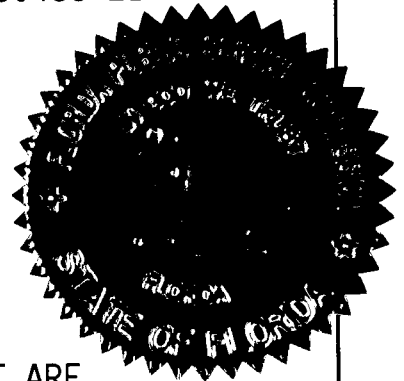


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 030438-EI

In the Matter of:

PETITION FOR RATE INCREASE BY
FLORIDA PUBLIC UTILITIES COMPANY.



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PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER J. TERRY DEASON,
 Prehearing Officer

DATE: Monday, February 2, 2004

TIME: Commenced at 1:30 p.m.
 Concluded at 1:58 p.m.

PLACE: Betty Easley Conference Center
 Room 152
 4075 Esplanade Way
 Tallahassee, Florida

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

1 APPEARANCES:

2 NORMAN H. HORTON, JR., ESQUIRE, Messer Law
3 Firm, P.O. Box 187, Tallahassee, Florida 32302-1876,
4 appearing on behalf of Florida Public Utilities
5 Company.

6 STEPHEN C. BURGESS, ESQUIRE, Office of
7 Public Counsel, c/o The Florida Legislature, 111
8 West Madison Street, Room 812, Tallahassee, Florida
9 32399-1400, appearing on behalf of the Office of
10 Public Counsel.

11 JENNIFER BRUBAKER, ESQUIRE, and KATHERINE
12 FLEMING, ESQUIRE, FPSC General Counsel's Office,
13 2540 Shumard Oak Boulevard, Tallahassee, Florida
14 32399-0850, appearing on behalf of the Commission
15 Staff.

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P R O C E E D I N G S

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2 COMMISSIONER DEASON: Call the prehearing conference
3 to order. Could I have the notice read, please.

4 MS. BRUBAKER: Pursuant to notice, this time and
5 place has been set aside for the purposes of conducting a
6 prehearing for Docket 030438-EI. The purpose of the prehearing
7 is set forth more fully in the notice.

8 COMMISSIONER DEASON: Thank you. Take appearances.

9 MR. HORTON: Norman H. Horton, Jr., of Messer,
10 Caparello & Self on behalf of Florida Public Utilities Company.

11 MR. BURGESS: I'm Steve Burgess with the Office of
12 Public Counsel representing the citizens of the State of
13 Florida.

14 MS. BRUBAKER: Jennifer Brubaker for the Florida
15 Public Service Commission. Also Katherine Fleming for the
16 Florida Public Service Commission.

17 COMMISSIONER DEASON: Okay. Very well.

18 Ms. Brubaker, do we have any preliminary matters?

19 MS. BRUBAKER: Yes, Commissioner, there are a number
20 of preliminary matters. One is that the company has requested
21 than an additional number of pages be afforded in which to
22 prepare its brief. Forty pages are kind of the usual
23 allotment. The Company has suggested that 100 pages be
24 allowed, and neither OPC nor staff objects to the granting of
25 that request.

1 COMMISSIONER DEASON: Mr. Horton, do you care to add
2 anything to that?

3 MR. HORTON: Commissioner, there is just a number of
4 issues in here. And given the number of issues, we just fear
5 that 40 pages would be way too short to address. Even if you
6 just look at one page per issue, it's going to be extensive.
7 So we had suggested 100.

8 COMMISSIONER DEASON: My only observation would be
9 that you don't use 100 just because you have been allocated
10 100.

11 MR. HORTON: Commissioner, brevity is what we will
12 seek.

13 COMMISSIONER DEASON: Okay. Very well. Okay, we
14 will make that change, then. And, Mr. Burgess, you have no
15 objection, correct?

16 MR. BURGESS: No, I have no objection.

17 COMMISSIONER DEASON: And you don't have to use 100
18 pages, either.

19 MR. BURGESS: I have no intention of coming close to
20 100.

21 MS. BRUBAKER: Also, Commissioner, briefs are
22 currently scheduled to be filed on February 25th. Pursuant to
23 conversations with the parties and staff, there has been a
24 proposal to change the brief filing date to February 27th.

25 COMMISSIONER DEASON: No objection to that change?

1 We'll reflect that change as well.

2 MS. BRUBAKER: The other preliminary matter of which
3 I'm aware of at this time is that several of FPUC's witnesses
4 will be testifying as a panel. Five minutes are currently
5 allotted for witnesses to provide a summary of their testimony.
6 Given that you will have a number of witnesses testifying as a
7 panel, FPUC has suggested that additional time be afforded for
8 those witnesses. In other words, five minutes will not be
9 needed to be divided up among three witnesses. And I will
10 leave it to the company to suggest what might be an adequate
11 amount of time.

12 MR. HORTON: Well, I'm not going to suggest five
13 minutes per witness on the panel, but I would suggest for the
14 individuals, again, five minutes should be sufficient. But for
15 the panel, we have some panels of two which, you know, if we
16 could have ten minutes per panel -- ten to fifteen minutes
17 should be more than sufficient for the panels.

18 COMMISSIONER DEASON: Let's shoot for ten minutes,
19 regardless of the number on the panel.

20 Mr. Burgess, any objection to that?

21 MR. BURGESS: No problem at all.

22 COMMISSIONER DEASON: All right.

23 Any other preliminary matters?

24 MS. BRUBAKER: Staff has none currently.

25 COMMISSIONER DEASON: Mr. Burgess, any preliminary

1 matters?

2 MR. BURGESS: No, we have none.

3 COMMISSIONER DEASON: Mr. Horton?

4 MR. HORTON: No, sir.

5 COMMISSIONER DEASON: Okay. I understand in
6 communications with Ms. Brubaker that there has been a lot of
7 work that has been going on, going through the issues and
8 making changes, and identifying potential stipulations. And
9 just let me express my appreciation to the hard work of staff
10 and the parties in trying to address those matters.

11 I understand that the prehearing order has gone
12 through several iterations, and that hopefully we will be
13 working from the latest. It may be that we may need to make
14 sure that we all have the latest information on all the issues,
15 and we will deal with that as we go through the issues.

16 MS. BRUBAKER: I can confirm that copies of the most
17 recent draft, which has also been provided to you, has also
18 been made available to the parties.

19 COMMISSIONER DEASON: Very well. As is my practice,
20 we would proceed through the draft prehearing order
21 section-by-section. We will do so in fairly rapid fashion. So
22 if you have any questions, or concerns, or clarifications,
23 please just make that known and we'll stop and address all
24 matters which need to be addressed in due course.

25 Having said that, we will begin with Section I,

1 conduct of proceedings. Section II, case background.
2 Section III, jurisdiction. Section IV, confidential
3 information.

4 Ms. Brubaker, do we anticipate the use, the extensive
5 use of confidential information in this hearing or not?

6 MS. BRUBAKER: At this time I don't believe anyone
7 anticipates extensive use of confidential information.

8 COMMISSIONER DEASON: Very well.

9 MR. HORTON: We don't.

10 MR. BURGESS: We don't intend to use confidential
11 information.

12 COMMISSIONER DEASON: Have good. Section V,
13 post-hearing procedures. We have addressed the length of
14 briefs. I don't know if this is the correct section or not,
15 but, anyway that notation will be made.

16 Section VI, prefiled testimony and exhibits.
17 Section VII, order of witnesses.

18 Ms. Brubaker, we do anticipate -- what about direct
19 and rebuttal, are we taking that testimony together, or is that
20 going to flow in the normal course.

21 MS. BRUBAKER: It is my understanding that it is
22 going to flow in the normal course, that they will not be taken
23 up together.

24 COMMISSIONER DEASON: Mr. Horton, that's your
25 understanding?

1 MR. HORTON: That is correct, that is as of today.
2 There may be a couple that we could do direct and rebuttal at
3 the same time. But given the panel situation, I think it would
4 flow a lot smoother if we left it the normal way.

5 COMMISSIONER DEASON: Very well. I just would like
6 to make sure that it is clarified one way or the other,
7 whatever procedure we're going to follow.

8 MR. HORTON: Commissioner, as long as you are looking
9 at the witnesses there, I do not believe we will have any
10 questions for Jeffrey Small. He does address that one issue
11 that is left.

12 MS. BRUBAKER: With your permission, Commissioner,
13 what I can do is designate with an asterisks on the finalized
14 prehearing order that Jeff Small may be excused, provided none
15 of the Commissioners on the panel need to ask any questions of
16 him.

17 COMMISSIONER DEASON: Very well. Mr. Burgess, I
18 assume you have no questions.

19 MR. BURGESS: We have no questions for Mr. Small.

20 MS. BRUBAKER: Should we set a time certain at which
21 the Commissioners are to get back with me about whether they
22 will have questions for Mr. Small, say a week before the
23 hearing?

24 COMMISSIONER DEASON: No, I would just -- just make
25 that notation, and just work with the individual Commissioners'

1 offices. And as soon as you get an indication, just let the
2 parties know.

3 MS. BRUBAKER: Very good. Thank you.

4 COMMISSIONER DEASON: Section VIII, basic positions.
5 Section IX, issues and positions. We will go issue-by-issue,
6 beginning with Issue 1.

7 MR. BURGESS: Commissioner, may I make a statement
8 with regard to a number of the issues. There were several that
9 I was intending to add the dollar effect of our position on,
10 and some of them I have not tracked down at this stage. I was
11 hoping to receive leave to provide that as I'm able to get that
12 in the next day or so.

13 COMMISSIONER DEASON: Well, that was going to be my
14 question. How long do you need to do that?

15 MR. BURGESS: I think I can have everything finished
16 tomorrow.

17 COMMISSIONER DEASON: Okay. Ms. Brubaker, when were
18 you anticipating issuing the prehearing order.

19 MS. BRUBAKER: It can be issued at your pleasure.
20 Provided those changes could be received to us tomorrow, it
21 should be able to issue Friday or Monday.

22 COMMISSIONER DEASON: You can do that no later than
23 close of business tomorrow?

24 MR. BURGESS: I can.

25 COMMISSIONER DEASON: Mr. Horton, any objection?

1 MR. HORTON: No, sir.

2 COMMISSIONER DEASON: Very well. Issue 1.

3 Issues 2, 3, and 4 have been dropped.

4 Issue 5.

5 Ms. Brubaker, just for my own benefit, can you just
6 review quickly the various categories of stipulations.

7 MS. BRUBAKER: Certainly, Commissioner. Category 1
8 Stipulations are those in which staff, the utility, and OPC are
9 in agreement upon. Category 2 Stipulations are those upon
10 which the utility and staff agree, but OPC takes no position.

11 COMMISSIONER DEASON: Very well. Mr. Burgess, on
12 those Category 2 Stipulations, that is correct, you are not
13 agreeing with the positions, but you are not taking issue with
14 it, either, is that correct.

15 MR. BURGESS: That is absolutely correct.

16 Issue 6. Issue 7 is a Category 2 Stipulation. Issue
17 8 is a Category 1 Stipulation. Issue 9, Issue 10, Issue 11,
18 Issue 12, Issue 13, Issue 14, Issue 15, Issue 16, Issue 17.
19 Issues 18 and 19 have been dropped. Issue 20. Issue 21 has
20 been dropped. Issue 22, Issue 23, Issue 24, Issue 25, Issue
21 26, Issue 27, Issue 28.

22 MS. BRUBAKER: Sorry, Commissioner, I beg your
23 pardon.

24 COMMISSIONER DEASON: Sure.

25 MS. BRUBAKER: With respect to Issue 27, staff has a

1 change in its position. From, "this is dependent upon the
2 decision in Issue 114," to, "No position at this time."

3 COMMISSIONER DEASON: Issue 28, Issue 29. Issue 30
4 has been dropped. Issue 31, Issue 32, Issue 33. Issue 34 is a
5 Category 1 Stipulation. Issue 35 has been dropped. Issue 36,
6 Issue 37, Issue 38. Issue 39 has been dropped. Issue 40,
7 Issue 41, Issue 42. Issue 43 is a Category 1 Stipulation.
8 Issue 44 is a Category 1 Stipulation. And Issue 45 is a
9 Category 2 Stipulation. Issue 46, Issue 47, Issue 48,
10 Issue 49. Issue 50 has been dropped. Issue 51 is a Category 1
11 Stipulation. Issue 52. Issue 53 has been dropped. Issue 54,
12 Issue 55, Issue 56, Issue 57, Issue 58, Issue 59, Issue 60,
13 Issue 61. Issue 62 has been dropped. Issue 63, Issue 64,
14 Issue 65. Both Issues 66 and 67 are Category 1 Stipulations.
15 Issue 68. Issue 69 and 70 are a Category 1 Stipulation. Issue
16 71. Issue 72 and 73 have been dropped. Issue 74 and 75,
17 Category 1 Stipulation. Issue 76 dropped. Issue 77, Category
18 1 Stipulation. Issue 78. Issues 79 and 80 have been dropped.
19 Issue 81, Issue 82, Issue 83. Issue 84 has been dropped.
20 Issue 85, Issue 86. Issue 87 has been dropped. Issue 88.
21 Issue 89 has been dropped. Issue 90, Issue 91, Issue 92.
22 Issue 93 has been dropped. Issue 94. Issue 95 and 96,
23 Category 1 Stipulation. Issue 97 has been dropped. Issue 98,
24 Issue 99, Issue 100. Issue 101 and 102, Category 1
25 Stipulation. Issue 103, Issue 104, Issue 105. Issue 106 has

1 been dropped, Issue 107 and 108, Category 1 Stipulation. Issue
2 109 has been dropped. Issue 110, Issue 111, Issue 112, Issue
3 113, Issue 114, Issue 115, Issue 116. Issue 117 has been
4 dropped. Issue 118, Issue 119, Issue 120, Issue 121, Issue
5 122, Issue 123, Issue 124, Issue 125. Issue 126 and 127,
6 Category 2 Stipulation. Issue 128. Issues 129 and 130,
7 Category 2 Stipulation. Issue 131. Issue 132 and 133,
8 Category 2 Stipulation. Issue 134. Issue 135, Category 1
9 Stipulation. Issue 136, Category 1 Stipulation. And Issue
10 137.

11 That concludes the issues, Ms. Brubaker?

12 MS. BRUBAKER: That's correct.

13 COMMISSIONER DEASON: Okay. We will proceed, then,
14 to Section X, the exhibit list. Any changes or corrections to
15 the exhibit list. There are quite a few pages of exhibit list.

16 MS. BRUBAKER: Just for informational purposes,
17 Commissioner, there has been some discussion, although I don't
18 think it had been finalized, as introducing MFRs as composite
19 exhibits. We will pursue that, and we'll submit that
20 information as soon as it is available about how that might be
21 submitted at hearing.

22 COMMISSIONER DEASON: The MFRs?

23 MS. BRUBAKER: The MFRs. Perhaps by witness has been
24 one suggestion.

25 MR. HORTON: Commissioner, I was going to inquire.

1 Currently we show each MFR individually by the witness. Ms.
2 Martin, for example, sponsors a number of them. And if it is
3 your preference, we can just show Ms. Martin various MFR
4 exhibits, or break them down as they are here. It would
5 certainly make for a much shorter prehearing statement,
6 prehearing order to have them grouped.

7 COMMISSIONER DEASON: Staff, do you have a
8 preference?

9 MS. BRUBAKER: I think that would be fine to do them
10 grouped that way.

11 MR. HORTON: It's your pleasure. We have got it
12 either way.

13 COMMISSIONER DEASON: Let's go for the shorter
14 version.

15 Mr. Burgess, any objection?

16 MR. BURGESS: No, none.

17 COMMISSIONER DEASON: Okay. Section XI, proposed
18 stipulations. As previously discussed, there are two
19 categories of stipulations with various stipulations listed
20 under each. Are there any changes to these? These are the
21 most up-to-date, correct?

22 MS. BRUBAKER: These are the most up-to-date. And as
23 far as I know, there are no changes to these at this time.

24 COMMISSIONER DEASON: Mr. Burgess, any changes for
25 you?

1 MR. BURGESS: None that I see. I'm confident there
2 are no changes.

3 COMMISSIONER DEASON: Okay. Mr. Horton, any changes
4 that you have?

5 MR. HORTON: Not that I'm aware of.

6 COMMISSIONER DEASON: Ms. Brubaker, let me ask, is
7 there still the possibility that there could be additional
8 either Category 1 or Category 2 stipulations?

9 MS. BRUBAKER: Yes, there is.

10 COMMISSIONER DEASON: So that work will continue.

11 MS. BRUBAKER: Yes.

12 COMMISSIONER DEASON: Very well. Section XII,
13 pending motions. As indicated, there are no pending motions.

14 Mr. Horton or Mr. Burgess, are you aware of any
15 pending motions?

16 MR. BURGESS: I'm aware of none.

17 MR. HORTON: None.

18 COMMISSIONER DEASON: Very well. Section XIII,
19 pending confidentiality matters, there are two matters. We
20 will address these in due time, Ms. Brubaker?

21 MS. BRUBAKER: That's correct.

22 MR. HORTON: Commissioner, those may be already
23 resolved. One of these -- these are both my requests. One of
24 them involves some discovery from Public Counsel. And I have
25 already talked to Public Counsel, and if they will return the

1 documents they have, I will withdraw that request.

2 MR. BURGESS: Yes, I think we are going to be able to
3 resolve it that way, rather than require a formal Commission
4 decision on it.

5 COMMISSIONER DEASON: Very well.

6 MR. HORTON: And one of the others involves some
7 documents that have already been reviewed and disposed of, so
8 that may take care of itself as well.

9 COMMISSIONER DEASON: Very well. If you can
10 communicate with Ms. Brubaker, and before the order is issued,
11 if there are no pending confidentiality matters, then we will
12 so reflect in the order.

13 MR. HORTON: Yes, sir.

14 COMMISSIONER DEASON: Section XVI, rulings. I know
15 of no rulings other than the dates for the filings and the
16 length of the briefs. Is there anything else that we need to
17 address?

18 MS. BRUBAKER: There is also the length of time given
19 for the summaries of the witnesses for the testimony.

20 COMMISSIONER DEASON: Well, the bulk of the order
21 will address that. Okay.

22 MS. BRUBAKER: Right.

23 COMMISSIONER DEASON: Well, that concludes the
24 various sections of the draft prehearing order. Just let me
25 ask, is there anything else that needs to come before the

1 prehearing officer at this time? Mr. Burgess?

2 MR. BURGESS: No, none.

3 COMMISSIONER DEASON: Mr. Horton?

4 MR. HORTON: No, sir.

5 COMMISSIONER DEASON: Staff?

6 MS. BRUBAKER: Staff has nothing.

7 COMMISSIONER DEASON: Thank you. Just let me repeat
8 what I said earlier, that I appreciate the very hard and
9 diligent work that has been carried on so far by Public
10 Counsel's Office, and the utility, and our staff. There has
11 been lot of progress made, and we look forward to an
12 educational and efficient hearing.

13 When are the hearing dates, Ms. Brubaker?

14 MS. BRUBAKER: The 18th and 19th of February.

15 COMMISSIONER DEASON: Okay. And do we anticipate
16 that we will be able to conclude in the two allotted days, Mr.
17 Horton?

18 MR. HORTON: It depends on how wordy Mr. Burgess is.

19 COMMISSIONER DEASON: Mr. Burgess?

20 MR. BURGESS: I think we will, I'm certain we can
21 finish in two days, and I think we can finish in two standard
22 days. It's one of those where at the end of day one we will
23 know a lot more.

24 COMMISSIONER DEASON: Well, as is, I guess, standard
25 practice around here, when you come to a hearing be prepared to

1 work into the evening. I don't know what -- I guess I will be
2 presiding officer at this hearing, won't I?

3 MS. BRUBAKER: I believe so.

4 COMMISSIONER DEASON: As we proceed through the
5 hearing, we will get a better feel for that. Obviously if
6 there is no need to work late in the evenings, we will not do
7 that. But it is anticipated that we will conclude within two
8 days.

9 MR. HORTON: I think we can, Commissioner, I share
10 Mr. Burgess' views.

11 COMMISSIONER DEASON: Very well. Staff, do you share
12 that view as well.

13 MS. BRUBAKER: Absolutely.

14 COMMISSIONER DEASON: Okay. Anything else?

15 MS. BRUBAKER: Staff has nothing.

16 COMMISSIONER DEASON: Thank you all, again. This
17 prehearing conference is adjourned.

18 (The prehearing concluded at 1:58 p.m.)
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STATE OF FLORIDA)

COUNTY OF LEON)


: CERTIFICATE OF REPORTER

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

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

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

DATED THIS 6th day of February, 2004.



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