BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080001-EI

In the Matter of:

FUEL AND PURCHASED POWER COST RECOVERY CLAUSE WITH GENERATING PERFORMANCE INCENTIVE FACTOR. (FLORIDA POWER & LIGHT COMPANY)
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PROCEEDINGS:	AGENDA CONFERENCE ITEM 10
BEFORE:	CHAIRMAN MATTHEW M. CARTER, II COMMISSIONER LISA POLAK EDGAR COMMISSIONER KATRINA J. McMURRIAN COMMISSIONER NANCY ARGENZIANO COMMISSIONER NATHAN A. SKOP
DATE:	Tuesday, July 1, 2008
PLACE:	Betty Easley Conference Center Room 148 4075 Esplanade Way Tallahassee, Florida
REPORTED BY:	JANE FAUROT, RPR Official FPSC Reporter (850) 413-6732

PARTICIPATING:

JOHN W. MCWHIRTER, JR., ESQUIRE, representing Florida Industrial Power Users Group.

JOHN T. BUTLER, ESQUIRE, representing Florida Power & Light Company.

J. R. KELLY, ESQUIRE, Office of Public Counsel, representing the Citizens of Florida.

ROBERT SCHEFFEL WRIGHT, ESQUIRE, representing Florida Retail Federation.

JIM TORRENS and ALBERTO CARVALHO, representing the School Board of Miami-Dade County.

JOY FRANK, ESQUIRE, representing the School Superintendents Association.

MS. LARSON

MICHAEL COOKE, FPSC GENERAL COUNSEL, LISA BENNETT, ESQUIRE, and BILL McNULTY, representing the Florida Public Service Commission Staff.

PROCEEDINGS

CHAIRMAN CARTER: We are back on the record, and at this time, Commissioners, we are on Item 10. Also, before staff introduces the issue we have got -- I think we've got someone calling in. We'll give Chris a second here to --

Hello.

MS. LARSON: Hello.

CHAIRMAN CARTER: Oh, there we go. Ms. Larson, is that right?

MS. LARSON: Yes.

CHAIRMAN CARTER: Okay. Good. Thank you. We can hear you fine. You can hear us okay, can't you?

MS. LARSON: Yes, dear, I can hear you fine.

CHAIRMAN CARTER: Okay. Staff, you're recognized.

MS. LARSON: Do I start talking?

CHAIRMAN CARTER: No. We are going to have the staff go first, and then we'll come back to you, okay?

MS. LARSON: Okay, darling. I'm sorry.

CHAIRMAN CARTER: No, no, we just wanted to make sure that you could hear us and we could hear you. Thank you.

MS. LARSON: That's great.

MR. McNULTY: Commissioners, Item 10 on the Agenda is Florida Power and Light Company's petition for midcourse correction to its fuel factor that was approved by the Commission in last year's November hearing. There are four issues addressed in the recommendation, including a motion to dismiss, or alternatively to abate the proceeding.

With the Chairman's permission, I will turn the microphone over to Ms. Bennett to address the issue of party and interested persons' participation.

CHAIRMAN CARTER: Ms. Bennett, you're recognized.

MS. BENNETT: Mr. Chair and Commissioners, as the last recommendation, Issue 1 is a legal argument. I have spoken with both FIPUG and FPL. They do not wish to speak to Issue 1, so you will not have to make a decision unless, of course, you want to hear from them.

Issues 2 through 4 are the substantive issues. And as before, they are at the Commission's discretion whether you wish to hear from the parties. As you know, there is someone on the telephone, a customer from, I believe, Miami, who wishes to speak and, also, representatives from the Miami-Dade School District are here. Florida Power and Light has also indicated they wish to speak with you.

CHAIRMAN CARTER: Let's do this, then, Commissioners, on this Issue 1, there is no request for oral argument. I think we have kind of heard from the parties, and we will be able to hear from them once we get into the actual issues in the case.

Ms. Bennett, I think your recommendation on that was to move forward, is that correct? Did I hear you correctly?

MS. BENNETT: Our recommendation is to deny the motion to dismiss and to deny the motion to abate the proceedings.

CHAIRMAN CARTER: Commissioners, Issue 1?

Commissioner Edgar.

COMMISSIONER EDGAR: I make a motion in favor of the staff recommendation for Issue 1.

COMMISSIONER SKOP: Second.

CHAIRMAN CARTER: Moved and properly seconded on Issue 1.

Commissioners, any questions? Any debate?

Without it, show it done.

Let's do this, Commissioners, before we go further, before we hear from the parties, let me do this. We have got Ms. Larson.

Ms. Larson?

MS. LARSON: Yes, dear.

CHAIRMAN CARTER: We are going to -- before we hear from all the parties, we want to give you about seven minutes, and you can kind of let us know what is on your heart. How about that?

MS. LARSON: That's fair enough.

CHAIRMAN CARTER: You're recognized.

MS. LARSON: All right. Thank you, Commissioners.

This has been a long journey today to get on a teleconference. I can tell you that. If there was 10,000 of us, we'd be in trouble. Anyway. We all would have are slit our wrists. No.

But I have some really grave concerns with FPL. FPL doesn't live in a vacuum. They knew that fuel prices were going to go up. I think they were very aware of the volatile situation of our country. I think they have very intelligent doctors, lawyers, and Indian chiefs working for them that could have predicted this. If a housewife could predict it and a couple of her friends, I think that their actuaries certainly should have been able to come up with fuel is going to go up.

I'm very concerned because they want to hit us -- from what the papers say, they want to hit us with a 16 percent increase. And from what I have been able to glean today, they only deserve about 12 percent. That's what I see. I'm wondering why nobody has put FPL's feet to the fire.

In the early '80s, late '70s, solar was a viable option, and FPL, there was rebates, the program just got squished, squashed, whatever. We went into another direction. I'm sure -- I don't know, I guess everybody is aware, during the Reagan years the philosophy was greed is good. I think that philosophy still lives at FPL, I'm sorry.

FPL is a monopoly. There is no other alternative. The only place you can flip your switch is FPL. They have not made their customers aware. To send out a flier the month that they are going to do the rate increases is kind of scary. The American people are all in -- we are going through foreclosures, we are going through -- you can't even make your payments on things. And here is a very profitable -- I know that they say FPL Energy and FPL are separate entities, but their profit margin was 66 percent. That was the dividends they paid. I'm sorry, 66 percent.

I don't know if it's in your purview of what you guys do -- I'm learning what you guys do -- but how much of a profit is a gross profit? How much belt-tightening are they supposed to do? They paid out 25 million bucks in bonuses to their top five guys. Are they cutting back on -- are they cutting back on anything in their lives? No, absolutely not.

People can't afford the prices. They can't afford it. The fuel costs rising. I'm really concerned, because at the meeting I went to last week with you guys -- I did get to get there personally. Thank you for letting me call instead of making the trip and spending a lot of my hard-earned cash -- they wanted to put off not giving you a price on the Cape Canaveral and the Riviera plants. I think the reason for that is is because they don't want to give a price, because I think they want to make them nuclear.

I don't think they want to make them gas. They are going to come out in a year and say gas is too expensive. We are going to build nuclear. And through legislation they are allowed to build nuclear plants and charge the ratepayers for them. That wasn't the case before that legislation went through. I think they are looking for another kickback from the ratepayers.

I'm worried about it. I am worried about the consumer. I heard -- you know, my girlfriend was monitoring you, and one of your staff members was kind enough to say that you did get letters on this. And when you get letters to the editors, you know, newspapers, they count every letter as 10,000 people. I hope you guys give the letters that you got the same reverence, or whatever you want to call it, you know, because I think -- it's not your fault, but people do not know who you are.

I asked ten people yesterday, do you know that you can come in on a conference call with the Public Service Commission? They didn't have a clue. They thought they had to travel to Tallahassee like we did. I'm just worried about us, because I don't think that -- I think that there is another avenue that FPL needs to go down. I really do. I think that they need to refocus their stuff.

I didn't get to monitor your meeting, and I don't know what the Commissioners said today, but I think that they -- they need to be audited. The entire -- the whole company needs to be audited, every profit. And I think you need to go back 20 years. How much of their profits raised when they keep going for fossil fuel instead of going to alternatives, because they are not.

Like I said, at Treasure Coast last week they said one-tenth of one percent, and their witness said that's probably right. That's scary. Because they are not looking at any alternative, and natural gas is going to go up just like the price of gasoline, and here the households in America are having to tighten every belt. They can't buy a gallon of milk. They can't feed their kids.

And FPL is going to put the squeeze on us and give 12 million bucks to their top guy? I think that's ridiculous. And I don't know -- what is the cut-off point? What is the cut-off point for the amount of money a corporation is allowed to make and not for them to say uncle just like the rest of us. The American people deserve better. The people of Florida deserve better.

I'm sorry, but your Commission is called the Public Service Commission, and from past votes and a couple of things I have looked at, it looks like the corporate service commission. And I don't think that's your fault. I think they are steering from powers above, maybe. There is an article in the paper today, June 27th, 2008, our president is squelching solar power and saying, no, we can't put it in the national forests, or on a farm, or anywhere else because, you know, they would have to do an EIS. They would have to make sure it's safe. It can't be any worse than gas or a nuclear power plant. But yet here is our president, which is not your fault, saying, nah, we have got to really look at solar for two years. It is not a good idea.

It's not a good idea, as I stated last week, because you can't charge for sunshine; it's free. And FPL, I think they squashed the solar -- the solar hot water heaters because they were losing money. And if we all had one -- in California they mandated the other day -- I don't know, you probably read the paper. They mandated solar hot waters on everything new that goes into California. And they want to retrofit the old houses, too. That is the journey we have to take.

Down at the Governor's summit, his Climate Summit, a gentleman from Germany, whose opening statements was, what are you guys doing? Why aren't you doing solar? They do it at farms. They are doing it on the top of shops. They are doing it on tops of the homes. FPL is not going down that route. They don't want to, because they will make less money. They won't be able to pay their shareholders 66 percent.

And I have a real fear of that nuclear thing. I think I hit it on the head. I think it is very viable. They don't want to give you a price on Cape Canaveral or Riviera because they are going to go nuclear. That is what they are going to do. They are going to say gas is not viable. Natural gas doesn't work. It is way too expensive. Let's do nuclear.

And then we, the taxpayers, the ratepayers, have to foot the bill prior to the building of the plant.

I know I sound frustrated, and I am, because I don't know how many people -- I know that there is a million people in Palm Beach County. I don't know the total amount of people. They say they have 4.4 million customers. Well, 4.4 million customers are saying uncle. Tighten your belts. Do not give them this rate increase, not until you do an entire audit of them. What are their profits? What are their stuff? What are they doing? It kind of -- and I can only go by what I read in the newspaper, but, you know, they wanted to black out stuff and redact it because you shouldn't see it, when your staff asked for their stuff on different things. I think they do. I think they need an audit. I think everything needs to come out. Cards on the table.

What are you planning to do until 2017? Because from what I've seen, from what I've witnessed at Treasure Coast, they don't plan on any alternative. Gas, coal, nuclear. That's it. And that's not the way to go. We are not -- that ain't going to work. That's not going to work for the ratepayers. You know, it's not working. The situation is not working. The machine is broken. We are broken. The American people are broken.

Somebody made a statement to me one day that, you know, if you -- if you break people's spirts, they won't have individual thoughts. I thank God they haven't broken my spirit yet, because I am broke, too, just like the rest of America. God help me. But I still have an individual thought in my head. And I want -- I want the Public Service Commission to say uncle for us. You need to. Maybe if we get these cards on the table. What are you really planning on, FPL? Are you planning on it? If you can give out bonuses of that magnitude, why can't you find a way to make it a little bit easier on the ratepayers?

I know they want to make 66 percent profits, but my goodness, my goodness, what is -- I don't know any company that is making 66 percent profits, or giving out dividends, or anything like that. That is insane. And it's really frightening that the only layer between us is you guys, the Public Service Commission. You say yes or no, you are the ones. You say, yes, you will get it; no, you will get it.

I don't think they have really laid their cards on the table with the Public Service Commission. Why didn't they hedge their funds properly? Why didn't they figure out the fuel properly? They certainly have hundreds of people working who know the prices. They know what's going on. You can watch the stock market and everything just like the average Joe. They can watch it. They can watch the words and know whoops, we're in trouble. So if we have to cut back and we don't get to go out to dinner or we don't get to buy that whatever it is we really like, maybe FPL needs to stop buying what it is they really like and stop giving out huge bonuses.

Because as history shows us, some of these companies giving out those really huge bonuses aren't here anymore. So what happens if FPL goes under? What is the backup dog Zippy? Is there one? Who is going to bail out the Americans? Who is going to bail out Florida? Is there anybody? Because I don't know how -- I know I don't know how to run a power company. But I do know that profits within reason are allowed, but not gross profits, not at the cost of the ratepayers. Your ratepayers are screaming uncle. They can't afford to live any more.

CHAIRMAN CARTER: Thank you, Ms. Larson.

And, by the way, Ms. Larson, we want you to kind of listen in with us as we proceed further. But we thank you for your comments, and we are going to hear from the parties now. But please listen in --

MS. LARSON: I will.

CHAIRMAN CARTER: -- as we continue our deliberations.

At this point in time, we'll listen to Mr. Butler, then Mr. McWhirter, then Mr. Wright. Mr. Kelly, do you want me to recognize you last?

Ms. Bennett, you mentioned -- I'm sorry, you mentioned two others from Miami-Dade. Give me those.

MS. BENNETT: I'm not certain whether Mr. Torrens or Mr. Carvalho will speak. Both.

CHAIRMAN CARTER: Okay. Gentlemen, you may sit over here, and these microphones work fine. And just for the record, so we can put the names in here, just kind of help me out here.

Right over here. These two microphones right over here.

MS. BENNETT: Jim Torrens and Alberto Carvalho. Did I say it correctly?

CHAIRMAN CARTER: I didn't get the last name.

MS. FRANK: Excuse me, because I did not know I needed to sign up. I'm Joy Frank with the School Superintendents Association.

CHAIRMAN CARTER: Joy Frank. Oh, great.

Okay. Give me one second here for my notes here.

Alberto, I'm sorry, I didn't get your last name. Help me out here.

MR. CARVALHO: Yes, sir. It's Carvalho, C-A-R-V-A-L-H-O.

CHAIRMAN CARTER: C-R-V --

MR. CARVALHO: C-A-R, V as in Victor, A-L-H-O.

CHAIRMAN CARTER: Thank you. Carvalho.

MR. CARVALHO: You're welcome.

CHAIRMAN CARTER: Was I close, Carvalho?

MR. CARVALHO: Only my mother can say it better.

CHAIRMAN CARTER: I love this guy.

Mr. Kelly, we'll recognized you at the end of the rest of the parties. So at this point in time, we'll give the parties seven minutes each.

First, Mr. Butler, you're recognized, sir.

MR. BUTLER: Thank you, Mr. Chairman. John Butler on behalf of FPL.

At the outset I would like to offer to see whether it is possible to cut this short. We are prepared to accept the Option C, the approach that you approved for Progress Energy Florida a short while ago, as an alternative to staff's recommendation of Option A. There are couple of things I would like to just make you aware of that are kind of factors to keep in mind in doing so, but we are prepared to do that. And if that obviates the need for presentations and debate, it would certainly be all the better for us.

CHAIRMAN CARTER: Commissioner Skop.

COMMISSIONER SKOP: Thank you, Mr. Chairman.

Before we go down that path, I just had one additional question. And I think staff had brought this up in relation to the FPL request, and I think this hits squarely in line with some of the concerns that Commissioner Argenziano had previously raised. And I apologize to that regard again if I missed something down here on the far end of the bench. But because of the size of the requested increase, again, I share Commissioner Argenziano's concerns that a lot of costs are going through clauses, a lot of costs are going in the rate base, a lot of costs are coming through the fuel clause. But because of the size and the amounts of the continued increase, after increase, after increase, I feel that the Commission needs to be more diligent than ever to know that the fuel costs which the PSC will review and approve in November are prudently incurred and reasonable.

And in support of that effort, the Commission should take the time to review affiliate transactions and cost allocations between FPL and FPL Energy Services as a supplier of gas in the unregulated market. Staff previously conducted an audit of this transactional relationship several years ago, but given the current state of natural gas prices, which are well over $12 per MMBtu, as well as the high cost incurred in obtaining additional firm fixed transport for new gas projects, it may be an appropriate time to conduct another audit to ensure that the unregulated FPL affiliate is not being unduly subsidized, if they are at all.

And, again, I'm not making allegations at the expense of the general body of ratepayers. But, again, I think that we need to be ever diligent as a Commission to make sure that the consumers and the 4-1/2 million customers that FPL serves are not subsidizing some other venture. And I think that -- I think staff had some discussions. I know staff had done some diligent work in the past.

I would not expect that we would ever find anything that would be bad or reflect negatively upon FPL. But, certainly, we have a fiduciary duty as a Commission to undertake that responsibility and to critically look at affiliate transactions in light of the numerous increases and such that have been coming before us. And I would just respectfully request as a comment in passing that staff consider moving forward with doing what it feels to be diligent in those areas. Because, again, I think that Commissioner Argenziano's points are extremely well-taken.

I think this is a case in point where there is an affiliate, and that affiliate has an affiliation with the regulated entity. So, again, I think that consistent with what staff did several years ago, perhaps it's time to take another look at that. So that's the only point I had.

CHAIRMAN CARTER: Thank you.

Commissioner Argenziano.

COMMISSIONER ARGENZIANO: Thank you, Mr. Chair.

Just to clarify. Commissioner Skop, are you asking for -- when you mentioned my comments in the previous issue we had before us, when I asked for full review of everything that falls under our purview that we can look at, or are you just asking -- the one that I got shot down on, by the way, are you asking just for the review of an affiliate?

COMMISSIONER SKOP: Basically, I just had some discussions with staff. Certainly, I think that there would be opportunity to have a review. You know, I don't know at what point in time that, you know, FPL will come in for a rate case, or whether the Commission will initiate a rate case, or that OPC will initiate a rate case, but I guess my concern was directed more towards the work that staff had previously conducted on an unlimited basis to take another look at that audit that was conducted with respect to the transactional relationship just based on some discussions that I have had with staff.

CHAIRMAN CARTER: Thank you.

Mr. McWhirter.

MR. BUTLER: I'm sorry --

CHAIRMAN CARTER: Oh, wait a minute, Mr. Butler. I'm sorry, Mr. Butler.

MR. BUTLER: My offer came with some conditions on it here. You'll have to listen to me for just a couple of minutes, please.

CHAIRMAN CARTER: You're recognized.

MR. BUTLER: Thank you. A couple of real quick points I wanted to make.

We had handed out a set of three pages -- well, it's more than three pages, three exhibits here. I wanted to focus particularly on the top one initially, the natural gas price forecast and a series of these kind of parallel curves, and just make a couple of quick observations there so the Commission is advised of where we are and where we see things.

First of all, to the point about when we were in a position to know that we needed a midcourse correction. The red line is the fuel forecast that was used for our September 2007 projection filing when we set the rates or set the fuel factors for this year. The green line that sets pretty close to on top of it is from February 7th, 2008, so several months later into 2008; and, as you can see, up to that point there really was very little difference in the fuel forecast. So we were not seeing anything that would suggest a major increase in fuel costs or, therefore, a major underrecovery of the fuel costs.

But then it started taking off kind of in the -- around the beginning of the second quarter of this year. You'll see the next and sort of dark blue line is the April 15 forecast. And then the next one, the light blue line, the May forecast, May 21, that's the one that we actually used for our midcourse correction. And you can kind of see the pattern there where, after a period of quiescence, the fuel costs really took off. And it was as soon as we recognized that we were going to be over the 10 percent threshold that we prepared and made our filing.

The last line, I just wanted to point that out, as well. That is the natural gas forecast for the remainder of '08, and all of 2009 from June 27th, 2008. Last Friday was the most recent data that we had available. As you can see, it is quite a bit higher than any of the others, including the one that we used for the midcourse correction filing.

And this really just goes to the point that we were prepared to accept the Option C and the compromise, the 50/50 sharing, but we want to be sure that the Commission understands that what we really expect is going to happen unless things go in a different direction than the trend for the whole first of the year is that, unfortunately, fuel prices are high. They are going to remain high, perhaps even higher. And that is going to end up leading to some pretty significant fuel prices in 2009. Which if we move in the direction of, you know, deferring 50 percent of the recovery to 2009, that will end up just having to be added on top of those fairly high fuel costs.

If you will look to the next couple of pages, you will kind of see the impact of what would happen if -- sort of, one, if things stayed where they were in the midcourse correction filing versus on the next page after it, the more current fuel forecast. And you will see that with the Option C, just focusing on that, that we have the $102, and this is, of course, for the 1,000 kilowatt hour residential bill. It goes up to 110, and then 120, and then 122 over the course of the 2009 period. But if you turn to the next page, you will see that if we ended up having significant additional underrecoveries for 2008, and then also high fuel costs in 2009, because of a higher fuel forecast, you get more of a jump. You would end up having, you know, a jump from 110 August through December up to 124 at the beginning of 2009, and then it jumps up slightly again when we anticipate that West County Unit 1 will come into service.

Again, we are not objecting to adopting Option C, but just want to be sure that you understand that if fuel costs kept going in the direction that the current forecasts are indicating, we could end up with some substantial prices in 2009.

The last point that I wanted to cover briefly goes to the question of interest on the underrecovery balance that would be carried forward. I certainly agree with Commissioner Skop that the rate, the commercial paper rate is an attractive one from the customer's perspective. But we have concerns at FPL that that is not a limitless pool of available funds. The commercial paper is used at FPL for several purposes. It is a source of the initial kind of short-term funding for capital expenditures of which we are engaged in or embarked upon a great deal these days.

It is the source of the funding for hedging requirements when hedges are out of the money. Right now, of course, with the fuel prices having run up so high, the hedges are all in a position of having large gains. But as recently as last year there were periods when there were losses on the hedge positions, and that will fluctuate back and forth. When it is in the down cycle, when you have losses, the commercial paper is a source of funding that's required there. And then, of course, we are going to be funding a substantial amount of underrecovery, and it may be a larger amount if these higher fuel forecasts end up eventuating.

And, finally, something that we always want to have that source of funds kept available, kind of literally for a rainy day, is that it is what funds hurricane and storm recovery in the event that we have major storms and need cash quickly to pay for all of the crews, all of the materials that go into storm recovery.

So in the short-term, this is something that I think FPL can and will manage. But the comment that Commissioner Skop had made that, you know, the idea of spreading these recoveries out over a limited period of time may be manageable, but it has got to be kept to a limited period of time. This isn't something that our credit position and our access to commercial paper could tolerate being impinged upon by large underrecoveries that carried over for extended periods of time on a regular basis. So I just wanted to make those points clear. And with that, I would turn the floor over to the next speaker.

Thank you.

CHAIRMAN CARTER: Thank you.

Mr. McWhirter.

MR. McWHIRTER: I have the same concerns in this case that I did in the Progress Energy case, but will not repeat them. However, I would ask you to look at the Exhibit 1 that I have attached, and you will see in that exhibit that heretofore the largest base rate increase that was ever awarded to Florida Power and Light in the history of this Commission was $255 million. The request that is sought in this case is $746 million, which is about three times the amount of the largest base rate increase ever granted.

Now, what is it all about? What it's all about is expressed in Paragraphs 9, 10, and 11 of the petition. And it shows that -- well, part of it is carried over from last year's underrecovery. Remember last year in November we thought that the hedging losses were going to be around $400 million. In April they filed a petition that indicated that their hedging losses for 2007 were $799 million. So the difference between the projected shortfall in 2007 at the end of the year and what it was a couple of months later is being added into this rate increase.

The other thing is they have done a new projection of fuel costs to year-end, and they say that the expected fuel cost to the year end is $283 million more than they originally projected last November. The good news is that staff's audit demonstrated that the hedging gains -- I thought hedging was what this case was all about. It is not. The hedging gains this year so far are $729 million, and those have been set off against the additional fuel costs. And the fuel costs would have been higher but for the hedging gains. So that's a great tribute to that activity, and I'm not going to focus on it too much more.

The thing that I do want to focus on, and the most alarming, the most alarming thing in this case, and it is seriously alarming, is contained in Paragraph 11 of the petition. Paragraph 11 of the petition shows that they want to increase the rates $329 million through this -- in this proceeding because of lost sales. Think about that just a minute. Lost sales or conservation is causing the fuel clause to go up $329 million.

And when that question is posed, why is that; and they say, well, the other fuels costs are going up so much. That doesn't count. Because if your people are saving and using less energy, fuel costs should go down, but they are not. And when they say the other fuel costs have gone up so much that we have to recoup that, that is not accurate, either, because they give you an itemized account of what they are paying for each component of their fuel and that's covered by this $283 million.

So what is it all about? I don't know, but I can tell you what my conclusion is, and perhaps the evidence will demonstrate it. And if my conclusion is accurate, it's a very serious problem that you need to address very promptly. And the problem is that the fuel clause is not like we have always understood it to be, that if -- when their fuel costs go down, that's all they collect is the money from the customers to pay for fuel. But they collect for other things. They collect for barge -- I don't think they collect for barges, the other utilities do that. They collect for gas pipelines. They collect for security costs. They collect for coal handling facilities. And these are fixed costs. These are fixed costs that are carried in the fuel clause. And these fixed costs carry -- if it's an investment in physical facilities, they carry a return of 11.75 percent. So there is a profit in the fixed costs of hard items that are included in the fuel clause.

And the magnitude of it I never realized was so great, but if it is $329 million from losing 5 million megawatt hours of electricity, that means there are a lot of things loaded in the fuel clause that serve as a disincentive to conservation. Because if people conserve on their fuel, they still have to collect these fixed costs that are attributable to these ancillary assets.

Now, I'm not going to go into that a great deal later, but to me that is one of the most serious concerns you should have in your studies of energy efficiency. Because if there are a lot of fixed costs that are loaded into the fuel clause, then conserving is not going to save energy, it's just going to load other costs that have to be collected somewhere else.

My suggestion to you, if it proves out like I think it will, is that what you might want to do is look at this in connection with base rates. And if the utility is earning more than their authorized return, or in the upper limits of the authorized return on base rates, perhaps some of these fixed costs can be moved out of the fuel clause and into base rates. And that would be a much simpler thing to do than having the full rate review that you talked about.

Now, the other thing I want to suggest to you is this. Once again, on these exhibits, we are using a customer -- if you look at the fuel clause under Scenario A, if it's granted, a 102 bill -- a $102 bill will go up to $118 if the petition is granted. Now, $16 on $102 is around 16 percent. But the rate increase that is requested in this case is $15 per megawatt hour, and it's an increase over the existing fuel factor of $55, and that's 28 percent. So there is a 28 percent increase.

If the people in this study are only paying 18 percent, somebody else is picking up the price. And that somebody else is the people who live in single-family homes, and the middle level person that consumes 2,000 megawatt hours, because they suffer inverted rates.

Now, I had lunch today with a man who -- he made me promise not to give his name, but he didn't mind me telling you what he told me. He said I represent hospital associations all over the state, and the hospital associations are in Florida Power and Light, Progress, Gulf, everywhere else. And he said hospitals are funded through Medicaid, principally. And Medicaid gives us 82 percent of our actual cost to care for Medicaid people. And we set a budget, and we set our budget at the first of the year. And what happens when you get a -- I said what happens when you get a 30 percent increase, as you are -- or 28 percent increase on your fuel costs, if you do? He said I don't know. We're in desperate trouble if that happens, because our budget for our hospital, which was set earlier in the year, doesn't change just because we get a higher electric bill. We need notice.

And so if you postpone this to the first of the year, then what you would have is people would have adequate notice to set their budgets. There is a Ms. Joy Frank here who is with the School Board of Miami-Dade County, and I think she will tell you something similar for school boards. So this is a serious problem. Two problems I want to bring to your attention. One, nonfuel items that are contained in the fuel clause that could be moved to base rates. And the other is the real problem in rate shock that you face for people when you put a rate increase on them with 30 days notice. If you do it in January, people will have that kind of opportunity.

Now, Mr. Butler in his wisdom, and he's very wise, and he is very diplomatic, and he is a fine gentleman, and everybody I have met with FPL are fine people. I have great respect for them. He has suggested that they would be willing to do what you ordered for Progress Energy, and that's good. But the problem with that is they would be willing to do that if you give them everything they ask for. My suggestion to you is that you have got $329 million in this $746 million that is attributable to their forecast for lost sales.

I heard somebody said today that their electric bill went way up this month when the weather changed. Well, my suggestion to you is the bills are going to go way up in June, and in July, and in August, and in September because people are going to use the air conditioning. And it won't do them any good to conserve, because they are going to be hit by an additional rate increase if they really use less fuel.

I suspect that these people will continue to use electricity in the same fashion, and that 329 million between now and the end of the year will disappear because the sales will be substantially the same. Staff is worried about a hurricane in the Gulf. I would suggest to you don't worry about that right now. Give them $283 million, which is their fuel cost forecast to the end of the year, and I don't know whether you ought to split that in two or not. I think maybe just give them the 283, and give them everything they ask for for fuel cost increases to the end of year and don't worry about sending it over the next year, but do worry very much and be concerned about the conservation. If conservation doesn't work, we have been going down a very serious primrose path.

Thank you very much.

CHAIRMAN CARTER: Thank you, Mr. McWhirter.

Mr. Wright.

MR. WRIGHT: Thank you, Mr. Chairman. Again, I will try to be brief, and particularly in light of FPL's offer to accept Option C.

Again, the issues here are really about the timing of recovery of fuel costs. And we are here because FPL either missed, or I would say more accurately believes it missed its 2008 fuel cost projections by a substantial amount.

I apologize. I need to make the point that both John Rogers and Samantha Hunter-Padget are also here with me on behalf of Florida Retail Federation. Thank you.

We don't believe that there is any real argument to be made that a sudden 15 to 24 percent increase in total customer bills is not rate shock. Lower load factor customers get a lower increase. Higher load factor customers -- I ran some rough numbers. I didn't have to get real high before I got up to 23 or 24 percent. It's a big hit. We would prefer to have a hearing on the surcharge; but, if not, we advocate spreading the pain over a longer period of time.

I want to make a couple of points about a couple of things that have gone on and are pending. FPL's proposal for its proposal here, Option A, is inconsistent with what FPL itself proposed three years ago in the 2005 fuel docket under fairly similar circumstances. FPL was looking at a $770 million underrecovery for 2005. They did not ask for a midcourse correction. They asked to spread it over the succeeding two years, 2006 and 2007. I explained to you what you did earlier in the '05 case. You said we're going to do it based on what is known at the time and carry what is not known forward.

FPL's proposal in this docket is also inconsistent with FPL's pending petition for approval of its improved volatility mitigation mechanism, in which they propose to recover underrecoveries of unhedged fuel costs over two years instead of one year, and overrecoveries contending to be refunded to customers over one year.

Now, the Commission -- and FPL recognizes in their DNM petition, the Commission, particularly through Commissioner Skop's articulate discussion, clearly recognizes the interest rate benefits of this. And FPL specifically recognized the benefits to ratepayers of being able to fund the underrecoveries by using the very favorable commercial paper rate.

Now, we believe, as before, you know, and as compared to Option C, we advocate something slightly different. And this is a compromise and it's a balancing act. But, you know, I think we believe that applying logic and reasoning that the Commission employed in the 2005 fuel docket will produce a much fairer result than Option A, and at least it's closer to Option C, so I would have to say a somewhat fairer result in Option C. And that is simply give them recovery, subject to proof at hearing as to reasonableness and prudence, of course, but give them recovery based on what is known at the time.

I did some pretty quick front of the envelope extrapolations from the data that are included in FPL's handout, and they report an actual underrecovery from November and December of last year of $121 million, an actual underrecovery through April of $152 million, and then a projected underrecovery of $473 million. Now, you might, you could -- when we get there, you would add in whatever the actual underrecoveries are for June, July, August, and September. But if you make a rough assumption from May, you are probably looking at an actual underrecovery through May in the range of $340 million. So that is what we would suggest that you let them recover over the August to December period.

When you get to November you will know what June, July, August, and September were, and they may be $250 million, they may be 350, or even $400 million, depending on whether the black line on the front graph is the right one or whether something else happens in there. But whatever it is, you will know what it is, and we will have a hearing on it in November as to the reasonableness and prudence, whether FPL did what they should have done, knowing what they knew or what they reasonably should have known, et cetera, et cetera.

Regardless, you can have a hearing on that based on known costs, and then roll whatever is left into consideration next year. Again, one of two things can happen, either it gets rolled into the fuel docket toward the end of the year in 2009, or 2010, or we have a midcourse correction, if that were to turn out to be warranted.

In your 2005 fuel order you said this approach balances the concerns that FPL has regarding high bill impacts in 2006 with our, the Commission's, concerns regarding high bill impacts in 2007, a concern that FPL itself recognizes as valid. We are asking you to strike a similar balance here. Follow the principles regarding recovery of known full costs on a going-forward basis.

Again, as I said before, you know, the Commission's orders and recommendations invariably articulate that the chief criterion is the best interest of customers. In today's world, you know, we submit to you that it is unequivocally not in the best interest of customers to impose $746 million of costs or even more. Additionally, if you put off some of this it will give consumers time to adjust their consumption habits. You know, you can't do a whole lot between July 1st and August the 1st. We can do more over time.

Finally, regarding the rate impacts that are shown both in the staff's recommendation and here, I would simply make the point than none of the tabular information that has been presented to you shows what would happen if you were to follow our proposal. And that is through May, August to December, June to September of 2009, October, November, December roll forward on some basis. Conceptually it seems that most likely that that would result in a further smoothing, a dampening of the effect in 2009, with some -- with due full consideration based on actual known costs, subject to proof, et cetera, in the 2009 fuel hearing for the last quarter of 2008 underrecoveries.

In closing, I would simply say, you know, basing recovery on what is known when you decide is especially appropriate here in the light of today's real world economic realities and in light of the underlying reason that we are here; and that is, we are here because FPL's projections were wrong.

Thank you.

CHAIRMAN CARTER: Thank you, Mr. Wright.

Mr. Torrens and Mr. Carvalho, generally we have given the parties seven minutes, but because there are two of you guys, we are going to give you ten minutes, and you can split them five each. Will that be okay, since both of you are representing Miami-Dade? We definitely want to hear from you.

And, Ms. Frank, I will come to you after that, okay?

MS. FRANK: If I could, I would like to go first. Is that okay?

CHAIRMAN CARTER: Absolutely. Age before beauty or beauty before age or something like that. I don't know. (Laughter.)

MS. FRANK: I have a lot of gray hair. Not a problem.

CHAIRMAN CARTER: Where's my script? I need a script.

MS. FRANK: Good afternoon.

COMMISSIONER ARGENZIANO: (Inaudible. Microphone off.)

CHAIRMAN CARTER: I'm deeply embarrassed on that one.

MS. FRANK: That's okay. That's okay.

COMMISSIONER ARGENZIANO: (Inaudible. Microphone off.)

CHAIRMAN CARTER: Bail me out, Ms. Frank. Bail me out.

MS. FRANK: I have a lot of gray hair. So, it's okay, I wasn't offended.

Thank you very much, Mr. Chairman, Commissioners. My name is Joy Frank. I'm the General Counsel representing the Florida Association of District School Superintendents.

You know, I thought public school finance was complicated, but I'm definitely getting an education here on fuel finance as well as utility finance. So it has been an interesting day for me.

I just want to take a moment of your time to explain what's going on in public schools. We are one of your largest consumers of utilities and of fuel, and we are being heavily impacted and shocked by these rate increases. In fact, as mentioned, we have got people from Miami-Dade here who will testify in just a minute, but Brevard County is going to anticipate a 19 percent increase in their fuel costs. Palm Beach is over 8 million; Broward, 9 to 11 million; Hernando, 25 percent; Manatee, 19 percent; and Seminole up to 24 percent increases based on this recovery we have been talking about today.

These increases in addition, combined with the budget reductions of the last couple of fiscal years and the ones we are anticipating in the fiscal year that just started today, are having a devastating impact on public schools. So, of course, we would love to have an abatement of this midcourse correction, but also appreciate what's going on, and at least want to spread the pain, if you will, across as large a time as possible so that we can have some stability in planning the operating budgets for public schools. That is our main concern.

Fixed costs are going up in households. They are also going up for public schools, utility costs, transportation costs. The transportation formula for public schools is, basically, supposed to be funded, I think, at about 70 percent. We get anywhere from 54 to 60 percent now. That's before the increased cost in diesel fuel. So we are not going to be able to run buses quite the way we have in the past, and I know you have read about that in the paper.

Food service costs are going up. We have been pushed to provide more and more school breakfasts, as well as school lunches, as well as snacks. Those costs are increasing. Those are costs we have to absorb as the public school system.

Over this past year the budget that was just passed, we're already being asked to take a 4 percent holdback, as are all state agencies. Fortunately, we have a combination of state and local funds, so our local funding helps us out there a little bit. But given the economic times, it's becoming more and more difficult. The total state funding for K-12 education was reduced by over 12 percent last year. Twelve percent.

Now, fortunately, some of the costs for public schools were shifted to the local level. So overall our total funding was only reduced by 5 percent, but that translates into over $300 per FTE. So, we are -- that translates, basically, into we are receiving less operating dollars today, and that is even before the reduction that we are going to have to take over this just beginning fiscal year than we received in 2006/2007.

And I know you have read in the paper, but, basically, this affects kids, it affects programs, education opportunities and jobs across the board. We are seeing schools close, delay of opening of new schools, and we have class size reduction upon us. We have delayed implementation of that, but that is upon us in 2010 and '11. We are eliminating seventh period day in secondary schools, so it is diminishing the opportunities for our high school students. I just heard in one district they are eliminating -- reducing by half art and music in elementary schools, reducing magnet schools, et cetera, et cetera. We are reducing contract links for some of our school-based administrators, you're seeing a lot of administrative reductions. You are seeing annual contracts not be renewed. We are reducing or eliminating reading coaches and math coaches. I could go on and on.

Now, this is not totally because of Florida Power and Light. It is just the overall economic conditions that we are having to deal with. And this is one more unplanned shock we are having to deal with and lends itself to the instability. We need more planning time is kind of our plea. And, frankly, this is just the beginning. We all know that we are, I think, entering into some uncharted territory as far as the economy is concerned, and given the increased costs in Medicaid that was mentioned a little bit earlier with the hospitals association, as well as class size reduction, and the fact that the general revenue forecasts continue to be off, I think we are going to be faced in developing a budget for 2009/'10, which is where my reality starts being, there is going to be a significant hole of maybe about $4 billion. So, that is -- I can't even think about how we are going no be absorb those kinds of costs.

So, basically, we need some relief, and we need some stability, and we need the ability to plan. And any way that we could spread the pain of some of these increases, we would appreciate it. And this does not even touch the impact of some of the proposed amendments in November.

So with that, I appreciate the opportunity to address you, and I wanted to just give you the context within which the public schools, who provide some economic engine to the state; in many of the counties, we are the largest employer.

So with that, I would like to give Alberto Carvalho and Jimmy Torrens an opportunity.

CHAIRMAN CARTER: Mr. Torrens, you're recognized.

MR. TORRENS: Thank you very much, Mr. Chairman, Commissioners, I really appreciate the opportunity to be able to address you today.

Being from Miami-Dade County Public Schools, we are either the third or fourth largest customer for Florida Power and Light in the state of Florida. Our annual utility bill for electricity from FPL is over $72 million. So when we received the call on June 3rd advising us that a rate -- an effective rate increase of about 16 to 19 percent was going to be implemented beginning in July -- beginning in August of this year, obviously -- the word shock has been used a lot, but I can tell you we were really shocked. We had just been through a very difficult budgeting cycle. We are in the midst of that budgeting cycle trying to set our budget for the 2008-2009 fiscal year, which in our case begins July 1, today, and we had just -- the legislative session had just concluded. As Ms. Frank mentioned, it was some very deep cuts in funding to education, so we were being hit from all sides.

And one of the other terms that has been used is a perfect storm. Well, we felt we were in the eye of this perfect storm and with very little recourse. Over the next few days and weeks we got some additional information from FPL that made the situation even more disturbing, because we learned that, in fact, a lot of this was due to a shortfall that had been accruing for months, as demonstrated in the documents that have been presented to you; since November of '07, actually, this, basically, deficit had been accruing. So that made us even more upset.

And, actually, why had we not been informed sooner? So when we posed this question, we were informed by FPL that procedurally they were prohibited from telling us that the rates were going to be increasing for fuel until they had exceeded a 10 percent threshold. So this obviously disturbed us considerably, because if we had known months earlier, we may have been able to take some measures in the legislative session and other recourses in our planning to try and mitigate some of this.

We are not with our heads in the sand. We knew that -- we all go to the gas pumps and we all pay for gasoline and get our bills, and so forth. So we were aware that we could anticipate some increase. We were planning for an increase. We had worked that into our budget workpapers, and we concurrently worked a mitigation strategy. Some very drastic measures on our part. During our spring breaks, during our summer recess right now, completely closing schools, consolidating high schools and middle schools, physically shutting things down completely. Nobody in the building, no air conditioning, no lights, anything.

We also implemented a program to automatically shut down our computers at night. We were taking this very seriously and we thought we were in pretty good shape. I mean, based on what we anticipated to be a rate increase because, again, we knew that fuel was going up, and we were going to be affected to some extent.

But, in our case, you know, we had taken some prudent steps. I mean, we were planning, we were taking what we thought to be prudent measures. And we were just -- we felt like all these measures have been undermined by this drastic increase. In our case being about $12 million overnight, basically, because we have no recourse at this point. The legislative session was over. Tax rolls are in. There is very little flexibility the school district has to raise revenue. We, obviously, can't pass it on to our customers, our students.

So, we were really in quite a difficult situation and are as of today. We have not been able to include this full $12 million in our budget for the '08/'09 school year. We are waiting for -- and our board and our superintendent are waiting for the outcome of this deliberation today to determine how seriously we are going to be impacted. We really have nowhere else to go now.

We have made very deep cuts in all of our administration, all of our support services. At our last board meeting for the first time in my 23 years with the school system, we have actually reduced force. We have laid people off for the first time. This had never happened before in all of my time with the school system. Mr. Carvalho, who will follow me, can attest to that. This is a very traumatic situation for our board. At this point any dollar that we have to take from the operating budget is going to result in additional reductions in force. And, obviously, the catastrophic spiraling effects of that to the economy are many fold. We are going to have more people that are unemployed, more people that will not be able to pay their bills. So this is a direct impact now on us to the classroom.

We are no longer cutting hypothetical programs or cutting other things. Now every dollar that is cut is coming from the classroom. So, you know, we implore you to consider any measure at this point. We were actually prepared to ask for an even more drastic measure, which is any of the undercollected amounts to be extended over even a longer period of up to 24 to 36 months if possible. Because we feel at that point the economy in the state will start to -- based on, you know, our forecast, will start to turn around, and we will be in a position to -- not just us, but -- I mean, we are a fixed income user, as well. We have been hearing a lot about fixed income, or retirees, and folks which are very stressed in this environment. But we are in a similar situation. And not only on a fixed income, but we are on a declining income and there is very little that we can do about it.

So, again, with regard to the specific measures on the table, I have heard several different options proposed here, we don't know exactly which one would result in the greatest relief. Our immediate certain is for the 2008/2009 fiscal year which starts today. So anything that will yield us relief in this year and defer some of this burden to the future, the following year and the year after that, would be very welcome. We saw a 17-month recovery schedule that's also on the table. That would even be more favorable than the 50/50 from our perspective, because it would actually spread it out over three fiscal years.

So, again, thank you very much for the opportunity to address you. We really appreciate it, and I will turn it over to Mr. Carvalho.

CHAIRMAN CARTER: Thank you, Mr. Torrens.

Mr. Carvalho.

MR. CARVALHO: Good afternoon, Mr. Chairman. My name is Alberto Carvalho, Associate Superintendent for Miami-Dade County Public Schools. I am just going to briefly, considering how late it is and how tired you must be, echo some of the sentiments that have been spoken by my colleagues, both Joy and Jim.

I think we need to take this conversation in the context of what we have gone through over the past few months. Certainly this proposal before you today comes at a time of unprecedented cuts across the state to education. Miami-Dade County Public Schools alone, during the '07/'08 fiscal year that just closed yesterday reduced based on statewide reductions its budget by $70 million. One of the most devastating things about the second part of that reduction was the reduction was not put on us until the third quarter of the year. When you annualize that, in fact, that $33 or $34 million reduction looks more like a $90 million reduction.

We are looking at '08/'09, which began today, not with an increase from the state for education. In fact, with a decrease in the order of $68 million for the operation of the '08/'09 school year. And we are going into '08/'09 cognizant of the fact that the economic situation in the state has not improved. And we are looking potentially, as Joy mentioned, at a 2 percent holdback out of the FEFP, which for Miami-Dade represents $42 million.

So if you add 70 million for '07/'08, 68 million that we are beginning '08/'09 with, and the possibility of an additional $42 million reduction, in fact, I echo Mr. Torrens' description of the scenario as being right in the center of the perfect storm. In addition to that we're dealing with fixed cost increases associated with increased transportation costs, food service costs, utilities, et cetera. You put all of this together and, in fact, we will be operating '08/'09 $212 million below '07/'08.

And we have to compress the management of this budget into a 60 to 90-day period. That's about how long we have to, in fact, cobble together the budget for '08/'09. A pass-through increase at this point representing about $12 million for Miami-Dade County Public Schools, in fact, would be perceived as an unbudgeted liability on our school system. And it is 12 million for us. It is about $10 million for Broward, and about $7 million for Palm Beach. We were involved in a telephone conference yesterday. We are not here just representing Miami-Dade. We are, in fact representing Miami-Dade, Broward, Palm Beach, Lee County, about one million K-12 students in the southern part of our state.

And, of course, as was said before, we cannot pass this cost increase to our clients, the students. If we were to do that, we would be further compromising the quality of education in this state and we cannot afford to do that at this point in time.

You have an opportunity today to adopt a policy that is both fiscally responsible, but at the same time does not compromise further the quality of education in our state, particularly in our school systems. I recognize that a $12 million reduction at this point to Miami-Dade alone, as Mr. Torrens said, represents cuts to people. We have already cut administrative expenses. We have already reduced bus routes. The $12 million represents 200 teachers in Miami-Dade. 200 teachers out of the classroom.

The questions that are posed to me these days are which teachers will we let go? Now, the math, the science, reading, social studies, those are core areas. We can't let go of them. So what goes? What goes are the subjects that actually bring kids to school. The arts, the music, physical education. We don't want to do that. The lateness, the timely -- the time at which we are receiving the news of this the pass-through increase have an opportunity to, in fact, damage the quality of education for kids in our state, and we are urging you not only to opt for a less than perfect, as was stated before, option.

There are no perfect options before you, but we are urging you to select the least imperfect option for one of the most fragile communities in the state, kids. They represent 20 percent of Florida's population; they represent 100 percent of our future. Imposing a reduction or an increase to the rate, which, in fact, we perceive as a reduction of 12 million at this point, will impact the quality of education and the quality of life in our communities. Not only do we urge you to consider Option C, but consider Option C recognizing the underrecovery based on known values and data not necessarily as presented by FPL.

Thank you very much.

CHAIRMAN CARTER: Thank you, Mr. Carvalho.

Mr. Kelly, you're recognized, sir.

MR. KELLY: Thank you, Mr. Chair and Commissioners.

In light of the late time today, and it has been a long day, I will simply reiterate my comments this morning. And in the interest of time, I won't add anything that I had to say this morning.

CHAIRMAN CARTER: Commissioner Argenziano.

COMMISSIONER ARGENZIANO: I guess while I appreciate OPC being here, and I guess I want to ask are you for, against? I would like to know something from OPC. Do you have a suggestion?

MR. KELLY: Commissioner, you know, I think -- number one, I think that there were some very, very good comments made this morning by all of you from the bench. I think that certainly hearing some of the comments this afternoon, that in light -- or in addition to what I said this morning, that probably based upon your decision you made this morning or this afternoon, rather, sorry, in the earlier docket that some spreading of the increase based upon fuel is probably favorable.

Certainly I would be swayed by some of the things you just heard relating to the school districts, and I think that looking out into the future may be a way to go. I made a comment this morning, and I believe Commissioner McMurrian said it a little better than I did, that forecasts are -- I said that forecasts are unpredictable, that you don't know what you're doing. And I think she said that they are always wrong.

That is probably a truer statement.

And with that said, I think that pushing the increase out further could have a better -- that's a bad choice of words -- would have a lesser impact, but be a better course to take. And let's face it, I mean, I'm an optimist. I know we are in bad times right now economy-wise, but I have always been an optimist and I always try to say that the glass is half full and not half empty. And I would hope that a year from now our economy is turning around. I don't know, but I'm going to remain optimistic, because that is only way I have ever lived my life.

So with that said, I think that maybe the direction that you started taking this morning -- or, excuse me, this afternoon, we started this morning -- that if we do see some turnaround in the economy next year, then some of these increases can have a lesser impact on the pocketbooks of ratepayers.

CHAIRMAN CARTER: Thank you.

Commissioners.

MR. BUTLER: Mr. Chairman.

CHAIRMAN CARTER: Mr. Butler.

MR. BUTLER: Could I have two minutes to respond very briefly to some of the points that were made by the other parties?

CHAIRMAN CARTER: Let's do this. It will be -- look at the clock on my right. When the long hand is on the seven we will reconvene. Okay. That's five minutes. Let's be ready to roll in five minutes.

(Recess.)

CHAIRMAN CARTER: We are back on the record. I see the long hand is on the seven, and -- where is Mr. Butler? We'll come back to him. We'll come back to Mr. Butler.

Commissioners, comments, reflections, or whatever? Let's start on my right, Commissioner Argenziano, Commissioner Edgar, Commissioner McMurrian, and Commissioner Skop. And if there is anything left, I may just stick my two cents in or my one cent in.

Commissioner Argenziano, you are recognized.

COMMISSIONER ARGENZIANO: A question and then just general comments very quickly.

CHAIRMAN CARTER: Yes, ma'am.

COMMISSIONER ARGENZIANO: To Mr. McWhirter. I think what I heard you saying in your presentation, and I'm not sure, please correct me if I'm wrong, was that you had some problems with some of the, I guess -- I think, base rate items that were in the fuel clause, and that the lost sales and perhaps with a review, and I don't know if you were talking about the same kind of review I was talking about, that those changes would be looked at more thoroughly.

MR. McWHIRTER: I was not talking about the same kind of review you had in mind. I always have a fear that those kind of reviews might result in a rate increase as opposed to a rate reduction.

COMMISSIONER ARGENZIANO: I'm being very fair. But what I hear you saying is you want some kind of further review.

MR. McWHIRTER: The Legislature had a number of years ago a law that required utilities file MFRs every four years. MFRs are the basic information that you use in a rate case, and it develops out these rate structure and everything. And after several years they were persuaded that that was so expensive to do it that that legislation was repealed.

The kind of review I was talking about has to do with the fuel clause itself. And the fuel clause is not just fuel, it contains other things. It contains fuel handling, fuel transportation equipment, pipelines. Those are things that historically you found in base rates.

The first thing that came was the fuel recovery clause cost, and it was basically recovering what they spent for fuel. But now it's what they spend for transportation, what they spend for pipelines, and so forth. I think you could look at that, find out exactly what it is. The environmental clause, for instance. The legislation requires you, or requires you to roll that into base rates every now and then. So maybe if the utility is earning well above the minimum of its authorized rate of return, you might give customers some relief by rolling items that are really base rate items that are temporarily in cost-recovery back into base rates. And that is the kind of review I was talking about.

COMMISSIONER ARGENZIANO: But, nonetheless, you wanted further review?

MR. McWHIRTER: Yes, ma'am.

COMMISSIONER ARGENZIANO: Okay. And then just two closing points, because we've had the case before this, and all the comments that I made prior would go here also, and I would like to include the words that I read into this case also, and just reiterate what I said before about taking into consideration that fuel costs have, undeniably, gone up for everybody, and the need for the electric utilities to recover legitimate costs, I understand that, and make that very clear, and that I was willing then in the last case, as I am now, to give them a midcourse correction today if -- I mean, of approximately half, or spread it out as far as the Commission would want to go, with the same caveat that I would like a better review of many, many things that need to be taken into consideration and that haven't been done for many, many years. So with that said, that is all I need to say, and thank you for indulging me.

CHAIRMAN CARTER: And what we will do, Commissioner, is we will get a copy of your comments and have them entered into the record as though read.

COMMISSIONER ARGENZIANO: Thank you.

CHAIRMAN CARTER: Commissioner Edgar.

COMMISSIONER EDGAR: Thank you, Mr. Chairman. And similarly, I won't restate everything that I said in the last one, but I will say kind of ditto, ditto, ditto.

I want to particularly thank our friends from Dade County that have come. I know it has kind of been long day for you because it has been a long day for me, and we do this every day. So thank you for coming and thank you for, I know, your heartfelt comments.

As probably, once again, I know you all are tired of hearing my stories about my children, but I'm a mother, so bear with me. But as the mother of two young children who are in public school, I so much take to heart on a personal level as well as a professional the comments that you have made about impacts to public school education, which is truly near and dear to my heart in every way. And I have great concern about it and will give that, you know, request to the Legislature to, as always, try to keep public education whole.

Also, on that note, if you will further indulge me, I'll give a shout out to Roberts Elementary, yea, which is where my children are. One of the best public schools in the state, I believe.

I don't think that Option C is perfect. I said that earlier. In fact, I also said earlier that I think Option A has some very, very sound financial reasons in support of it, and I believe that for this item as well as for the previous one. However, trying to take into account all of the factors and concerns that we have heard from different customer groups, as well as the concerns of the utility and my colleagues, Option C just seems to be the best middle point, realizing that we don't have that crystal ball into the future.

I do worry about my words kind of pancaking future costs one on top of another, on top of another, an additional rate shock and impact, if we were to spread out much further. That would be my concern. But with that in mind, I appreciate the utility taking into account the discussion on the earlier item and being willing to work with us on that account. And I am hopeful that if we go in that direction on this item, as well, that it will turn out to be a good decision in the best interests of all groups.

Thank you.

CHAIRMAN CARTER: Thank you.

Commissioner McMurrian.

COMMISSIONER McMURRIAN: Thank you, Chairman.

I similarly will not go through all the comments I made earlier, and most of them were probably fairly inarticulate anyhow. But with that said, I will say that with all due respect to FPL and their acceptance of Option C, I still believe what I said earlier about the midcourse correction is about protecting the ratepayer interest. I still have a lot of concerns about what is going to happen in 2009. And I, too, appreciate you all coming all the way here to tell us about what is going on in the school systems. And I probably should point out that my mother-in-law is a public school teacher, and I probably will be hearing a lot about this from her, as well, and she is not shy at all. And I do love her dearly. But I still have those concerns, and I hope that you all understand where I'm coming from. I know it's probably hard to, and I think it will be hard for a lot of people to understand where I'm coming from. But I really am concerned that in 2009 we are going to be facing a lot of this again. So I hope that you will accept that.

But I cannot accept Option C. I still believe that Option A is the best course of action to take at this time. And I hope I am proven wrong. I hope that next year we are in a lot better shape, and I would like to think that I'm an optimist like Mr. Kelly, but, obviously, I haven't taken that tack with respect to this case.

But, again, those are my heartfelt comments. I still agree with the things I said earlier, and I still believe that Option A is the best course, so I will be voting consistent in this case with the earlier case. But, again, I thank you all for what you have said, and I do definitely care about what is happening in our public school systems, as well as all the consumers that will be faced with some type of increase, I am supposing, with the votes we have had earlier and will probably be taken with this case and others.

Thank you, Chairman, for letting me say that.

CHAIRMAN CARTER: Thank you, Commissioner.

Commissioner Skop.

COMMISSIONER SKOP: Thank you, Mr. Chairman. And I do appreciate the school board and such coming down from -- coming up from Dade County and giving their comments, and their comments are well taken. Everyone is feeling the pain. And I think I'm not going to repeat what I articulated in great length, and probably not so articulate, either, but I try my best. My communication skills aren't my greatest strong point.

Nevertheless, I do feel that deferral of any such requested increase, even a portion thereof, helps ease the pain that the school districts may feel, that consumers feel, that people on fixed incomes may feel, small business, industry, the like. So, again, I will most likely be supporting Option C as we go forward.

Thank you.

CHAIRMAN CARTER: Thank you, Commissioner.

And on behalf of my colleagues, we always extend a heartfelt appreciation to members of the local government. I mean, there is nothing more local than school systems, to come here and be with us today. And as I'm sure, you sat here through this morning and saw how we agonized over trying to balance the interests between maintaining the integrity of the businesses being able to stay viable, as well as lessening the impact on the ratepayers.

And I feel, you know, pretty much where I was before in that Option C to me is based upon where we are now and based upon what we are seeing I think it's probably the best thing for us, because, you know -- Mr. Kelly, I agree with you, the glass is half full. And I believe that the economic prognosticators are going to be correct, that Florida's economy is going to rebound in the third quarter of '09, and a lot of the kind of things that we are hearing now is going to balance out for us. The unemployment numbers are going to change to the better in terms of people are going to be able to get good jobs and get better employed. Some of these costs, at least, you know, some of the immediate costs like gas and food and those kind of things hopefully will stabilize within the next several months or so.

And I just feel that, you know, as we talk about consumers, we're consumers, too. We are all paying the freight and all like that, and I just think that, one, is that to me in order to balance those interests it just seems apropos to ensure that the companies stay viable so that they don't have a process where -- these rates that they are getting now are favorable rates because of the economic environment that we have created in terms of our regulatory perspective in Florida, keep those -- so they can get those good rates on the proceeds that they have to borrow, but also balance that against the interest of what we are all faced with now.

I think that I -- and I mentioned earlier about the budget, and I think Ms. Frank was even more explicit in terms of the billions of dollars that was cut from education and Medicaid. A lot of the kids are dealing with Medicaid, too, and a lot of those kind of things. And we are talking about meat and bread issues across the table, with moms and dads having to make difficult decisions.

The school system having to close down schools and, you know, it just -- in my opinion, Commissioners, and I appreciate your allowing me to think out loud, but based upon where we are now, I am in the same place with this Option C, because I think based upon the circumstances that we find ourselves in and based upon the facts that are presented to us in this case, I think, in my opinion, that's the best case scenario for us.

Commissioner Argenziano, you're recognized.

COMMISSIONER ARGENZIANO: Because I made a motion in the last case, and I don't want to put everybody through that since the motion failed, I have to go on record saying that while I think Option C was part of what I was suggesting by reducing the amount that they were asking, because we know that fuel costs have gone up legitimately, but without having the -- all the what I believe was the legislative intent would be to consider all the relevant factors in full context, I can't in good conscience vote for even Option C without having a more thorough investigation. And maybe as Ms. Larson had indicated an audit of some type.

And because it has been so many years that we had not set base rates through decision-making processes rather than stipulations, I just have to get it on record that I cannot and will not be voting for Option C, even though I think that reducing that amount is better than what was originally asked, but I can't agree with it. So that is the reason I will be dissenting.

CHAIRMAN CARTER: Thank you, Commissioner.

Commissioner Skop, you're recognized, sir.

COMMISSIONER SKOP: Thank you, Mr. Chair. I guess I appreciate Commissioner Argenziano's concern. Again, I shared some of the same concerns earlier about the affiliate transactions and the need to scrutinize things properly.

Certainly, just a quick question of staff, not to open Pandora's box. I do think that is where I am showing a little restraint here is due, perhaps, to some legal issues. But it is my understanding that the Commission can bring a rate case, FPL can file a rate case, and the Office of Public Counsel can all bring a rate case, or a request for a rate case, is that correct?

MS. BENNETT: Commissioner Skop, the answer is yes, but we do have an order that was approving the settlement agreement in 2006. That order -- the settlement agreement expires December of 2009. And so when you are looking at modifying a prior order, then you have got some additional steps that you need to take as a Commission to modify a prior order.

COMMISSIONER SKOP: Okay. And to my point that I just made, and Commissioner Argenziano's previous point, it is my understanding that the FPL settlement agreement has an Evergreen provision in it, which continues in perpetuity until something happens, unlike the Progress settlement agreement, is that correct?

MS. BENNETT: As I recall the settlement agreement for FPL, it has a minimum term of December 2009 at which point any party could bring a rate case. If they don't, it will continue.

COMMISSIONER SKOP: I don't think that was the answer to my question. I will be happy to take a break and go get the staff-provided analysis of the contract summaries -- of the settlement summaries. My understanding is that there is an Evergreen provision where FPL can go on with the deal it has now until somebody brings a rate case against it.

MS. BENNETT: That's correct.

COMMISSIONER SKOP: Okay.

MS. BENNETT: You're correct.

COMMISSIONER SKOP: I'm sorry. But the Progress -- the Progress settlement agreement does not have that same provision in it, correct?

MS. BENNETT: My recollection of the Progress settlement agreement is it is a little different. Progress can provide a notice that they want to continue past the minimum term of 2009 until June of 2010.

COMMISSIONER ARGENZIANO: And one final question, I think, to Commissioner Argenziano's point also, again, to settlement agreements. Again, the provision in the FPL agreement that is not in the Progress agreement, apparently, was all agreed to by the parties and Office of Public Counsel, is that correct?

MS. BENNETT: Both settlement agreements were agreed to by all of the parties to that docket.

COMMISSIONER SKOP: Okay. Again, I think there is some overlap. I agree with you legally there are some issues in terms of taking action in relation to an existing order of this Commission with the term and everything. But I think what Commissioner Argenziano is hitting the point home is with respect to the settlements being reached, are those in the best interest of the ratepayers, or are we giving away too much of the farm and not looking out for the consumers. So I think --

I will yield to Commissioner Argenziano, because I think she wants to say something.

CHAIRMAN CARTER: Thank you.

Commissioner Argenziano.

COMMISSIONER ARGENZIANO: Okay. To that point, I believe that I have an opinion on the stipulation, and it can be looked at at any time. And this Commission has statutory authority to ask for that at any time, as they do as a rate case. And as far as the -- just my opinion, which I will give again, that stipulation terminated a lot of the appropriate degree of review and proofmaking that this Commission could look into. And since I wasn't here when that stipulation was made, I don't feel comfortable with giving up a degree of review and proofmaking, and that was my whole point.

So we have the discretion to look into that stipulation again as well as to ask for a full-blown rate review or whatever we desire. It's just not the desire of the full Commission at this time.

CHAIRMAN CARTER: Commissioner Skop.

COMMISSIONER SKOP: Thanks, Mr. Chair. And, again, to Commissioner Argenziano's point, I thought, you know, there was a similar question. I guess I'm hearing, you know, Commissioner Argenziano's interpretation is the Commission has the authority to do that on its own volition. But what I am hearing from legal staff is legal staff is questioning that.

So, again, there is a disconnect there, because I asked what I thought to be the same question --

COMMISSIONER ARGENZIANO: Mr. Chairman, let's get that point from our counsel.

CHAIRMAN CARTER: Mr. Cooke.

MR. COOKE: Commissioner, I think the only question was whether there was an administrative finality issue that is involved in the fact that this Commission approved the stipulation by order. So there may be some additional steps that we would have to go to. In other words, there is an preexisting order that this Commission issued and it approved the stipulation. And if we want to open a rate case prior to the expiration of that term, we may need to look and assert that there are changed circumstances, et cetera. But it can be done under appropriate circumstances.

COMMISSIONER ARGENZIANO: That's all I'm saying. It has already been voted that that is not what the Commission wants to do. I made the motion to do that. My concern was hearing that it was prohibited. It is not prohibited from what I read, and from what you just said it is not.

MR. COOKE: It's not prohibited, per se. There may be some additional circumstances --

COMMISSIONER ARGENZIANO: Let's not beat a dead horse. Let's just not. Thank you. Which, by the way, is against the law.

CHAIRMAN CARTER: You can't beat a dead horse. It's against the law.

Commissioner Skop, you're recognized, sir.

COMMISSIONER SKOP: Thank you. And, again, to our General Counsel's comments and to Commissioner Argenziano's point, I think, correct me if I'm wrong, you say it is possible, but I think that your caveating that by the fact that the party to the agreement, specifically the utility, would fight tooth and nail over that in terms of protecting their legal options under that agreement, is that correct?

MR. COOKE: I can't speak for the utility and what they will do. All I'm saying is that subject to administrative finality we would have to deal with that issue. And we are almost at the end of the term as stipulated in that agreement anyway. So I can't predict the future and what a separate party might do with it.

COMMISSIONER SKOP: Thank you.

CHAIRMAN CARTER: Thank you. Commissioners, anything further?

Commissioner Skop, you're recognized.

COMMISSIONER SKOP: Thank you, Mr. Chairman. I think just based on the insightful discussion, I would make a motion to approve Option C.

CHAIRMAN CARTER: Is that within the context of the --

COMMISSIONER SKOP: I mean, Option C.

CHAIRMAN CARTER: Option C, approval of staff recommendation on the other issues?

COMMISSIONER SKOP: Yes.

CHAIRMAN CARTER: Commissioners?

COMMISSIONER EDGAR: I'll second.

CHAIRMAN CARTER: It has been moved and properly seconded that we accept the staff recommendation with the adjustment on Issue 3, I believe it is.

MR. COOKE: Commissioners, in this case it's Issue 2.

CHAIRMAN CARTER: Issue 2, which would be going to Option C. Any further debate? Hearing none. All those in favor, let it be known by the sign of aye.

CHAIRMAN CARTER: Aye.

COMMISSIONER EDGAR: Aye.

COMMISSIONER SKOP: Aye.

CHAIRMAN CARTER: All those opposed, like sign.

COMMISSIONER ARGENZIANO: Aye.

COMMISSIONER McMURRIAN: Aye.

CHAIRMAN CARTER: Show it done.

Commissioners, we are now on Item 8.

COMMISSIONER McMURRIAN: Mr. Chairman.

CHAIRMAN CARTER: Wait one second.

COMMISSIONER McMURRIAN: Just that same exception as before that I'm not --

CHAIRMAN CARTER: Yes, ma'am.

COMMISSIONER McMURRIAN: -- dissenting on --

CHAIRMAN CARTER: The same exception for you and the same exception for Commissioner Argenziano.

COMMISSIONER McMURRIAN: Thank you.

CHAIRMAN CARTER: I think the Clerk has got that.

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STATE OF FLORIDA)

: CERTIFICATE OF REPORTER

COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, 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 21ST DAY OF JULY, 2008.

JANE FAUROT, RPR
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