there's been economic theory stated that  
2 indicates that regulation is a surrogate for competition. The  
3 long-term firms that are going to be competitive and stay in  
4 business are going to earn a reasonable rate of return  
5 somewhere within a range and that firms that are more efficient  
6 or more innovative or meet customer expectations in a better  
7 way, they're probably going to earn more than their true cost  
8 of capital and they may, but that's what competition is about.  
9 And that those firms which are maybe not quite as innovative or  
10 efficient or don't quite meet customer expectations may earn  
11 lower than their cost of capital and they're going to have to  
12 change their ways if they want to stay competitive. And that  
13 regulation is a surrogate for competition, and I've heard it  
14 stated that on a going-forward basis when you set rates, if a  
15 company is efficient, to some extent if we still stay within  
16 the overall range but if we set rates at higher than the true  
17 midpoint, that that may be really closely resembling  
18 competition than taking a number that is the midpoint and  
19 saying we're going to base rates on that midpoint.

20           Now do you follow that argument, and how does that  
21 mesh with your legal presentation?

22           MR. McLEAN: I do. I follow the argument that if a  
23 given company is especially efficient, that they will -- well,  
24 let me make back up and stay the Staff recommendation is not  
25 that this company shall under all circumstances earn

1 11.6 percent and remain within that range. It is a judgment by  
2 this Commission to offer them the opportunity to accomplish  
3 that. And they might be able to do it especially well and earn  
4 higher than the range. I accept that.

5 I think the very first part of your argument really  
6 provides me the answer to your question. And that is that it's  
7 a highly subjective enterprise anyway to determine return on  
8 equity and, as I said from the beginning, it is at the heart of  
9 what you do. You are a surrogate for the free marketplace and  
10 what you attempt to do is imagine this, this enterprise in a  
11 competitive environment and try to decide what would be a  
12 reasonable profit, reasonable return on equity for that  
13 enterprise.

14 So I don't see what you just said as being  
15 inconsistent with legal principle. In fact, I believe that the  
16 legal considerations that I've laid out provide the framework  
17 in which you can do that. But it is the one area probably that  
18 I would argue that you have the most discretion, because in  
19 many instances it's the bottom line of what you do.

20 A company that performs not so well, the K-Mart's of  
21 the world, perhaps don't, don't do well for their investors  
22 over time. The ones who perform especially well, perhaps the  
23 Wal-Mart's of the world, do well for their investors over time.  
24 And yours is to, is to create the environment where they can do  
25 that.

1           Now the question that you ask is a tough one. Would  
2 they excel anyway if they do particularly well? It's very  
3 difficult to say. It is a subjective judgment for you folks,  
4 I'm afraid. I don't think the law is going to help you out a  
5 whole lot in making that kind of decision. The law creates a  
6 framework in which you have discretion and you can exercise it.

7           CHAIRMAN JABER: Okay. Now may I ask a technical  
8 question of our Staff? Do you feel comfortable with the record  
9 as established in this case on past performance such that that  
10 becomes the benchmark to evaluate future performance? So if I  
11 was inclined to agree with the company that they should be  
12 rewarded going forward and use past performance as an  
13 indicator, how can I evaluate and measure future performance?

14           MR. LEE: I think the company has also  
15 demonstrated -- I think there are several ways you can  
16 benchmark. Certainly we need to look at their past performance  
17 and we can look at their performance -- the company indicated  
18 there are some outside, some factors outside their control that  
19 may affect the performance, and we believe that those factors  
20 may add to their benefit or detriment. And if Gulf can  
21 demonstrate that those factors actually, those factors  
22 actually, you know, their past, their past performance actually  
23 indicates that most of the performance is due to their own  
24 efforts instead of just because the weather is nice or their  
25 access to low cost power, then I think we should recognize that

1 and, you know, set benchmark according to that.

2 CHAIRMAN JABER: That -- are we able to do that right  
3 now? Do you feel like the record --

4 MR. LEE: That's the problem is that we don't have  
5 any mechanism now to set a numerical in this proceeding, in  
6 this proceeding. We don't have, have an established mechanism  
7 to do that.

8 And in the, in the Mississippi case actually they do  
9 have that. They have, as Gulf indicated, they have previously  
10 established mechanism and they've actually had the incentive  
11 plan since, operate on that plan since 1985, I think.

12 CHAIRMAN JABER: How did they establish --

13 MR. LEE: That's different.

14 CHAIRMAN JABER: How did they establish the  
15 performance standard in the Mississippi case?

16 MR. LEE: I think it's, it's kind of formula-based  
17 and they, they just -- using that -- they have some adjustment,  
18 I think, over the years. But they act according to that  
19 mechanism, you know, to adjust. That's the way it has been  
20 done, I think.

21 CHAIRMAN JABER: Commissioners, do you have  
22 questions?

23 COMMISSIONER PALECKI: I don't have a question, but I  
24 just have a thought I would like to throw out.

25 I'm concerned about taking any action that might

1 impede the parties that are going to be working together to put  
2 in place the going-forward incentive mechanisms. And I know  
3 that most of those incentive mechanisms that have been agreed  
4 to between the utilities and the Office of Public Counsel and  
5 the other parties have had mechanisms that have increased the,  
6 the range of the ROE and have had other similar mechanisms like  
7 that included, and I just don't want to do anything today that  
8 might impede the parties.

9 I wonder if it would be possible for this Commission  
10 to recognize today that Gulf Power's performance has been  
11 excellent, and ask the parties to consider that in the future  
12 proceeding and see if perhaps we can address this issue in the,  
13 the proceeding that will be filed within 90 days.

14 CHAIRMAN JABER: And make, make the reward or the  
15 penalty mechanism part of the incentive plan petition that's  
16 filed ultimately?

17 COMMISSIONER PALECKI: I would like to see that. And  
18 I certainly do believe that Gulf Power's performance has been  
19 very good performance, and I also believe that that needs to be  
20 recognized and I think our, our statutes support recognizing  
21 that in rates.

22 And I'd just like to cite several statutes.  
23 Section 351.17 gives the Commission the authority to do audits  
24 specifically of management performance.

25 Section 366.01 states that, "The regulation of public

1 utilities is deemed to be in the public interest, and this  
2 chapter shall be deemed to be an exercise of the police power  
3 of the state for the protection of the public welfare and shall  
4 be liberally construed for the accomplishment of that purpose."

5 Section 366.04(1) concerning rate fixing specifically  
6 states that, "The Commission should consider the ability of --"  
7 let me start -- "the cost of providing such service and the  
8 value of such service to the public and the ability of the  
9 utility to improve such service and facilities."

10 Section 367.07 states, "In setting rates --"

11 CHAIRMAN JABER: 367?

12 COMMISSIONER PALECKI: 366.07.

13 COMMISSIONER JABER: Oh, okay.

14 COMMISSIONER PALECKI: They start off saying that,  
15 "The Commission shall determine whether rates are unreasonable  
16 insufficient, excessive," et cetera, "or any service is  
17 inadequate or cannot be obtained."

18 So the statutes seem to say across the board that the  
19 Commission should consider the quality of service.

20 366.07(5) in setting experimental rates says that,  
21 "Experimental rates can be set to encourage efficiency." So  
22 matters, matters regarding management and efficiency, the  
23 service provided are cited in many of the statutes that are  
24 used to set rates for electric utilities.

25 CHAIRMAN JABER: Okay. So, Commissioner Palecki,

1 what you're proposing really is acceptance of Staff's  
2 recommendation because that's what Staff says, but add to it a  
3 finding and a recognition that Gulf has excellent past  
4 performance, and perhaps the ROE reward system could be  
5 incorporated into an incentive plan proposal that will be filed  
6 within 90 days?

7 COMMISSIONER PALECKI: Yes. That's my suggestion.

8 CHAIRMAN JABER: Staff, there is nothing that  
9 prohibits us from reestablishing ROE through that incentive  
10 plan process, if, if the record justifies it?

11 MR. MAILHOT: That's correct. You can always adjust  
12 ROE. It's just a question of being able to adjust rates.

13 COMMISSIONER DEASON: And, Madam Chairman, I guess  
14 that very point is the point that I wanted to make.

15 I'm -- you know, we're here to set rates and we need  
16 to do that and we need to set them the best way that we can,  
17 let customers know what the rates are going to be in the  
18 future.

19 An incentive plan is a good thing, and I certainly  
20 encourage the parties to pursue what we discussed as it relates  
21 to Issue 125. But I don't, I'm not comfortable us establishing  
22 rates and then getting a filing in 90 days and then increase  
23 rates more or decrease rates and then tell the customer, oh,  
24 well, we've had another docket and your rates are going up or  
25 going -- I think we need to set rates and let them stay the



1 same, give an incentive for the company to continue their  
2 excellent performance on a going-forward basis, and perhaps  
3 have some type of a sharing program or something, but not  
4 adjusting rates again.

5           So I'm more comfortable that if we feel that, that  
6 Gulf's performance is such that there needs to be some additive  
7 to the return on equity and that's indicative of what rates  
8 should be on a going-forward basis, let's do it and not just  
9 say let's put it off until we have this, this generic  
10 investigation into an incentive mechanism. Because I'm just  
11 not comfortable setting rates here and then in 90 days  
12 resetting rates. I want to set rates and have them be in  
13 existence. Hopefully they'll be in existence as long as it's  
14 been since Gulf's last rate case, another ten years or whatever  
15 it's been.

16           CHAIRMAN JABER: Would it necessarily, Commissioner  
17 Deason, result in resetting rates if you reestablish ROE for  
18 the purpose of a, I'm asking because I don't know, for the  
19 purpose of using that ROE for establishing rates going forward,  
20 is there a distinction between establishing ROE for  
21 surveillance purposes and ROE for establishing rates going  
22 forward?

23           MR. MAILHOT: Yes. Okay. Say the company files an  
24 incentive plan and it may involve a new range, you know,  
25 different from what you vote on today, that range can be

1 changed at that time and it may not affect rates. I think the  
2 concern is, is that if in 90 days it would be more difficult  
3 perhaps to come back and say, well, you know, as part of this  
4 incentive we really want to give them a 50 basis point  
5 increase, that you wouldn't want to adjust rates then for that  
6 50 basis points. I mean, I think that's the concern is  
7 adjusting customer rates.

8 COMMISSIONER DEASON: That's my concern. I want,  
9 when we, when we leave today we know what the revenue  
10 requirement is. And when we come back in on May the 8th and  
11 set rates, those are the rates and the customers know what they  
12 are and everyone makes their plans accordingly.

13 Now I think that we can, I think that we can  
14 envision, we can come forward with some type of an incentive  
15 mechanism which doesn't entail changing customer rates. It  
16 just lets the company operate, hopefully it will operate even  
17 more efficiently than they are now in the current rate makeup  
18 and perhaps it improves their profitability through some type  
19 of a sharing program, but we don't have to change rates to  
20 provide that incentive. I'm hopeful we don't have to change  
21 rates again in 90 days.

22 CHAIRMAN JABER: Commissioners, any other comments,  
23 questions? Just to let you know, I -- go ahead, Commissioner  
24 Palecki. Comments or questions? Pass?

25 COMMISSIONER PALECKI: I think I'll just pass.

1           COMMISSIONER JABER: Okay. The comment I was going  
2 to make is I'm going to support Staff's recommendation today  
3 because I think the overall past performance, Gulf's excellent  
4 past performance -- I mean, having conducted those service  
5 hearings, no one knows, you know, perhaps better than I what  
6 the customer satisfaction was, and I've heard nothing but good  
7 things from the customers about this company. But I'd love to  
8 be able to maximize all the parties' opportunities to float  
9 many, many ideas in creating an incentive program that takes  
10 reliability into account. So keeping an open mind on the  
11 future, and certainly I completely understand if the  
12 Commissioners want to deny Staff's recommendation, that's fine,  
13 I'm just not ready to include the reward in ROE today. So,  
14 Commissioners, if you all have a motion.

15           COMMISSIONER DEASON: What issue are we on?

16           CHAIRMAN JABER: Oh, I'm sorry.

17           COMMISSIONER BAEZ: Yeah.

18           CHAIRMAN JABER: This was 34.

19           COMMISSIONER PALECKI: 34? Is there already a motion  
20 on the floor or not?

21           COMMISSIONER DEASON: I thought that Commissioner  
22 Bradley may have made a motion, but I may, I stand corrected on  
23 that.

24           CHAIRMAN JABER: Yeah. On 34? What was it? That  
25 was so long ago.

1           COMMISSIONER BRADLEY: Basically my issue involves  
2 the current numbers in Gulf's --

3           CHAIRMAN JABER: I was going to ask you about that,  
4 Commissioner Bradley. You said something about the 12 percent.  
5 Staff, there was a stipulation --

6           COMMISSIONER BRADLEY: My motion was that we increase  
7 their range by 50 basis points on each side so that we would  
8 have a 10.5 to 13.5 range, with a midpoint of 12.

9           COMMISSIONER DEASON: I'm sorry. With a midpoint  
10 where?

11          COMMISSIONER BRADLEY: Of 12.

12          CHAIRMAN JABER: And that recognizes that that's  
13 currently where their midpoint is today is what I heard you  
14 say. And my question of Staff is is that in the record? What  
15 is in the record about what the midpoint is today?

16          MR. MAILHOT: I assume that the stipulation that was  
17 approved in '99, that that's in the record. And what that  
18 stipulation called for was that basically when it ended, when  
19 the Smith Unit 3 came online, at that point the company's ROE  
20 would revert to its prior ROE, which is 12 percent.

21          COMMISSIONER BAEZ: Madam Chairman, and that  
22 particular point has given me a splitting headache because  
23 we've been, you know, we've been arguing, we've been arguing on  
24 a policy basis in Issue 34 as to whether we should or could or  
25 will or won't recognize past performance as the subject of some

1 kind of reward or, or ROE add, and yet I think there's a,  
2 there's an issue out there, and these are the questions I had.  
3 I was hoping we had -- it seemed to me clearer along the way  
4 why Staff had suggested let's discuss Issue 35 before, and I'm  
5 beginning to think they might have been right.

6 CHAIRMAN JABER: Well, we can certainly do that,  
7 Commissioner.

8 COMMISSIONER BAEZ: I'm not even -- I'm not throwing  
9 it out there as a suggestion. Let me just get this one out and  
10 then you, maybe we can all figure out what's best to do.

11 I do have -- I have questions on, on how the Staff  
12 treated that stipulation. Because if it was anticipated at  
13 some point there that the in-service date was to occur  
14 according to schedule on some level or to some extent, that  
15 what we would be dealing with is a 12 percent midpoint. Did  
16 the Staff consider what the reality was going to be eventually  
17 and how much of this recommendation, and I can't recall  
18 specific language, but how much of it comes at it from the  
19 perspective we're setting a midpoint at 11.6 and what's the  
20 reason for changing the current midpoint, that current midpoint  
21 being 12 percent? That's, those were my questions or that was  
22 my, my concern or my, the part that I don't understand.

23 MR. LESTER: I based the 11.6 on the testimony of the  
24 witnesses for this case. And I did not specifically consider,  
25 I did not consider the, what the previous midpoint was because

1 the cost of capital was always changing or return on equity was  
2 always changing. So I think using the most updated numbers  
3 based on current testimony is the appropriate approach that I  
4 took.

5 CHAIRMAN JABER: Is it just the appropriate testimony  
6 or the test year that's been filed by the company as well?  
7 Aren't you looking at ROE and expenses and revenues based on  
8 the projected test year, in this case June 2002, May 31st,  
9 2003, and what the ROE was or what it became today, does it  
10 really matter?

11 MR. LESTER: It does not matter. I did not -- no, it  
12 does not matter. What matters is -- the way I've approached it  
13 is the most current information, current capital market  
14 information to be used to determine an ROE for the projected  
15 test year.

16 MR. MAILHOT: When we come up with an ROE, it's  
17 really forward-looking regardless of what the test year may be.  
18 Even if we had a 2000 test year, we don't try to look at the  
19 ROE for 2000. We look at it on a projected basis. I mean,  
20 that's the way the models are designed.

21 COMMISSIONER BRADLEY: If the current range is 12 and  
22 we back off to 11.6, aren't we effectively punishing a company  
23 for, for doing well, that is for providing exemplary service to  
24 their customers, ratepayers?

25 MR. LESTER: No, sir, I don't believe so. I think

1 the cost of equity is something that's going to change every  
2 day. It just changes because the capital markets change,  
3 interest rates change. So, I mean, to the extent the ROE in  
4 the way I've approached it and how I've recommended it has  
5 declined, then that just is simply reflecting current capital  
6 market conditions. It is subjective. I mean, there's -- you  
7 can always argue for maintaining the current range or  
8 something. But, I mean, the rates do, cost of capital changes  
9 every day, and so using the most current information, I think,  
10 is best.

11 COMMISSIONER BRADLEY: What's the cost of capital  
12 today?

13 MR. LESTER: Well, and based on the record in this  
14 case, what I've evaluated, I'm recommending 11.6 for the return  
15 on equity.

16 COMMISSIONER BRADLEY: No. No. No. My question is  
17 do you know what the cost of capital is today?

18 MR. LESTER: No, sir, because we don't -- on this  
19 very day, no, because the markets have changed and we don't  
20 have testimony on that.

21 CHAIRMAN JABER: Commissioner Baez, did you have  
22 other questions?

23 COMMISSIONER DEASON: Let me ask a question, because  
24 it deals with the timing of things.

25 COMMISSIONER BAEZ: Sure. Please.

1           COMMISSIONER DEASON: And it's just -- I mean, we  
2 have to have evidence submitted as of a certain date and we  
3 have a hearing as of a certain date, we have cross-examination.  
4 And then we know that when that's over with, the capital  
5 markets don't close and never reopen again, they continue to  
6 change; the day after the hearing they change.

7           MR. LESTER: Right.

8           COMMISSIONER DEASON: I guess my question is as of  
9 what date is the 11.6 determined? And the reason I ask that  
10 question is I want a feel for is it reflective of the  
11 ramifications and impacts as a result of the Enron situation?

12           MR. LESTER: I would have to go back and look at the  
13 record. I know that Gulf Witness Benore updated his figures,  
14 and I'm relying on that. And if you, if you'll give me just  
15 one moment, I might be able to check something in the rec. I  
16 think both he and Witness Rothschild used stock prices -- well,  
17 I believe his stock prices were in August of last year and  
18 Mr. Rothschild was as of November of last year. And then  
19 Mr. Benore updated his models, and I don't have the exact date  
20 in front of me for that, but his update would have been perhaps  
21 December or something.

22           COMMISSIONER DEASON: So it would have been --

23           MR. LESTER: I believe his update probably would have  
24 included the problems with Enron that developed in November.

25           COMMISSIONER DEASON: So it would have been during



1 that time frame, maybe not the full impact, but at least --

2 MR. LESTER: Some contemplation, yeah. Yes, sir.

3 There's even a mention in one of our depositions, I think of  
4 Mr. Rothschild, of, I think he brought up the Enron case, if I  
5 recall.

6 COMMISSIONER BAEZ: I'm sorry. Just a follow-up to  
7 Commissioner Deason's question.

8 This impact would have had what effect on ROE  
9 potentially? Would it trend it up, trend it down?

10 MR. LESTER: The Enron situation?

11 COMMISSIONER BAEZ: Yeah.

12 MR. LESTER: Probably would have depressed energy  
13 company prices, raising the cost of capital. Very broadly  
14 speaking, I think that might be --

15 COMMISSIONER BAEZ: Yeah. I'm not trying to hold you  
16 to any specifics. Just I want to get an idea for which, what  
17 direction. That's all.

18 CHAIRMAN JABER: Commissioner Baez, you expressed a  
19 question about the order, and it occurs to me going back to  
20 read what Commissioner Bradley's motion was, it actually may  
21 encompass all three issues. And whatever your preference is is  
22 fine with me.

23 COMMISSIONER BAEZ: I agree. No. My -- I guess  
24 since I had, since I had questions as to, as to what the, what  
25 the possibilities of maintaining or an idea of what the

1 possibilities of maintaining the current, the current midpoint  
2 and whether it, whether it falls within the range of  
3 reasonableness -- I mean, we've said all this, you know, this  
4 is -- there's a little bit of art as compared to science in  
5 setting these midpoints anyway. And although the standard or  
6 the procedure might be wrong, it just, it, I seem to be going  
7 at it, in my mind anyway, as to, you know, how unjustified  
8 would, would the current range have been in light of  
9 circumstances? And I know that that's not what you did. I  
10 know that, you know, cost of capital somehow is set up based on  
11 outside circumstances. But nevertheless, you know, I think  
12 it's a possibility to kind of address in a roundabout way all  
13 the, all the opinions that have been expressed here as to  
14 somehow recognize what exists now as not inappropriate or  
15 reasonable and still address whatever, you know, the whole  
16 concept of rewards and, and everything consistent with what the  
17 Staff is, is suggesting. Because I do feel uncomfortable about  
18 not having -- you know, saying yes. And I don't think there's  
19 any disagreement from anyone that the service has been, you  
20 know, very good or has excelled. But I think that the  
21 discomfort generally is with the lack of, the lack of criteria,  
22 you know. We're kind of, we're winging it, and that's  
23 something that I think we, we might not feel so comfortable  
24 doing.

25                   But in an effort to kind of stake out some, some

1 middle ground, to the extent that that 12 percent midpoint that  
2 exists today wasn't unjustified, then, you know, the policy  
3 issue or the policy of recognizing past performance or, or  
4 whether it's appropriate to fold into an incentive program or  
5 some sharing program in the future as a result of that 90-day  
6 filing, you know, can, can serve as a cleanup to the rest of  
7 those issues that are hanging out there and at least do a  
8 little bit of, of adjusting now. I don't know how that jives  
9 with -- I'm not exactly sure how it plays with the motion  
10 that's on the floor right now.

11 CHAIRMAN JABER: Okay. Well, let's give it a try.  
12 And recognize, Commissioner Bradley, I'm not, I'm going to  
13 support the motion only in part, and I'll be clear where I will  
14 and where I won't. And I'm sure all the Commissioners will  
15 feel free to give some input.

16 But if we take your motion for Issue 34, it would be  
17 to deny Staff on Issue 34 and to allow a 50 basis point range  
18 on both sides. Commissioners, don't let me state this --

19 COMMISSIONER DEASON: 150 basis points.

20 CHAIRMAN JABER: 150 basis points on each side.

21 COMMISSIONER PALECKI: Well, let me share my  
22 thoughts. My initial inclination would be to move Staff's  
23 recommendation and specifically recognize the good service that  
24 has been provided by Gulf Power and ask the parties to consider  
25 that in putting together an incentive proposal.

1           On the other hand, I'm also considering some,  
2 awarding something to Gulf Power now as a recognition of the  
3 good service that they have given over the years.

4           I have a problem with 12 percent. I know the Staff  
5 has recommended 11.6 percent. My inclination would be to  
6 increase that to 11.75 percent as a recognition of their past  
7 service. I would not increase the range at this time. I think  
8 increasing the range is something that the parties should  
9 consider for purposes of the incentive proposal in the future.

10           CHAIRMAN JABER: Okay. Commissioner Palecki --

11           COMMISSIONER PALECKI: Those are my thoughts.

12           CHAIRMAN JABER: Okay. We have a motion from  
13 Commissioner Bradley. So trying to separate it out, it would  
14 be on 34 to deny Staff and to do the 150 basis points. So is  
15 there a second for that motion?

16           COMMISSIONER DEASON: Well, I'm trying to just, Madam  
17 Chairman, I'm just trying to understand where we are and I'm  
18 trying to, trying to understand the motion a little bit better  
19 as well.

20           Issue 34, that's the performance consideration. 35  
21 is just what do we consider to be the cost of equity capital;  
22 is that correct? Yes, what is the appropriate ROE. And then  
23 37 is the range.

24           COMMISSIONER JABER: I think, Commissioner Deason --

25           COMMISSIONER DEASON: Is that correct?

1 CHAIRMAN JABER: -- that there might be some  
2 consensus with respect, some consensus with respect to the  
3 12 percent. So if you can help us separate out the motion,  
4 that would allow the Commissioners to vote separately on the  
5 range, the ROE amount and the reward.

6 COMMISSIONER DEASON: I guess my question then, yes,  
7 Commissioner Bradley, in your motion are you addressing all  
8 three of these issues or just some of these issues? Because --

9 COMMISSIONER BRADLEY: All three.

10 COMMISSIONER DEASON: All three. So you're looking  
11 at 12 percent as the, that's the level that we would use to set  
12 rates which would --

13 COMMISSIONER BRADLEY: Midpoint.

14 COMMISSIONER DEASON: That would be the midpoint.  
15 And that includes consideration of Gulf's performance?

16 COMMISSIONER BRADLEY: Yes.

17 COMMISSIONER DEASON: Okay. Well, let me ask you  
18 this -- and I think you and I are fairly, probably fairly  
19 close. This may cause some problems for the Chairman, so maybe  
20 we're kind of in a horse trading situation here. I'm not sure.

21 CHAIRMAN JABER: I'm listening. I don't like being  
22 in the middle.

23 COMMISSIONER BRADLEY: I'm a horse trader now.

24 COMMISSIONER DEASON: And I hear Commissioner Palecki  
25 say that he can live at 11.75, but that he doesn't necessarily

1 want to consider changes in the range.

2 Let me tell you where, where I would, where I would  
3 be, and then maybe, maybe we can come with a motion that maybe  
4 we can get a majority to live with.

5 I respect Staff's analysis of the, of the cost of  
6 equity capital, and I think they've indicated 11.6. I think  
7 you also indicated that 11.8 wouldn't be unreasonable either.  
8 And I'm also concerned to some extent that the, as to what  
9 impacts Enron has had on capital markets. I'm concerned that  
10 maybe we haven't captured the full effect of that. Hopefully  
11 that will start to diminish over time. I haven't seen it yet  
12 though.

13 I would, my preference would be to say the cost of  
14 equity capital is 11.75 and to increase that to 12 percent, 25  
15 basis points for recognition of Gulf's outstanding performance.  
16 So we would set rates at 12 percent. I'm inclined to go ahead  
17 and expand the range, realizing that that is something that can  
18 be considered in a proposal and we can change the range without  
19 changing rates.

20 My big concern is I don't want to do anything -- I  
21 want to set rates, have rates set and then we look at the  
22 incentive. If we want to tinker with things and massage things  
23 or change things around a little bit, that if we can give  
24 proper incentives and come up with some sharing, that's fine.  
25 So I would be inclined to expand the range. So what that range

1 would be would be 10.25 to 13.25, with 11.75 being the  
2 midpoint, but we would set rates at 12 percent.

3           And then while I've got the, I've got the floor here  
4 and I'm talking, I would also send out a challenge, if this  
5 were adopted, I would also send out a challenge to Gulf that  
6 we're setting rates at higher than 11.75, we're setting it at  
7 12 and we're expanding the range. If Gulf's earnings started  
8 approaching 100 basis points above 11.75, that being 12.75,  
9 that they look very seriously at using those earnings to go  
10 ahead and write off the third floor deferral that we're, we've  
11 indicated that you should have latitude, you know, to  
12 \$1 million a year write-off. So I would issue that challenge  
13 to Gulf.

14           So I would say 11.75 is the cost of equity, we set  
15 rates at 12 percent, we have a range of 10.25 to 13.25. But if  
16 Gulf's earnings start reaching 12.75 and above, they start,  
17 before they keep all of that earnings, they start looking at  
18 writing off that deferred asset related to the third floor.  
19 That's what my preference would be. But I'm willing to horse  
20 trade, so we can start the horse trading.

21           CHAIRMAN JABER: You're pointing at me.

22           COMMISSIONER BRADLEY: Madam Chair, in the spirit of,  
23 and my fellow members, in the spirit of cooperation, I would be  
24 willing to accept the substitute motion.

25           CHAIRMAN JABER: Okay.

1 COMMISSIONER BRADLEY: If that --

2 CHAIRMAN JABER: You traded successfully.

3 COMMISSIONER DEASON: See, you know, he's a real  
4 horse man anyway.

5 CHAIRMAN JABER: I know.

6 Commissioners, any input, any additional discussion?

7 COMMISSIONER BAEZ: When, when you say writing off  
8 the third floor deferral, is that a condition?

9 COMMISSIONER DEASON: I wouldn't make that a  
10 requirement. I would say us sitting here today and trying to  
11 send some signals to Gulf Power saying you've been an efficient  
12 company, you've operated well, we want to recognize that, we  
13 want to set rates a little bit higher than the midpoint, we're  
14 going to expand your range, but we also realize that there's an  
15 investment out there that should be written off your books as  
16 rapidly as possible.

17 And me just sitting here, when your earnings start  
18 reaching 12.75, if they do, I think you need to look at that  
19 very seriously and at least be in a position to answer a  
20 Commissioner's question as to why didn't you write that asset  
21 off, if your earnings are at 12.75 or above? And I'm not  
22 saying -- and if it's within your discretion -- I'm not saying  
23 the earnings have to be at 12.75. If you want to write that  
24 asset off at earnings lower than 12.75, I think that's great.  
25 Have at it. But what I'm saying is if your earnings start



1 reaching that magnitude and that asset is still on your books,  
2 I think you need to at least explain why you couldn't afford to  
3 write some of that asset off.

4 COMMISSIONER BRADLEY: Does my acceptance denote a  
5 second?

6 COMMISSIONER BAEZ: Hang on there. I think we need  
7 to talk about this.

8 COMMISSIONER BRADLEY: I'm sorry.

9 CHAIRMAN JABER: But I want to answer Commissioner  
10 Bradley's question. Actually I think, I think it's still your  
11 original motion and I think what you heard was Commissioner  
12 Deason willing to second that motion, but there needs to be  
13 discussion on this new motion.

14 COMMISSIONER BAEZ: And I think, I think Commissioner  
15 Deason's suggestion gets, gets me where, where I'm comfortable  
16 in terms of setting, in terms of setting a midpoint today,  
17 finding, finding a point where we can set rates at. I don't  
18 have a problem with that.

19 I think, I think where I have a problem is that I had  
20 envisioned, in all candor, I had envisioned that spread on the  
21 range as part of, as part of what was going, what would  
22 ultimately be a give and take on, on a sharing plan. And I  
23 guess, you know, with, with your suggestion, Commissioner  
24 Deason, I, you know, leave it to the accountant and I think  
25 you've structured or suggested something that I think

1 ultimately might work.

2 I guess what, what it begs my question is why would  
3 we need a 90-day filing with that kind of, with that kind of  
4 detail? As much as it wouldn't, it wouldn't hurt me at all to  
5 see something with that kind of thinking in it, I'm just, I'm  
6 just wondering if we're not, if we're not cutting our own  
7 throat here.

8 COMMISSIONER DEASON: Well, you know, if, if we make  
9 a decision today and set rates and set up some framework and  
10 Public Counsel is happy with it and Gulf is happy with it, we  
11 don't have to have 90 days. But I'm not saying that they will  
12 be.

13 COMMISSIONER BAEZ: Perhaps you're right.

14 COMMISSIONER DEASON: Anybody -- I guess we can, we  
15 can have a filing and that's fine. I'm not trying to preclude  
16 a filing. But if that's the effect, I mean, that's not  
17 necessarily a bad thing.

18 COMMISSIONER BAEZ: No. I, you know, I think if, as  
19 you say, we had, we had everybody's favorable, if we had  
20 everybody's favorable stance or comment on it, then, then maybe  
21 all of the, all of the concerns that we had expressed before  
22 with even accepting a sharing plan in terms of, you know,  
23 letting everyone get their due process and actually have  
24 everybody at the table and involved, you know, might, might  
25 have been served in this particular instance. Because I think

1 you can't -- I'm having trouble separating the two, frankly, or  
2 why the interest of one is, you know, allowing the interest of  
3 one to be carried out is important in a sharing plan and not,  
4 and not in a, in a decision that expands the range, although I,  
5 I would agree that we have the discretion to do that. But if  
6 it's not something that we're, that we normally do, and, again,  
7 someone can correct me whether it is or it isn't, that that  
8 might not be a, that might not be a shift that merits a more,  
9 some more discussion, especially because of the basis,  
10 especially because of the justification for doing it, which  
11 ultimately is, you know --

12 COMMISSIONER DEASON: Let me explain one of the  
13 reasons on the range.

14 First of all, it doesn't affect rates, but it  
15 certainly establishes a framework, you know, that earnings are,  
16 are reviewed.

17 Expanding the range is beneficial in two respects.  
18 It's beneficial to the company if they can earn, they can earn  
19 a higher return and still be within the range. But if things  
20 change, and who knows what lies ahead, and if their earnings  
21 start to deteriorate and they find it necessary to come back in  
22 for a rate proceeding, if you've got a lower range, that means  
23 that they have, they have to have lower earnings before they  
24 can justify an interim increase. They have to have lower  
25 earnings before they can justify the need for a rate case.

1           COMMISSIONER BAEZ: No. I, I agree with you. I  
2 mean, I think that that's, I think that that's one of, one of  
3 the plus sides of having an expanded range in an absolute  
4 sense. I just --

5           COMMISSIONER DEASON: You're just wondering why we're  
6 doing it now as opposed --

7           CHAIRMAN JABER: No. I think the concern, if I could  
8 try to summarize this, when it's all said and done, does this  
9 become the incentive plan that we were attempting to have the  
10 parties come together and reach? And specifically because we  
11 had the due process concerns and the opportunity to be heard  
12 and the opportunity for the specific plan to be vetted in  
13 dialogue at the hearing.

14           COMMISSIONER PALECKI: My concern is that the plan  
15 that we're coming up with now might not be as good as a plan  
16 that Gulf and OPC and the other parties could negotiate.

17           CHAIRMAN JABER: Now that's hard to believe because  
18 Commissioner Deason did this one, but.

19           COMMISSIONER PALECKI: But, you know, recognizing  
20 what has been the incentive plans for Florida Power Corp and  
21 for Florida Power & Light, I think both of those plans are, are  
22 better than what I'm, I'm hearing us come up with right now.  
23 I'm very reluctant to take any action that might impede those  
24 negotiations.

25           CHAIRMAN JABER: Okay.

1           COMMISSIONER PALECKI: At the same time, I want to  
2 reiterate, Gulf's service has been good and I think they're  
3 deserving of some recognition for that.

4           CHAIRMAN JABER: Okay. Commissioners, there is a  
5 motion and a second, I'm not sure who made it, who seconded it,  
6 that would resolve Issues 34, 35 and 37. Is there agreement  
7 that that motion would resolve those three issues?

8           COMMISSIONER BRADLEY: Oh, okay. Now which motion  
9 are we -- my motion?

10          CHAIRMAN JABER: No. No. You accepted the  
11 substitute --

12          COMMISSIONER BRADLEY: Okay. Yes, I did officially.  
13 Yes.

14          CHAIRMAN JABER: Which was, so that we're clear, the  
15 motion is to have the range from 10.25 to 13.25, establish  
16 11.75 as the midpoint, but set rates at 12 percent. And it  
17 includes a challenge for Gulf Power that if they go over 100,  
18 by 100 points the midpoint, which would be 12.75, that they  
19 would write off the deferred asset associated with the third  
20 floor.

21          COMMISSIONER DEASON: Yeah. And there's -- and I  
22 don't -- to make it clear, that it's just a challenge. It's  
23 just like, you know, you need -- if you can't write it off at  
24 those earnings levels, you need to explain why.

25          CHAIRMAN JABER: Okay. There's been a motion and

1 second. All those in favor, say aye.

2 COMMISSIONER BRADLEY: Aye.

3 COMMISSIONER DEASON: Aye.

4 CHAIRMAN JABER: Those opposed, say nay.

5 COMMISSIONER PALECKI: Nay.

6 CHAIRMAN JABER: Nay.

7 COMMISSIONER BAEZ: Nay.

8 CHAIRMAN JABER: I need a new motion.

9 COMMISSIONER BAEZ: And, please, before, before we  
10 throw a motion out there, can we, can we like really separate  
11 them out?

12 CHAIRMAN JABER: Yes.

13 COMMISSIONER BAEZ: I mean, I, I voted no because I  
14 can't, I don't feel comfortable. I don't feel comfortable with  
15 expanding the range without, without having it. And that's  
16 really my basis. I have no problem with a 25 basis point  
17 recognition of excellent service, I have no problem, you know,  
18 with, with, I guess, the first two parts of the motion.

19 COMMISSIONER DEASON: 11.75 as the midpoint?

20 COMMISSIONER BAEZ: 11.75 and have a 12, you know,  
21 have a .25 kicker.

22 CHAIRMAN JABER: Let's take your good advice and  
23 separate them out.

24 Commissioner Baez, should we take up Issue 35 first?  
25 And that's establishing the appropriate ROE.

1 COMMISSIONER BAEZ: I think that would be my  
2 preference because it's going to help us, it's going to help us  
3 craft 34 --

4 CHAIRMAN JABER: Okay.

5 COMMISSIONER BAEZ: -- later, so.

6 CHAIRMAN JABER: Do I have a motion on Issue 35?

7 COMMISSIONER DEASON: I move 11.75 percent.

8 COMMISSIONER BAEZ: I can second.

9 CHAIRMAN JABER: Okay. There's been a motion and a  
10 second to modify Staff's recommendation on Issue 35 to show  
11 that the appropriate ROE is 11.75.

12 COMMISSIONER DEASON: And I would recognize that  
13 that's really within the broad ranges that Staff said was  
14 reasonable, maybe a little on the higher end, but it's still  
15 within that range.

16 CHAIRMAN JABER: All those in favor, say aye.

17 (Simultaneous affirmative vote.)

18 CHAIRMAN JABER: So Issue 35 is approved unanimously  
19 with that modification.

20 That takes us to Issue 34.

21 COMMISSIONER DEASON: Madam Chairman, just to set the  
22 stage and get the discussion going, I would move that we  
23 recognize, that we set rates at 12 percent, which would be  
24 recognition of a 25 basis point additive to the return on  
25 equity, and that this be reflective of our anticipation that

1 when we set rates, that this is an appropriate level to set  
2 rates and it is indicative of our expectations of continued  
3 superior performance by this company.

4 COMMISSIONER BRADLEY: I will second that.

5 CHAIRMAN JABER: Okay. There's a motion to -- it  
6 would be to deny Staff, Commissioner Deason, right, with the  
7 modification --

8 COMMISSIONER DEASON: Yes. It would be to deny.

9 CHAIRMAN JABER: Yeah. With a modification that the  
10 ROE should have an additive to reflect great past performance  
11 for the purpose of expectations for the future. And there's  
12 been a second. All those in favor, say aye.

13 COMMISSIONER BRADLEY: Aye.

14 COMMISSIONER BAEZ: Aye.

15 COMMISSIONER DEASON: Aye.

16 CHAIRMAN JABER: You can show me as a nay vote. But  
17 let me clarify, not because I do not support the whole idea of  
18 recognizing past performance. I think our comments have  
19 recognized past performance. I'm only dissenting because I  
20 wanted to leave this issue completely open for the parties to  
21 come back and address. And I would note I don't think the  
22 Commissioners, there's any disagreement that it still is an  
23 issue that can be addressed by the parties further.

24 COMMISSIONER PALECKI: And I also would make a nay  
25 vote on this for the same reason. And one additional reason:



1 I just can't get to 12 percent. I believe it's too high.

2 CHAIRMAN JABER: Okay. So Issue 34 passes, as  
3 modified, three to two.

4 What do we have now?

5 COMMISSIONER BAEZ: You've got 37.

6 CHAIRMAN JABER: 37.

7 COMMISSIONER BAEZ: Staff, this, this issue now based  
8 on 35 changes, it would leave you at 12.75 and 10.75; is that  
9 --

10 MR. LESTER: We're recommending the range stay at 100  
11 basis points either side of the mid --

12 COMMISSIONER BAEZ: Okay. So it's, it's the number  
13 that's, you know, it's the spread that's recommended and not  
14 the numbers, not the end points; right?

15 MR. LESTER: That's correct.

16 COMMISSIONER BAEZ: Okay.

17 CHAIRMAN JABER: Commissioners, a motion on Issue 37?

18 COMMISSIONER BRADLEY: What's the specific number,  
19 just --

20 CHAIRMAN JABER: This issue would have us  
21 establishing what the range should be. And to be consistent  
22 with Issue 35, it would be to establish the range from 10.75  
23 to, to what, Staff, 12.75?

24 MR. LESTER: Yes, ma'am.

25 MR. MAILHOT: Right.

1 CHAIRMAN JABER: That's Staff's recommendation at  
2 least.

3 MR. MAILHOT: Right.

4 CHAIRMAN JABER: Commissioners, I need a motion, or  
5 if you have any questions.

6 COMMISSIONER BAEZ: Well, Madam Chair, just -- I'll  
7 throw a motion. I will move Staff for this reason: It's my  
8 feeling that increasing the spread should be subject to  
9 discussion as part of the, as part of an incentive plan. And  
10 that's, that was the feeling I had as a result of the  
11 discussion at hearing and it's a, and it's a feeling I continue  
12 to have today. I think it's more appropriate for the parties  
13 to get, to get involved as part of that 90-day filing. So I  
14 would move Staff.

15 CHAIRMAN JABER: There's been a motion to move Staff  
16 on Issue 37.

17 COMMISSIONER PALECKI: I'll second the motion.

18 CHAIRMAN JABER: Motion and a second. All those in  
19 --

20 COMMISSIONER DEASON: Madam Chair, before we vote,  
21 just let me say that that's not my first preference. I think I  
22 indicated my first preference. But I'm willing to, I'm going  
23 to support the motion for the reasons stated. So I just want  
24 the record to reflect that.

25 CHAIRMAN JABER: Okay. All those in favor, say aye.

1 (Simultaneous affirmative vote.)

2 CHAIRMAN JABER: Issue 37 is approved unanimously.

3 Does that --

4 COMMISSIONER DEASON: That way I don't have any  
5 dissenting votes, I think, in this whole proceeding.

6 CHAIRMAN JABER: Aren't you special?

7 COMMISSIONER DEASON: That's pretty rare; rare for  
8 me.

9 CHAIRMAN JABER: Okay. Staff, does that bring us to  
10 a discussion of what -- to the degree the company takes the  
11 request to file an incentive plan that incorporates some of the  
12 dialogue we've had and includes discussions from consumer  
13 advocates and all affected parties within 90 days of the date  
14 of issuance of the order, Commissioners, is there any more  
15 direction you'd like to give the company, anything you'd like  
16 to see in the plan?

17 COMMISSIONER DEASON: Well, just as I indicated  
18 before, I'd issue this challenge. I would like to see there be  
19 some, just personal preference that there be some incentive to  
20 get this asset off their books that's been there for so long  
21 and really shouldn't be there. And if that can be incorporated  
22 into some type of incentive plan, I'd like to see it.

23 COMMISSIONER BAEZ: I'd agree with Commission Deason.  
24 I think that falls well within all the options that are  
25 available.

1           CHAIRMAN JABER: I'd like to see a very balanced  
2 incentive mechanism that has a revenue sharing plan based on  
3 performance being evaluated from year to year, if that's  
4 possible. I don't know. That's just why I wanted to leave  
5 that completely open for the company to decide. But some sort  
6 of performance measurement that gets harder in a two- or  
7 three-year time period with revenues being shared with  
8 consumers, whether it be in the form of a refund or rate  
9 reduction. I'd like the performance measurements to be clear  
10 so that they can be measured. And I want to make sure that all  
11 of this is tied to reliability, Mr. McNulty, but not to  
12 restrict the company's ideas or hands on how they meet the  
13 reliability standards.

14           And, finally, I would like that to be pursued through  
15 a PAA process. Because if it's a consensus-reached approach, I  
16 don't think we go to the point of having a hearing. And if  
17 it's a settlement, then certainly it's not even PAA. And I  
18 think, you know, the challenge to the company and to the  
19 consumer advocates is that they sit down and reach an approach  
20 that works well for the company because that benefits the  
21 consumers. To the degree a mechanism can be put in place that  
22 keeps the company out of filing rate cases, then that benefits  
23 the consumers. And certainly I don't want to trigger a hearing  
24 process just because I want to see an incentive mechanism.

25           Finally, I want to thank the company because this is

1 a classic case of be careful what you ask for, you might get  
2 it. I asked companies when I became Chairman to think out of  
3 the box and come up with incentive-based approaches in  
4 ratemaking because I really believe that consensus-based  
5 approaches, sharing with, with customers, a better relationship  
6 with customers are beneficial to the consumer. And I certainly  
7 want to thank the company for thinking out of the box and  
8 meeting the challenge, but I have to reconcile that with giving  
9 everyone an opportunity to be heard on what the plan should be.

10 And finally, Staff, I would not want it to be handled  
11 in this docket. This docket needs to be closed and I know we  
12 need to vote on that issue. I would rather that it be a  
13 separately filed petition in a new docket.

14 COMMISSIONER DEASON: Madam Chairman, may I say one  
15 thing?

16 CHAIRMAN JABER: Yes.

17 COMMISSIONER DEASON: Going through this  
18 recommendation, I couldn't help but recognize the amount of  
19 stipulated issues, which was a breath of fresh air. I know  
20 we've already dealt with the stipulated issues before. And I  
21 guess I just would like to repeat the fact that this took a  
22 great deal of work by all of the parties to conduct all of the  
23 review, the discovery and be able to recognize that there are  
24 issues that could be stipulated. And I, as one Commissioner,  
25 appreciate it. I know it took a great deal of work to do that

1 and reach that point. I know Staff played a facilitating role  
2 in that as well, and I want to congratulate them. It helped  
3 them to be able to focus on the other issues, and I think  
4 that's a great thing.

5 CHAIRMAN JABER: Okay. Staff, my direction to you  
6 all is when you get, when and if you get this petition, you  
7 handle it expeditiously, you provide the facilitation necessary  
8 between the parties. I know in one of the company's requests,  
9 Page 10 of 10 of that attachment, they're asking for a one-day  
10 hearing. I'll leave open for you all to decide whether a  
11 workshop on the proposal would be helpful to the Commissioners  
12 and to Staff. Okay.

13 COMMISSIONER BAEZ: Madam Chairman, just one last  
14 question before we break.

15 CHAIRMAN JABER: Go ahead, Commissioner.

16 COMMISSIONER BAEZ: I just want to understand. You  
17 say if we receive a petition or if Staff receives a petition.  
18 What's the significance? Is it -- do they receive it within 90  
19 days? I mean, what's the 90 day play here, I guess?

20 CHAIRMAN JABER: To the degree the company -- that's  
21 a good question.

22 COMMISSIONER BAEZ: Whatever it is, it is. I'm not,  
23 you know -- I just want to understand what the -- maybe someone  
24 else can explain it to me.

25 CHAIRMAN JABER: My understanding, my understanding

1 of the 90 days was to the degree the company wants to file an  
2 incentive plan that incorporates our comments, that they need  
3 to do that within 90 days.

4 COMMISSIONER BAEZ: Okay. All right.

5 CHAIRMAN JABER: Is that a fair statement?

6 COMMISSIONER DEASON: Okay.

7 COMMISSIONER BAEZ: Does that mean that if they do --  
8 and I'm only half joking here -- but if they do it within 120  
9 days, we're not going to take it or --

10 CHAIRMAN JABER: No. It means that I am so excited  
11 about incentive-based approaches that I'd love to see something  
12 in 90 days.

13 COMMISSIONER BAEZ: Do it by 90, please.

14 CHAIRMAN JABER: Okay. Commissioners, we have a  
15 close the docket issue.

16 COMMISSIONER PALECKI: Well, I believe we still have  
17 rate design issues out there.

18 MR. MAILHOT: There will be a subsequent agenda to  
19 address rate issues and then to close the docket.

20 CHAIRMAN JABER: Right. And that's what your  
21 recommendation is on page, on Issue 126, so I need a motion.

22 COMMISSIONER PALECKI: I move Staff.

23 COMMISSIONER DEASON: Second.

24 CHAIRMAN JABER: Okay. There's been a motion and a  
25 second on Issue 126. All those in favor, say aye.

1 (Simultaneous affirmative vote.)

2 CHAIRMAN JABER: Staff, good job. This was one of  
3 the best hearings I have ever been part of. And I thank you,  
4 Gulf, I thank the Intervenors. Thanks for your hard work.

5 (Special Agenda concluded at 1:55 p.m.)

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1  
2 STATE OF FLORIDA )

3 : CERTIFICATE OF REPORTER

4 COUNTY OF LEON )

5  
6 I, LINDA BOLES, RPR, Official Commission  
7 Reporter, 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' attorneys or counsel  
17 connected with the action, nor am I financially interested in  
18 the action.

19 DATED THIS 1ST DAY OF MAY, 2002.

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LINDA BOLES, RPR  
FPSC Official Commissioner Reporter  
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