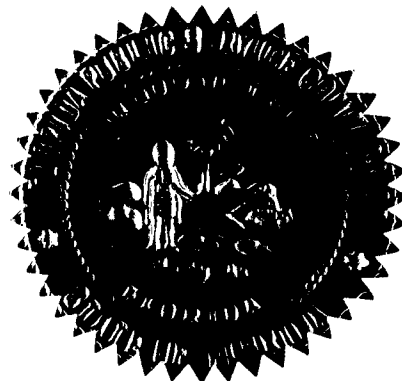


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 050078-EI

In the Matter of

PETITION FOR RATE INCREASE BY
PROGRESS ENERGY FLORIDA, INC.



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VOLUME 9

Page 1324 through 1384

PROCEEDINGS: TECHNICAL HEARING

BEFORE: CHAIRMAN BRAULIO L. BAEZ
COMMISSIONER J. TERRY DEASON
COMMISSIONER RUDOLPH "RUDY" BRADLEY
COMMISSIONER LISA POLAK EDGAR

DATE: Wednesday, September 7, 2005

TIME: Commenced at 9:30 a.m.
Concluded at 11:40 a.m.

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

REPORTED BY: JANE FAUROT, RPR
Official FPSC Hearings Reporter
(850) 413-6732

APPEARANCES: (As heretofore noted.)

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P R O C E E D I N G S

(Transcript follows in sequence from Volume 8.)

CHAIRMAN BAEZ: While we're setting up, I will, much like a previous rate case settlement we entertained, I guess a week ago, or a couple of weeks ago at this point, I would just suggest the parties may have to be available, or there may be some questions that can only be answered by those that actually signed the thing. And if you can just remain available until we get -- you all can choose among yourselves who the best person to answer the question might be at any given time.

Mr. Devlin, I will hand it over to you. I think we can probably proceed the same way we did last time. If we want to -- Commissioners, unless there is any objection, or you have any special way you want to go about this, I would suggest we go through it paragraph-by-paragraph and we can ask our questions and you can go ahead and point out things that we need to be aware of.

MR. DEVLIN: Fair enough, Mr. Chairman. And I'm glad you made the point. There are a couple of provisions in here that we weren't able to get clarification, and it would be suitable, I think, for one of the parties to step forward and help in that regard.

CHAIRMAN BAEZ: Very well.

MR. DEVLIN: That's what I was going to suggest as well, is to follow the same format we did with FPL, and just

1 walk through provision-by-provision, use that as our
2 conversation piece, and then we will point out areas where we
3 think clarification could be useful to avoid maybe a future
4 dispute, or maybe just a further explanation to get a better
5 feel for the effect of the stipulation would be in order.

6 With that, we can turn to -- and I guess as we go
7 through this we will try to contrast this stipulation with
8 FPL's and also, to the extent we can, with the current
9 stipulation that Progress Energy is operating under. So there
10 are really two points of comparison.

11 Turning to Page 3, and I will be calling on various
12 staff people to help me out in this regard. The first
13 paragraph on Page 3, or we will call it the first provision,
14 really deals with the implementation and termination dates of
15 this plan, if you will. This contrasts with FPL in that it
16 does not have the so-called evergreen provision. It will
17 terminate in four years. It has got one proviso in there that
18 Progress Energy at their discretion could ask for a six-month
19 extension. We did ask the parties what was the relevance of
20 that, and the answer was it would, perhaps, provide for
21 staggering of rate cases come 2010 between FPL and Progress
22 Energy.

23 CHAIRMAN BAEZ: Questions, Commissioners?

24 COMMISSIONER DEASON: Mr. Chairman.

25 CHAIRMAN BAEZ: Go ahead, Commissioner Deason.

1 COMMISSIONER DEASON: The option for the six-month
2 extension, that is solely at Progress' discretion, is that
3 correct?

4 MR. DEVLIN: That's my understanding; yes, sir.

5 COMMISSIONER DEASON: And they have to give notice of
6 that intention, is that also correct?

7 MR. DEVLIN: It says, yes, upon written notice to the
8 parties on or before March 1st of 2009.

9 COMMISSIONER BRADLEY: What --

10 CHAIRMAN BAEZ: Commissioner Bradley.

11 COMMISSIONER BRADLEY: Yes. I want staff's
12 interpretation of this language. What is the significance of
13 written notice to the parties?

14 MR. DEVLIN: I believe that's just to -- as a matter
15 of courtesy, just to let the parties know that Progress intends
16 to, you know, prolong the settlement for six months. I look at
17 it as more of just a common courtesy to the parties.

18 COMMISSIONER BRADLEY: Okay. You don't see it as a
19 clause that would bind the Commission?

20 MR. DEVLIN: I guess that's a point we should
21 probably make right up front with respect to this whole
22 settlement, and I don't know if the Attorney General can jump
23 in, but the settlement does not bind the Commission in any way.
24 The Commission is not a party to the settlement.

25 MS. BRUBAKER: If I could just add to that. There

1 are certain provisions here. And we may go ahead and reiterate
2 the comments, but just as kind of a blanket overall statement,
3 the Commission traditionally has given a great deal of
4 deference to settlements. It promotes settlements and
5 encourages negotiated settlement between parties, and certainly
6 a great deal of weight and deference is given to negotiated
7 settlements.

8 Nonetheless, the Commission has a legislative mandate
9 to exercise its authority in the public interest. And in the
10 public interest is an ongoing thing. While we certainly give a
11 lot of weight to settlements, nevertheless circumstances do
12 change, public interest may change, and we have an ongoing
13 responsibility to both the utilities we regulate and the
14 customers they serve to maintain that authority. And so, no,
15 the Commission is not bound in the sense that the parties are
16 bound to the settlement. We always have that underlying
17 responsibility that we are mandated by the Legislature to
18 exercise in the public interest.

19 CHAIRMAN BAEZ: I just have -- Commissioner Edgar, do
20 you have a question? No. Just one quick clarification. The
21 way the dates work out, March 1 would be around the date that
22 MFRs would have to be filed in order to get a seamless
23 transition. You know, in order to get a rate case processed
24 within the statute and to get new rates in place by 1/1/2010,
25 is that correct?

1 MR. DEVLIN: That's correct. Well, there is a
2 eight-month file and suspend time clock, if you will.

3 CHAIRMAN BAEZ: I'm sorry?

4 MR. DEVLIN: There is an eight-month file and suspend
5 time clock, if you will, and it is --

6 CHAIRMAN BAEZ: And it roughly works, dovetails into
7 that?

8 MR. DEVLIN: Right.

9 CHAIRMAN BAEZ: Okay. Commissioners, if there are no
10 questions, we can move on.

11 MR. DEVLIN: Provision 2 and 3, Ms. Kummer is going
12 to talk about. It regards rates and rate matters.

13 MS. KUMMER: Provisions 2 and 15 both deal with the
14 changes to rates and tariffs, so we are just going to take the
15 two of those together. There are numerous changes to the
16 various rates and schedules, and Exhibit 1 to the settlement
17 lays those out. There are just a couple that staff would like
18 to bring to your attention.

19 The first of the increases is to the lighting
20 services schedule. Lighting services includes all outdoor
21 lighting, from the private security light outside your house to
22 the street lights in the municipality. The settlement
23 increases both the fixture and the maintenance charges for most
24 of the fixture types as well as increases the charges for many
25 of the poles. These increases will generate approximately

1 \$6.4 million in additional revenue for the utility.

2 The other change of note is the addition of a minimum
3 late payment charge. Currently Progress charges one and a half
4 percent per month times the overdue balance for late payment.
5 The settlement adds to this a five-dollar minimum. So that
6 late payments will now be subject to either the five-dollar
7 minimum or the one and a half percent, whichever is greater.
8 Staff estimates that this change will generate approximately an
9 additional \$6 million in revenue per year.

10 As I said, Pages 1 and 2 of Exhibit 1 lists all of
11 the changes, and I'll be happy to discuss any of those, if you
12 have questions. But all told, staff estimates that the changes
13 will generate an additional \$15 million in revenue for the
14 company.

15 Now, based on the phone call last Friday with the
16 parties, it is staff's understanding that this new revenue will
17 be subject to the revenue sharing. It won't adjust the
18 threshold, but it will adjust the determination of the amount
19 of whether or not sharing occurs.

20 CHAIRMAN BAEZ: Wait. Can you say that again?

21 MS. KUMMER: There was the -- let me let Mr. Devlin.

22 CHAIRMAN BAEZ: The additional revenues are not
23 outside of whatever formula gets put in place in order to -- so
24 it is subject to the revenue sharing?

25 MS. KUMMER: Yes, sir.

1 MR. DEVLIN: That's correct. That was an issue two
2 or three years ago with the past revenue sharing, whether these
3 miscellaneous revenues should or should not be included, and we
4 clarified they should be.

5 CHAIRMAN BAEZ: It falls in the same bucket for --

6 MR. DEVLIN: Correct.

7 COMMISSIONER DEASON: Mr. Chairman.

8 CHAIRMAN BAEZ: Commissioner.

9 COMMISSIONER DEASON: And the threshold is not being
10 increased as a result, is that correct? The threshold is as it
11 is stated?

12 MR. DEVLIN: That is my understanding. If one of the
13 parties could come forward if we are wrong on that, but my
14 understanding is that the threshold would not be affected --
15 would not be adjusted.

16 MR. GLENN: That's correct.

17 CHAIRMAN BAEZ: Commissioners, other questions on 2
18 or 15? Commissioner Edgar.

19 COMMISSIONER EDGAR: The five-dollar late payment
20 minimum fee, is that comparable to what other utilities are
21 charging now for late payment?

22 MS. KUMMER: Currently Power and Light and Tampa
23 Electric just have the one and a half percent. Florida Public
24 adopted the five dollar minimum in its 2002 rate case.

25 CHAIRMAN BAEZ: Quick math, of which I am unable, how

1 low does a bill have to be in order to get a five-dollar
2 minimum? I guess I'm --

3 MS. KUMMER: The breakeven point is somewhere around
4 \$300 to get a one and a half percent to equal a five-dollar
5 minimum. So if your late payment is anything below \$300, you
6 are generating less than five dollars right now in late fees.

7 CHAIRMAN BAEZ: Very well.

8 Commissioners, if there are no questions, we can move
9 on. Paragraph 3.

10 MS. KUMMER: Okay. Provision 3 addresses the
11 retention of certain interruptible and curtailable service rate
12 schedules. IS and CS rates are essentially demand-side
13 management programs where large customers receive credits for
14 agreeing to be interrupted. The credits are subject to the
15 standard conservation cost/benefit analysis and are set in the
16 energy conservation cost-recovery clause proceedings.

17 The IS-1 and CS-1 rates addressed here were closed to
18 new customers in 1996 because they were no longer
19 cost-effective. However, existing customers were allowed to
20 remain on those rates. In 2000 and in the current case,
21 Progress proposed eliminating these rates and moving these
22 customers to the IS-2 and CS-2 rate, which are cost-effective.

23 The credits paid under IS-1 exceed those that those
24 customers would receive if they went to an IS-2 rate by
25 approximately \$7.8 million. By allowing existing customers to

1 remain on the IS-1 and CS-1 rate schedules, the \$7.8 million in
2 credits will continue to be recovered through the energy
3 conservation cost-recovery clause.

4 CHAIRMAN BAEZ: In essence, I guess the recoveries
5 available -- what you're saying is that the recoveries
6 available under the conservation clause are essentially
7 \$7.8 million higher than if the actual migration of customers
8 to the new tariff would have taken place.

9 MS. KUMMER: Yes, sir.

10 CHAIRMAN BAEZ: But, in essence, that is not a
11 change, it is almost -- maintaining the status quo.

12 MS. KUMMER: Those dollars are currently collected
13 through the clause.

14 CHAIRMAN BAEZ: Right.

15 Commissioners, questions? Commissioner Deason.

16 COMMISSIONER DEASON: I know that this was an item of
17 settlement in a previous case, is that correct? Explain the
18 history of this for me, if you could.

19 MS. KUMMER: The interruptible and curtailable rate
20 schedules were set up as demand-side management type of
21 programs in Progress' '91 rate case. As I recall, Progress
22 proposed eliminating them in their 2002 earnings review, and as
23 part of the settlement they were retained in that case just as
24 they are being retained here.

25 COMMISSIONER DEASON: So as far back as at least the

1 2002 case, and maybe prior to that, there was concern that
2 these particular rate schedules were -- that the level of the
3 credits were no longer cost-effective, is that correct?

4 MS. KUMMER: These rates were, in fact, closed to new
5 customers in 1996 because it was determined that they were not
6 cost-effective.

7 COMMISSIONER DEASON: And you mentioned earlier about
8 the Commission's on-going responsibility to determine fair,
9 just, and reasonable rates and to protect the public. At what
10 point when we do the annual conservation evaluations and energy
11 conservation clause, at what point is the Commission going to
12 have to further investigate the level of these credits?

13 MS. KUMMER: I believe under the terms of the
14 stipulation those credits, and it's really the application of
15 the credits that are different between the two rate schedules,
16 but I believe that that is frozen under the stipulation for the
17 term of the stipulation. That the Commission would not be
18 allowed to look at those for the term of the stipulation.

19 COMMISSIONER DEASON: Ms. Brubaker just said we have
20 an on-going responsibility. I know that we also give great
21 deference to negotiated settlements. And I understand that,
22 and I think that is a principle that the Commission
23 historically has followed, and I hope will continue to follow.
24 But there is a little bit of friction here is what I'm hearing.

25 So is it staff's intent that this is something that

1 doesn't rise to the threshold such that we need to take a
2 further review of it, that this is something that can continue
3 during the time period of this stipulation, and that parties
4 are put on notice that at the conclusion of this stipulation it
5 may very well be something that the Commission will have to
6 further investigate?

7 MR. DEVLIN: Yes, Commissioner Deason, I think that
8 is a fair characterization of staff's view.

9 MS. KUMMER: And, again, it does not represent an
10 increase in costs. These costs are currently being recovered
11 through the clause.

12 CHAIRMAN BAEZ: Commissioners, any other questions?

13 Mr. Devlin.

14 MR. DEVLIN: Provision 4 is very similar to FPL. We
15 tried to get some clarification because there was some
16 discussion in the FPL agenda conference about the term or
17 phrase unforeseen extraordinary costs imposed by government,
18 down towards the end the page, what does that mean. And we
19 really didn't get any clarification. The response was
20 something like you'll know it when you see it. So we can't
21 offer any help in that regard. Basically, it is unforeseen.
22 That is what unforeseen means. We don't know.

23 Other than that, we don't have any points of
24 clarification, since we couldn't clarify that one point.

25 CHAIRMAN BAEZ: Commissioners, questions?

1 COMMISSIONER DEASON: This is the same language that
2 was contained in the FPL settlement, is that correct?

3 MR. DEVLIN: That is my understanding, yes, sir.

4 CHAIRMAN BAEZ: No questions. And just for my
5 clarification sake, because I kind of belabored the point the
6 last time, and maybe it bears repeating here. My only concern
7 with these types of terms is not so much the parties knowing
8 what they meant, because I'm sure that that line moves with
9 time as it probably should, but at least the Commission getting
10 a level of comfort that we know what kind of universe, what
11 kind of knowns are out there.

12 It is not really the unforeseen, the actual
13 unforeseen circumstances. No one can predict that. But at
14 least getting a sense of certainly what the company is
15 predicting, what the company can foresee, and what the
16 intervenors or the parties in total understood is foreseen.
17 And maybe that is sort of a way of backing into it. But,
18 anyway, I fear I have said too much already. And seeing no
19 other questions, I think we can move on.

20 Mr. Devlin, I guess we are on 5.

21 MR. DEVLIN: Provision 5 on Page 5 basically just
22 speaks to the method of regulation that would be employed
23 during the terms of the settlement, that being revenue sharing
24 as opposed to traditional earnings type regulation.

25 CHAIRMAN BAEZ: Mr. Devlin, this is similar language

1 again?

2 MR. DEVLIN: That's correct.

3 CHAIRMAN BAEZ: Commissioners, questions?

4 COMMISSIONER DEASON: Yes, Mr. Chairman, a
5 clarification.

6 CHAIRMAN BAEZ: Commissioner Deason.

7 COMMISSIONER DEASON: But there is an obligation to
8 continue, though, to file earnings surveillance reports,
9 correct? And, in fact, there is a provision that is tied to
10 the earnings surveillance report and there is a trigger point
11 of a 10 percent ROE, correct?

12 MR. DEVLIN: That's correct, sir.

13 COMMISSIONER DEASON: And, here again, back to Ms.
14 Brubaker's statement, we will have those earnings surveillance
15 reports and we will be able to review those and make judgments
16 about that. And if necessary, here again, giving due deference
17 to the settlement, but, if necessary, the Commission is free to
18 take action based upon the earnings surveillance reports, is
19 that correct?

20 MR. DEVLIN: That is correct.

21 CHAIRMAN BAEZ: Other questions, Commissioners?

22 Item 6.

23 MR. DEVLIN: Item 6 is very similar to FPL. Very
24 similar in concept to the sharing plan that Progress operates
25 under now. We did have, I believe, three areas of

1 clarification, similar to the areas of clarification we have
2 with FPL. One being that in the event Progress sells or
3 transfers part of its system there would be an adjustment to
4 the sharing thresholds downward, in that case. That was one
5 clarification.

6 Number two, in the event new customers or part of a
7 system is added to Progress, those revenues would be excluded
8 from the sharing and the customers involved would be excluded
9 from the sharing.

10 And then the third point of clarification is the
11 growth rate, the ten-year growth rate that is embodied in this
12 provision is based on Progress Energy information as opposed to
13 statewide information.

14 COMMISSIONER DEASON: Mr. Chairman.

15 CHAIRMAN BAEZ: Commissioner Deason.

16 COMMISSIONER DEASON: The rolling ten-year average
17 growth in kilowatt hour sales, has there been an adjustment for
18 Winter Park, or is it not necessary to do that?

19 MR. DEVLIN: I believe the company would have to
20 answer that. We don't think so, but I'm not 100 percent sure.

21 CHAIRMAN BAEZ: I'm sorry, Commissioner Deason, I
22 wanted to understand your question.

23 COMMISSIONER DEASON: Well, I'm not sure that it
24 would have a material effect, I'm just raising the question.
25 The Winter Park system is no longer -- those previously were

1 retail customers, they no longer are retail customers. I
2 didn't know if it was going to have some affect upon the
3 ten-year rolling average growth rate or not, and that was the
4 basis for the question.

5 MR. GLENN: It's not clear that it will, but those
6 will be based on actuals. So, to the extent that those retail
7 customers have been removed, that will be reflected in the
8 rolling ten-year average for sales.

9 CHAIRMAN BAEZ: And it is your contention that they
10 match up, that the numbers match up accordingly? I mean, with
11 the removal of a system such as it is your revenues are down.
12 All of a sudden the revenues generated by that once part of the
13 system are no longer reflected. On a net basis that reflects a
14 decrease in revenues.

15 MR. GLENN: Yes. And I don't know that we have
16 looked at that and have determined what kind of impact that
17 will have.

18 CHAIRMAN BAEZ: I think that goes to the question
19 of --

20 COMMISSIONER DEASON: Well, it goes to the question,
21 and maybe I am misinterpreting, but if we are going to use
22 actuals and we take out some retail revenues, that is going to
23 end up with a lower growth rate, which means it's going to be a
24 lower threshold than it otherwise would be. So, if anything,
25 it is protective of customers. I think this is to the benefit.

1 of customers, if there is not going to be some adjustment for
2 the Winter Park sale.

3 MR. PORTUONDO: Correct, Commissioner, it will have a
4 benefit to the customers. It will show lower growth because
5 the sales for Winter Park are no longer there contributing to
6 the average.

7 COMMISSIONER DEASON: I thought that was the case. I
8 wanted to confirm it. And with you confirming that, I
9 appreciate it, because you are aware of that and the potential
10 effect of that would result in a lower threshold which is
11 beneficial to customers.

12 MR. PORTUONDO: That is correct.

13 CHAIRMAN BAEZ: Commissioners, any other questions?
14 Thank you.

15 Mr. Devlin.

16 MR. DEVLIN: Mr. Chairman, like FPL, I thought it
17 might be relevant to point out the possibility of sharing based
18 on what we know, the likelihood of sharing and the numbers that
19 are relevant in the stipulation, the 2006 sharing threshold is
20 \$1.499 billion compared to their forecasted revenue of
21 \$1.482 billion. So their forecasted revenues are below their
22 threshold, so that does reduce the probability of sharing.

23 CHAIRMAN BAEZ: Commissioner Deason.

24 COMMISSIONER DEASON: But what about -- we mentioned
25 that there were some changes to late payment charge, and there

1 were some changes to street lighting tariffs which are revenue
2 enhancement changes. How do those revenues relate to the
3 forecasted amount of revenue versus what is being used as the
4 sharing point?

5 MR. DEVLIN: A fair question. I just asked Mr.
6 Slemkewicz that question. And our understanding is that that
7 revenue increase was not part of the forecasted revenue that I
8 just presented to you. The forecasted revenue would be before
9 rate changes. But if I'm wrong, the company can come forward
10 and correct me.

11 CHAIRMAN BAEZ: So, in other words, a more accurate
12 forecast is plus these numbers, that you plus whatever was
13 identified by Ms. Kummer in terms of revenue, additional
14 revenues generated, that may be generated?

15 MR. DEVLIN: I believe so. I believe you are
16 correct.

17 CHAIRMAN BAEZ: The effect being that the forecast
18 starts getting a little closer to the threshold.

19 MR. DEVLIN: That's correct.

20 CHAIRMAN BAEZ: Okay. Commissioners, any other
21 questions?

22 Item 7.

23 MR. DEVLIN: Provision 7 is very similar to Florida
24 Power and Light's. It is sort of a safety net for the utility.
25 It is pretty self-explanatory. The utility needs to basically

1 just report earnings below 10 percent on equity.

2 COMMISSIONER DEASON: Mr. Chairman.

3 CHAIRMAN BAEZ: Commissioner Deason, I'm sorry.

4 COMMISSIONER DEASON: This is language -- as I
5 recall, and I have not made a word-for-word comparison, but
6 this language seems to be the same as the language for the FPL
7 settlement, is that correct?

8 MR. DEVLIN: That's correct.

9 COMMISSIONER DEASON: And there we had the discussion
10 that the earnings surveillance, that it is on an as-filed
11 basis, and that is the trigger point as filed. And I suppose
12 that is the same intent here. Is that your understanding?

13 MR. DEVLIN: That's correct, sir.

14 CHAIRMAN BAEZ: Other questions, Commissioners? Item
15 8, Mr. Devlin.

16 MR. DEVLIN: Item 8, again, is consistent with
17 Florida Power and Light's stipulation, and also our rule on the
18 calculation of interest. Basically, it is the commercial paper
19 rate. I don't believe there is anything to be clarified there.

20 CHAIRMAN BAEZ: Number 9.

21 MR. DEVLIN: Provision 9 is very similar to Florida
22 Power and Light. It basically provides the option of a
23 separate clause in the event there is an RTO or similar
24 structure to an RTO.

25 CHAIRMAN BAEZ: Questions, Commissioners? None.

1 Item 10.

2 MR. DEVLIN: Item 10. We will probably have to spend
3 some time trying to get some clarification, because there is at
4 least one provision in here that we are not sure how it
5 operates. And I would turn your attention to -- first of all,
6 I would like to point out that unlike FPL, in this stipulation
7 Progress Energy is extending their storm damage accrual of \$6
8 million a year where FPL eliminated accrual. But in their rate
9 case they asked for a \$50 million accrual, so the difference
10 was taken off the table. It went from 50 million back to their
11 existing \$6 million accrual.

12 We were having some problems in provision 10B
13 understanding the significance of noncatastrophic storms. And
14 I personally don't understand it to this moment. I think the
15 purpose of 10B is to give the company the option of using the
16 securitization legislation to provide for the funding of the
17 amounts that are now in the order or in the surcharge that was
18 ordered recently, or 10B(a)(2) uses the security legislation to
19 set up a reserve for noncatastrophic storms pursuant to the
20 legislation. Again, I'm not sure what the significance of
21 noncatastrophic versus catastrophic.

22 CHAIRMAN BAEZ: Commissioners, I would throw that
23 initial question out to the parties. I mean, is there an
24 answer? Commissioner Edgar.

25 COMMISSIONER EDGAR: Well, as we are answering the

1 question that you have thrown out, if there is a significance
2 between using the terms catastrophic and noncatastrophic versus
3 the terms named storms, which is the way we have addressed it
4 in other instances.

5 MR. GLENN: The intent of this provision was to
6 protect the company in the event of any storm that would be
7 above the depletion of your storm reserve, whether it be a
8 catastrophic or a noncatastrophic storm. It was also the
9 intent of this section that we could have the option to seek
10 securitization or to seek a surcharge recovery, as we did in
11 the previous storm cost proceeding.

12 CHAIRMAN BAEZ: And remind me, are there any
13 limitations as part of the securitization legislation as to
14 what kind of recoveries you can seek?

15 MR. GLENN: I don't believe there are.

16 MR. DEVLIN: I believe, Mr. Chair, it is restricted
17 to named storms. Ms. Brubaker has the legislation.

18 MS. BRUBAKER: It specifies, "Storm means a named
19 tropical storm or hurricane that occurred during calendar year
20 2004 or thereafter."

21 CHAIRMAN BAEZ: Mr. Glenn, I may be misunderstanding
22 what you are talking about, but it sounds from at least this
23 brief plain reading of the statute that somehow there may be
24 some conflict between what --

25 MR. GLENN: Well, to the extent that there isn't the

1 ability to securitize, for example, and there is a
2 noncatastrophic storm that is not a named storm but that does
3 significant damage, for example, next year, we have \$6 million
4 in the reserve. Nothing would preclude the company under this
5 settlement from coming back to the Commission to seek recovery
6 for any of those noncatastrophic storms.

7 CHAIRMAN BAEZ: Is it your understanding -- and,
8 Commissioners, I'm sorry if I'm monopolizing the questions.
9 Please jump in. Commissioner Edgar did have a pretty good
10 basic question as to what the definitions mean to you. Are any
11 of the terms of this agreement changing what is recoverable
12 under our rules? I mean, do you see --

13 MR. GLENN: No.

14 CHAIRMAN BAEZ: So there is an acknowledgment at
15 least implied within the agreement that whether you ever go
16 into the reserve at all is still subject to the existing rules
17 of the Commission?

18 MR. GLENN: That's correct.

19 CHAIRMAN BAEZ: And that whatever opportunities you
20 may have to truly have a choice as laid out in this paragraph
21 also depends on the limitations set forth in the securitization
22 statute, as well.

23 MR. GLENN: That's correct.

24 CHAIRMAN BAEZ: Okay. And I don't think Commissioner
25 Edgar got an answer to the noncatastrophic definition. Can you

1 clear that up for us?

2 MR. GLENN: Well, we didn't specifically have in mind
3 specific types of storms, other than there could be instances
4 in which it is not a named storm, clearly not a Katrina type
5 catastrophic storm, but that would fall in a level that would
6 require us to seek recovery that were somehow not recovered
7 through the base rate recovery on the 6 million.

8 CHAIRMAN BAEZ: And I seem to recall, in fact, as
9 late as this past year where there were a couple of dockets,
10 and I don't recall if it was Progress Energy in particular, but
11 certainly some of the IOUs had cause to seek recourse from the
12 Commission to actually go into the storm reserve for events
13 that didn't quite match up. Does anybody remember, or am I
14 making this up?

15 COMMISSIONER DEASON: Mr. Chairman, I believe that
16 you may be referring to some exceptions or waivers that have
17 been filed for the reporting of reliability standards. I don't
18 think it is storm recovery.

19 CHAIRMAN BAEZ: So it didn't deal with the storm
20 recovery. Okay. And I guess my question would be to staff, do
21 our rules allow those kinds of waivers from the limitations of
22 the storm fund, of access to the storm fund, to your knowledge?

23 MR. DEVLIN: I may have to confer on that.

24 CHAIRMAN BAEZ: Okay. And the reason for my question
25 is this. I want to understand how this language either expands

1 or creates greater access for the company. And I'm not making
2 a value judgment on whether that is good or bad, I just want to
3 understand exactly what the terms of the settlement, how they
4 affect your ability -- because you have thrown out this word
5 noncatastrophic terms, to me that immediately puts into play
6 what kind of limitations you have in order to draw from the
7 fund. Whether we are expanding it, contracting it, or we are
8 keeping it the same, you know, what --

9 MR. PORTUONDO: Commissioners, the provisions here
10 really don't change the company's current practice or change
11 the Commission's current policy on what constitutes an
12 appropriate charge to the reserve. The reserve to which we are
13 contributing 6 million is designed to address major storms.
14 The term named storm was dropped, I think, in '94 and it was
15 recategorized to just major storms. Because there were events
16 that took place that really were just as bad as a tropical
17 storm or a named event, and the Commission and the staff recast
18 the reserve to address those events, like tornados, or a term
19 called microburst which caused just as much damage. So this
20 provision really doesn't change any of the Commission's current
21 standing practice on how the reserve is to be utilized.

22 CHAIRMAN BAEZ: Commissioners, questions?

23 COMMISSIONER DEASON: I have a question.

24 CHAIRMAN BAEZ: Commissioner Deason.

25 COMMISSIONER DEASON: When management makes the

1 decision that a weather-related event results in damage which
2 qualifies to have a charge against the reserve, is there some
3 notice requirement that you have to give staff that you are
4 doing that, or is that just part of surveillance reporting?
5 How does that work?

6 MR. PORTUONDO: Actually there currently is no notice
7 requirement for the use of the reserve.

8 COMMISSIONER DEASON: Staff, maybe that is
9 something -- not in relation to this company specifically or
10 even to this settlement specifically, but just on a
11 going-forward basis it may be something that we should at least
12 have a requirement to notify when a charge is made against the
13 reserve and what was the event that triggered that.

14 MR. DEVLIN: Yes, sir. This conversation reinforces
15 the notion that we need to go to rulemaking and clarify
16 probably a lot of things of what should and shouldn't be
17 charged to the reserve, you know, different types of
18 information provision, et cetera. After we get through these
19 cases, we are planning on going to rulemaking.

20 COMMISSIONER EDGAR: Mr. Chairman.

21 CHAIRMAN BAEZ: Commissioner Edgar.

22 COMMISSIONER EDGAR: I would just like to echo the
23 concern expressed by Commissioner Deason, and I'm glad to hear
24 that we are moving forward on that. I do realize one thing at
25 a time, but the notice requirements, what qualifies, what does

1 not, I do think some additional clarity here in the future
2 would be helpful.

3 CHAIRMAN BAEZ: And I think, you know, it is
4 probably -- there couldn't have been a better time. I mean,
5 obviously this is all Monday morning quarterbacking. But the
6 bright side, if there is one to all of this, is that we
7 actually have two major storm fund cases that we have actually
8 established some kind of precedent that gives us a platform to
9 move to rulemaking with. I'm not sure we would have gotten as
10 much value out of that kind of review even two years ago as we
11 will now, I hope. Commissioner Edgar.

12 COMMISSIONER EDGAR: And this may be going a little
13 further afield than the issue that is before us right now, but
14 what mechanisms are there, or how will it be determined what is
15 the appropriate amount necessary to replenish the reserve
16 under -- and I think I'm looking at 10B. Yes. 10B(2), I
17 think.

18 MR. DEVLIN: Yes, Commissioner Edgar. In the past,
19 again, this would be subject to rulemaking, maybe we can get
20 better clarification, but in the past the Commission has
21 required studies. And actually a lot of the companies have
22 brought in outside consultants to provide a study of the
23 outside potential liability of different types of storms,
24 worst-case scenarios, et cetera.

25 I recall, and Jim Breman can come up and probably add

1 more to it, but I recall every time we have had a case where we
2 set the accrual level, usually there has been a study behind it
3 that would provide a target that this particular company should
4 be shooting for and help guide the Commission in establishing
5 the accrual. Actually, I think that would be the case in the
6 future, as well. They would come in here and petition the
7 Commission for a particular target level based on a study.

8 COMMISSIONER EDGAR: Mr. Glenn, do you have anything
9 to add to that?

10 MR. GLENN: As a practical matter, this will likely
11 come before the Commission soon, either through a petition for
12 a financing order for securitization or some other surcharge
13 petition going forward to replenish the fund. So at a
14 practical matter that is likely to happen.

15 CHAIRMAN BAEZ: Do you want to ask the question or
16 shall I?

17 MR. GLENN: Define soon?

18 CHAIRMAN BAEZ: Yes. And just as a formality, do you
19 have any --

20 MR. GLENN: Certainly the outside date for our
21 company at this point would be no later than the end of the
22 year. I can't anticipate us going beyond that. And in all
23 likelihood it would be sooner than that.

24 CHAIRMAN BAEZ: And I don't know if I'm stepping into
25 something that may not need to be public knowledge or not, but

1 the question was or some discussion was had in Power and
2 Light's case as to some IRS rulings and so forth. Are you in a
3 similar posture?

4 MR. GLENN: We may not be in a similar posture as
5 FPL. However, just recently within the last two weeks the IRS
6 has issued what is called a revenue procedure to clarify that
7 this type of securitization legislation is a nontaxable event
8 for purposes of obtaining the funds, the bonds when they are
9 issued, and it would be taxable when you seek recovery and
10 collection. So that really clarifies the landscape, and we
11 hope --

12 CHAIRMAN BAEZ: As a general matter.

13 MR. GLENN: -- as a general matter, and hope will
14 help expedite the process.

15 CHAIRMAN BAEZ: Very well. Thank you.

16 Commissioner Deason.

17 COMMISSIONER DEASON: Mr. Chairman, I agree that
18 there is a need to move on this, but I would note one
19 difference here with Power and Light. At least Progress is
20 maintaining their annual contribution to the reserve, their
21 annual accrual to the reserve, which was not the case for Power
22 and Light, which I think even gave greater concern over Power
23 and Light to move forward as quickly as possible. Not to say
24 that Progress should not move forward, but I think that there
25 is a little bit of a difference here between the two.

1 CHAIRMAN BAEZ: There is. Any other questions,
2 Commissioners?

3 COMMISSIONER EDGAR: I think we have spent most of
4 our time the past few minutes focusing on 10A and B, which has
5 been helpful. But, Mr. Devlin, could you explain 10C to me?

6 MR. DEVLIN: Well, actually Ms. Kummer was prepared
7 to do that for us.

8 MS. KUMMER: This paragraph did cause a fair amount
9 of head scratching among staff. Based on Friday's discussion,
10 this is staff's understanding of this paragraph. If the
11 utility chooses to recover storm-related costs through
12 securitization, the total cost subject to recovery under that
13 securitization would be allocated to customer classes pursuant
14 to the statute. The statute lays out the method by which this
15 is done.

16 Under this provision, the utility may request
17 approval of a tariff to allow certain customer classes to pay
18 their share of those costs over a period not to exceed two
19 years. The language in the settlement appears to limit this
20 shortened recovery period to only those costs that were
21 identified in the storm cost recovery docket, the 041272
22 docket.

23 Based on Friday's conference call, it is now staff's
24 understanding that this alternative recovery schedule would
25 apply to the total pot of securitization dollars allocated to

1 that class, whatever costs were included in that securitization
2 offering. The tariff would be processed in accordance with all
3 existing rules and procedures, and the Commission retains the
4 right to deny the tariff if they deem that the terms or
5 conditions are inappropriate.

6 CHAIRMAN BAEZ: I may have misunderstood your
7 explanation, but are you saying or suggesting that the terms of
8 the agreement actually offer a certain class of customers the
9 ability to opt out of a securitization type recovery?

10 MS. KUMMER: Staff's interpretation is that it would
11 shorten the recovery period and not the total costs that they
12 would be required to contribute toward the total pot.

13 CHAIRMAN BAEZ: Okay. So that means that the
14 computation of the pro rata share identified in the agreement,
15 again, assuming -- and I forget now how long the
16 securitizations typically are, if they were even set forth.
17 But, just for arguments sake, that if it was a ten-year
18 recovery period on a securitization type of activity, the
19 pro rata share to a particular customer class would be computed
20 based on a ten-year recovery period, and then that number taken
21 over two years?

22 MS. KUMMER: That is staff's understanding of this
23 language.

24 CHAIRMAN BAEZ: Can anyone clarify?

25 MR. PORTUONDO: Commissioners, that is not exactly

1 what we are intending to work out with the intervenors. The
2 pot of dollars, as staff has indicated, would be first
3 calculated amongst the classes. The portion that was allocated
4 to the demand class customers, we would work with the
5 representatives for those customers to establish some mechanism
6 to recover that portion, let's say it's 50 million, over just a
7 two-year period outside of securitization.

8 CHAIRMAN BAEZ: So then it is an opt out of sorts.

9 MR. PORTUONDO: It is an opt-out provision. And then
10 the balance of the funds that were allocated to all other
11 classes of customers would be sought through a bond issuance to
12 securitize and recover over, let's say, your ten-year period.

13 CHAIRMAN BAEZ: And, not to get far afield -- and,
14 Mr. Shreve, I see you coming up, but I will ask the question
15 and get it out there in order for maybe you to have the benefit
16 of it, as well. When you, as part of a petition --
17 theoretically speaking, as part of a petition for a financing
18 order, included in that process there has to be some evaluation
19 or some fixing of what that pot of dollars is, correct? I
20 mean, is that part of the same proceeding?

21 MR. PORTUONDO: That would be part of the financing
22 hearing process, the application, yes.

23 CHAIRMAN BAEZ: Okay. And only then do you actually
24 have a basis for whichever of the intervenors can avail
25 themselves of this option to then begin the negotiation.

1 MR. PORTUONDO: That is correct.

2 CHAIRMAN BAEZ: Okay. I understand. I think I
3 understand. Now, Mr. Shreve, you were going to say something?

4 MR. SHREVE: Mr. Chairman, I think you are correct.
5 All this really was designed to do was to give certain parties
6 or certain intervenors the option to go ahead and pay their
7 share, their portion earlier rather than spreading it over ten
8 years. To go ahead and pay it earlier for whatever reason.

9 MS. BRUBAKER: Mr. Chairman, if I may. I will
10 confess I'm not ultra-familiar with the securitization
11 legislation. I don't know off the top of my head a provision
12 that would prevent this kind of mechanism. What I can offer by
13 way of reassuring the Commissioners, however, is that any
14 securitization that would come to us for approval, at that time
15 if we make a determination that this can't be done under the
16 statute, then we retain our authority to decline to accept that
17 proposal. And the settlement itself specifically says that in
18 that event that the parties would, in good faith, negotiate
19 further. So, I'm not aware, again, off the top of my head of
20 anything that prevents it. But to the extent there would be,
21 the Commission has that degree of security.

22 CHAIRMAN BAEZ: And I want to say here I don't have
23 any -- the notion of it doesn't offend me necessarily, so long
24 as there has been discussion or there is some comfort level
25 that the act of a certain customer class actually including

1 itself out of what is, in essence, for everyone else's sake a
2 general process and applicable to everyone else isn't creating
3 undue hardships on those that remain and don't have that --

4 MR. SHREVE: Absolutely. I think all the parties
5 felt that way, too. If a certain group felt that it was
6 beneficial to their business or industry to pay their portion
7 of it at an earlier date, that was all that was intended, and
8 certainly not to the detriment of any other parties.

9 CHAIRMAN BAEZ: And I guess that -- I hate to start
10 peeling the onion now, but when you say a certain group, I
11 think, you know, that there are -- it says here demand-metered
12 customers. That is the group that is identified, so it is
13 anyone in that class.

14 MR. SHREVE: Right.

15 CHAIRMAN BAEZ: So I guess arguably it extends much
16 farther than those demand-metered customers that were actually
17 involved in the settlement.

18 MR. SHREVE: And not necessarily all of them on an
19 individual basis.

20 CHAIRMAN BAEZ: Oh, so it goes -- even within the
21 demand-metered class, it is an opt in or opt out on an
22 individual basis?

23 MR. PORTUONDO: No, not on an individual customer, it
24 is the class. It is the whole class that could opt out or opt
25 in. It is not individual customers.

1 CHAIRMAN BAEZ: Then who makes that determination for
2 the -- and, forgive me, I guess I'm trying to picture what the
3 procedural issues are with all of it. I mean, obviously it is
4 up to the company, in essence, to determine that everyone in
5 the class is in or out. I mean, by sheer numbers the whole
6 class is not represented here.

7 MR. PORTUONDO: Right. And I don't disagree that
8 that is a true statement. I think in the context in which this
9 particular provision was negotiated, it would be up to the
10 intervenors that represent those types of customers to
11 interject their position.

12 CHAIRMAN BAEZ: Commissioner Deason's suggestion is
13 well taken. If there is some discussion that needs to take
14 place in order to clarify this for me, we can take five minutes
15 and let you all get together. That's all right. We will
16 recess for five minutes.

17 (Recess.)

18 CHAIRMAN BAEZ: We'll go back on the record.

19 Commissioners, I don't know whether I actually posed
20 a question, but it may have raised some discussion among the
21 parties to it, and I wonder if we made any headway or can offer
22 any, any way, anything by way of clarification of how this, how
23 this particular option is going to get handled.

24 Mr. Kise.

25 MR. KISE: I think, Mr. Chairman, we're still waiting

1 on one point of clarification.

2 CHAIRMAN BAEZ: Okay.

3 MR. KISE: And we haven't quite resolved this issue.
4 I'm sure it'll get resolved, but we don't --

5 CHAIRMAN BAEZ: Then why don't we -- I think that one
6 can stand alone because really what I have is, and I want you
7 to understand, what I have is a procedural concern. I was, I
8 was mentioning to, to Commissioner Deason, you know,
9 settlements by and large are supposed to avoid litigation and
10 simplify the process, one would hope obviously. But what we
11 have to avoid -- one of our interests is in avoiding unintended
12 consequences. And, you know, if we can kind of clarify so that
13 we don't have issues into the future, all the better. That's
14 why we reserved eight days, ladies and gentlemen, and we're
15 willing to use every single one of them to get this cleared up.

16 MR. SHREVE: Mr. Chairman, I don't think in this
17 particular case we really have a disagreement as much as we had
18 a misunderstanding on this.

19 CHAIRMAN BAEZ: That's fine.

20 MR. SHREVE: And, as Mr. Kise pointed out, he wanted
21 me to answer the question since the explanation I gave was
22 totally wrong.

23 CHAIRMAN BAEZ: Mr. Shreve, I think you've earned
24 your chance at redemption.

25 MR. SHREVE: Thank you very much. Mr. Perry is

1 making a call to Mr. McWhirter, who raised this point in the
2 first place. I don't think there will be any problems with it
3 in the long run.

4 CHAIRMAN BAEZ: And I don't have -- Commissioners, if
5 we can indulge for the moment just going over, and we can go
6 ahead and move along with the rest of the agreement. And that
7 would be -- I guess it's 11.

8 MR. DEVLIN: Provision 11. Yes, sir. Provision 11
9 deals with the suspension of the accruals for both nuclear
10 decommissioning and fossil fuel dismantlement, and also the
11 implementation of new depreciation rates.

12 And just to give an idea of the effects of those
13 three things: The depreciation result, the change in
14 depreciation resulted in a decrease in depreciation expense on
15 a jurisdictional level of \$81.1 million; and the
16 decommissioning accrual before it was suspended in the last
17 stipulation was \$7.7 million; and the dismantlement accrual
18 before it was suspended in the last stipulation, which we're
19 going back three years now, was \$9.9 million.

20 CHAIRMAN BAEZ: So if you can translate that a little
21 bit, Mr. Devlin, there's, there's a continuation of about
22 \$16 million.

23 MR. DEVLIN: There's a continuation on
24 decommissioning and dismantlement of \$16, \$17 million. It's
25 zeroed out per the stipulation. And then with respect to

1 depreciation the expenses go down \$81 million.

2 CHAIRMAN BAEZ: Commissioners, questions on that
3 portion? Commissioner Deason.

4 COMMISSIONER DEASON: The decommissioning accrual,
5 that has been suspended for some time prior to now; is that
6 correct or not?

7 MR. DEVLIN: That's, that's true.

8 COMMISSIONER DEASON: When did -- how long ago did we
9 cease accruing for the decommissioning? The last settlement?

10 MR. DEVLIN: I believe it was -- 2002, I've been
11 told.

12 COMMISSIONER DEASON: Okay. You know, Progress has a
13 funding, a funded nuclear decommissioning -- it's a funded
14 reserve, is it not, or not?

15 MR. DEVLIN: I believe so, yes.

16 COMMISSIONER DEASON: Okay. And whatever already
17 exists in the fund continues there and continues to earn -- it
18 earns a rate of return, those funds are invested, and so that
19 principal, if you will, continues to grow, does it not?

20 MR. DEVLIN: That's correct.

21 CHAIRMAN BAEZ: Mr. Slemkewicz.

22 COMMISSIONER DEASON: What was -- the dismantlement,
23 was there -- there was a dismantlement study filed in
24 conjunction with the depreciation; is that correct?

25 MR. DEVLIN: I believe -- Mr. Slemkewicz has joined

1 us -- but I believe it was the decommissioning study that was
2 filed.

3 COMMISSIONER DEASON: Okay. There was not a separate
4 dismantlement study?

5 MR. DEVLIN: Both.

6 COMMISSIONER DEASON: They both were filed. What was
7 the -- as a result of the dismantlement study, what was the,
8 what was the -- what did the study indicate?

9 MS. GARDNER: Okay. Based on the filed dismantlement
10 study, it showed a 9.9 annual accrual. On the previous fossil
11 dismantlement study it was like \$8.8 million annual accrual.
12 But basically when we're dealing with the \$9.9 million fossil
13 dismantlement accrual currently, it was also what was filed in
14 the MFR; whereas, we put it as one of the changes to bring it
15 back to that level that it was before.

16 COMMISSIONER DEASON: Well, I guess my question is is
17 there going to be an adverse consequence as a result of the,
18 the, the ceasing of the \$9.9 million accrual or is that reserve
19 in sufficient shape to take that without significant adverse
20 consequences in the future? And maybe that's a judgment call.
21 And has staff looked at that?

22 MS. GARDNER: Staff did look at that and it's
23 appropriate.

24 CHAIRMAN BAEZ: Commissioners, any other questions?
25 Paragraph 12.

1 MR. DEVLIN: Paragraph 12 relates to power plants
2 going into base rates. And to distinguish this stipulation
3 from FPL, FPL had what they called the GBRA, the Generation
4 Base Rate Adjustment. We don't have that situation in this
5 stipulation. The difference I see is FPL's was ongoing even
6 after the four-year period, where this provision only applies
7 to the four-year period. In fact, it really only applies to
8 Hines 4 and at Hines 2. Okay?

9 CHAIRMAN BAEZ: Mr. Devlin, let me stop you right
10 there. Just to, just to make sure I understand the distinction
11 that you're drawing, the reason there was a, there was a
12 generation adjustment worked into the FP&L plan is mainly
13 because it is an open-ended agreement?

14 MR. DEVLIN: That's my understanding, that it was
15 open-ended.

16 CHAIRMAN BAEZ: And it had to contemplate, it had to
17 contemplate some generation additions that weren't in the, in
18 the pipeline, so to speak.

19 MR. DEVLIN: Perhaps. As I recall in FPL's case,
20 there were two generating plants planned for, within the
21 four-year period. And if the plant is extended, there could be
22 others that would be affected by that provision.

23 CHAIRMAN BAEZ: Right. And that's why, that's why
24 the adjustment --

25 (Simultaneous conversation.)

1 MR. DEVLIN: That's why I believe it's called an
2 adjustment concept. Correct, sir.

3 CHAIRMAN BAEZ: Okay.

4 MR. DEVLIN: To give an indication -- Hines 4 is
5 scheduled to be in service in December 2007, and the estimated
6 effect at this point is \$49 million.

7 We did clarify in the conference call Friday that the
8 calculation of the costs that would be included in base rates
9 would be based on the first 12 months of revenue requirements
10 and would include depreciation, half a year of depreciation
11 similar to FPL. That wasn't clear from the stipulation that it
12 would be calculated in that manner.

13 Also, unlike FPL though, there's no provision for
14 true-up. In the event the actual costs come in below estimated
15 costs -- if you might recall in FPL, there would be a one-time
16 adjustment through the capacity clause. This -- that provision
17 is not in this stipulation.

18 We tried to get a clarification on the ability, if
19 you will, or retention of the Commission's authority to review
20 these costs for reasonableness, and I believe the parties
21 believe that the Commission still when there's a filing
22 sometime in the future to recover these costs for Hines 4, that
23 the Commission still retains its ability to review these costs
24 for reasonableness and prudence, it's my understanding.

25 With respect to cost of capital, which is a very

1 important part of calculating these costs, my understanding, in
2 the FPL case it was an incremental cost of capital; whereas, in
3 this case it's more of an overall cost of capital which would
4 include components like deferred taxes. So in that respect,
5 all other things being equal, the cost of capital would be
6 lower for Progress and FPL even with the, even though the
7 return on equity is the same, 11.75. That part of it would
8 lower it.

9 There's another component though that distinguishes
10 this settlement from FPL and it's pretty significant. This
11 settlement is based on a hypothetical equity component, whereas
12 FPL's was based on their actual equity, and it was the equity
13 that they projected or they were proffering in the rate case.
14 And I believe it involved a \$757 million adjustment above and
15 beyond what they have in their books to equity. That's what
16 they were proffering in the rate case and that's what was
17 agreed to in the settlement. That would have a certain effect
18 on the cost of capital component. That would increase the cost
19 of capital that would be applied to Hines 4.

20 There's another element that maybe Connie can help me
21 with with regard to the allocation with Hines 4.

22 MS. KUMMER: The difference -- one difference between
23 this and Power & Light's settlement is that the percentage
24 increase in rates will only apply to the energy and demand
25 charges, not to the customer charges. Power & Light applied it

1 across the board. This applies only to energy and demand, not
2 customer.

3 CHAIRMAN BAEZ: Commissioners, questions?

4 COMMISSIONER DEASON: And that's, that's beneficial
5 for residential customers because residential customers pay a
6 higher customer charge, everything else being equal.

7 MS. KUMMER: The customer charge is a higher
8 proportion of residential customers' bills.

9 CHAIRMAN BAEZ: Commissioner Edgar.

10 COMMISSIONER EDGAR: Mr. Devlin, I understood you to
11 say a moment ago that it is your understanding that the
12 Commission will, with the future filing, have the opportunity
13 to review the installed cost for Hines Unit 4. And I was
14 looking this way, so did we get a nod from Progress on that
15 interpretation?

16 MR. GLENN: That's correct.

17 COMMISSIONER EDGAR: Thank you.

18 CHAIRMAN BAEZ: Any other questions?

19 MR. DEVLIN: I was just going to mention also
20 coincident with this Hines 4, this Hines 2, the -- as I
21 understand what would happen is Hines 2 is now being recovered
22 through the fuel adjustment clause to the extent the fuel
23 savings are in excess of the revenue requirements. Well, that
24 test that fuel savings be in excess of revenue requirements is
25 no longer valid here. And what would happen is that the

1 Hines 2 revenue requirements, which are predicted to be about
2 \$39 million, would roll into base rates coincident with
3 Hines 4.

4 CHAIRMAN BAEZ: Commissioner Deason, you had a
5 question.

6 COMMISSIONER DEASON: Yeah, I did. And this --
7 Mr. Devlin's last comment raises another question.

8 So at the time of the commercial in-service date of
9 Hines 4, at that point then the, the revenue requirements
10 associated with Hines 2 would be rolled into base rates as
11 well?

12 MR. DEVLIN: Yes, sir.

13 COMMISSIONER DEASON: And the current cost recovery
14 mechanism for Hines 2 would cease at that point?

15 MR. DEVLIN: Yes, sir.

16 COMMISSIONER DEASON: And that mechanism now, it has,
17 there is an offset of fuel savings associated with that?

18 MR. DEVLIN: It's my understanding it's sort of a
19 test that the revenue requirements, the fuel savings had to be
20 in excess of the revenue requirements for us to include the
21 costs into the fuel clause. And somebody could speak to that
22 issue, but I believe they've passed that test, if you will, for
23 the last couple or three years.

24 CHAIRMAN BAEZ: Mr. McNulty, you --

25 MR. McNULTY: Commissioner Deason, that test is a

1 result of that, of the earlier settlement, and that test exists
2 through 2005. So for the years 2006 and 2007 the recovery of
3 that would continue through the, through the fuel clause but
4 would not have that same fuel savings test applied to it.
5 That's our understanding.

6 COMMISSIONER DEASON: Okay. And the -- I have
7 another question concerning the billing determinants that are
8 going to be utilized to actually set the rate impact of -- set
9 the rates as a result of the inclusion of these units. Those
10 billing determinants are the 2006 billing determinants; is that
11 correct?

12 MS. KUMMER: That is staff's understanding, yes.

13 COMMISSIONER DEASON: And that's as contained in the
14 MFRs?

15 MS. KUMMER: Yes, sir.

16 COMMISSIONER DEASON: Okay. And that's being used
17 even though the plant will come online at the end of 2007 and
18 there would be -- one would think there would be even more
19 customers online at that point, but we're still going to use
20 the 2006 billing determinants.

21 MS. KUMMER: That's my understanding. I don't
22 believe there's any discussion of increasing those or adjusting
23 those numbers.

24 COMMISSIONER DEASON: Oh, I'm sorry. One other
25 question, Mr. Chairman.

1 When these revenues associated with the Hines units,
2 how do they affect the earnings sharing threshold?

3 MR. WILLIS: It raises the earnings sharing
4 threshold.

5 COMMISSIONER DEASON: So it would be adding revenue
6 but would also be adding the threshold?

7 MR. WILLIS: Yes. It actually raises the revenue
8 caps also.

9 COMMISSIONER DEASON: Okay.

10 CHAIRMAN BAEZ: Any other questions, Commissioners?
11 Mr. Devlin.

12 MR. DEVLIN: We're on Provision 13.

13 CHAIRMAN BAEZ: 13.

14 MR. DEVLIN: I believe this is similar to -- not FPL,
15 I don't believe FPL had a provision like this -- but similar to
16 a provision Progress had in their last settlement, and
17 basically it has no effect on rates per se. It allows Progress
18 to accelerate the write-off of certain regulatory assets.
19 There's been past Commission policy that's encouraged that, to
20 write off regulatory assets as soon as economically
21 practicable. So I think it's consistent with Commission
22 policy. It doesn't affect rates, it can't affect the company's
23 earnings.

24 There's another part to this provision regarding the
25 equity ratio of 57.83. We did inquire a little bit about that

1 in our meeting Friday. It was just a negotiated number. It
2 was the same equity ratio that was embodied in their primary
3 case that they filed, something they were asking the Commission
4 to accept in their case, and so it's consistent with our MFRs.
5 And I guess it would be used for calculating return on equity
6 for surveillance purposes.

7 CHAIRMAN BAEZ: Questions, Commissioners? No
8 questions?

9 14.

10 MR. DEVLIN: Provision 14 reiterates that revenue
11 sharing is the exclusive method of regulating earnings, and I
12 think it was mentioned in a previous provision as well. It
13 also speaks to AFUDC, and we have a couple of comments with
14 regard to that.

15 There's some variation between the amount that was
16 negotiated and, you know, the calculation, a calculation that
17 we based on our rule. So we have some variance with our AFUDC
18 rule, but all parties agree with that.

19 Basically it involves our rule requires actual
20 amounts to be used in the calculation of the AFUDC rates;
21 whereas, the calculation underpinning the negotiated number
22 were projected amounts. I think we just found out this morning
23 the difference in the AFUDC rate. Maybe Marshall has it. I
24 can't seem to put my hands on it.

25 MR. WILLIS: 7.81. The current AFUDC rate is 7.81,

1 which was established back in 1993, compared to the
2 8.848 percent contained in the settlement.

3 MR. DEVLIN: These numbers would be relevant for the
4 power plants coming online, both Hines 4 -- well, not Hines 2,
5 but Hines 4.

6 CHAIRMAN BAEZ: Commissioner Deason.

7 COMMISSIONER DEASON: Is there a conflict with the
8 rule that needs to be resolved or do we have the discretion to
9 utilize the AFUDC rate that's in the negotiated settlement?

10 MS. BRUBAKER: Commissioner Deason, the rule is
11 designed to protect both the utility and the customers'
12 interest to provide a certain degree of certainty when it comes
13 to the establishment of AFUDC.

14 What we have here is a situation where all the
15 affected parties, almost every customer group you could look at
16 has a representative available who has negotiated this rate
17 with Progress. And I believe that we have the discretion to
18 accept that negotiated rate in this context.

19 CHAIRMAN BAEZ: So there's not -- there is no, there
20 is no weakness in the manner in which we've, in the manner in
21 which the AFUDC rate would have been set, that we didn't, you
22 know, that there wasn't, that there wasn't a petition for, for
23 a variance or for a different, you know, for some kind of --

24 MS. BRUBAKER: No. I believe it's within our
25 discretion to accept it under these circumstances.

1 CHAIRMAN BAEZ: Okay. Commissioner Deason.

2 COMMISSIONER DEASON: Yeah. In the earlier Provision
3 12, I think Mr. Devlin indicated that the anticipated cost of
4 Hines 4 is \$49 million. Did that reflect the old or the new
5 AFUDC rate, or would it still just get caught up in the
6 rounding on that number?

7 MR. DEVLIN: I'm not sure, Commissioner Deason.
8 Maybe the company can enlighten us.

9 MR. PORTUONDO: Commissioner, that calculation was
10 based on the cap that's authorized, that was authorized in the
11 need determination. So it was a kind of do not exceed unless
12 you can justify that the increase above the cap was prudently
13 incurred. So what we did is for the staff's benefit is just
14 utilize that cap so they could gauge the impact.

15 COMMISSIONER DEASON: And so when it comes time to
16 include Hines 4 and you're using the higher AFUDC rate, that
17 would just be part of your case at that point demonstrating the
18 reasonableness of the number; is that correct?

19 MR. PORTUONDO: Yes, sir.

20 CHAIRMAN BAEZ: Any other questions, Commissioners?

21 Mr. Devlin.

22 MR. DEVLIN: I think, Mr. Chairman, we've already
23 addressed Provision 15; Ms. Kummer did.

24 CHAIRMAN BAEZ: 15. Right.

25 MR. DEVLIN: Provision 16 Bill McNulty is going to

1 discuss.

2 MR. McNULTY: Okay. Commissioners, Provision 16
3 discussed security cost recovery through the capacity cost
4 recovery clause. We just wanted to clarify that in relation to
5 Provision 16, Provision 17, Provision 17 indicates that
6 Commission approval will constitute approval of MFRs; that
7 within the MFRs there is a certain amount of incremental
8 security cost that's reflected in that; and the company did
9 clarify that that amount, \$3.28 million, that's reflected in
10 that amount in the MFRs for recovering base rates is actually
11 going to be recovered through the capacity cost recovery clause
12 on a going-forward basis. So that's the first point of
13 clarification.

14 The second point of clarification is we did inquire
15 as to what types of fuel procurement O&M costs would be
16 recoverable through the fuel cost recovery clause, given the
17 second sentence in Provision 16, and it was clarified by the
18 parties that it was only O&M costs, fuel procurement O&M costs
19 associated with coal procurement and not the other types of
20 fuels.

21 CHAIRMAN BAEZ: Questions, Commissioners?

22 Commissioner Deason.

23 COMMISSIONER DEASON: Yes. Well, the second, the
24 second sentence of Provision 16, is that changing what
25 currently is being done for these costs in the sense of the

1 manner of the recovery of these costs?

2 MR. McNULTY: Commissioner, I don't believe so in the
3 sense that the coal procurement in the past was, was handled
4 basically through their affiliate, Progress Fuels Corporation,
5 and at this -- and so that was something that was always
6 contemplated in the past as being recovered through the fuel
7 clause.

8 CHAIRMAN BAEZ: Any other questions, Commissioners?
9 Mr. Devlin.

10 MR. DEVLIN: Provision 17, the only, the only area
11 that we inquired about was the second line in Provision 17
12 regarding Commission approval of MFRs. We weren't sure what
13 the parties had in mind with that. And the parties, based on
14 our phone conversation, didn't believe that meant that the
15 Commission was approving the MFRs or at least wasn't approving
16 the accuracy of the MFRs.

17 CHAIRMAN BAEZ: Questions, Commissioners? No?
18 Go ahead, Mr. Devlin.

19 MR. DEVLIN: Provision 18 is very similar to the FPL
20 regarding the environmental expenditures. Ms. Kummer might
21 chime in. But basically it changes the allocation from what
22 was -- from an energy base to the current cost service
23 methodology, which includes demand, and that in turn would
24 shift some dollars from commercial/industrial to residential.
25 But that was, I think, exactly the same wording that was in the

1 FPL stipulation.

2 MS. KUMMER: Yes, it is the same as was approved in
3 FPL.

4 CHAIRMAN BAEZ: Questions?

5 COMMISSIONER DEASON: Mr. Chairman, yes.

6 CHAIRMAN BAEZ: Commissioner Deason.

7 COMMISSIONER DEASON: There's the adjective "new"
8 capital costs. How do we define that in terms of new versus
9 old?

10 MS. KUMMER: Okay. Based on our conversation Friday,
11 it's staff's understanding that new costs are those costs for
12 which the Commission has not yet issued an order. This, again,
13 is similar to what we did in FP&L.

14 COMMISSIONER DEASON: And is there any effect on the
15 old costs as far as their cost allocation?

16 MS. KUMMER: No. The intent is only for new costs.

17 CHAIRMAN BAEZ: Mr. Devlin.

18 MR. DEVLIN: Provision 19, I don't believe there's a
19 lot of substance to that provision, although we'd want to note
20 that heretofore there was, in the current settlement there was
21 a performance measure for reliability, the company had to meet
22 a certain standard or it was subject to making a refund, and
23 that has been removed in this stipulation. Other than that, I
24 don't think there's a lot of substance to that provision.

25 CHAIRMAN BAEZ: Commissioner.

1 COMMISSIONER EDGAR: Just to restate the obvious,
2 that Provision 19 in no way limits the Commission's ability to
3 look at or address any reliability issues that we may wish to
4 in the future.

5 MS. BRUBAKER: That's correct.

6 MR. DEVLIN: Mr. McNulty whispered in my ear -- the
7 performance measure that I was speaking to still is in effect
8 for 2005. The parties have agreed here to take it off the
9 table for 2004 and it won't be there 2006 forward, but it's
10 still applicable in 2005.

11 CHAIRMAN BAEZ: Okay. That's the balance of the, of
12 the terms of the agreement. Commissioners, any, any questions
13 in particular? And I know that we've got, we've got one
14 hanging out that some of the parties were trying to come to
15 some kind of agreement on.

16 MR. GLENN: I think we -- sorry, Chairman. I was
17 just talking to Mr. Perry. I think we've come to a resolution
18 on, on Section 10(c) in the language.

19 CHAIRMAN BAEZ: Okay.

20 MR. GLENN: We, I think, all believe that the
21 language is clear, but we wanted to clarify it that the intent
22 is to apply to a class of customers. However, in the fullness
23 of time as we go forward hopefully with securitization or
24 another petition for a surcharge that we would look at
25 reasonable alternatives. And we're going to work with

1 individual customers within that context to help them, if, if
2 possible, to address their needs.

3 CHAIRMAN BAEZ: And I, and I started reading it again
4 in all of the time that's, that's passed, and a lot of it
5 obviously is, is -- you know, ultimately the burden of a
6 decision falls on, because it's a tariff filing it does fall on
7 the Commission and, you know, it does create a process. And
8 I'm assuming there may be -- everyone -- all affected parties
9 will have a chance to decide what's in their best interest. I
10 mean, you know, don't, wouldn't want to get Wal-Mart versus
11 Publix, but if that's the way, if that's the way it winds up
12 happening, I think everybody is free to decide. And I guess
13 once again the Commission would probably decide whether to bind
14 all, all members of a class or not. And that can be -- but we
15 agree that that can be --

16 MR. GLENN: Certainly the Commission would be the
17 ultimate --

18 CHAIRMAN BAEZ: -- a standard or some grounds for,
19 some grounds for deciding or some grounds for discussion or our
20 consideration on.

21 Mr. Perry, I'm sorry.

22 MR. PERRY: Yeah. And we'd also like to make clear
23 that I think that our understanding is that it would also, it
24 would give the option for the whole class and then the option
25 for the possibility that the company could work with individual

1 customers to the extent possible.

2 CHAIRMAN BAEZ: And that would be -- would that --
3 and I guess again that's where my sticking point is. Does
4 that -- can you write that into a tariff? I mean, is that -- I
5 don't -- I guess I'm not seeing it. I'm sorry.

6 MR. GLENN: I think we have a number of creative
7 lawyers here who could probably work on that. I think we'll be
8 doing that.

9 CHAIRMAN BAEZ: I have no doubt that you are.

10 MR. PERRY: And I think that all parties agree that
11 the Commission is the ultimate arbiter of, of whether or not --
12 of what is approved.

13 CHAIRMAN BAEZ: Sure.

14 MR. PERRY: And so each party has to make their case.

15 CHAIRMAN BAEZ: Well, you can't do it all on your
16 own. You need us for something; right?

17 MR. PERRY: That's true. We always do.

18 MR. SHREVE: Commissioner, I think all the parties
19 are in agreement now on that interpretation of it. And I did
20 want to set the record straight on one thing. I was not
21 incorrect for our side of it. We -- so we just get the record
22 straight on that, please.

23 CHAIRMAN BAEZ: You thought you were wrong once, Mr.
24 Shreve, but you were mistaken.

25 MR. SHREVE: I know. And it was a shame -- I wish I

1 had not made that mistake thinking I was wrong.

2 (Laughter.)

3 CHAIRMAN BAEZ: Ms. Kummer.

4 MS. KUMMER: One more qualifying or one more
5 clarification question.

6 CHAIRMAN BAEZ: Absolutely. Please.

7 MS. KUMMER: And this is more in terms of procedure
8 and the order of which things happen.

9 If I understand, understood what has been discussed
10 today, the tariff, if they choose this option, the tariff would
11 need to be approved before they file for a financing order
12 because that would determine what they would seek a financing
13 order for. And I'm checking to see if that's correct.

14 MR. GLENN: Yeah. That would be correct.

15 CHAIRMAN BAEZ: Okay. That makes sense to me.

16 Commissioners, any other, any other questions?

17 We are at the end. We've gone through all the
18 substantive portions of the, of the proposed stipulation and
19 settlement and we are at a point where we can entertain
20 comments or motions or both. And as usual I will be following
21 no set order; pretty much first-come first-serve.

22 Commissioner Edgar.

23 COMMISSIONER EDGAR: Mr. Chairman.

24 CHAIRMAN BAEZ: Looking to my left, Commissioner
25 Edgar.

1 COMMISSIONER EDGAR: Thank you. I will be brief. I
2 had thought as recently as a couple of weeks ago that in my
3 first year at the Commission I was going to go through two
4 full-blown electric rate case hearings, and here we are with a
5 second settlement. So I want to thank, as I did before, but
6 thank the parties here. Thank you to the company and thank you
7 to the Intervenors for being at the table and negotiating in
8 good faith to bring forward a document that does, you know,
9 seem to be in the best interest of the state of Florida, of the
10 customers, that gives rate stability both in the short-term and
11 the long-term, which I do believe is in the best interest of
12 all consumer groups and the utility as well. So thank you.

13 And I would also like to be the first to say thank
14 you to our staff who I know have spent so much time on this
15 issue in the months before but also in the past few days, and
16 thank you for the time that you spent with me going through it
17 line by line. I appreciate that as well.

18 CHAIRMAN BAEZ: Commissioner Bradley.

19 COMMISSIONER BRADLEY: Yes, Mr. Chairman. As I've
20 said on numerous occasions, and I said this two weeks
21 ago when we accepted a similar agreement involving
22 Florida Power & Light, good public policy occurs when all
23 stakeholders get what they need both today and in the future.
24 And as in the FPL docket, I think that this stipulation
25 agreement, in this stipulation agreement, that is, that all of

1 the stakeholders have been well-served.

2 One of the things that I noticed is that there are
3 even more parties represented by this agreement than in the FPL
4 agreement, which indicates to me that we have had a tremendous
5 amount of participation. And I'd like to take this opportunity
6 to again thank the parties for, for working out this agreement
7 and for their hard work and their tenacity. And it, I think,
8 makes our job as Commissioners a little less difficult when,
9 when the parties get together and do as they've done in this
10 instance also. So, again, thank you, and I look forward to us
11 accepting this agreement.

12 CHAIRMAN BAEZ: Thank you, Commissioner.

13 Commissioner Deason.

14 COMMISSIONER DEASON: Yes. Mr. Chairman, as you
15 know, I think we all probably in this room know that the
16 Commission has a long history of encouraging negotiated
17 settlements. In some cases it's possible, in some cases it's
18 not. In this case it has resulted in a, a good settlement and
19 I certainly intend to support it. As in all negotiations there
20 are, there's give and take, and I'm sure that given the, the
21 parties involved in this negotiation they probably were long,
22 heated, intense negotiations with a lot of give and take. And
23 certainly it's not our job to try to go behind those and try to
24 second guess, you know, what's good or what is bad, we take it
25 as a whole, and we need to review the end product based upon

1 that and whether it's in the public interest. I believe that
2 it is. I congratulate all of those who participated in those
3 negotiations and that they were fruitful.

4 I also think it bears stating that for there to be
5 fruitful negotiations there has to be a forum in place where
6 parties feel like they have an opportunity to be treated
7 fairly. And if one side or the other felt like they had an
8 advantage, there would be no reason to negotiate. And so
9 everyone negotiated in good faith and there was a fair give and
10 take, and I certainly can endorse this end product and I will
11 look forward to, to casting a vote in support of it.

12 CHAIRMAN BAEZ: Thank you, Commissioner.

13 It's funny what Commissioner Edgar said, funny to me
14 anyway, that her fear was that her first year was going to
15 include two, two full-blown rate cases. I had the exact
16 opposite fear myself, that that was going to be my going-away
17 present. And as much as I would have accepted it had it
18 happened, it does, it does make me very pleased that, that all
19 of the hard work of all the parties involved has come to
20 fruition and presented this before us.

21 I, too, in due course will be supporting any motion
22 in favor of the stipulation and agreement, and I, too, want to
23 go on the record thanking our staff for all the hard work that
24 they do.

25 I said it before, rate cases, as everybody knows, are

1 long, you know. They give you nine months for a reason; it's
2 because it's probably two months less than you actually need.
3 So this, this process started a while back and our staff at the
4 Commission has, has been on top of it ever since and in terms
5 of the last-minute, very heartily worked agreements that, that
6 happened to show up on hearing day. Suffice it to say that
7 they've been on top of those too as soon as they've been made
8 aware of them. So I do thank you for all the, the hard
9 last-minute work that you've, that you've done in order to let
10 us try and consider this today.

11 Commissioner Deason, thank you for at least your
12 recognizing that all the parties need a forum where they feel
13 that they can get a reasonable resolution, a fair resolution,
14 perhaps not always the resolution one would like 100 percent,
15 but I think that that creates a backdrop for all of you to do
16 the good work that you do. And for me personally, I think I
17 get, I get the finest going-away gift any Commissioner could
18 have; the, the good, the good fortune, I guess, of not having
19 had -- it'll be five years now that I've been a Commissioner
20 and I've never had a full-blown rate case with any of these
21 IOUs. I mean, we did go through one with Gulf, and Gulf and
22 the parties did a lot of good work to make that one go smoothly
23 as well. So while I -- I was only bit in a, in a small way.
24 It could have been much worse. So for that, for that I am
25 personally appreciative. But it wouldn't have been honest

1 appreciation if it hadn't represented such good results.

2 With that said, Commissioners, we can entertain a
3 motion from either my left or my right. I don't care.

4 COMMISSIONER BRADLEY: Well, with all that has been
5 said and done, again, I'm happy to support the approval of this
6 stipulation and agreement in its entirety, and, therefore, I
7 move the stipulation and agreement in its entirety.

8 CHAIRMAN BAEZ: There's a motion. Is there a second?

9 COMMISSIONER EDGAR: Second.

10 CHAIRMAN BAEZ: Motion and a second. All those in
11 favor, say aye.

12 (Unanimous affirmative vote.)

13 CHAIRMAN BAEZ: Show the stipulation and settlement
14 agreement approved unanimously.

15 Thank you all. We are adjourned.

16 (Proceeding adjourned at 11:40 a.m.)

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1 STATE OF FLORIDA)
 : CERTIFICATE OF REPORTERS
 2 COUNTY OF LEON)

3

4 WE, JANE FAUROT, RPR, and LINDA BOLES, RPR, CRR,
 Official Commission Reporters, do hereby certify that the
 5 foregoing proceeding was heard at the time and place herein
 stated.

6

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

9

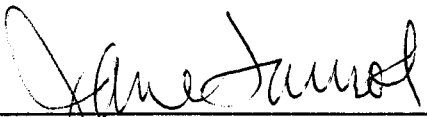
10 WE FURTHER CERTIFY that we are not a relative,
 employee, attorney or counsel of any of the parties, nor are we
 a relative or employee of any of the parties' attorneys or
 11 counsel connected with the action, nor are we financially
 interested in the action.

12

13 DATED THIS 13TH DAY OF SEPTEMBER, 2005.

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 JANE FAUROT, RPR
 FPSC Official Commission
 Reporter

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(850) 413-6732

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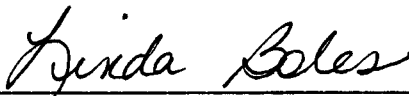
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LINDA BOLES, RPR, CRR
 FPSC Official Commission
 Reporter

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