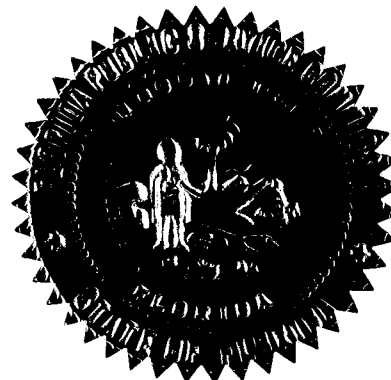


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 041441-GU

In the Matter of:

PETITION FOR APPROVAL OF STORM COST  
RECOVERY CLAUSE TO RECOVER STORM  
DAMAGE COSTS IN EXCESS OF EXISTING  
STORM DAMAGE RESERVE, BY FLORIDA  
PUBLIC UTILITIES COMPANY.



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PROCEEDINGS:                   AGENDA CONFERENCE  
  ITEM NO. 10

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

DATE:                               Tuesday, October 4, 2005

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

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

DOCUMENT NUMBER-DATE

09695 OCT 10 05

1 APPEARANCES:

2 NORMAN H. HORTON, JR., ESQUIRE, and GEORGE  
3 BACHMAN, representing Florida Public Utilities Company.

4 JOHN SLEMKEWICZ, ANDREW MAUREY, and  
5 MARY ANNE HELTON, ESQUIRE, representing the Florida Public  
6 Service Commission Staff.

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CHAIRMAN BAEZ: Commissioners, we are on Item 10.

MR. SLEMKEWICZ: I'm John Slemkewicz, and this item concerns Florida Public Utility Company, their gas division's request to recover costs related to the 2004 hurricanes, and to replenish its storm damage reserve through a storm cost-recovery clause. Staff is prepared to go issue-by-issue or address specific questions from the Commissioners.

CHAIRMAN BAEZ: Commissioners, what is your preference?

COMMISSIONER BRADLEY: Issue-by-issue.

CHAIRMAN BAEZ: Let's go issue-by-issue, Mr. Slemkewicz. Issue 1.

COMMISSIONER DEASON: I can move staff on Issue 1.

COMMISSIONER BRADLEY: Second.

CHAIRMAN BAEZ: Moved and seconded. All those in favor say aye.

(Simultaneous affirmative vote.)

CHAIRMAN BAEZ: Issue 2. Questions or a motion?

COMMISSIONER DEASON: I can move staff on Issue 2.

COMMISSIONER BRADLEY: Second.

CHAIRMAN BAEZ: Moved and seconded. All those in favor say aye.

(Simultaneous affirmative vote.)

CHAIRMAN BAEZ: Issue 3.

1           COMMISSIONER DEASON: Mr. Chairman, I have a question  
2 on Issue 3.

3           CHAIRMAN BAEZ: Go ahead, Commissioner.

4           COMMISSIONER DEASON: I know that from the original  
5 recommendation this recommendation has been changed, and it had  
6 to do with the terminology director, and that it was staff's  
7 belief that at one point these were funds that were --  
8 additional funds that were paid to the members of the board of  
9 directors, but that in clarification it was directors in the  
10 sense that they were managerial level employees that just  
11 carried the title of director, is that correct?

12           MR. SLEMKEWICZ: That's correct.

13           COMMISSIONER DEASON: And it is now staff's  
14 recommendation that the one-time payments awarded to these  
15 managerial employees in the sum of \$10,257, that that be  
16 charged against the reserve. And the question that I have and,  
17 here again, it is a maybe one of those nits and just kind of  
18 more of a question of policy or philosophy, managerial  
19 employees are on salaries, correct, they don't normally collect  
20 any type of overtime?

21           MR. SLEMKEWICZ: That's correct.

22           COMMISSIONER DEASON: The question that I have is is  
23 it appropriate to charge bonuses paid to managers to the storm  
24 reserve? And the reason I ask that question is managers have  
25 the responsibility to do the job, whatever it takes. And in

1 times of difficulty, hurricanes or whatever, it just falls upon  
2 them to do the job. That is why they are paid the salary and  
3 that is why they are generally well compensated. And I do not  
4 oppose, if upper management thinks that particular managerial  
5 level employees should receive a bonus, certainly by all means  
6 pay it. But the question is do ratepayers pay that, or is that  
7 a stockholder responsibility?

8           So that is the basic question, and I will just throw  
9 it out for staff. Obviously you considered that and,  
10 apparently, you didn't think that was appropriate. But you  
11 thought it was appropriate to have this charged against the  
12 reserve, and I just want your thinking on it.

13           MR. SLEMKEWICZ: Well, in my mind there was, you  
14 know, there is a certain level of extra effort that you expect  
15 management employees to put out without compensation. But I  
16 think that sometimes in times of, you know, crisis or emergency  
17 that if they do put forth some extra effort that, you know,  
18 sometimes that can be rewarded. And, you know, the smaller the  
19 company, I think the more time that managerial employees will  
20 actually have to spend to do some of these activities. And  
21 that was my thinking on allowing this to be recovered from the  
22 ratepayers.

23           COMMISSIONER DEASON: Now, in your recommendation you  
24 pointed out that for the larger companies that it was really  
25 unclear as to exactly how that was treated. It was not a

1 specific issue as it is laid out in here. Can you further  
2 expand upon what happened with the other companies in regard to  
3 managerial bonuses?

4 MR. SLEMKEWICZ: As you have pointed out, it's  
5 unclear from the record in those proceedings exactly what  
6 happened to a lot of those. I mean, if there were some of  
7 those in there they would have been allowed.

8 COMMISSIONER DEASON: Well, let me just -- it seems  
9 to me that a question of managers' salaries is one of whatever  
10 is appropriate. You want to be able to attract and retain high  
11 quality people. That is in the best interest of the company  
12 and the customers that the company serves. But it seems to me  
13 that, particularly in a state like Florida, that managers know  
14 there are going to be hurricanes and it is part of the job.  
15 And that if a company cannot, because of hurricanes if they  
16 cannot attract or retain high quality managers, they just need  
17 to increase the salaries. And there is no question, then, that  
18 that is a legitimate operating expense of the company.

19 I just have a problem with management giving bonuses  
20 to management and it being charged against the reserve and paid  
21 for directly by customers. That is the philosophical question  
22 that I have. And I would just appreciate some feedback from  
23 other Commissioners.

24 CHAIRMAN BAEZ: Commissioner Bradley, you had a  
25 question or a comment?

1           COMMISSIONER BRADLEY: Well, I guess just for  
2 feedback, I guess the assumption is that the small company, I  
3 would assume, pays managers a set salary rather than an hourly  
4 wage as what would probably be the case of nonmanagerial  
5 employees, is that correct?

6           MR. SLEMKEWICZ: That's correct.

7           COMMISSIONER BRADLEY: Well, my question is this.  
8 Does the recommendation exclude nonmanagerial personnel, or  
9 does it include them? In other words, the nonmanagerial staff,  
10 the line workers, were they allowed to recoup -- pay for their  
11 overtime?

12          MR. SLEMKEWICZ: Right. The overtime for employees  
13 was included in this recovery. Regular pay was not, just the  
14 overtime.

15          COMMISSIONER BRADLEY: Okay. So the amount that is  
16 before us just excludes the managerial requests? In other  
17 words, the nonmanagerial staff are allowed to collect overtime  
18 pay, and the managerial staff are not allowed to collect  
19 overtime pay?

20          MR. SLEMKEWICZ: That's correct.

21          COMMISSIONER BRADLEY: Okay. Commissioner Deason,  
22 you brought up a very interesting point, though. How does  
23 staff factor in the fact that the pay rate for managerial staff  
24 may be going up as a result of time spent, if we deny this  
25 request?

1 MR. SLEMKEWICZ: Well, that would be the prerogative  
2 of the company. I can't comment on what they would do. This  
3 money has been paid and certainly it is a cost to the company.  
4 The question is whether it is going to be recovered through  
5 base rates or through this recovery mechanism.

6 COMMISSIONER BRADLEY: Okay. I'm fine with staff's  
7 recommendation.

8 COMMISSIONER DEASON: And let me say this. I don't  
9 ask the question in an attempt to try to indicate that the  
10 managers are not deserving. They probably did go way beyond  
11 the normal call of duty. They probably did perform in an  
12 exemplary manner, and I commend them for that. The question is  
13 is that something that should that be charged directly against  
14 the storm damage reserve. I'm not so sure that it should be.  
15 I think we should be conservative with what we allow to be  
16 charged against the reserve.

17 You know, what if the amount, instead of 10,000, what  
18 if it was 100,000? At what level do we start questioning -- I  
19 know that this is a small company. And when management awards  
20 bonuses to management, it just gives pause for concern. I'm  
21 not saying it's not justified, and I'm sure these managers did  
22 an outstanding job, probably went beyond the call of duty. It  
23 is just a question of do we directly charge it against the  
24 reserve.

25 CHAIRMAN BAEZ: How are bonuses normally treated,



1 outside of these circumstances?

2 MR. SLEMKEWICZ: They would be just a base rate item,  
3 but they would be allowed.

4 CHAIRMAN BAEZ: So the fact that they are -- the fact  
5 that they are being awarded as part of hurricane recovery, or  
6 in that context, doesn't create a perverse incentive to load  
7 onto recovery what would otherwise come out from below the  
8 line?

9 MR. SLEMKEWICZ: Probably not. The bonuses were  
10 relatively small.

11 CHAIRMAN BAEZ: And I don't think -- and I think I  
12 hear Commissioner Deason and agree with him, it is not a  
13 substantial amount necessarily, and I don't think it is the  
14 amount that is really the question. I guess if bonuses for  
15 exemplary work are normally awarded out of base rates in times  
16 when there are no hurricanes, I guess I would be more concerned  
17 if it were the other way around and we were creating a  
18 situation where all of a sudden we are bringing bonuses back  
19 into -- putting it back on the ratepayer's side where there  
20 isn't a consistent treatment under other circumstances.

21 MR. SLEMKEWICZ: And I'm not aware of what their  
22 bonus policy is or what it has been in the past.

23 CHAIRMAN BAEZ: Commissioner Deason.

24 COMMISSIONER DEASON: I'm not aware of the specific  
25 bonus policy, either. But it just seems to me -- I mean,

1 Mr. Slemkewicz indicated earlier that these bonuses probably  
2 would be just included in base rates. That may be the result.  
3 But if this were a rate case and we had management paying  
4 bonuses to management, it would receive a great deal of  
5 scrutiny. We would look at the overall management compensation  
6 package to determine if it was reasonable or not, and we would  
7 look on a going-forward basis what is a reasonable overall  
8 amount of compensation for managers, including bonuses or not  
9 including bonuses.

10           And I think that is the time and place to do that  
11 type of review. I just don't think it is appropriate -- the  
12 reserve is for the extraordinary cost of responding to  
13 incremental storm costs. I'm just uncomfortable with the  
14 concept of manager bonuses being included in that. It's not to  
15 say manager bonuses are not legitimate.

16           And if during a base rate proceeding there could be a  
17 legitimate case shown that as part of the management  
18 compensation package and part of base rates there should be the  
19 ability of the company to provide bonuses during hurricanes,  
20 but that would be a burden for them to show and to show that it  
21 is part of the ongoing necessary operations to attract and  
22 retain top quality managers in the State of Florida.

23           But we are not going through that here. And I'm  
24 uncomfortable with doing an automatic charge to the reserve in  
25 this situation. Obviously overtime pay for nonsalaried

1 nonmanagement employees without question needs to be included  
2 and charged against the reserve.

3 CHAIRMAN BAEZ: Commissioners, other questions or  
4 comments?

5 COMMISSIONER EDGAR: Mr. Chairman.

6 Commissioner Deason, I agree with the statement you  
7 made earlier about approaching charges for the reserve fund  
8 conservatively, and I agree with that very strongly, and I  
9 think I have shown that in comments and questions when we have  
10 considered other charges to other reserve funds of other  
11 companies previously.

12 However, in this instance, I am getting a little  
13 uncomfortable. I do think the fact that it is a much smaller  
14 company, that with a smaller company that sometimes managers  
15 are required to do even more than when there are other and  
16 deeper personnel resources to call upon. And that one of the  
17 purposes for having a reserve in the first place is to make  
18 sure that, or to help make sure that response is immediate and  
19 thorough.

20 And in this instance what I think I have read and  
21 what I think I have heard is that that was the case. And I do  
22 think that the amount of money that we are talking about here  
23 does carry some weight with me, as well. So in this instance  
24 I'm comfortable with the staff recommendation for these facts  
25 that are before us today.

1 CHAIRMAN BAEZ: Commissioner Bradley.

2 COMMISSIONER BRADLEY: Right. And my question is  
3 related to our discussion, but it is slightly different from  
4 what we are discussing right now. The company has requested to  
5 use the surcharge methodology of recovering its costs as it  
6 relates to the storm-related damages. Was bonding a  
7 possibility? And the reason why I'm asking this question is  
8 because it is apparent that the company is dealing with this as  
9 a one-time situation. But, as I always say, I don't have a  
10 crystal ball, but it appears that Florida and this country is  
11 going to be in for some rough times as it relates to  
12 hurricanes, for whatever reason, over the next few years.

13 And to just give some discussion or have some thought  
14 about future occurrences that the company may be before this  
15 Commission as a request to recover costs that have occurred as  
16 a result of catastrophic events, I'm just wondering if a  
17 surcharge is the appropriate method or if bonding might be more  
18 appropriate. I don't even know if bonding is germane to a gas  
19 company.

20 MR. SLEMKEWICZ: Are you referring to securitization?

21 COMMISSIONER BRADLEY: Yes.

22 MR. SLEMKEWICZ: I believe that amount is probably  
23 too small to be securitized, but Mr. Maurey could address that.

24 MR. MAUREY: Well, Commissioner, your earlier remark  
25 is -- the securitization bonds are limited to electric IOUs at

1 this time. It might be broadened in the future to include gas  
2 companies, but right now both the size, but also the nature of  
3 this company, securitization is not an option for them.

4 COMMISSIONER BRADLEY: Okay.

5 CHAIRMAN BAEZ: Commissioners, other questions or a  
6 motion? I will tell you something, you made some good points,  
7 Commissioner Edgar, and I think on some level I agree with you.  
8 First of all, this is a company that has proven to be well run  
9 and very scrupulous with its interactions when it comes before  
10 the Commission. So on that level I have great comfort that the  
11 numbers -- you don't have to look at them with a jaundiced eye  
12 in any sense of the word.

13 However, my main concern is that this is probably the  
14 first time as, you know, we are clearly still feeling the  
15 effects, in a regulatory sense, of the 2004 storm season. And  
16 we are in the unenviable position of trying to evolve a policy  
17 on storm recovery going forward. And this issue, as staff  
18 correctly pointed out, wasn't directly before us in the two  
19 larger recovery dockets.

20 And my concern is that addressing it one way or the  
21 other here establishes a precedent or a policy as to how we are  
22 going to be treating what could very possibly become larger  
23 more significant amounts, whether they are justified. I'm sure  
24 they would be justified under certain circumstances, but  
25 whether they are justified or not. And my main concern is how

1 we are going to deal with and what the impact of this decision  
2 on these set of circumstances, what the impact is going forward  
3 as we see more and more recovery dockets possibly down the  
4 road.

5           So as a policy matter, that's where my concern is.  
6 It's not an individual circumstance matter. I really don't  
7 have a problem in this case. I would be looking, you know, to  
8 our staff to tell us what possible impacts of the decision  
9 could be going down the road.

10           MR. SLEMKEWICZ: Well, I guess in terms of larger  
11 companies, it could open the avenue for them to run through,  
12 you know, large bonuses. Or they could be, you know,  
13 justifiable bonuses, but the amount could be significant.

14           CHAIRMAN BAEZ: Right. And, again, I'm not trying to  
15 differentiate one from the other. I mean, really what we are  
16 talking about is a matter of scale. And certainly I would  
17 expect those numbers in the future to be scrutinized on some  
18 level, just like any other cost that was sought to be  
19 recovered.

20           As long as we could get that kind of framework, or at  
21 least that kind of understanding generally that this is  
22 something that was presented in this case, that it is something  
23 that is up for discussion, and certain scrutiny, and that there  
24 is a burden on the part of the company, any company that's  
25 requesting it to prove up.

1           MR. SLEMKEWICZ: I believe in FPL that there was a  
2 request, but I believe they withdrew that request to include  
3 some type of managerial bonuses. So it was never really  
4 considered.

5           CHAIRMAN BAEZ: Exactly. And I guess I don't know to  
6 what extent Commissioner Deason shares the concern going  
7 forward, but I certainly have one. And, again, it is not with  
8 the particular circumstances that we have today or could have  
9 had in the two previous dockets that went to hearing, and so  
10 forth, and we decided. But rather that this stays a live  
11 issue, and we haven't created any blanket policy that says, you  
12 know, bonuses are now part of the mix officially, and it is  
13 something that because we approved it once, we have to do it  
14 over and over again, or at least there is a presumption that  
15 they are appropriate. I don't know how we get there. I don't  
16 know if I can get any comfort from that. That is really my  
17 concern, Commissioner Edgar.

18           Commissioner Bradley.

19           COMMISSIONER BRADLEY: Right. I don't -- and my  
20 thinking is along this line. I think that we still -- I think  
21 the message is that if there is an extraordinary case where a  
22 bonus might be appropriate, then this Commission would still  
23 have the option to give consideration to it. But I think that  
24 probably our message is that this should only be done on a  
25 case-by-case basis. And if the company feels very strongly

1 about it, that this Commission will analyze and render a  
2 decision as it relates to a particular request. Isn't that  
3 where we are, basically?

4 COMMISSIONER EDGAR: Commissioner Bradley, I am  
5 comfortable, and my thinking is case-by-case. And if I may,  
6 Mr. Chairman, comment on a comment that you made a moment ago.  
7 I have a great deal of respect for precedent. However, I would  
8 point out that in some of the previous storm dockets that we  
9 considered, we did take up issues that came before us as a  
10 first time that had not come before us or had not been brought  
11 before us in the prior docket. And we did not decide to not  
12 consider, and in some cases considered them favorably simply  
13 because they had not been issues brought before us in the prior  
14 ones. To me, in this instance, the very narrow facts before  
15 us, and also in complete candor, the size of the company that  
16 we are addressing today, in this instance, I am, again,  
17 comfortable with the staff recommendation before us.

18 COMMISSIONER DEASON: Just one comment.

19 CHAIRMAN BAEZ: Commissioner Deason.

20 COMMISSIONER DEASON: I don't disagree with that.  
21 And the size of the company, I guess, is relevant. But you're  
22 got to remember, too, \$10,000 for this company would really be  
23 a nit for Florida Power and Light. But it has a much smaller  
24 customer base, too. And so the numbers may be smaller, but the  
25 impact on customers may be just as significant.



1           CHAIRMAN BAEZ: Commissioners, again, I put it out  
2 for staff. Mr. Smith, maybe you can help us out as to what the  
3 impact is or what the posture of an issue like this is going  
4 forward. The Commission always retains the right to review any  
5 particular cost that is sought to be recovered, and it's the  
6 company's burden to prove that the costs are reasonable for  
7 inclusion, and so on and so forth.

8           MR. SMITH: Yes. I think that is a correct  
9 characterization of the situation. I mean, you are not locking  
10 yourself into an absolute policy of approving bonuses by  
11 dealing with the unique circumstances of this case, if that  
12 gives you any comfort. I mean, obviously there is some  
13 managerial discretion over those bonuses. I guess if you feel  
14 comfortable -- that there is a basis that you could feel  
15 comfortable with approving, that is fine in these  
16 circumstances.

17           CHAIRMAN BAEZ: Commissioner Bradley.

18           COMMISSIONER BRADLEY: Well, and I think I heard the  
19 words that I was looking for. Prudently incurred expenses. Is  
20 this a prudently incurred expense or is it outside of the  
21 concept of prudence?

22           MR. SLEMKEWICZ: I believe it would be within the  
23 range of being prudent.

24           CHAIRMAN BAEZ: And I think that is the  
25 recommendation you are getting from staff, Commissioner.

1 MR. SLEMKEWICZ: It is. It is within management's  
2 prerogative to do this. Again, it's just how are we going to  
3 allow them to recover it is the question.

4 COMMISSIONER BRADLEY: And my question goes to this  
5 more specifically. Have they awarded -- have they divied up  
6 these dollars and paid the managerial staff?

7 MR. SLEMKEWICZ: Have they already paid it?

8 COMMISSIONER BRADLEY: Are they seeking to recover  
9 what they have divied up?

10 MR. SLEMKEWICZ: Right. This is the amount of money  
11 that they actually did pay. One thing I would like to point  
12 out is that we are planning on going to rulemaking soon, you  
13 know, to establish policy. And this would certainly be one of  
14 the areas that we would cover in that rulemaking. So if you  
15 are thinking about precedent going forward, again, the  
16 rulemaking, you know, would cover these areas.

17 CHAIRMAN BAEZ: Commissioner.

18 COMMISSIONER EDGAR: Is it possible that through  
19 those rulemaking procedures that any future requests for  
20 bonuses either given or proposed to management due to  
21 storm-related performance or activities would be clearly  
22 presented and reviewed by staff, and a recommendation would  
23 come forward to us prior to a decision being made as to whether  
24 to take those amounts from a reserve, we would be able to move  
25 forward? Did I lose you?

1 MR. SLEMKEWICZ: You mean absent rulemaking or --

2 COMMISSIONER EDGAR: Is that something that could be  
3 considered through the rulemaking discussions?

4 MR. SLEMKEWICZ: Yes, it would. And we could  
5 establish, you know, a certain percentage would be appropriate  
6 or a company size. But that would be something -- and it could  
7 also be industry specific. So there are a lot of things that  
8 could be considered in rulemaking, and I can't really speculate  
9 on how that would turn out. But it would be an area that we  
10 would look at in rulemaking.

11 CHAIRMAN BAEZ: Commissioner Bradley.

12 COMMISSIONER BRADLEY: Yes. I guess what I'm trying  
13 to compare with this situation is state government. You know,  
14 we, as Commissioners, have agreed that just by the mere fact  
15 that we are categorized as being SES employees that if we work  
16 40 hours the salary is the same, or if we work 140 hours a  
17 week -- I don't know if you could work 140 hours a week -- but  
18 if you work 140 hours a week, the salary is still the same.

19 And if there is an extraordinary event and you are  
20 required to work 140 hours, that is just a part of what you  
21 agreed to do. Now, Career Service is somewhat different, which  
22 would be synonymous with nonmanagerial. And I'm just wondering  
23 is that the structure that the company has in place, or is it  
24 that they have a hybrid, or do you know?

25 MR. SLEMKEWICZ: I really don't know. But I would

1 imagine, you know, in a lot of, you know, private companies,  
2 they do give bonuses to employees based on performance whether  
3 they are hourly or managerial employees.

4 COMMISSIONER BRADLEY: Right. And I can understand  
5 that concept, also. Because, you know, you don't want to  
6 discourage employees from going over and beyond the call of  
7 duty based on how your system is set up and what it requires.  
8 But I think that what is before us is a situation that needs to  
9 be considered on a case-by-case basis, so I'm satisfied with  
10 what staff is recommending.

11 CHAIRMAN BAEZ: Commissioners, other questions or a  
12 motion?

13 COMMISSIONER EDGAR: I will make a motion, if we are  
14 ready to proceed, that we accept the staff recommendation on  
15 Issue 3 before us.

16 CHAIRMAN BAEZ: There is a motion. Is there a  
17 second?

18 COMMISSIONER BRADLEY: Second.

19 CHAIRMAN BAEZ: A motion and a second, all those in  
20 favor say aye.

21 COMMISSIONER EDGAR: Aye.

22 COMMISSIONER BRADLEY: Aye.

23 CHAIRMAN BAEZ: Aye.

24 All those nay?

25 COMMISSIONER DEASON: Nay.

1 CHAIRMAN BAEZ: Thank you, Commissioners.

2 Issue 4.

3 COMMISSIONER DEASON: I can move staff.

4 COMMISSIONER EDGAR: Second.

5 CHAIRMAN BAEZ: Moved and seconded. All those in  
6 favor say aye.

7 (Unanimous affirmative vote.)

8 CHAIRMAN BAEZ: Issue 5.

9 COMMISSIONER DEASON: Move staff.

10 COMMISSIONER BRADLEY: Second.

11 CHAIRMAN BAEZ: A motion and a second. All those in  
12 favor say aye.

13 (Unanimous affirmative vote.)

14 CHAIRMAN BAEZ: Issue 6.

15 COMMISSIONER DEASON: I move staff.

16 COMMISSIONER EDGAR: Second.

17 CHAIRMAN BAEZ: Moved and seconded. All those in  
18 favor say aye.

19 (Unanimous affirmative vote.)

20 CHAIRMAN BAEZ: Issue 7.

21 COMMISSIONER DEASON: Issue 7 is basically just a  
22 fallout issue, is that correct?

23 CHAIRMAN BAEZ: It looks like it, yes.

24 MR. SLEMKEWICZ: Yes.

25 COMMISSIONER DEASON: I can move it with the

1 understanding that -- I disagreed with one of the previous  
2 issues, but I can move staff's recommendation because it is a  
3 fallout.

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

5 COMMISSIONER EDGAR: Second.

6 CHAIRMAN BAEZ: A motion and a second. All those in  
7 favor say aye.

8 (Unanimous affirmative vote.)

9 CHAIRMAN BAEZ: Issue 8.

10 COMMISSIONER DEASON: Mr. Chairman, I have a question  
11 on Issue 8.

12 CHAIRMAN BAEZ: Go ahead, sir.

13 COMMISSIONER DEASON: I believe, staff, in your  
14 recommendation you indicate that the company's accruals to  
15 their reserve ceased in 2003, is that correct?

16 MR. SLEMKEWICZ: That's correct.

17 COMMISSIONER DEASON: And that in a 2004 rate case,  
18 they did not request any continuation of accruals?

19 MR. SLEMKEWICZ: That's correct.

20 COMMISSIONER DEASON: Under what authority did they  
21 cease their accruals in 2003?

22 MR. SLEMKEWICZ: Well, that was in conjunction after  
23 the rate case.

24 COMMISSIONER DEASON: So even though it was in 2004,  
25 it was a projected 2004 test year?

1 MR. SLEMKEWICZ: That's correct.

2 COMMISSIONER DEASON: I'm still having a problem  
3 meshing the time period, though. Did we retroactively give  
4 them permission or authorization to cease the accruals as of  
5 2003?

6 MR. SLEMKEWICZ: I guess it's kind of --

7 COMMISSIONER DEASON: And if there was an accrual in  
8 the rates, at what time did those rate change to reflect the  
9 fact that there was no longer an accrual to the reserve?

10 MR. SLEMKEWICZ: It was when those new rates went  
11 into effect for 2004.

12 COMMISSIONER DEASON: So in 2003 they were collecting  
13 amounts to fund the reserve, but they just didn't make the  
14 entries?

15 MR. SLEMKEWICZ: I'll have to check. I think they  
16 made accruals through the end of 2003, but I may --

17 COMMISSIONER DEASON: I'm just trying to make sure  
18 that everything meshes and that we don't have a period of time  
19 where there was no accruals being booked, but there were still  
20 funds in base rates to compensate for those accruals.

21 MR. SLEMKEWICZ: You know, I was incorrect, they  
22 stopped at the end of 2002.

23 COMMISSIONER DEASON: They stopped at the end of  
24 2002?

25 MR. SLEMKEWICZ: Right. 2002 was the last year that

1 they made an accrual.

2 COMMISSIONER DEASON: What was the level of the  
3 accruals at that time?

4 MR. SLEMKEWICZ: It was \$18,000 annually.

5 COMMISSIONER DEASON: So beginning January 2003, the  
6 accruals ceased?

7 MR. SLEMKEWICZ: That's correct.

8 COMMISSIONER DEASON: And was that a decision of the  
9 Commission?

10 MS. HELTON: Commissioner Deason, I looked to see if  
11 I could find a Commission decision, and there was none.

12 COMMISSIONER DEASON: Did they have the discretion to  
13 cease the accruals?

14 MS. HELTON: It was not a question that was raised in  
15 the rate case, the following rate case. So I guess in one  
16 sense you could say that there was an implicit decision by the  
17 Commission in that they did not require the company to continue  
18 making the accrual.

19 COMMISSIONER DEASON: Mr. Chairman, this is noticed  
20 as a PAA? Does that mean that people can participate?

21 CHAIRMAN BAEZ: Yes, and I was about to get to Mr.  
22 Horton and see --

23 COMMISSIONER DEASON: Maybe Mr. Horton could answer  
24 that question for us.

25 MR. BACHMAN: Yes, Commissioners. George Bachman,



1 I'm chief financial officer of Florida Public Utilities. I was  
2 looking through the information at hand. I will take John's  
3 word that the accrual ceased, but I'm sure it was either under  
4 direction of staff or from the order in that rate case, which  
5 I'm not sure that would have defined a certain set period of  
6 making an accrual.

7 It is not Florida Public Utilities policy to stop an  
8 accrual which was authorized in a rate proceeding. So we can  
9 check into that. I could even call the office and find out  
10 under what authority that was stopped. But I can assure you it  
11 was not just we decided to stop making an accrual on our own  
12 accord.

13 COMMISSIONER DEASON: Mr. Chairman, I need some  
14 comfort. I need some assurances as to what happened. I'm sure  
15 that the company didn't intentionally try to violate some  
16 directive from the Commission, but at the same time I'm  
17 concerned that there was an amount included in rates to fund an  
18 \$18,000 a year accrual until rates were changed in 2004, and  
19 those accruals didn't take place starting January 1, 2003.

20 Now, if that was the Commission's decision, we  
21 considered it and that was what we wanted the company to do, by  
22 all means we need to abide by that decision, even though that  
23 would have been a poor decision. I may even have participated  
24 in it. I don't recall.

25 MS. HELTON: Commissioner Deason or Chairman Baez,

1 with your permission if we could table this item either for  
2 later today or defer it again until the next agenda so that  
3 staff could look into that further.

4 CHAIRMAN BAEZ: And we don't --

5 MS. HELTON: I don't know that we could give you the  
6 answer --

7 CHAIRMAN BAEZ: There is no time limits or anything.  
8 We can hold off until we get an answer to that? Commissioner  
9 Deason, do --

10 COMMISSIONER DEASON: Let me ask a couple of other  
11 questions.

12 CHAIRMAN BAEZ: Go ahead.

13 COMMISSIONER DEASON: When did the rates go into  
14 effect as a result of the 2004 rate case?

15 MS. HELTON: It was an '04 docket. I don't know that  
16 I have the exact date for when the rates went into effect.

17 COMMISSIONER DEASON: That's not in the order? When  
18 was the order issued?

19 MS. HELTON: I apologize, Commissioner Deason, but  
20 that is not referenced in this staff recommendation, when the  
21 order was issued in the docket, the rate case docket.

22 COMMISSIONER DEASON: Well, if we are going to defer  
23 this, and I'm not saying that we have to, but if we are, I  
24 would ask the company to check with management to see what the  
25 entire circumstances were. And if this was an inadvertent

1 decision to cease the accruals, and it did not have the  
2 specific authorization of the Commission, and if the rates did  
3 not go into effect until sometime in 2004, that the company  
4 would voluntarily make the \$18,000-a-year accrual back into the  
5 fund up until the point the rates changed on a going-forward  
6 basis, or unless they can show that there was a specific  
7 directive from the Commission, a decision, an order, or a  
8 directive from staff authorizing them to cease the accrual  
9 beginning January 2003.

10 MR. BACHMAN: Commissioner Deason, we would  
11 absolutely agree with that.

12 MR. SLEMKEWICZ: The rates went into effect  
13 November 18th, 2004.

14 COMMISSIONER DEASON: November 18th, 2004. So there  
15 is a period starting January of 2003 until November of 2004  
16 that we are unsure as to whether there should or should not  
17 have been an \$18,000-a-year accrual?

18 MR. SLEMKEWICZ: That's correct.

19 COMMISSIONER DEASON: I just need some assurances one  
20 way or the other. And I'm sure that the company can check to  
21 find out what was the basis for the decision to cease the  
22 accrual. And they have indicated that if there was -- if that  
23 was done inadvertently without specific Commission  
24 authorization that they would be willing to make the reserve  
25 whole. That would be to reaccrete, if that is the correct term.

1 CHAIRMAN BAEZ: Can we actually do that?

2 COMMISSIONER DEASON: Anyway, to make the reserve  
3 whole for that period of time that there was not an accrual  
4 until the rates were changed.

5 MR. BACHMAN: Correct.

6 CHAIRMAN BAEZ: And to the extent that that were the  
7 case, that would clearly impact the number that we are dealing  
8 with on Issue 8. Do you see that as impacting?

9 COMMISSIONER DEASON: Well, I see that. But in order  
10 to move this along, Mr. Chairman, we are making a decision --  
11 if part of Issue 8 is making a decision as to what to do with  
12 an amount of excess earnings, and the recommendation is to go  
13 ahead and to recognize those excess earnings and put those into  
14 the reserve to be utilized on a going-forward basis, that it  
15 not necessarily offset the deficit as a result of the 2004  
16 hurricane season, is that correct?

17 MR. SLEMKEWICZ: That's correct.

18 COMMISSIONER DEASON: And I have a concern that even  
19 with those excess earnings of 117,000, that that still may be  
20 inadequate on a going-forward basis. So I would be willing to  
21 suggest that if there is a need to add the additional 18,000 on  
22 whatever period of time that the 18,000 covers, that it simply  
23 be put into the reserve to bolster that amount to be utilized  
24 on a going-forward basis.

25 Would the company have any objection to doing that if

1 the facts so demonstrate?

2 MR. BACHMAN: No objection.

3 CHAIRMAN BAEZ: In addition to the proposed treatment  
4 of this 117.

5 COMMISSIONER DEASON: That's correct. I think it  
6 would not have any result on the actual numbers that staff is  
7 recommending to be utilized for surcharge purposes in this  
8 case, correct?

9 MR. SLEMKEWICZ: That's correct.

10 CHAIRMAN BAEZ: As a matter of fact, I think we are  
11 actually trying to draw a clear distinction between what is  
12 replenishment and what is excess recovery.

13 Commissioner Bradley, you had a question?

14 COMMISSIONER BRADLEY: Right. My concern would be  
15 this: For sure we don't want to -- we wouldn't want to create  
16 a situation that overcapitalizes the fund, but also we don't  
17 need to create a situation that undercapitalizes the company's  
18 ability to deal with a future storm occurrence. What is  
19 staff's opinion as to what the real situation is as it relates  
20 to the rate of accrual?

21 MR. SLEMKEWICZ: Well, it's obvious that they have no  
22 accrual on a going-forward basis since the rate case. And the  
23 hurricane damage has depleted the reserve. So they have zero  
24 reserve at this point, and they have no mechanism right now for  
25 replenishing the fund, absent coming in with a study and asking

1 for an accrual.

2           And from staff's standpoint, we looked at -- we  
3 didn't want to leave them with nothing in the reserve and no  
4 accrual, or no way to replenish it. So that's why we thought  
5 or felt that the 117,000 was adequate to put in the reserve for  
6 future purposes, with the understanding that the company can  
7 come in at any time with a study to justify a higher amount and  
8 an accrual.

9           COMMISSIONER BRADLEY: So it's staff's opinion that  
10 this method will serve an adequate function as it relates to  
11 their ability to respond to -- if there is a future occurrence,  
12 to respond to that occurrence, at least to some extent?

13           MR. SLEMKEWICZ: Yes. Based on their past activity  
14 in the reserve, it has been pretty spotty. They had a little  
15 bit in the past, and then they had none for a few years. And  
16 then with the unprecedented storm season we had, it overwhelmed  
17 what they had in the reserve.

18           COMMISSIONER BRADLEY: And I'll tell you why I asked  
19 my question. I wouldn't want the company to be  
20 undercapitalized because the ratepayers or the consumers are  
21 interested in having a situation that allows for a quick  
22 turnaround and restoration so that they may receive service.  
23 So I wouldn't -- and that's basically what my concern is. I  
24 just want to, as much as we possibly can, make sure that that  
25 is achievable, the quick turnaround and the restoration of

1 service, based upon the reserve that is currently being  
2 approved.

3 MR. SLEMKEWICZ: In the past the greatest ending  
4 balance that they had in their reserve was 59,000. So this is  
5 approximately double what they have ever had built up in the  
6 reserve, the 117,000. And if they are going to actually add a  
7 little bit more based on what we find out, I believe that their  
8 reserve will at least be adequate for their purposes.

9 COMMISSIONER BRADLEY: At least for a beginning  
10 point.

11 MR. SLEMKEWICZ: For a beginning point.

12 COMMISSIONER BRADLEY: Okay.

13 CHAIRMAN BAEZ: Commissioners, at this point if you  
14 all are comfortable with moving forward on Issue 8, we can  
15 accept the motion, and also with the understanding that there  
16 is that outlying accrual question to be run down between staff  
17 and the company.

18 COMMISSIONER DEASON: Mr. Chairman, I can move  
19 staff's recommendation on Issue 8 with the understanding that  
20 there is going to be an internal review at the company, and  
21 staff also, I guess, is going to be part of that review to  
22 ascertain the circumstances surrounding the decision to cease  
23 the accruals beginning January 2003. And depending upon what  
24 that review shows, that there may be an additional one-time  
25 debit to the reserve -- debit or credit? Credit to the

1 reserve. Keep me straight, Mr. Slemkewicz. A one-time credit  
2 to the reserve to compensate for that period of time that the  
3 accrual ceased if, in fact, that accrual ceased  
4 inappropriately.

5 MR. SLEMKEWICZ: That's correct.

6 COMMISSIONER DEASON: And the company is in agreement  
7 with that as well?

8 MR. BACHMAN: Yes.

9 CHAIRMAN BAEZ: Very well.

10 COMMISSIONER DEASON: And we are on sound legal  
11 basis? Is that fine, Mr --

12 MR. SMITH: Yes, sir.

13 COMMISSIONER DEASON: That is the motion.

14 COMMISSIONER BRADLEY: And I'll second it.

15 CHAIRMAN BAEZ: There is a motion and a second. All  
16 those in favor say aye.

17 (Unanimous affirmative vote.)

18 CHAIRMAN BAEZ: Issue 9.

19 COMMISSIONER DEASON: I can move staff on Issue 9.

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

21 COMMISSIONER BRADLEY: Second.

22 What is the fallout amount here, 484,000?

23 MR. SLEMKEWICZ: \$484,532.

24 COMMISSIONER BRADLEY: Okay. I'll second the motion.

25 CHAIRMAN BAEZ: A motion and a second. All those in



1 favor say aye.

2 (Unanimous affirmative vote.)

3 CHAIRMAN BAEZ: Issue 10.

4 COMMISSIONER DEASON: Move staff on Issue 10.

5 COMMISSIONER BRADLEY: Second.

6 CHAIRMAN BAEZ: Moved and seconded. All those in  
7 favor say aye.

8 (Unanimous affirmative vote.)

9 CHAIRMAN BAEZ: Issue 11.

10 COMMISSIONER DEASON: Move staff on Issue 11.

11 COMMISSIONER BRADLEY: Second.

12 CHAIRMAN BAEZ: Moved and seconded. All those in  
13 favor say aye.

14 (Unanimous affirmative vote.)

15 CHAIRMAN BAEZ: Issue 12.

16 COMMISSIONER DEASON: I can move staff on Issue 12.

17 COMMISSIONER BRADLEY: This issue goes to some of the  
18 discussion we just had. I'll second the motion.

19 CHAIRMAN BAEZ: Moved and seconded. All those in  
20 favor say aye.

21 (Unanimous affirmative vote.)

22 CHAIRMAN BAEZ: Issue 13.

23 COMMISSIONER DEASON: Move staff on Issue 13.

24 COMMISSIONER BRADLEY: Second.

25 CHAIRMAN BAEZ: Moved and seconded. All those in

1 favor say aye.

2 (Unanimous affirmative vote.)

3 CHAIRMAN BAEZ: Issue 14.

4 COMMISSIONER DEASON: Move staff on Issue 14.

5 COMMISSIONER BRADLEY: Just a minute.

6 CHAIRMAN BAEZ: Is there a second?

7 COMMISSIONER BRADLEY: I'll second it.

8 CHAIRMAN BAEZ: Moved and seconded. All those in  
9 favor say aye.

10 (Unanimous affirmative vote.)

11 CHAIRMAN BAEZ: Issue 15.

12 COMMISSIONER DEASON: That was 15 we just --

13 CHAIRMAN BAEZ: Did we just do 15?

14 COMMISSIONER DEASON: I'm sorry, I'm getting ahead of  
15 myself. Move staff on Issue 15.

16 COMMISSIONER BRADLEY: Second.

17 CHAIRMAN BAEZ: Move and seconded. All those in  
18 favor say aye.

19 (Unanimous affirmative vote.)

20 CHAIRMAN BAEZ: And Issue 16.

21 COMMISSIONER BRADLEY: Now, Mr. Chairman, I think we  
22 need to have a little discussion here before we -- I don't have  
23 a problem with the issue itself.

24 CHAIRMAN BAEZ: Go ahead, Commissioner.

25 COMMISSIONER BRADLEY: But I need to understand

1 exactly what we have done here. Basically what we have done is  
2 to reduce the amount that was initially requested, is that  
3 correct?

4 MR. SLEMKEWICZ: That's correct.

5 COMMISSIONER BRADLEY: And as a result, the impact is  
6 going to be reduced from 20 cents per month per customer to  
7 approximately 10 cents per month per customer, and the time  
8 frame is going to be reduced from four years to two and a half  
9 years, am I --

10 MR. SLEMKEWICZ: No, it is going to be 17 cents. If  
11 we had done it over the original four-year period, it would  
12 have been ten cents. And so we decided to shorten it to two  
13 and a half years at 17 cents to get it over more quickly.

14 COMMISSIONER BRADLEY: Okay. So 17 cents for two and  
15 a half years. Okay. So basically we reduced it by three  
16 cents.

17 MR. SLEMKEWICZ: That's correct.

18 COMMISSIONER BRADLEY: For the same time frame of  
19 four years, for less time.

20 MR. SLEMKEWICZ: Over the shorter time frame.

21 COMMISSIONER BRADLEY: Did you make a motion,  
22 Commissioner Deason?

23 COMMISSIONER DEASON: Yes, I made a motion on Issue  
24 15. Didn't we vote on Issue 15?

25 (Simultaneous conversation.)

1           CHAIRMAN BAEZ: We voted the issue out. We're just  
2 going to vote to close the docket.

3           COMMISSIONER DEASON: This is a PAA. And, of course,  
4 we will follow the normal PAA procedure on that, which is  
5 staff's recommendation. I can move staff on 16.

6           COMMISSIONER BRADLEY: Second.

7           CHAIRMAN BAEZ: Moved and seconded. All those in  
8 favor say aye.

9           COMMISSIONER DEASON: Mr. Chairman, I want to say one  
10 thing before we finish up.

11          CHAIRMAN BAEZ: Commissioner Deason.

12          COMMISSIONER DEASON: Back on Issue 3, let me say  
13 that I understand and respect the majority's decision on that,  
14 there is a sound basis for that, I just disagree with it. And  
15 I just want the record to be clear that my questioning of that  
16 is in no way a negative reflection upon the management of this  
17 company. I hold the management in high regard. They are, by  
18 all accounts, an efficiently run company. It was more of a  
19 question and concern of policy and principle as opposed to the  
20 facts of this case and this particular management team, which I  
21 think do an outstanding job.

22          CHAIRMAN BAEZ: Thank you for that, Commissioner.  
23 And I think you -- I think you encapsulated what the  
24 troublesome concept of that is in all of this, and that is  
25 management awarding management bonuses. But personally I think

1 I got enough comfort from the fact that we have got rulemaking  
2 coming up. That, as it stands, it is a case-by-case basis in  
3 the end. And based on all our conversation and all our  
4 relative discomfort with the whole concept of it, that all of  
5 those that are listening out there for future reference know  
6 that any awards from management to management are going to  
7 receive --

8 COMMISSIONER BRADLEY: Scrutiny.

9 CHAIRMAN BAEZ: Probably going to raise more red  
10 flags than would other matters. But, again, I think the  
11 circumstances in this case warranted my vote. But I do  
12 appreciate your comments.

13 CHAIRMAN BAEZ: Commissioners, with that we are done  
14 with Item 10, and we are on Item 11. Thank you, Staff.

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STATE OF FLORIDA     )  
  
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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 10th day of October, 2005.

\_\_\_\_\_  
JANE FAUROT, RPR  
Official FPSC Hearings Reporter  
FPSC Division of Commission Clerk and  
Administrative Services  
(850) 413-6732