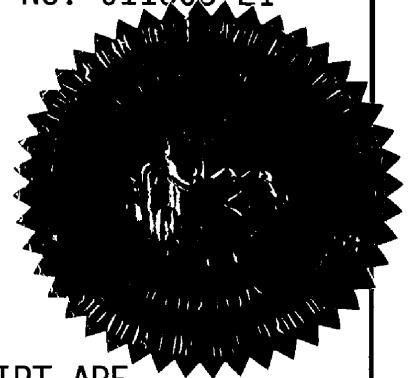


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 011605-EI

In the Matter of

REVIEW OF INVESTOR-OWNED
ELECTRIC UTILITIES' RISK
MANAGEMENT POLICIES AND
PROCEDURES.



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PROCEEDINGS: HEARING

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

DATE: Monday, August 12, 2002

TIME: Commenced at 9:30 a.m.
Concluded 11:34 a.m

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

REPORTED BY: JANE FAUROT, RPR
Chief, Office of Hearing Reporter Services
FPSC Division of Commission Clerk and
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2 RUSSELL BADDERS, Beggs and Lane Law Firm, 3 West
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4 on behalf of Gulf Power Company.

5 JOHN T. BUTLER, Steel, Hector and Davis, 200 South
6 Biscayne Boulevard, Suite 4000, Miami, Florida 33131-2398,
7 appearing on behalf of Florida Power and Light Company.

8 TIMOTHY J. PERRY, McWhirter, Reeves, McGlothlin,
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10 Street, Tallahassee, Florida 32301, appearing on behalf of
11 Florida Industrial Power Users Group.

12 JAMES McGEE, One Progress Plaza, Suite 1500, St.
13 Petersburg, Florida 33733-4042, appearing on behalf of Florida
14 Power Corporation.

15 JAMES D. BEASLEY, Ausley & McMullen, 227 South
16 Calhoun Street, Post Office Box 391, Tallahassee, Florida
17 32302, appearing on behalf of Tampa Electric Company.

18 JACK SHREVE, Public Counsel and ROB VANDIVER,
19 Associate Public Counsel, c/o The Florida Legislature, 111 West
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21 appearing on behalf of the Citizens of the State of Florida.

22 WM. COCHRAN KEATING, IV, FPSC General Counsel's
23 Office, 2540 Shumard Oak Boulevard, Tallahassee, Florida
24 32399-0850, appearing on behalf of the Commission Staff.

25

P R O C E E D I N G S

1
2 CHAIRMAN JABER: Good morning. We are ready to go
3 ahead and get started.

4 Mr. Keating, you have a notice to read?

5 MR. KEATING: Yes. Pursuant to notice issued July
6 22nd, 2002, this time and place have been set for a hearing in
7 Docket Number 011605-EI, review of investor-owned electric
8 utilities' risk management policies and procedures.

9 CHAIRMAN JABER: Thank you, Mr. Keating.

10 Let's take appearances.

11 MR. BUTLER: John Butler with the law firm of Steel
12 Hector and Davis on behalf of Florida Power and Light Company.

13 MR. BADDERS: Russell Badders with the law firm of
14 Beggs and Lane on behalf of Gulf Power Company.

15 MR. MCGEE: James McGee, Post Office Box 14042, St.
16 Petersburg, on behalf of Florida Power Corporation.

17 MR. BEASLEY: Commissioners, I'm Jim Beasley with the
18 law firm of Ausley and McMullen in Tallahassee representing
19 Tampa Electric Company.

20 MR. VANDIVER: Jack Shreve and Robert Vandiver
21 appearing on behalf of the Office of Public Counsel.

22 MR. PERRY: Timothy Perry from the McWhirter Reeves
23 law firm on behalf of the Florida Industrial Power Users Group.

24 MR. KEATING: Cochran Keating on behalf of the
25 Commission.

1 CHAIRMAN JABER: Thank you.

2 Mr. Keating, I understand that there are some
3 preliminary matters we should take up before we start the
4 evidentiary portion of the hearing.

5 MR. KEATING: That is correct. Late Friday or
6 sometime Friday afternoon we received a signed stipulation
7 among three of the utility parties to this docket and the
8 Office of Public Counsel and FIPUG.

9 Staff is in a position, if the Commission wishes to
10 take this up as a preliminary matter, to answer questions about
11 it, and I believe the parties are, as well. And, if the
12 Commission is prepared to receive a recommendation on it now,
13 staff can give one orally.

14 CHAIRMAN JABER: Thank you, Mr. Keating.

15 Let me make sure first that all of the Commissioners
16 have the proposed resolution. Did you distribute it to all the
17 Commissioners? It's going to look like this, Commissioner.
18 Yes, that's it.

19 Commissioners, here is what I would like to do with
20 this, and certainly if there is a better, more efficient way of
21 handling it, I won't be opposed to that, either. I look
22 forward to your feedback. I would like to have the parties
23 brief the Commissioners, walk us through the stipulation. Give
24 the Commissioners an opportunity to ask questions, if you have
25 questions of the parties, and take it from there.

1 I am inclined to ask staff for a written
2 recommendation on the proposed resolution, and frankly that is
3 just because I read this for the first time this morning.
4 Nothing more than that. Don't read into my request or my
5 desire to have a written recommendation. It's Monday morning,
6 first time I'm seeing it, that is the only reason.

7 But do you have any desired method of handling this?
8 A briefing, walk-through.

9 COMMISSIONER BAEZ: Sure.

10 CHAIRMAN JABER: Now, from the parties who would like
11 to start in briefing us on the proposed resolution? Not all at
12 once.

13 MR. BADDERS: Before we start -- Russell Badders on
14 behalf of Gulf Power -- is the stipulation that is being
15 offered, is it reflected in Attachment A in its entirety?

16 CHAIRMAN JABER: In Attachment A?

17 MR. BADDERS: Attachment A to the prehearing order.

18 MR. BUTLER: No.

19 CHAIRMAN JABER: I don't think so, Mr. Badders. I've
20 got a separate document. It is entitled, "Proposed resolution
21 of issues." It looks like it ends with a signature by Mr.
22 Shreve, maybe. The last page. Yes, the last page is a
23 signature by Mr. Shreve.

24 MR. BADDERS: If we could get a copy of that, we have
25 not seen a copy of that.

1 CHAIRMAN JABER: Sure.

2 MR. KEATING: It contains the terms of the document
3 that was provided to Gulf, I believe by e-mail on Friday. The
4 only difference is that this document includes the signature
5 pages.

6 CHAIRMAN JABER: Yes. But, Mr. Keating, do you have
7 a copy of the final version that has been executed by the
8 parties?

9 MR. BADDERS: Mr. Butler is sharing his with me at
10 the moment, so I can just get a copy a little bit later so we
11 can go ahead and proceed.

12 CHAIRMAN JABER: I would rather take a few minutes
13 and get you your own copy, because I don't want any delays
14 later.

15 MR. BADDERS: Okay.

16 CHAIRMAN JABER: Mr. Butler, did you all have someone
17 designated to brief the Commissioners on this proposed
18 resolution?

19 Mr. Shreve, did you all talk about that?

20 MR. BUTLER: We have the individuals who would be our
21 witnesses if the stipulation isn't approved, Korel Dubin and
22 Joe Stepenovitch, available to answer any detailed questions
23 that you might have on the proposed stipulation. I would like
24 to just take a stab at giving you FPL's perspective on it
25 myself, and if there are questions you have that I can't

1 answer, I will be happy to have them step in and do so.

2 CHAIRMAN JABER: Let's get started, Mr. Butler. And
3 if the other signatories want to add something after you are
4 done, that would be great.

5 MR. BUTLER: Do you want me to go through
6 paragraph-by-paragraph and describe what we understand the
7 paragraphs are for?

8 CHAIRMAN JABER: Yes.

9 MR. BUTLER: Is that the way you would like for me to
10 proceed?

11 CHAIRMAN JABER: Yes.

12 MR. BUTLER: Okay. Well, the first paragraph is, I
13 think, primarily a statement of the intent of the parties in
14 settling as you can see. It recognizes the importance of using
15 mechanisms to manage price volatility and states the sort of --
16 the conclusion that as the proportion of fuel used is an ever
17 higher percentage of the total price of electricity then the
18 merits and need for controlling volatility become therefore
19 proportionately greater. Beyond that I think that it is not
20 sort of the core of the settlement.

21 Paragraph 2 is primarily oriented toward describing
22 the information that would be provided to the Commission in the
23 form of sort of an advance risk management plan by each of the
24 utilities, and it tracks very closely the elements of the
25 proposed risk management plan that Mr. Bohrmann included in his

1 testimony as Exhibit TFB-4.

2 As you can see from the numbers, there are a couple
3 of paragraphs from TFB-4 that are omitted because the
4 discussions among the parties concluded that those were going
5 to be a practical problem to provide the information.

6 I think probably the most important part besides
7 confirming the parties' commitment to providing the information
8 that Mr. Bohrmann would have requested that is provided in
9 here, that is contained in here is the sentence that begins
10 about two-thirds or three quarters of the way down. Filing of
11 such risk management plans for informational purposes shall not
12 constitute approval or disapproval by the Commission.

13 There was, I think, some question among the parties
14 and with staff as to whether the plans would be something that
15 would be more formal that would be presented and officially
16 voted up or down by the Commission. And the proposed
17 resolution here would have them be something that is
18 informational, that certainly the Commission and others would
19 look to as guidance for where you would expect to see the
20 utility go, but would not be either automatically a basis for a
21 concern about some deviation or I think automatically a safe
22 harbor for activities that are within the scope of the plan.
23 It is intended to be informational.

24 Paragraph 3 is really just a confirmation of the
25 specific nature of the types of hedging transactions that would

1 be recoverable, or that would be charged or credited I think
2 are the terms that we came up with at FIPUG's suggestion to the
3 fuel clause. And basically the point here is that if the
4 utility prudently engaged in hedging type activities and there
5 were a gain on that, then the gain would be credited to the
6 customers through the fuel adjustment clause and if there was a
7 loss then the additional cost of it would be charged as an
8 additional recovery through the fuel clause.

9 Paragraph 4 --

10 COMMISSIONER DEASON: Madam Chairman, can we ask
11 questions paragraph-by-paragraph or do you want us to wait
12 until the end?

13 CHAIRMAN JABER: Absolutely. No, Commissioner
14 Deason, whatever is easier for you.

15 COMMISSIONER DEASON: Well, I do have a question on
16 Paragraph 3. The beginning sentence in that paragraph
17 indicating that each IOU shall be authorized to charge or
18 credit through the recovery clause, does that mean that the
19 Commission is bound to approve that, or does it mean that you
20 are authorized to make that entry and then it would be a matter
21 for discussion at your annual fuel hearing? How would that
22 work mechanically?

23 MR. BUTLER: The latter. I think this was intended
24 to address some concern about whether as a matter of principle
25 these sorts of costs fit into a category that could be -- for

1 which recovery could be sought through the clause mechanisms,
2 and the intent of the parties, I think, really to cover your
3 concern is wrapped up in the adjective there, prudently
4 incurred.

5 The idea here is that the utility would submit the
6 credits or charges, I suppose there would be more prudence
7 concern on the charges than the credits, but if there was a
8 charge to the clause that represented what the Commission felt
9 was imprudent that the company had made a bad decision without,
10 you know, using the benefit of hindsight in reaching that
11 conclusion, but under conventional legal principles of what
12 prudence review constitutes that it was an inappropriate
13 transaction for the utility to have undertaken then this would
14 not foreclose the Commission from disallowing that charge.
15 And, yes, the expectation is that the transactions would be
16 identified and made part of the filing that would take place in
17 the normal course of the fuel adjustment --

18 COMMISSIONER DEASON: So in a nutshell, then, these
19 are eligible costs for recovery through the fuel recovery
20 mechanism, but the Commission has the discretion to determine
21 if they indeed are nonspeculative or prudently incurred.

22 MR. BUTLER: That's right.

23 COMMISSIONER DEASON: Okay. I also have another
24 question as it pertains to that paragraph, and it is the sixth
25 line where it discusses purchased power contracts. And there

1 is a modifier there that says tied to the price of natural gas.
2 Now when you are using that phrase "tied to the price of
3 natural gas," does that just refer to purchased power
4 contracts, or does it also refer to residual oil, or how does
5 that particular section operate?

6 MR. BUTLER: The intent is the first of what you
7 said, it is intended to modify purchased power contracts as I
8 understand it. That basically -- and you might want your staff
9 to give its further elaboration on this, but my understanding
10 of this principle here is that in some instances some utilities
11 will have purchased power contracts where they are paying an
12 energy charge that, in effect, just passes the cost of natural
13 gas fuel through as part of the cost of the purchased power.
14 And the idea of this was that if you are hedging the swings and
15 the costs of that fuel element that is going to come through
16 the purchased power contract, then that would be potentially
17 recoverable the same way as if you were hedging the actual
18 purchase of natural gas that the utility would burn in its own
19 units.

20 COMMISSIONER DEASON: Staff agrees with that
21 interpretation?

22 CHAIRMAN JABER: Mr. McNulty, why don't you identify
23 yourself and elaborate.

24 MR. McNULTY: My name is Bill McNulty with staff, and
25 I agree with that interpretation.

1 COMMISSIONER DEASON: Okay. Madam Chairman, that's
2 all the questions I had on that paragraph.

3 CHAIRMAN JABER: Go ahead, Mr. Butler.

4 MR. BUTLER: Continuing to Paragraph 4. Paragraph 4
5 is of a similar nature to the one we just discussed in the
6 sense of being intended to identify a class or a category of
7 potentially recoverable costs not to make any final
8 determination of whether they would be recoverable.

9 But basically the purpose of this paragraph is to
10 recognize that utilities are -- you know, have been and are
11 incurring fairly significant additional operations and
12 maintenances costs to initiate and maintain either for the
13 first time a hedging program or to expand the scope and the
14 sophistication of their existing fuel purchasing programs to be
15 in a position to do an effective and properly controlled job
16 of, you know, more actively engaging in hedging transactions.

17 And this is intended to address the policy question
18 of whether as a matter of principle utilities may seek recovery
19 of those costs through the fuel clause. And the answer to that
20 question under this provision would be yes, subject to
21 essentially two constraints. That the utility would need to
22 demonstrate that the costs are truly incremental, that this is
23 something that wasn't being done previously; and then,
24 secondly, that they are prudently incurred.

25 And, the remainder of the paragraph is in my view, at

1 least, primarily designed to provide some detailed guidance on
2 the information that would be filed and the way that the costs
3 would be calculated so that staff will have a relatively
4 straightforward way of looking at them and being sure that they
5 are incremental and then making their assessment of whether the
6 costs are prudent.

7 CHAIRMAN JABER: Mr. Butler, is it your understanding
8 that system expenses, the cost of personnel and the costs of
9 computer systems to accommodate any changes associated with
10 hedging are incorporated into this provision?

11 MR. BUTLER: In Paragraph 4?

12 CHAIRMAN JABER: Uh-huh.

13 MR. BUTLER: Yes. That is the sorts of costs that
14 this is directed to or at least among the sorts of costs that
15 this is directed to. If you have -- you know, basically these
16 programs are and will entail a larger department of people
17 using more sophisticated tools and things like better
18 forecasts, you know, ways to follow the markets in which the
19 hedging transactions are made available, greater controls to be
20 sure that the hedging transactions are operating properly
21 within constraints that are established and would probably be
22 described in the risk management plan we discussed earlier.
23 That is the sort of costs --

24 CHAIRMAN JABER: So any capital expenses associated
25 with hedging would be included, in your opinion, in a filing --

1 could be included in a filing that the company files in the
2 fuel adjustment proceeding?

3 MR. BUTLER: We think that under certain
4 circumstances your existing orders provide an opportunity to
5 seek recovery of capital costs if you meet the necessary
6 thresholds. But this paragraph here is only addressing O&M
7 expenses, as I understand it. It isn't intended to answer the
8 question yes or no about capital costs. You know, that is my
9 understanding of why the terminology of operating and
10 maintenance expenses is used in the paragraph.

11 CHAIRMAN JABER: Mr. Shreve, may I ask you a quick
12 question on this provision, and really all of the O&M expenses
13 and capital expenses that could be recovered, whether via prior
14 orders of this Commission or through this resolution. Do you
15 feel like signing this resolution precludes you from raising
16 the prudence of any of those expenses?

17 MR. SHREVE: I don't believe we would be precluded
18 from raising the prudence. I think it gives the three
19 companies more of the principle of recovery on using the funds
20 for this type of activity, but I don't think an imprudent -- if
21 we thought they were used in an imprudent manner, I don't
22 believe we would be precluded from raising that.

23 CHAIRMAN JABER: Okay. I just want to make sure we
24 all have sort of a meeting of the minds as we go forward.

25 MR. SHREVE: Here again, I think the principle as

1 much as anything else is taken care of at this point that these
2 are legitimate expenses for these three companies.

3 MR. BUTLER: Or legitimate categories of expenses.
4 And we don't intend this to be resolving the prudence question,
5 you know, that would come in the normal process.

6 CHAIRMAN JABER: I guess I am more concerned with or
7 precluding any party who signs this stipulation from raising
8 prudency as an issue.

9 MR. BUTLER: That's right. No party would be.
10 Public Counsel would be as free as staff or you would be to
11 inquire into those issues, as would FIPUG.

12 COMMISSIONER DEASON: Madam Chairman, are we leaving
13 Paragraph 4?

14 CHAIRMAN JABER: I don't think so, no. I think I
15 interrupted Mr. Butler.

16 MR. BUTLER: I was about ready to leave Paragraph 4,
17 so if you have any questions on it.

18 COMMISSIONER DEASON: I have two questions. One kind
19 of a general one and then one that is more specific as it
20 pertains to the precise language. First, the more general
21 question. As to the principle that is being established here
22 in this paragraph, do you agree that when you are determining
23 incremental costs that you have a responsibility to determine
24 that if when you incur these incremental costs there are cost
25 savings in other areas -- and I'm not saying that there will

1 be, I'm just saying if -- if by incurring these additional
2 expenses you find that there are some savings or costs you
3 don't have to incur in some other part of your fuel management,
4 that that would go into -- if there are offsets that would be
5 part of the incremental calculation. Is that true?

6 MR. BUTLER: I think so, yes. If there were some
7 sort of connection there that, you know, you install this
8 system over here and -- I guess an example I could think of is
9 that if you had some sort of group established that had two
10 purposes and one of them was incremental activity, the other
11 was doing something that, you know, made it less necessary to
12 do something else so that there was some reduction in activity
13 elsewhere as a result, that the recoverable amount would be the
14 net of the impacts.

15 COMMISSIONER DEASON: Okay. And then the more
16 precise question I have, if you can look at the sixth line from
17 the bottom, there is a phrase there that begins including the
18 difference between the base year and recovery year expense
19 amounts, and then there is a summation. Is that just the
20 true-up mechanism there in operation, is that what that is?
21 There is a true-up associated with that from period-to-period?

22 MR. BUTLER: Yes.

23 COMMISSIONER DEASON: Okay, that's fine. Thank you.

24 MR. BUTLER: Anything else on Paragraph 4?

25 COMMISSIONER DEASON: No.

1 MR. BUTLER: Paragraph 5 is, in my understanding,
2 intended to provide staff with a commitment of the sorts of
3 information that they will be receiving as part of the true-up
4 process that will allow them to make a fairly detailed
5 assessment of the prudence questions and just generally track
6 the level of hedging activities that we have been talking
7 about. And it doesn't really in my mind create or negate any
8 particular rights of recovery or otherwise effect recovery, it
9 is just providing staff with information that would allow them
10 to do their job of reviewing the expenses for which recovery is
11 sought.

12 CHAIRMAN JABER: Mr. McNulty, is it correct that this
13 additional information included in Provision 5 is only for the
14 purpose of monitoring what the effect of the hedging is? Do
15 you envision any greater emphasis on the information that will
16 be allowed for in Provision 5?

17 MR. McNULTY: Yes. I think essentially it allows us
18 to monitor the level of activity to see if the utilities are
19 engaging in hedging on kind of a post hoc basis, and this
20 information will help us do that. To the extent that it gives
21 us further information that a utility is not engaging in
22 hedging whatsoever and we think that it should be, we could
23 potentially take some type of advisory action following that,
24 but it is basically to tell us where they are at.

25 CHAIRMAN JABER: Okay.

1 MR. BUTLER: Paragraph 6 is essentially a recognition
2 that we are all kind of sick of each other, that we want to put
3 this on hold for a little while. And it provides that the two
4 companies who had filed hedging incentive programs, FPL and
5 Power Corp, would not for this coming year, in other words, for
6 the 2003 fuel adjustment cycle, propose anything that would be
7 an incentive program. But also recognizes that if, you know,
8 as we gain additional information and it seems like it would
9 make sense to do so, that we could come back at the 2004 fuel
10 adjustment cycle, meaning essentially the fall 2003 hearings or
11 thereafter and raise proposals if we wanted to do so on --

12 CHAIRMAN JABER: Would that give you a full year of
13 information?

14 MR. BUTLER: Well, it actually, I guess, wouldn't
15 give us a full year of information when the hearings are
16 happening. We would be probably eight months or nine months
17 worth of information, I guess, by the time we were looking at
18 that. And obviously that is something we will have to take
19 into account. If it looks like that the jury is still out
20 because we need additional information, it may be something
21 that it wouldn't be a good idea to come at that point. Or it
22 could be that, you know, the first several months of
23 information make it pretty clear as to how the process is
24 working and that this would make sense. But for the purposes
25 of the settlement, we are committing that we would not be

1 bringing anything before you as an incentive proposal in the
2 2003 cycle.

3 CHAIRMAN JABER: Prior to that date.

4 MR. BUTLER: Yes.

5 CHAIRMAN JABER: But in terms of realizing the
6 effects of a good proactive hedging program, certainly by 2004
7 you wouldn't have seen any of the real benefits, would you?

8 MR. BUTLER: I'm not sure that I can agree that we
9 wouldn't see any of them, but I would certainly agree that you
10 are going to be in a better position to see what is going on
11 further out in the process than you are earlier, and I think it
12 really depends on what we end up seeing. Whether there is
13 enough information at the end of that first year to be able to
14 make any assessments or not.

15 And then the other thing that Paragraph 6 does is
16 just make it clear that Florida Public Utilities Company that
17 has not been part of this docket or any of the proceedings here
18 isn't bound by or affected by the settlement.

19 CHAIRMAN JABER: Staff, I wanted to ask you about
20 that line in Provision 6. Have you consulted with Florida
21 Public Utilities Company, or have they even on the periphery
22 been involved?

23 MR. KEATING: They have not. And I believe this
24 wasn't an issue that was pursued with them, and staff can
25 correct me if I'm wrong, largely because they don't have any

1 generation of their own.

2 MR. McNULTY: That's correct.

3 CHAIRMAN JABER: Okay.

4 MR. BADDERS: If I may, Commissioner, we have
5 obviously not signed onto this settlement, and our sole reason
6 for having not done so is contained in Paragraph 6, which would
7 require us to forego our currently filed plan that we proposed.

8 CHAIRMAN JABER: I can't hear you, Mr. Badders.

9 MR. BADDERS: I'm sorry. Our reason for having not
10 signed on is Paragraph 6. It precludes us to present testimony
11 on Issue 7A, and we feel that this is a good opportunity to go
12 ahead and proceed on those issues. We do agree with the rest
13 of the stipulation.

14 CHAIRMAN JABER: Yes. I have got a series of
15 questions for Gulf Power. Let's get through the resolution and
16 we will come back to you all. But coming back to Florida
17 Public Utilities, they have not --

18 MR. SHREVE: Commissioner, just as to the statement
19 that was just made as to agreeing with the rest of the
20 stipulation, I want it very clear on our part, and I'm not sure
21 who else, but if Gulf Power is not a party to this stipulation,
22 then they do not receive any of the benefits of principles that
23 are under it.

24 CHAIRMAN JABER: I understand your position, but
25 let's come back to Gulf, because I think that will probably

1 take a more extensive conversation. But on Florida Public
2 Utilities Company you said they do not have their own
3 generation at all?

4 MR. KEATING: That is my understanding, that they
5 purchase all of their power.

6 CHAIRMAN JABER: Cochran, this is probably more of a
7 legal question. I'm wondering if it is even appropriate to
8 reference them at all, then, since they are not a signatory,
9 but we have got this provision that says it won't apply to
10 them. You will have time to think about it, but it's just a
11 question with respect to whether it is appropriate for the rest
12 of the parties to include a sentence about another utility that
13 wasn't privy to any of these conversations. And, therefore,
14 then this agency acknowledging or not acknowledging that fact.
15 All right. Let's get through Provision 7 and we will come back
16 to Gulf.

17 MR. BUTLER: I would note, Chairman Jaber, that
18 certainly FPL would not have any objection either leaving in or
19 taking out the reference to Florida Public Utilities Company.
20 Paragraph 7 is really just ministerial. It was something that
21 we put in in order to enable faxing around signatures of the
22 settlement on Friday afternoon. And then there are the three
23 paragraphs that have asterisks that are intended to be -- it's
24 kind of explanatory or informational. The first one just
25 confirming that prudence review in I guess mainly Paragraphs 3

1 and 4 where that had been raised as an issue would be
2 undertaken according to the normal conventional legal
3 principles of prudence review.

4 The second is -- I think historically this settlement
5 started with something that had a stronger emphasis maybe than
6 it does now specifically on financial hedging, and it was here
7 to make it clear that the settlement wasn't intended to have
8 any implications as to whether the Commission had a preference
9 for utilities to use financial or physical hedging
10 transactions.

11 And the final one, you know, there is the term
12 speculative, or actually it is nonspeculative is used as a
13 limitation on the types of hedging transactions or O&M costs
14 for hedging programs that are recoverable here, and I think
15 FIPUG was particularly interested to make it clear that if they
16 were agreeing to recovery or potential recovery of these sorts
17 of costs that it was only for the types of costs that in this
18 field are typically referred to as nonspeculative.

19 We agreed with that, but when we went back and talked
20 with our management about it, somebody raised a good point that
21 in the absence of being in on all the discussions it wasn't
22 real clear what speculative meant, and this was trying to use a
23 conventional definition within the fuel trading field of what
24 is the distinction between speculative and nonspeculative
25 transactions.

1 That is the extent of my summary of it. Are there
2 any other questions for me or for FPL that you have?

3 CHAIRMAN JABER: Thank you, Mr. Butler. I noticed
4 the signatories are FIPUG, Florida Power Corporation, it looks
5 like TECO and Public Counsel. So of those parties, is there
6 anyone that would like to add to the discussion we just had
7 with Mr. Butler? All right.

8 MR. BUTLER: Excuse me, Chairman Jaber, you didn't
9 mention Florida Power and Light in there as a signatory, but we
10 definitely are.

11 CHAIRMAN JABER: That's fine.

12 MR. BUTLER: Thank you.

13 CHAIRMAN JABER: Thank you. Now, with respect to
14 Gulf Power, Mr. Badders, help me understand Gulf's position and
15 we will open it up for questions.

16 MR. BADDERS: Basically, our position, we were
17 involved in the negotiations that led to the settlement and we
18 agree with pretty much all of the settlement, all of the
19 particulars set forth in Paragraphs 1, 2, 3, and 5. Mainly
20 those deal with filing requirements, reporting requirements,
21 and, of course, sets up where these amounts would be recovered.

22 Where Gulf is not able to agree is to take our plan
23 off the table for your consideration today and to settle Issue
24 7A which involves the incentive. We feel that this is the best
25 opportunity to bring that before you for your consideration,

1 and otherwise we can't agree to what is in here.

2 And I believe stipulated Issues 2, 3, and 4 do get to
3 some of the information that is in this resolution, this
4 stipulation, so I believe some of it is already going to be
5 settled out for Gulf Power.

6 CHAIRMAN JABER: Well, let me ask you this, Mr.
7 Badders, for purposes of a hypothetical, and recognize we
8 haven't heard from the rest of the parties yet with respect to
9 your position. But if we did not vote on the resolution this
10 morning, whether we vote on it this afternoon or in a
11 subsequent agenda conference, if we didn't vote on it this
12 morning and listened to your witness today, would that make
13 you -- is that all you want us to do is to listen to your
14 witnesses as they describe the incentive program and make sure
15 that that is an incentive program that we don't want to pursue
16 right now?

17 MR. BADDERS: Yes, basically that is where we are at.
18 Of course, if we go through the hearing today, we won't know
19 which way you have gone until you vote, so it would really be
20 tough for us to go back and sign onto a stipulation or
21 negotiate anything further.

22 But, yes, basically that is where we were at. We
23 were asked, I believe it was in March just prior to a workshop,
24 a formal workshop to either come to the Commission with an
25 incentive plan for discussion or come to the Commission and

1 discuss why we really shouldn't pursue such a plan.

2 We undertook to do that and that is what we have
3 pulled together and would like to present today. And basically
4 that is why we are here and not able to step away from the
5 table.

6 CHAIRMAN JABER: Now, procedurally though, I want to
7 understand what your position is with respect to signing onto
8 the agreement. You don't think you are precluded from signing
9 onto the agreement if after we have heard your witnesses
10 testimony we think it is premature to adopt an incentive
11 program?

12 MR. BADDERS: I believe if the other parties would
13 allow us to, I believe we may be past that with some of the
14 parties. I'm not sure, I can't speak for those parties, but I
15 believe that we could -- I would take that back to my client
16 and that would be something that we could consider.

17 CHAIRMAN JABER: Mr. Shreve, you voiced some concern.

18 MR. SHREVE: Well, Commissioner, I think I would have
19 a problem with you hearing from them, and if you made a
20 decision or gave an indication that you were not pleased with
21 their plan that then we would back away and allow them to come
22 on the stipulation. That is the reason for a stipulation. You
23 don't go to hearing on part of it and then allow them to come
24 onto it.

25 I keep hearing they are in agreement with the rest of

1 the plan, the rest of the plan. If they want to eliminate the
2 25 percent of the gain that Gulf Power is asking for as opposed
3 to how the other three companies are coming in on a breakeven
4 basis, just performing this to the best of their ability with
5 the costs only being recurred, that is a different story. But
6 that's not where Gulf is.

7 I don't know that it would be fair to even approach
8 it and go through the hearing and have some indication from the
9 Commission that you don't like their plan, and then we go back
10 to the stipulation. There was give and take all the way
11 through this.

12 CHAIRMAN JABER: Mr. Shreve, you don't see the
13 resolution independent of Gulf's proposal? Is it an all or
14 nothing? Can the Commission consider the resolution and also
15 consider Gulf's incentive plan?

16 MR. SHREVE: Oh, I think so. You mean the resolution
17 by the other three companies? Oh, absolutely, I think so. No
18 problem there. I thought the question was could Gulf go
19 through a hearing and then find out how they were doing and
20 then decide to get on or not.

21 CHAIRMAN JABER: I think that was the initial
22 question.

23 MR. SHREVE: See, I hope I'm never put in the
24 position of trying to negotiate with companies and then go
25 through the hearing and they lose and then they can come on and

1 take the benefits of the stipulation. I won't go along with
2 that.

3 CHAIRMAN JABER: That was the initial question and I
4 will tell you why I asked it. What I heard Mr. Badders say is
5 we want you to hear our testimony, we don't necessarily
6 disagree with any of the provisions in the stipulation.

7 MR. SHREVE: Well, they can go ahead and sign on the
8 stipulation and then put their witness on if they just want you
9 to hear it. Frankly, I think what the other three companies --
10 and let me at this point congratulate your staff. I don't
11 always brag on them, but they have done an excellent job in
12 trying to come up with something that was workable to, I think,
13 go forward with some type of direction that was given by the
14 Commission.

15 I sometimes wonder how we got here in this docket in
16 the first place. Because whenever you have future contracts by
17 the companies, you have hedging in a sense in trying to
18 maintain the volatility of the dockets. And I think several of
19 the companies probably wonder why we are here.

20 As far as being in a situation where the customers
21 have to pay more for fuel as opposed to having a lack of
22 volatility, you have pretty well taken care of that problem
23 already by going through a full year. I think the plan that
24 the three companies have agreed to sign on and that the staff
25 has worked so hard to come up with has given the Commission

1 something that gives the ability to investigate and try out
2 some hedging to see if it benefits the customers without going
3 overboard. And I don't see a whole lot of risk to the
4 customers there, although I think almost everyone has to agree
5 that in the long run if there are additional costs the
6 customers will end up paying more for fuel.

7 In the early '70s everything was changed when you
8 took fuel out of the docket, out of the base rates because the
9 companies were getting killed by increasing fuel costs. Now
10 that is taken care of and we are on a fairly stable fuel
11 adjustment clause with the companies assured of getting their
12 costs back and the customers being assured that they are going
13 to pay the costs.

14 I think we are going into something now that maybe it
15 will give us a little bit more smoother collection, I don't
16 necessarily think that is going to be the case. I don't see --
17 but I really do not see this making any money for the
18 customers. Certainly not under Gulf's plan. Now, with the
19 other three companies, they have come in, they are willing to
20 go ahead and expense some costs to go in the direction that
21 they think you want them to go or have in the past wanted them
22 to go. And I think they are to be congratulated that they are
23 willing to do that. The customers are going to cover the
24 costs, and hopefully receive some benefit from it. But none of
25 them are asking for a percentage of the profits which is not a

1 part of the cost of the fuel, and that is what Gulf is asking
2 for.

3 CHAIRMAN JABER: Thank you, Mr. Shreve. Those are
4 very good comments. Thank you. And I appreciate what you said
5 about our staff.

6 Mr. Badders, what I'm trying to do is gauge exactly
7 what Gulf is seeking in terms of going forward with this
8 hearing. Mr. Shreve just made a suggestion that I think is
9 worth considering. Is it that you want your testimony to be
10 considered by the Commission for purposes of information or do
11 you really want the Commission to vote up or down on your
12 incentive program that, I guess, is supported by your witness?

13 MR. BADDERS: We are in the position that we would
14 like a Commission vote. It is not for informational purposes
15 only. Maybe I should clarify where we are at with regard to
16 the stipulation. We agree that the costs should be recovered.
17 We agree with the reporting requirements that were negotiated.
18 We agree with some of the filing requirements. If staff comes
19 to us after this docket, whichever way it ends up, and says,
20 "Well, this what is we expect you to file, the information that
21 is contained in this resolution," we are more than willing to
22 abide by that. But we would like a Commission vote on our plan
23 that is in Mr. McKenzie's testimony.

24 CHAIRMAN JABER: Okay. And I have one more question
25 for you. With respect to Provision 6, I think it is, Mr.

1 Shreve made clear that his understanding of the application of
2 that provision is if you are not a signatory to this
3 resolution, then you will not be able to seek recovery of the
4 expenses associated with any hedging. Is that your position,
5 Mr. Shreve?

6 MR. SHREVE: Yes, ma'am.

7 CHAIRMAN JABER: Do you agree with that?

8 MR. BADDERS: Actually I disagree with that. I don't
9 believe that in their resolution they can decide on what we can
10 recover and what we cannot. I believe that is the Commission's
11 decision. I believe that same issue is stipulated in Issues 2,
12 3, and 4 with regard to the cost-recovery.

13 CHAIRMAN JABER: Staff, did you envision if we act on
14 this resolution that we would go back to the other issues that
15 have been stipulated and take a vote on those, as well? And
16 the Commission has to accept the stipulations.

17 MR. KEATING: Right. The issues that are as shown as
18 stipulated in the prehearing order, yes, we would still have to
19 go through those with respect to Gulf Power to determine
20 whether the Commission would approve those stipulated
21 positions.

22 CHAIRMAN JABER: With respect to Gulf Power? I mean,
23 it is not a stipulated issue if it only applies to one company.

24 MR. KEATING: The prehearing order really is an
25 indication of the status of the case as of the prehearing a

1 week ago before we had the settlement. And at that time it was
2 our understanding that the parties were in agreement. Issues
3 2, 3, and 4 which essentially if you look at Paragraph 3 of the
4 proposed resolution which allows cost-recovery for transaction
5 costs associated with the hedging transactions, the gains and
6 losses on the transactions, et cetera, that is what is covered
7 in Issues 2, 3, and 4 in the prehearing order. Those issues
8 are shown as stipulated in the prehearing order. It was our
9 understanding that the parties were in agreement that those
10 types of costs should go through even before this stipulation
11 was reached.

12 Where I think there is not an issue established in
13 the docket in the prehearing order is in the area of recovery
14 of incremental O&M expenses. And in my mind that is the area
15 that perhaps is -- that Gulf is more at risk at here. That
16 there is not a -- that if their program is not approved there
17 is not an issue in the docket that says how should these types
18 of costs be recovered.

19 CHAIRMAN JABER: Okay. So you don't see an
20 inconsistency between stipulated Issues 2, 3, and 4 and the
21 proposed resolution?

22 MR. KEATING: No.

23 CHAIRMAN JABER: Where there is a difference between
24 the resolution and those stipulated issues is the provision
25 related to incremental O&M expenses?

1 MR. KEATING: I think so.

2 CHAIRMAN JABER: And so is it staff's belief that if
3 Gulf does not sign onto the proposed resolution, Gulf will not
4 be able to submit recovery for the incremental O&M expenses?

5 MR. KEATING: I believe that they are not precluded
6 from seeking recovery of those expenses through the fuel
7 clause. As I believe Mr. Butler mentioned earlier, there is a
8 fuel clause order, a 1985 order that spells out those -- it
9 provides a laundry list of the items that are to be recovered
10 through the fuel clause or allowed to be recovered through the
11 fuel clause and there is a catch-all provision in there that
12 allows capital or O&M type expenses to go through, but there is
13 a showing that is required. And that showing, I don't remember
14 the exact language of the order, but I believe it is something
15 along the lines of net savings associated with what those costs
16 are going towards.

17 So this wouldn't preclude Gulf from coming in and
18 asking for those costs. I have a question in my mind as to
19 whether we could approve recovery of those costs in this docket
20 if their program is not approved because there simply hasn't
21 been an issue brought up in this docket otherwise as to how
22 those costs should be recovered. I think -- well, I will stop
23 there.

24 MR. BADDERS: If I may.

25 CHAIRMAN JABER: Go ahead, Mr. Badders.

1 MR. BADDERS: With regard to the administrative
2 costs, we do have testimony on that. It is not that a
3 separately defined issue, but we did file testimony on that
4 issue.

5 CHAIRMAN JABER: Did you envision, staff, we would be
6 approving or reacting to the resolution today and the
7 stipulated issues?

8 MR. KEATING: I don't think you would have to address
9 the stipulated issues today, and let me explain, I guess, what
10 staff is prepared for. I mean, as mentioned earlier by Mr.
11 Shreve, staff has been heavily involved in the settlement
12 discussions, so obviously we have had more time to look at this
13 than the Commissioners have. And I understand that you are
14 concerned that perhaps you or the Commissioners aren't as
15 comfortable, given the time you have had to review this, to
16 vote on it today.

17 Staff can give a recommendation today or a written
18 recommendation later on the stipulation. I don't believe we
19 need a vote on the three stipulated issues, as Gulf is the only
20 party that hasn't signed the stipulation that those issues
21 still apply to, if that makes sense. We only have to vote on
22 those issues with respect to Gulf and that could be done as
23 part of your post-hearing consideration.

24 CHAIRMAN JABER: Maybe the other Commissioners
25 understand what you are trying to say, I don't. With respect

1 to Issues 2, 3, and 4, they have been stipulated by all the
2 parties.

3 MR. KEATING: Correct.

4 CHAIRMAN JABER: Okay. Do those stipulations stand
5 with the proposed resolution or have they become unstipulated
6 as a result of the resolution? That's what I'm trying to
7 understand.

8 MR. KEATING: I don't believe they become
9 unstipulated with respect to Gulf. As we prepare our
10 recommendation with respect to Gulf, I think at least from
11 staff's perspective we don't see those as disputed issues that
12 we have to resolve from here on.

13 CHAIRMAN JABER: But if Gulf is the only party
14 agreeing to the resolution of Issue 2, 3, and 4, then you don't
15 have a stipulation. Am I missing something here?

16 MR. BADDERS: If I may.

17 CHAIRMAN JABER: Mr. Badders, go ahead.

18 MR. BADDERS: My understanding, I mean, when we came
19 to prehearing we did not have this resolution that the other
20 utilities had signed onto. All the parties had agreed Issues
21 2, 3, and 4 were resolved. We had proceeded accordingly. I
22 mean, obviously that is subject to your vote. You don't have
23 to accept the stipulation, but I think for any of the parties
24 to change their mind at this point would be somewhat
25 prejudicial. I mean, we have had an agreement. Now, post that

1 period of time some of the other parties were able to meet and
2 resolve something further.

3 CHAIRMAN JABER: Let me ask the parties that. I
4 don't know that they have changed their mind, it may be that
5 the resolution is in addition to the stipulated issues.

6 But, Mr. Shreve, what did you envision happening?

7 MR. SHREVE: Well, actually we are taking into
8 consideration some things that I had not thought would come
9 about. But going back to the way the Commission has always
10 handled stipulations, I guess in this case now we have to view
11 it as though we have a stipulation with all of the parties but
12 one. We have a stipulation in its entirety, I don't know that
13 you can pick and choose which part of that stipulation you
14 want. I know some of the other companies certainly would not
15 want you to leave out part of it. We would not want you to
16 leave out part of it.

17 I suppose what you would have done in the past and
18 have done if all of the parties don't agree is put out a
19 proposed agency action, and if there is any parts of it that
20 any party wants to disagree with, I guess they can and protest
21 it.

22 COMMISSIONER DEASON: Madam Chairman, let me ask you
23 a question just for my own clarification. And I just throw it
24 out to anybody that wants to comment. Do we or do we not have
25 a stipulation on Issues 2, 3, and 4 for all parties?

1 MR. BADDERS: It is my understanding that we do.

2 COMMISSIONER DEASON: That we do.

3 MR. BADDERS: And that we did on Monday at the
4 prehearing and that it was agreed to by all the parties.

5 COMMISSIONER DEASON: Mr. Shreve, is that true or
6 not?

7 MR. SHREVE: Commissioner, I guess I'm going to have
8 to take a look and see if the stipulation on any given issue
9 will stand without a stipulation on the entire product. And I
10 would probably need to talk to the other companies about that,
11 too. I mean, we have been through this before, and I would
12 have to look at those and see if there was anything there.
13 Because when we have had stipulations in the past, we have put
14 it in a position that no one would pick and choose. And maybe
15 there is nothing in there that makes a difference, but I think
16 you have a stipulation that stands on its own.

17 COMMISSIONER DEASON: Well, I guess that is the crux
18 of the matter and I guess we need further clarification on is
19 that if the resolution that was signed by some of the parties
20 but not all has any effect on the previous stipulations on
21 Issues 2, 3, and 4. And let me just say that I am open to
22 discussion on it, but I was operating under the understanding
23 that Issues 2, 3, and 4 were stipulated. That was done and
24 then there was a resolution which addressed all issues for some
25 of the parties and that would be in addition to the already

1 stipulated 2, 3, and 4. But if that is not the case, I need to
2 know that.

3 CHAIRMAN JABER: And that's why, Mr. Keating, I was
4 asking you that because I was operating under the same
5 assumption and did not prepare on 2 through 4 because they were
6 noticed as stipulated issues. I was alerted when you said,
7 well, those stipulations would apply only to Gulf.

8 MR. KEATING: And what I meant by that, and I guess I
9 didn't speak as clearly as I could have, if you accept the
10 stipulation with the other three parties, that addresses all
11 the issues with respect to those parties, which leaves for
12 consideration -- essentially we have Gulf, Public Counsel, and
13 FIPUG left in the case to proceed on Gulf's proposal. We still
14 have the issues that were outlined in the prehearing order to
15 address with respect to Gulf.

16 And as I understood it at the prehearing, we had
17 stipulated Issues 2, 3, and 4, and three of the parties who
18 have stipulated those issues are still here, Gulf, FIPUG, and
19 Public Counsel. So I believe -- it is my understanding that
20 Issues 2, 3, and 4 are stipulated.

21 CHAIRMAN JABER: Commissioner Baez, you had a
22 question?

23 COMMISSIONER BAEZ: Yes. And along the lines, just
24 to clarify. I mean, if we took -- it was my understanding that
25 the stipulated issues were somehow consistent with what is

1 contained in the resolution.

2 MR. KEATING: That is correct.

3 COMMISSIONER BAEZ: So, in essence you are just
4 folding them in. I mean, is that everybody's understanding
5 that 2, 3, and 4 are somehow folded into the resolution and
6 that the resolution is somehow supplemental or --

7 MR. BUTLER: That is certainly correct for FPL. It
8 is our understanding that for the most part Paragraph 3 of the
9 proposed resolution ends up sort of folding in the stipulation
10 on Issues 2, 3, and 4. But, yes, the stipulation is not
11 intended to be inconsistent with -- the proposed resolution is
12 not intended to be inconsistent with the stipulation on those
13 three issues, 2, 3, and 4.

14 COMMISSIONER BAEZ: And what it is boiling down from
15 everything that I'm hearing is really just a timing issue. And
16 it seems, Mr. Badders, you can clarify this for me. It seems
17 that the only real issue that you have is a stay-out clause
18 until 2004. I mean, is that fair to say? I mean, I guess
19 timing wise, Gulf would like a decision on its proposed
20 incentive plan sooner than you would have otherwise presented
21 and gotten a decision on if you had signed onto the resolution.
22 Is that really what you are --

23 MR. BADDERS: That is correct. Yes, we would like to
24 have.

25 COMMISSIONER BAEZ: A year earlier.

1 MR. BADDERS: Correct, a year earlier.

2 COMMISSIONER DEASON: Now, I also understand this,
3 and I don't mean to speak for Public Counsel, and they can sure
4 correct me, but what I understand them saying is that they have
5 entered into a stipulation and there has been some give and
6 take there. And part of that give and take, I think, is that
7 Public Counsel is willing to allow the other utilities which
8 have signed to the stipulation the ability to file for
9 incremental costs associated with whatever fuel management plan
10 they put in place.

11 I think that as it pertains to Gulf, though, they
12 want the ability to come in and say that is not a wise policy,
13 or it is not appropriate for Gulf, they didn't sign the
14 stipulation and they want the ability to say incremental costs
15 should not be allowed. That's what I understand them to say,
16 and because that was part -- I understand that was part of the
17 give and take of the stipulation as it pertained to the other
18 three IOUs.

19 COMMISSIONER BAEZ: That is a good point, then. Let
20 me ask this. I mean, going back to what is folded in and what
21 is addressed by what, the issue of incremental cost was not
22 something that would have been included as part of the
23 stipulated issues, absent the resolution? Is that --

24 MR. KEATING: There is not a separate issue
25 identified in the docket for addressing incremental O&M costs

1 associated with the hedging plans, it is something that has
2 been proposed as part of Gulf's plan.

3 COMMISSIONER BAEZ: And would have been decided
4 individually. Well, I'm not so sure that you can decide that
5 kind of issue individually. Everybody either gets to file for
6 incremental cost or not. Could there be a situation where one
7 company has authority and another one doesn't? Wouldn't that
8 raise policy-wise some inconsistency?

9 I guess my point is this, if that is an issue that
10 you would normally say, all right, this applies across the
11 board, Commissioner, then I find it difficult that by virtue of
12 some resolution we would somehow place ourselves in an
13 inconsistent position.

14 COMMISSIONER DEASON: Let me just say the way I view
15 it. And here again, I am open-minded and I hear, you know, but
16 under our present policy, which I don't think we are changing
17 really anything. Our present policy is a utility has the
18 ability to come in and to ask for other expenses to be included
19 for consideration in the cost-recovery mechanism. If it is not
20 one of the very specific delineated items which we said are
21 eligible, they have a burden to show that because of these
22 additional expenses there are going to be savings for
23 customers.

24 COMMISSIONER BAEZ: Exactly.

25 COMMISSIONER DEASON: That is the burden they have to

1 show. I think though for the -- and that is the burden Gulf
2 would have to meet if they wanted to ask for that. And Public
3 Counsel sure has the ability to say that is not the case and
4 present evidence.

5 What I understand the stipulation to say is that that
6 burden has shifted just a little bit and it is from one of
7 showing customer savings to one of prudently incurred. And
8 that is the burden that the three signatories, the three IOUs
9 have signed on that they can request the incremental costs, but
10 it is not necessarily that there have to be concrete savings to
11 customers, only that the costs that they incurred were
12 prudently incurred. They were nonspeculative and they were
13 prudently incurred, and that is the burden they have to meet to
14 have the Commission consider those for inclusion in the
15 recovery mechanism.

16 CHAIRMAN JABER: That is what makes stipulated Issue
17 3 so important, because what Gulf is also saying is I don't
18 think I am precluded from that prudently incurred test because
19 I have stipulated to Issue 3.

20 COMMISSIONER BAEZ: I don't think anyone is precluded
21 from the current -- I mean, that is what it would be normally.

22 CHAIRMAN JABER: It's the switch in the standard.

23 COMMISSIONER DEASON: And maybe there is not an
24 intended switch in the standard, but that is the meaning that I
25 got. There was a change in the standard. It was a very high

1 standard under our current procedure, is that if you want to
2 include costs that don't neatly fit into our current
3 categories, you have got the burden to show that by incurring
4 those costs there were fuel savings to customers.

5 And I think when we established those procedures we
6 didn't want to preclude anything that was going to result in
7 fuel savings from being incurred because that certainly is
8 beneficial to customers. So Gulf would have the ability to
9 make that demonstration. The other utilities, I don't think
10 have that quite of a -- high of a burden, they have just got to
11 show that the costs that they incurred as part of their plan
12 were prudently incurred.

13 COMMISSIONER PALECKI: And that all depends upon our
14 vote if we accept the stipulation. If we accept the stipulated
15 issues that are now present in the docket that apply to Gulf,
16 clearly on our vote we could decide that Gulf is under a
17 different standard than the other utilities, or we could say,
18 well, we are going to decide that Gulf gets lumped in with the
19 other utilities. It's up to us, whatever we want to do if it
20 is supported by the record.

21 CHAIRMAN JABER: I guess what I need to understand
22 from staff, though, Commissioner Palecki, with respect to what
23 you just said is if we approve stipulated Issues 2, 3, and 4
24 haven't we, in effect, said Gulf is able to seek recovery, not
25 get.

1 COMMISSIONER PALECKI: I think we have.

2 CHAIRMAN JABER: I see stipulated Issues 2 and 3
3 reconcilable with the resolution. I'm just not so sure the
4 parties saw it that way.

5 MR. KEATING: I think maybe the difference is that
6 Issues 2, 3, and 4 address transaction costs, gains and losses
7 on these types of transactions, and those are incorporated
8 essentially into the stipulation among the other three IOUs in
9 Paragraph 3. Now, what is not included in stipulated Issues 2,
10 3, and 4 is what is in Paragraph 4 of the stipulation among the
11 other three IOUs that allows recovery of incremental O&M
12 expenses associated with these programs.

13 And I think Commissioner Deason was correct at least
14 in my understanding of the proposal here is that essentially
15 the three utilities who have signed off on this don't have to
16 meet that extra or overcome that extra burden of showing the
17 savings associated with the program to get recovery of the
18 incremental O&M costs at this time. They are still subject to
19 a prudence review for those costs, but they don't -- the
20 benefit they get is they don't have to overcome the additional
21 hurdle.

22 CHAIRMAN JABER: Well, I'm reading the position on
23 stipulated Issue 3, and it says premiums paid or received on
24 the purchase or sale of options used prudently to hedge the
25 risk associated with the fuel and purchased power transactions

1 should be recovered through the clause.

2 Issue 2, gains and losses on derivatives used
3 prudently to hedge risks associated shall be recovered.

4 Prudently is in stipulated Issue 4.

5 I guess your view is that is true for all expenses
6 associated with hedging except the incremental O&M because that
7 was not discussed in Issues 2, 3, and 4.

8 MR. KEATING: Right. I believe, and I think the
9 parties would agree and they can disagree if they do, but I
10 understood 2, 3, and 4 to cover the transaction costs
11 associated with these transactions and the resulting gains and
12 losses, and it does not go into O&M costs.

13 MR. BADDERS: That is our understanding, that the
14 incremental O&M administrative is still on the table so to
15 speak for Gulf Power. We have testimony on that, though there
16 is not a separate issue.

17 CHAIRMAN JABER: Okay. Commissioner Baez, you have
18 another question?

19 COMMISSIONER BAEZ: Well, and I guess going back to
20 something I perhaps stated simplistically, so that is what I
21 guess Gulf is faced with is choosing between getting the
22 benefit of incremental O&M per the resolution or getting 12
23 months ahead on a decision on an incentive plan, it seems like
24 that is what it is boiling down to me. Not that that is a
25 decision that we have to make, that is a consideration that the

1 company has. Okay.

2 CHAIRMAN JABER: Commissioners, if you don't have any
3 questions, any further questions, do you have a preference for
4 going forward? This discussion reinforces --

5 MR. SHREVE: I apologize, but we were talking about
6 the stipulated issues a minute ago and perhaps I need some --
7 on Issue 2, the position that was stipulated, gains and losses
8 on derivative used prudently to hedge risks associated with
9 procurement. Now that evidently is the gains and losses. Is
10 that really Gulf's position or do they want to keep 25 percent
11 of the gains?

12 CHAIRMAN JABER: Mr. Badders.

13 MR. BADDERS: This issue goes to whether or not it is
14 something that is recoverable in the clause. Now, as far as
15 the level and whether or not there is an incentive applied, the
16 incentive is covered in Issue 7A.

17 CHAIRMAN JABER: Okay. Here is what we're going to
18 do, Mr. Shreve. I want to take a break and let you all talk
19 about all of this a little bit more, but I also want to give
20 the Commissioners something to think about during the break.

21 Commissioners, this discussion we have had the last
22 half an hour or hour reinforces my desire to have a written
23 recommendation on the stipulated issues, frankly, now as well
24 as the proposed resolution. I could be talked out of that, but
25 I just think there has been so much discussion that indicates

1 we need to make absolutely sure that there is a meeting of the
2 minds on all of this, and that frankly there is an
3 understanding by staff and the Commissioners on what they are
4 recommending and therefore approving or not approving.

5 So with that, why don't we give everyone an
6 opportunity to talk about this further off the record. And,
7 Commissioners, let's come back at 11:00 o'clock. Okay? Thank
8 you.

9 (Recess.)

10 CHAIRMAN JABER: We need to go back on the record.

11 Mr. Badders, where we last left it, I asked you and
12 the parties to further talk about the stipulated issues and
13 whether those are reconcilable with the stipulation.

14 MR. BADDERS: I'm not sure that we made much in the
15 way of progress. We had some discussions. I believe that
16 certain parties have a different opinion on what the stipulated
17 issues and the resolution itself, what they are meant to cover.

18 Our opinion is still that the stipulated issues from
19 Monday's prehearing have nothing at all to do with the
20 resolution. The resolution was reached after the fact. And so
21 if the Commission is comfortable in voting on those stipulated
22 issues, we would very much like that. And as far as handling
23 the resolution, I am not a signatory to that. Do I believe
24 that it can be handled here procedurally? I do. I believe
25 that it can be amongst the parties who have signed it, and I

1 will step back from that resolution since we are not a
2 signatory.

3 CHAIRMAN JABER: Okay. Before we take up the
4 Commissioner's question, is there any other update or feedback
5 from the break?

6 MR. BUTLER: I would like to offer a bit, if I may.
7 First of all, I would agree with Mr. Badders that the proposed
8 stipulation on Issues 2, 3, and 4 that is in the prehearing
9 order, I don't think is inconsistent in any way with this
10 proposed resolution that the parties, or three of the utilities
11 have entered into.

12 The other thing I wanted to ask you, please, is to
13 consider the possibility of making a decision promptly based
14 upon a staff oral recommendation if you have the comfort level
15 to do so. We have worked with staff for a couple of weeks,
16 three weeks I think on this proposed resolution. It was
17 originally their proposal, we have obviously all had input to
18 it different ways, but they are very familiar with it. I think
19 they can give you a thorough recommendation on it. And one of
20 the things, one of the big things it is intended to do is to
21 achieve some certainty for the 2003 year cycle of fuel hearings
22 that we will be filing estimated actual testimony for as
23 recently as -- or as soon as next Tuesday, and then in
24 September we have got the testimony for the projection period.
25 It is moving forward very quickly, and it would be very helpful

1 to FPL to have some certainty going forward that we can operate
2 under the terms of the proposed resolution that we have agreed
3 to.

4 CHAIRMAN JABER: Commissioner Bradley, you had a
5 question.

6 COMMISSIONER BRADLEY: Yes. I'm just curious about
7 something that you mentioned prior to the break, and that is a
8 written recommendation from staff. Can we talk about that a
9 little bit and what that might bring to this process.

10 CHAIRMAN JABER: Sure. And what I envisioned because
11 of the time line for the fuel proceeding is something that
12 would come to us at the very next agenda, which I think is
13 September 3rd. And, again, Commissioners, if all of you are
14 comfortable going forward, I could certainly defer to your
15 judgment. I'm not absolutely wed to that, but I have to be
16 very frank with you. I love that staff has worked with you all
17 on a settlement. I love that. But the first time that I have
18 seen this is this morning. So, you know, there is no real
19 story there, that's it. I'm getting this cold. I would love
20 to be able to understand it. I feel unprepared for you and I
21 hate that. I apologize for that, but that is the reality of
22 the situation.

23 COMMISSIONER DEASON: Just thinking quickly, Madam
24 Chairman, I know this may be rushed, but this matter is
25 scheduled for two days of hearing. It may be that if we can

1 conclude the hearing, if we can ever get to the witnesses it
2 may be that staff could prepare a written recommendation and we
3 could take it up sometime tomorrow, potentially. That is just
4 a thought. Maybe people can give that some thought and see if
5 that might be a workable situation.

6 CHAIRMAN JABER: Yes. And normally I would be the
7 first to try to accommodate with that, but I was told this was
8 a one-day hearing, so I'm out of town tomorrow.

9 COMMISSIONER DEASON: I didn't know that. I
10 apologize.

11 CHAIRMAN JABER: But, Commissioner Bradley, honestly
12 I have read the resolution, and we have benefitted from the
13 discussion today. So if there is a general consensus to move
14 forward, I can move forward.

15 COMMISSIONER BRADLEY: Well, I don't have a strong
16 preference for a written recommendation or for us moving
17 forward today. I was just curious as to what that might lend
18 to the process and the decision-making component of what we are
19 confronted with here today.

20 CHAIRMAN JABER: Let me ask, FPL, Power Corp, Gulf
21 Power, if we vote on the September 3rd agenda conference, does
22 that give you enough time for the September projections? Is it
23 late August or early September that you do the true-up filing?

24 MR. BUTLER: We do the estimated actual true-up -- it
25 is next Tuesday, is that right? Next Tuesday. The projections

1 for 2003 would be in September. So if you don't make a
2 decision today, unless there is some change to the schedule for
3 filing the testimony, we are going to be in kind of an
4 uncertain position as to what to do, because certainly we have
5 costs that are affected by what is discussed in the stipulation
6 that we would include and say we are including them pursuant to
7 the stipulation and sort of meet the tests that are set forth
8 in the stipulation for showing that they are recoverable. That
9 is our intent or our hope to do that. If we don't have the
10 stipulation, we are going to be a little bit up in the air as
11 to how to approach that for the estimated actual true-up.

12 MR. SHREVE: Commissioner, before we leave one area
13 that was mentioned just briefly, I think there is some real
14 confusion on the issues that have been stipulated to. Because
15 the way we would see it, and I would glad to have Mr. Burgess
16 go more in detail to it is on position two, Gulf's position
17 that they are taking in their filing would be inconsistent with
18 that. Our position has been all along that if we are going to
19 do this, the gains and losses should go through. And that is
20 what this says. So I think we may need to talk about that. I
21 hate to do this at this point, but would it be possible to take
22 a five-minute break and let me meet with the staff just a
23 minute? Maybe we can --

24 CHAIRMAN JABER: With our staff? Absolutely.

25 MR. SHREVE: We don't need to go anywhere. It won't

1 take but just a minute.

2 CHAIRMAN JABER: Let us know when you are ready, Mr.
3 Shreve.

4 (Recess.)

5 MR. SHREVE: Thank you, Commissioner.

6 CHAIRMAN JABER: Thank you, Mr. Shreve.

7 MR. SHREVE: I will let you know who came up with
8 this, depending on whether you like it or not.

9 MR. STONE: Mr. Shreve, may I interrupt you?

10 MR. SHREVE: Sure.

11 MR. STONE: Commissioner, we have been asked to
12 consider something. If we could have another five minutes
13 among the company to talk.

14 CHAIRMAN JABER: It depends on what you are going to
15 do.

16 MR. STONE: I can't give the answer until I have the
17 five minutes.

18 CHAIRMAN JABER: Yes, absolutely.

19 MR. SHREVE: Well, I will go ahead and stipulate with
20 Jeff that FIPUG can give the answer.

21 CHAIRMAN JABER: Yes. Go ahead, Mr. Stone.

22 (Off the record.)

23 CHAIRMAN JABER: This is a good sign. You are back
24 before the five-minute mark.

25 MR. STONE: Well, we had a lesson learned in March

1 that we try to do things faster.

2 CHAIRMAN JABER: See, someone was listening.

3 MR. SHREVE: Commissioner, what we discussed, all the
4 companies and the staff, and some of us would have preferred to
5 keep the one-year prohibition against filing for an incentive
6 program in, but we are all willing to, and I think Gulf is
7 willing to accept six months. Take a look at it for the six
8 months, then absorb some costs and take a look at the whole
9 thing and then they are allowed to file after six months.
10 Allowed to, not mandatory, rather than being precluded for a
11 year. And that is the only change. Gulf if they signed on
12 would have all of the benefits, the wonderful benefits of this
13 stipulation.

14 CHAIRMAN JABER: So basically Provision Number 6 you
15 would modify to allow a company to file a hedging incentive
16 program after six months.

17 MR. SHREVE: After six months.

18 CHAIRMAN JABER: And with that modification, Gulf
19 Power, you would sign this proposed resolution?

20 MR. STONE: With that modification, everything else
21 and that modification, we are willing to be a signatory to that
22 stipulation under the assumption that it would resolve all
23 issues in this docket and this docket could be voted on
24 presumably today, but if not with all due speed.

25 CHAIRMAN JABER: Commissioners, I hear a modification

1 to the proposed resolution, and I'm sure that doesn't affect
2 staff's recommendation for voting out the proposed resolution.
3 Staff, do you have an oral recommendation?

4 MR. KEATING: If you are prepared for an oral
5 recommendation, we can make one right now.

6 CHAIRMAN JABER: Commissioners, considering we now
7 have all the parties to the table and we have a proposed
8 resolution that Mr. Shreve has reinforced the excellence of, I
9 certainly would be inclined to take it up today.

10 COMMISSIONER DEASON: Madam Chairman, let me say that
11 I appreciate that, and I had all of my questions answered. I
12 do admit, though, I got the stipulation late Friday afternoon,
13 so I did review it over the weekend. But I had all of my
14 questions answered during the presentation of the summary, so I
15 am comfortable moving forward.

16 COMMISSIONER BAEZ: And I was in the Monday group on
17 the resolution, but I think after having had the discussion and
18 having walked through it, and at least on my impression that
19 this -- really what it does is set parameters, and that the
20 bottom line is that the Commission certainly isn't giving up
21 any authority to ultimately act on the prudence or consider the
22 prudence of any of the expenditures as has always been the
23 case, I am comfortable moving -- you know, I don't need much
24 more than that, and I am comfortable in an oral recommendation.

25 CHAIRMAN JABER: Thank you, Commissioner.

1 Commissioner Bradley.

2 COMMISSIONER BRADLEY: Yes. I am in the Friday class
3 also, and I have had an opportunity to read the agreement, and
4 I'm happy that all parties have decided to come to the table
5 and stipulate. And I did have some concerns about not having a
6 written agreement, but by all means I am comfortable with a
7 verbal recommendation from staff.

8 CHAIRMAN JABER: Sounds good.

9 COMMISSIONER PALECKI: Madam Chairman, I am
10 comfortable moving forward on the stipulation.

11 CHAIRMAN JABER: Okay. Sounds great. Mr. Keating,
12 what is your recommendation?

13 MR. KEATING: First, I would just like to state that
14 I did everything I could to get this to you guys Friday,
15 understanding that you probably -- this was mind-numbing enough
16 for three pages of written material, that Monday morning would
17 not be the best time to see it, I understand. I would like
18 to --

19 CHAIRMAN JABER: There were some benefits I would
20 admit. So we can just move on now.

21 MR. KEATING: I would like to get some clarification
22 for purposes of the modified language in Paragraph 6. We have
23 modified that to six months. Would that be six months from the
24 date of the issuance of an order in this docket?

25 MR. SHREVE: I guess all we had really thought in

1 terms of was changing the one year to six months and whatever
2 time is already existing in the stipulation.

3 MR. KEATING: Yes. The one year in the existing
4 stipulation, I believe, since actually it sets the limit at the
5 projection filing for the 2004 fuel proceeding which would come
6 in in mid to late September, so if you want to make that half
7 of that time we would be in, what is that mid --

8 MR. STONE: Mid to late March.

9 MR. KEATING: Mid to late March, thank you. So we
10 will say six months from the projected fuel filing for 2003.

11 MR. SHREVE: That is fine with me.

12 MR. STONE: Six months earlier. Or six months after
13 the projection filing for 2003 would be the earliest that we
14 could file.

15 MR. KEATING: Right.

16 COMMISSIONER BAEZ: I'm sorry, Mr. Stone, could you
17 say that -- six months after the projected filing?

18 MR. STONE: We are making the projection filing in
19 September of 2002 for 2003, so the deadline -- we would have a
20 fixed deadline and it would be no earlier than six months after
21 that filing.

22 COMMISSIONER BAEZ: Six months after that. And I
23 guess the projection year would still be 2004 or -- I'm sorry,
24 I got you. I'm clear.

25 CHAIRMAN JABER: Let's make sure the parties are

1 clear and staff. So the new language would read, "No party to
2 this docket shall seek approval of the hedging incentive
3 program earlier than six months after the projection filing for
4 the 2003 fuel and purchased power cost-recovery period."

5 MR. STONE: That is my understanding.

6 CHAIRMAN JABER: Mr. Shreve, do you want me to say
7 that again or do you all agree with that? The language would
8 be, if I understand it correctly, no party to this docket shall
9 seek approval of a hedging incentive program earlier than six
10 months after the projection filing for the 2003 fuel and
11 purchased power cost-recovery period.

12 MR. SHREVE: That will be fine.

13 CHAIRMAN JABER: Staff, is that your understanding?

14 MR. KEATING: I think that is my understanding.

15 CHAIRMAN JABER: And your recommendation would be?

16 MR. KEATING: With that modification, with all the
17 parties on board, it is staff's recommendation that the
18 Commission approve the proposed resolution of issues. Staff
19 sees the proposed resolution as a reasonable result of the give
20 and take in the settlement negotiations in this docket allowing
21 staff and the consumer parties to this docket to have
22 information available through the form of risk management plans
23 and information provided in the final true-up filings that
24 allows staff and the parties to follow the practices of the
25 company and the transactions that they are incurring.

1 It does not preclude staff or those parties from
2 raising an issue of prudence, and it also removes disincentives
3 that may currently exist for parties to engage in this sort of
4 financial hedging by specifically providing a cost-recovery
5 mechanism for transaction costs, gains and losses, and it also
6 provides removing perhaps an additional disincentive. Some
7 companies see it that way and some don't, but the additional
8 disincentive of not having a recovery mechanism for the
9 incremental O&M associated with the hedging program. So we
10 believe that this is a reasonable resolution of the issues in
11 this docket and recommend its approval.

12 CHAIRMAN JABER: And do you need the docket to stay
13 open for any sort of monitoring or can the docket be closed?

14 MR. KEATING: I believe the docket can be closed. I
15 believe all the reporting requirements are made within the fuel
16 docket pursuant to the stipulation.

17 CHAIRMAN JABER: Okay. Commissioners.

18 COMMISSIONER DEASON: Madam Chairman, I am willing to
19 make a motion unless there are questions.

20 CHAIRMAN JABER: I hear no questions, Commissioner
21 Deason.

22 COMMISSIONER DEASON: Madam Chairman, I would move
23 approval of the staff's recommendation. And aside from the
24 very obvious reasons that all the parties have agreed to it, I
25 think that we have a number of benefits derived. One, it sets

1 a framework and direction for the Commission to follow and for
2 the parties to follow. It provides for the filing of required
3 information, and I think it is going to be especially helpful
4 to our staff and to the Commissioners, as well. And I think it
5 also maintains flexibility for the companies to have the
6 ability to put together what they think to be an appropriate
7 program. And I think probably most importantly the Commission
8 retains the discretion to evaluate those at the appropriate
9 time. So for those reasons I would move approval of staff's
10 recommendation.

11 COMMISSIONER PALECKI: I second the motion. And I
12 would like to thank staff. You have done an excellent job on
13 this docket.

14 CHAIRMAN JABER: There has been a motion and a second
15 to accept the proposed resolution that has been filed by all
16 the parties in this case.

17 All those in favor say aye.

18 (Simultaneous affirmative vote.)

19 CHAIRMAN JABER: Opposed nay.

20 Show the proposed resolution accepted in its entirety
21 and that the docket can be closed, Mr. Keating, and that all
22 issues in this docket are resolved. Thank you.

23 Let me echo what Commissioner Deason said. We
24 absolutely agree with all of that. And I really appreciate the
25 flexibility everyone showed this morning. Good job.

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Thank you very much.

(The hearing concluded at 11:34 a.m.)

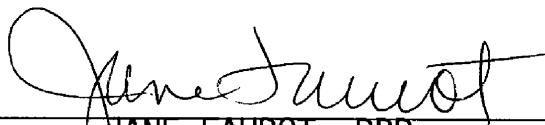
1 STATE OF FLORIDA)
2 : CERTIFICATE OF REPORTER
3 COUNTY OF LEON)

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

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

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

19 DATED THIS 20TH DAY OF AUGUST, 2002.

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