BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 070432-EI

IN THE MATTER OF:

PETITION FOR AUTHORITY TO USE DEFERRAL ACCOUNTING AND FOR CREATION OF A REGULATORY ASSET FOR PRUDENTLY INCURRED PRECONSTRUCTION COSTS ASSOCIATED WITH DEVELOPMENT OF CLEAN COAL PROJECT, BY FLORIDA POWER & LIGHT COMPANY.
_______________________________________/

PROCEEDINGS:	AGENDA CONFERENCE ITEM NO. 9
BEFORE:	CHAIRMAN MATTHEW M. CARTER, II COMMISSIONER LISA POLAK EDGAR COMMISSIONER KATRINA J. McMURRIAN COMMISSIONER NANCY ARGENZIANO COMMISSIONER NATHAN A. SKOP
DATE:	Tuesday, December 16, 2008
PLACE:	Betty Easley Conference Center Room 148 4075 Esplanade Way Tallahassee, Florida
REPORTED BY:	LINDA BOLES, RPR, CRR Official FPSC Reporter (850) 413-6734

PARTICIPATING:

BRIAN ANDERSON, ESQUIRE, representing Florida Power & Light Company

CHARLES J. BECK, ESQUIRE, representing the Citizens of the State of Florida.

JOHN SLEMKEWICZ and JEANETTE SICKEL, representing the Florida Public Service Commission Staff.

P R O C E E D I N G S

* * * * *

CHAIRMAN CARTER: We are back on the record and now we are on Item 9. Staff, you're recognized.

MR. SLEMKEWICZ: I'm John Slemkewicz. Item 9 is Florida Power & Light Company's petition to defer $34.5 million of preconstruction costs related to the Glades Power Park and to establish a regulatory asset. Amortization of the regulatory asset would not begin until base rates are reset. At that time the $34.5 million would be amortized to FPL's operating expenses over a five-year period. Staff is recommending that an adjusted amount of $34.1 million be deferred as a regulatory asset and be amortized over a five-year period beginning January 1, 2008. Neither FPL's request nor staff's recommendation would result in any increases to FPL's base rates or cost recovery clauses. Staff is prepared to answer any of the Commissioners' questions, and representatives of FPL and the Office of Public Counsel are also present.

CHAIRMAN CARTER: Thank you.

Mr. Anderson, good morning. Is it still morning? It's afternoon. Good afternoon.

MR. ANDERSON: Just past noon, Chairman Carter.

CHAIRMAN CARTER: Welcome.

MR. ANDERSON: Thank you very much.

CHAIRMAN CARTER: Mr. Beck, good afternoon.

MR. BECK: Good afternoon, Mr. Chairman.

CHAIRMAN CARTER: Welcome, sir.

MR. BECK: Thank you.

CHAIRMAN CARTER: You guys are just here for questions, is that -- Mr. Anderson, do you want to make a comment?

MR. ANDERSON: Yes.

CHAIRMAN CARTER: You're recognized. You are recognized.

MR. BECK: I do also.

CHAIRMAN CARTER: I'll recognize you next, Mr. Beck.

MR. ANDERSON: Thank you very much, Chairman Carter.

I wanted to take a few minutes today because we view this as a very, very significant matter, and I want to take a little bit of time to review some points with you supporting our request to begin amortization when new base rates are set.

FPL agrees with staff's recommendation with the exception of the start date for amortization of the costs associated with the canceled generating plant. I'd like to share with you why we feel the Commission's decision today is very important to FPL and from a Florida regulatory policy perspective. In doing so, I'm going to touch briefly upon factual, legal and policy reasons supporting the beginning of amortization at the time new rates are set, not 2008.

The heart of this case is that Florida Power & Light Company incurred substantial costs to develop a solid fuel power plant as directed by the Commission on numerous occasions in order to enhance fuel diversity and to decrease reliance on natural gas. Indeed, the Commission's June 2006 approval of a need determination for the first two natural gas units at West County was expressly conditioned upon FPL's agreement to bring a solid fuel project to the PSC in the near-term, and we made commitments and we met those commitments. FPL did so, and thereafter our need determination petition was denied so the project did not proceed. In each instance when we were directed first to proceed and later to stop, FPL implemented faithfully the Commission's direction and decision.

The question before the Commission today is what should be the regulatory treatment of the costs to first develop and then unwind the project? The Commission has historically addressed the start date for amortization of costs on a case-by-case basis with each case being decided on the merits. Under the circumstances at hand, good policy supports allowing FPL to defer the costs and begin amortization of costs when base rates are reset.

Because FPL, in reliance upon the Commission's direction, we took every action possible to expedite the project while at the same time minimizing contract exposures. All of those actions were reviewed by staff, the costs have been audited. The Commission, we believe, should permit amortization of $34.1 million in prudent costs identified by staff over the five-year period. We're not taking issue with the differences between the 34.5 initial, it was 34.3 actual and then staff's adjustment of 34.1. We're agreeing not to dispute that. Staff has stated correctly also that the bill impact to customers is the same whether amortization begins in 2008 or 2010 when new base rates are set. So if there's no change in impact to customers, why is the deferral to 2010 so important? It's very important for several reasons.

First, beginning amortization in 2008, this year, means FPL would be required under accounting rules to recognize an additional $14 million in expense during 2008 and 2009 without any adjustment in rates to allow for the expense. We would be required to expense immediately right now this month about $7 million. This translates directly into a $7 million decrease in this year's 2008 earnings, a bad fourth quarter surprise for FPL and investors generally at a time of an historically bad economy and with unusual skittish financial markets. This would be followed by another $7 million expense and decrease in earnings in 2009.

Beginning amortization in 2008 rather than when new rates are set has the same economic effect on FPL as if the Commission ordered a penalty or an imprudence disallowance despite our having carried forward the Commission's direction to, in the words of the Commission, move forward with the construction of the generating units as expeditiously as possible. Such result would send a strong message to Florida utilities and other stakeholders, including financial market representatives, of heightened risks of incurring costs to carry out FPSC regulatory directives. Fostering hesitance and creating disincentives to carrying out the directives is not in the public interest. In addition, creating a heightened sense of investment risk for investors, who we all need to provide capital to provide service to customers in Florida, is not in the public interest. Such a harsh, harsh and adverse financial result is not necessary. It's not required by law.

In contrast, the Commission has previously approved amortization treatment like that requested in this case. Our petition describes two FPL cases. One was with respect to Nuclear Regulatory Commission designed basis threat costs. Those were costs of about $38.3 million, which in Order Number PSC-041276-FOF-EI, Docket Number 04001-EI, December 23, 2004, the Commission authorized a deferred accounting treatment and amortization over a five-year period beginning January 1, 2006, when new base rates are set. Same type of treatment we're seeking here.

Previously the Commission authorized deferred accounting treatment for costs associated with the Martin Unit 1 reservoir repairs and also Turkey Point steam generator work and amortized those with an effective date of new base rates in a general rate proceeding, again, with a four-year, with a five-year period. That was your Order Number 16907. The Docket Number is 850782-EI and 850783-EI issued December 2, 1986.

We also reviewed staff's recommendation which cites a Florida Power Corporation now Progress Energy case. That case is not like this case. That involved canceled transmission line costs from a Progress Energy case where Progress Energy proposed the case and determined that because of increased costs and litigation they determined to cancel that project. They also asked for a different accounting treatment than we asked for. They asked for accounting treatment to begin amortization around the time of the Commission's order implementing accounting. That's different. This is a circumstance again in the first case where we clearly carried out the Commission's policy direction, reversed course when we're required to do so, and in addition we're seeking a different accounting treatment which is within your discretion to grant of a type that's been granted by the Commission before.

FPL's requested treatment we feel is fair. In approving the beginning of amortization requested by FPL, the Commission will provide appropriate signals to utilities that the pursuit of new resource options, particularly those that promote fuel diversity, is encouraged by this Commission and that the recovery of costs incurred in the course of those efforts will not hinge on whether a specific resource decision is ultimately adopted. Granting FPL's requested treatment will also be received by the investment community providing Florida utilities capital as consistent with this Commission's continued commitment to a constructive regulatory policy. Such a decision in this current adverse and uncertain financial climate serves the public interest.

For all these reasons, and I am available to answer any questions you have, we ardently request the Commission grant our request that amortization begin when new rates are set. Thank you.

CHAIRMAN CARTER: Commissioner McMurrian -- I'll get back to you, Mr. Beck. Commissioner McMurrian.

COMMISSIONER McMURRIAN: Yes. I just wanted to ask Mr. Anderson, did you bring copies of the precedent you're talking about, these cases?

MR. ANDERSON: Yes. I have copies of all those cases that we've cited here.

COMMISSIONER McMURRIAN: I'd like to see them at some point.

MR. ANDERSON: Yes. We will ensure those are put into your hands, and I do have those here.

COMMISSIONER McMURRIAN: Okay.

CHAIRMAN CARTER: Okay. Mr. Beck.

MR. BECK: Thank you, Mr. Chairman, and good afternoon, Commissioners, again.

Commissioners, at your June 5th, 2007, agenda conference the Commission by unanimous vote denied FPL's petition for a certificate of need to build its proposed Glades coal plant. Page 2 of the staff recommendation contains the reasoning used by the Commission in that decision, and that is succinctly that FPL failed to demonstrate that the proposed plants are the most cost-effective alternative available, and then it goes on from there.

I believe the issue in front of you is whether you will require Florida Power & Light to follow existing generally accepted accounting principles and record the cost of Glades in 2007 or whether you should allow them to shift the costs into the future to be recovered in the upcoming rate case which FPL intends to file in the next few months.

Now Mr. Slemkewicz correctly stated that staff's recommendation doesn't affect customer rates at this moment. It will not affect base rates. FPL is under an agreement where it cannot increase base rates through the end of 2009. But if you create the regulatory asset as proposed by staff, the effect will be a permanent increase in base rates of approximately $6.8 million per year.

Now I passed out ahead of time a forwarding letter and the first page from Florida Power & Light's surveillance report for 2007, and in that you'll see that the cover letter states that their return on common equity was 11.96 with a pro forma for revenue normalization.

If you turn to the second page, in Item IV, Item G, it says their FPSC adjusted return on common equity was 11.92. Now I believe these numbers do not include the Glades costs in them. FPL filed their surveillance report assuming that you, that they wouldn't recognize those costs even though generally accepted accounting principles requires them to do that. Had the Glades costs been included, the PSC adjusted earnings would have been 11.61, 31 basis points lower than what's indicated in the surveillance report.

So this is the issue: Are you going to increase Florida Power & Light's earnings during 2007 from what should have been 11.61 to 11.92 by creating and amortizing a regulatory asset that will lead to an additional permanent rate increase of $6.8 million per year in FPL's upcoming rate case? There's no reason to do this. The 11.61 return on equity is extremely healthy, an extremely generous return on equity if you have them recognize the costs when they were realized. Mr. Anderson described this as harsh treatment. I beg to differ. It's not harsh treatment to have the company follow GAAP and record the costs when they're incurred. This treatment would be consistent with the settlement agreement in place which freezes FPL's base rates during the term of the agreement. FPL doesn't have an authorized return on equity range as do other companies. Under your agreement they're exempt from that, and that means you take the good with the bad and the bad with the good. And if they have costs during 2007, then they ought to recognize them.

Staff cites the Lake Tarpon case and Mr. Anderson, you know, touched on that. In that case there is an issue of costs for transmission lines that the company didn't pursue for, for cost reasons. In that case the Commission agreed to amortize those costs and it reduced the impact on their earnings from 94 basis points to 24 basis points. The order doesn't say a whole lot, but it's clear that the Commission was, wanted to amortize the costs over four years so the effect on their earnings would be 24 basis points rather than 94. Here the full impact of the earnings, of an adjustment would be 31 basis points, which makes this case much more close to what the Commission actually accomplished in the Lake Tarpon case.

So in conclusion, we simply see no reason for you to increase their earnings from 11.61 to 11.92 return on equity. The Commission should not create an exception from generally accepted accounting principles because that's what Florida Power & Light has proposed. They should recognize the loss when it's realized instead of shifting those costs onto future ratepayers, which will surely happen if you approve the staff recommendation. Thank you.

CHAIRMAN CARTER: Commissioner Argenziano.

COMMISSIONER ARGENZIANO: Thank you, Mr. Chair.

In this case, I tend to disagree with OPC. This is one where I just feel there's a matter of fairness. I'm going to need a longer neck or a higher chair.

I just, I do disagree. And with respect to ROE, that's something I've mentioned before and something that will be looked at, I think, in the future with all the companies, at least I hope to take a look at that, and it is a point well-taken.

But when -- and before, previous to the denial in 2007 this Commission indicated to the company go forward and do this, and I just find it really difficult to -- I think it is a penalization, penalty on the company after we told them move forward and then there's a shift in what the state policy is and what we need to do. So I don't think it's fair. And I think that to, to penalize them for that at this point is probably wrong, and especially due to the current state of affairs of the economy and I'm looking at the bigger picture.

So with all due respect to OPC -- and I understand, as I say, the ROE issue is one of great concern to me. I just don't see this as the place to take advantage of that at this point. And so I just want to express that and basically say that I don't even agree with the staff position at this point.

I think the company is due that 2010 when the, when the rate base is decided. I think that's the only fair approach in trying to live up to my fairness, whether it's to the consumers or the company. I think in this case the company has a point well-taken.

MR. BECK: Commissioner, may I respond?

CHAIRMAN CARTER: You're recognized.

MR. BECK: I understand what you're saying. We don't view it as penalizing the company. They will have recovered those costs. In other words, they'll have earned 11.61 return on equity if you require them to recognize the costs involved, generally accepted accounting principles. So I understand our disagreement, but from my view they have recovered it and they will have recovered it. It's not penalizing them. We differ.

CHAIRMAN CARTER: Okay. Commissioner Edgar. Commissioner Edgar.

COMMISSIONER EDGAR: Thank you, Mr. Chairman. A couple of brief comments and then I think I have a question to follow that up.

First off, I think I take issue or have a different recollection of a few of the comments that Mr. Anderson made on this point, which is I vote here as a Commissioner and voted on the West County plants, and I still believe that that was the right decision and I remember discussion at the time. And I think Commissioner McMurrian and Commissioner Carter were with us at that point in time.

I fully recognize and believe that this Commission and other entities in this state had been looking and continue to look at ways to diversify our fuel portfolio and that that was the case at that time, prior to that time and since that time. However, I don't remember in that order this Commission ordering FPL to bring forward a solid fuel plant. I remember there being some discussion from one Commissioner, but I do, I don't recollect language in the order and I thought that's what I heard you say. So that's -- let me finish. Just that, that's an important point to me. And if I'm incorrect, I welcome to be corrected.

But, again, I do recognize the desire for fuel diversity and discussions and probably more general direction to all of our utilities and other interested parties to look for ways to diversify our fuel. And similar to Commissioner Argenziano, it is because of those policy decisions and discussions in the past and at the present that I am comfortable with, for me, making a decision today to amortize the costs over a period of time. And I, I do think that that is an appropriate accounting treatment and recognition of the policy again at the time and currently. So I just wanted to make that comment.

My question then briefly is I am still --

CHAIRMAN CARTER: Do you want to give Mr. Anderson an opportunity to --

COMMISSIONER EDGAR: No, I don't.

CHAIRMAN CARTER: Okay.

COMMISSIONER EDGAR: But thank you for asking. My question is --

CHAIRMAN CARTER: The rule of thumb.

(Laughter.)

COMMISSIONER EDGAR: I already know what I think and I just told you, so. But my question is I'm trying to, and I recognize the comments that my colleague made, I am still trying to understand the policy reasons, if indeed we amortize, which I am in favor of, between a 2008 and a 2010. And so this I would pose to Mr. Anderson and anybody else, if you could help me perhaps understand and give me a compelling reason from a policy basis why 2010 is better than 2008, I would like to understand that a little bit better.

MR. ANDERSON: Thank you, Commissioner Edgar. Chairman Carter, may I respond to Commissioner Edgar's points and then also address briefly some legal support for something I heard Commissioner Argenziano say and also respond to Mr. Beck?

CHAIRMAN CARTER: Mr. Anderson, you may proceed.

MR. ANDERSON: Okay. Thank you. First, with respect to the particular orders that we talked about, there are two important orders. One was the West County 1 and 2 order. That case is a case where one of the elements in the Commission's approval was our stipulation that we would bring you the Bid Rule exemption in that type of case and there's discussion of that in that order.

Probably the most direct language, just remembering together, was actually in the Bid Rule exemption order which is where the Commission's order actually included the words that FPL should move forward with construction of generating units as expeditiously as possible, which going to the point that you raised about regulatory policy and why 2010 is much, much better than 2008, put ourselves back at the time when we were all working together, we were marching towards trying to implement fuel diversity as fast as we could at a time when the markets for the construction equipment, for the generating equipment and all those things were going up very fast. And in order to bring you a project consistent with that direction, proceed as expeditiously as possible, we do what we do with this Commission is we take that direction. We spent -- we went forward. We didn't wait until we had a need order, we didn't wait until we had an SCA determination. If we had done that, there's no way we could have delivered that project, or if we did that in other cases, deliver other projects on a timely basis. So from a regulatory policy perspective we followed that direction, we spent money to be able to control costs very effectively and your audit shows that and to meet schedule.

And the challenge presented is that if a 2008 amortization schedule begins, the effect to our company will be as if a good chunk, 40 percent of those costs, were to be found imprudent. We would be required to write off about $14 million of the about $35 million of money we spent to put the, put the Commission and the state in the position of being able to proceed if that was ultimately your choice. So that, that's the heart of it.

Now translated one step further as we think about investor interests and customer interests, we all know what's going on in the financial markets, we all read the paper. And bad bumps in earnings we all know cause people to be more uncertain about what to expect from our company or other companies. And comparatively speaking, things which are consistent with, you know, the traditional constructive regulatory approach that Florida has been applauded for where there's a reasonable expectation that utilities will be treated fairly, that kind of has a soothing and calming effect comparatively. And we need that, all of us, as we compete for capital to construct the projects and things that we need to serve customers. So it's not just us, though we are terrifically concerned for ourselves here, no bones about it. It's fourth quarter. This would be very, very bad for us.

But in the greater scheme of things, you know, the rating industries, Standard & Poor's, Moody's, they watch on a company-by-company, matter-by-matter basis. You know, when your NCR order was issued there were special bulletins issued by the different rating agencies. And so the signals that are set and received are terrifically important. And when we talk about regulatory policy, in that respect that's what I'm discussing in addition to the important fairness points.

I'd like to now turn very briefly to some points that were, were raised by Mr. Beck also. Take two steps back. We are in a rate freeze period. We agreed and we did freeze our base rates through the end of a considerable period, and one of the basic arrangements there is that we're not regulated on what our specific return on equity is. So a return on equity comparison looking back a couple of years is not even relevant or should not be relevant to this discussion. Moreover, think about this. What we're hearing from Mr. Beck is not only arguments about when you start the amortization date; listening to him, he's concerned with the idea of even creating a regulatory asset.

In any event, if you go back to 2007 and any changes at that time, we're not just talking about a fourth quarter bad earnings surprise, we're talking about a restatement of financial statements of Florida Power & Light Company, which is a most, most uncommon thing.

So, again, those suggestions and directions are not at all consistent with the rate agreement we've all been abiding by, it's not consistent with the fact that ROE and earnings tests are not part of the, that, that conversation and thought during that term. And, you know, it would be an even bigger financial community impact, and that's really the sum of my points there.

CHAIRMAN CARTER: Commissioner Skop and then Commissioner McMurrian.

COMMISSIONER SKOP: Thank you, Mr. Chairman. I guess I share for the most part the views expressed by Commissioner Argenziano, I differ a little bit for some reasons that I'll articulate, and I do disagree somewhat with some of the comments that Mr. Anderson just made and I'll try and elaborate on that.

But going back to the need determination itself, the proposed Glades project was well engineered and well planned using proven technology. But the record evidence, however, showed that the project was not the most cost-effective alternative and the need was accordingly denied. I think that if we look at the record during the need determination proceeding itself, I think that in the interest of fairness I actually suggested that FPL should be permitted to recover the preconstruction costs associated with bringing the need determination forward.

I also acknowledge, as Commissioner Argenziano has pointed out and I think Commissioner Edgar somewhat touched upon but took some exception, I do acknowledge the direction, not the order, but the direction that the Commission previously gave to FPL and view that somewhat in favor of FPL. I tend to disagree with Mr. Beck's position for that sole point alone, that the Commission had some hand in this providing some affirmative direction to the company. So, again, the, the remedy of just requiring them to expense it in whole to me seems somewhat extreme. I think the most cost-effective thing to do would be write a check in the full amount, but again that would violate the terms of the settlement agreement.

But I guess the problem I'm struggling with, as Commissioner Edgar pointed out, is, is the notion of how do you amortize the regulatory asset appropriately? And to that point what FPL is proposing seeks to start amortizing the asset in 2010 after the rate case. Once the amortization is fully completed, that's fine, the regulatory asset no longer exists. But from an accounting perspective that's the amortization.

The revenue requirement reality is a different story. And by putting it in the rate base in its totality, and this is the policy issue that I think Commissioner Edgar spoke to, is that it's there until the next rate case. The amortization of the amounts incrementally doesn't affect what's being collected and retained by the company. And I think that if we were to look at the staff handout, I think that was given to each of the Commissioners, it summarizes, I think, in some part -- some of it is confusing so I'll speak to the easy part at the bottom, but it articulates the estimated rate case annual revenue requirements by the FPL request per the staff recommendation in terms of starting the, the amortization in 2008 and the difference between those numbers. And the annual revenue impact between doing it in staff's methodology and FPL's methodology is a difference of almost $1.7 million extra a year that consumers would be paying. Again, I'm trying to be very fair to FPL. But essentially I think what FPL seeks to do is to maximize the opportunity to itself to put the money in the rate base in its totality to increase the rate base.

Now this differs, and I think staff could probably elaborate upon this a little bit further, but this is, this would be different than a water and wastewater case where the rate case expenses are amortized over four years and then you have a subsequent rate decrease. That's not happening here and I think that's an important consideration. Because if we have a rate case and we do what FPL suggests, and, again, I'm trying to be very fair here, but FPL does not come in for a rate case for seven or eight years, the money that's the $34 million is more than recovered multiple fold because, again, it's incorporated in full into the rate base. It's not going away, the amortization doesn't do anything to it. You're collecting on the basis of that rate base at the time the rates were fixed until the next rate case, and I think staff pointed that out a little bit, kind of fleshed it out.

But I guess my, my concern is in the interest of fairness, without trying to, to penalize FPL but to recognize again that the Commission did put forth some direction which moved them in the direction they took and being fair, I tend to support the staff recommendation, primary staff recommendation for the following reason. First, it seems to be consistent with past Commission precedent. Secondly, I think, as Mr. Beck pointed out, it's consistent with generally accepted accounting practice to the extent that the event giving rise to the creation of the regulatory asset occurred in 2007. And this issue has been lingering around for quite some time now. But, again, starting the amortization in 2008, yes, it does reduce the principal amount by $14 million. But the residual of that amount is going into the rate base and they will recover on that amount until such time as rates are changed again. And I can't say for certainty whether that be three years, five years or 15 years, getting to some of the same rationale that Commissioner Argenziano has previously brought up about the length of having a full-blown rate case. But once you put something in base rates, it's there. You're recovering on it until such time. And the difference between what they're recovering versus doing it staff's way and FPL's way is about $1.7 million extra a year. So to me that's a concern. It gives me some pause. Again, I could, I could look at it different, different ways, but I tend to generally support the staff recommendation.

I do have one question on Page 6. And, Mr. Chair, I could defer it or I can -- let me just do it now since I have it, and I'll be happy to listen to my colleagues. But on Page 6 of the staff recommendation -- and I do appreciate that FPL moved forward with the project. Again, I thought it was well-engineered and well-managed and well-planned. But with respect to the, the major equipment contract termination costs for the turbine generator, you know, sometimes industry practice is if you have a cancellation in the midst of preliminary design before you go into full-scale manufacture, sometimes it's possible, as I think came up in the issue of the what if of the nuclear need determination on that advanced payment for long-lead forgings, what happens if you shift gears? Can you move that payment somewhere else?

So I guess I'd like to hear from FPL and staff with respect to looking at whether the turbine generation contract termination costs, whether any -- was that solely termination costs or could that money be, you know, used or was it used for other projects that have been in the Ten-Year Site Plan or development through a workout solution with the, with the turbine vendor? I don't know much about it and I don't know if staff looked at it. But, you know, certainly an assurance by FPL would be helpful there also.

CHAIRMAN CARTER: Are you asking staff, Commissioner, or are you asking --

COMMISSIONER SKOP: Both. Both. So staff and then FPL.

CHAIRMAN CARTER: Staff, you're recognized. Then we'll come to you, Mr. Anderson.

MR. ANDERSON: Thank you.

MS. SICKEL: I'm Jeanette Sickel with staff.

Commissioners, the auditors did provide us with documents relating to negotiations on various pieces of equipment. There were some negotiations about these turbine generator components and allowances. There was nothing that I saw which indicated that the company had omitted or failed to pursue an opportunity. I think the company created opportunities to negotiate in a forward-looking manner, and this information and the details of it we did not include in our recommendation. My impression is that there was a very positive effort on the part of the company.

CHAIRMAN CARTER: Thank you.

Mr. Anderson.

MR. ANDERSON: Thank you. First, with respect to Commissioner Skop's points about accounting. With all respect, it is this Commission which through its orders establishes what is considered to be generally accepted accounting principles for a utility. So it's clearly within the Commission's discretion to do as we've asked in this case.

I have with me today Mr. Bill Yeager, who is our vice president of engineering and construction. And I'm just going to give my recollection of the net result of the negotiations and I'll only ask him to come up if I get this wrong, which is quite possible. I'm sorry.

But, you know, taking a couple of steps back, at the time that the project needed to be wound up, the company under Mr. Yeager's direction went and, you know, negotiated the best possible termination arrangement that it could, and I think there are puts and takes and this and that. Bottom line, my recollection is that it resulted in a change in the, that is beneficial to customers on other projects actually, specifically on the West County units because some of the same vendors were involved. For example, we were able to renegotiate the payment schedule such that AFUDC on the West County units is reduced to customers' benefit by about $500,000. I also recall that there's about a $250,000 contract cost reduction benefit for a net benefit -- was it 750 -- of $750,000 to customers on that West County project. And, you know, thinking because you've got transactions going with the company and both things, one is being terminated, what we look for is to get as much value for customers in the context of that and that's what we did.

Does that answer your question, Commissioner?

COMMISSIONER SKOP: Yes, Mr. Chair. And thank you, Mr. Anderson. I appreciate that. That's exactly to the point, again, leveraging those opportunities.

MR. ANDERSON: Yes, sir.

COMMISSIONER SKOP: Again, my question was defined specifically to the turbine generator which probably is a large frame turbine based on the plant design, but just solely because the other equipment would have been so specialized around a coal plant that, you know, it's pretty much sunk costs; whereas, the turbine generator, say, for instance, GE was doing it and you had a cancellation on a large frame, you might be able to leverage some value on combined cycle combustion turbines, which I think that hearing some of the representations from the company they sought to do. So that addresses my question.

Again, the only concern I have again would be, in the interest of fairness would be, again, the amortization timing that Commissioner Edgar alluded to. Again, I seek to want to be extremely fair to FPL based on the circumstances. But, again, timing matters and when that amortization starts. And, again, FPL I think is, is, if we're looking at a spectrum, certainly OPC has recommended, you know, that they expense it. I would think from what I've heard FPL is advocating that they put the full amount in rate base and I think staff is somewhere in the middle. And there are cost ramifications, real cost impact ramifications associated with that as well as benefits to the company. And, again, if I were the company, I would seek to maximize my benefit. But, again, the amounts in question and the uncertainty of if they're put into rate base and how long will it be to the next rate case again gives me a little bit of concern because the annual impact is a $1.7 million recovery difference between what staff has recommended and what the company is asking for. And I think that that's something worthy of vetting, as Commissioner Edgar has raised. Thank you.

CHAIRMAN CARTER: Thank you.

Commissioner McMurrian.

COMMISSIONER McMURRIAN: Thank you, Chairman. And we've touched on a lot of the things that I -- you know, I think that I'll probably touch on them again too. I guess to start with we've talked a lot about the Commission's prior guidance, suggestions, urging in prior cases and things, and we talked a lot about the West County with the exchange between Commissioner Edgar and Mr. Anderson. And I actually can't remember if I was a Commissioner yet. I don't believe I was. But I believe I was in the room when we had the discussion and I definitely recall some of that.

But I also recall a couple of other things, and I think we asked them to do a coal study. In the Ten-Year Site Plan reports I seem to remember a lot of emphasis on the need for fuel diversity and suggesting that utilities, not just FPL, but utilities look at solid fuel options, and I can't remember where exactly Mr. Anderson was quoting on the expeditiously as possible. But anyway I remember at the time there were a lot of things going on and it was over, I guess, probably several months that this was going on and remember it well.

FPL in my opinion did what any prudent regulated utility in its shoes would have done, and they brought us a coal plant because -- and I say us. It's the Commission going backwards. I think with all that urging that they did what we were asking them to do. And to me, I agree with Commissioner Argenziano that to now deny recovery of those prudent preconstruction costs in order to deliver what the Commission was asking for would be unfair. And I think, and I think this has come out too that FPL has demonstrated that the majority of the preconstruction costs were incurred in order to ensure that if it were approved, and, of course, it was not, but if it were approved, the coal plant would have been built in the most cost-effective manner to benefit the ratepayers. And, of course, all those things matter.

The other thing, the precedent that we've talked about -- and, Mr. Anderson, I still haven't seen those orders.

MR. ANDERSON: I'm sorry. I'm getting them out of my book right now. I have them right here.

COMMISSIONER McMURRIAN: But, but I did look at the

Progress case that staff referenced in theirs and it seems likes it's a little different at least in one area to me that in that case it was the company's decision to pull back on that transmission line. And I don't remember all the circumstances, but at least to me that's a significant difference; whereas, in this case we urged or the Commission urged over that period of time I talked about earlier that the utility go down that road. And so to me that, that makes it different. And so I don't believe that we're bound to follow that precedent exactly whenever those circumstances vary in my opinion materially and they call for more, in this situation I think calls for more equitable regulatory treatment.

So that's -- I agree with Commissioner Argenziano. I think that, you know, in this case that the amortization beginning in 2010 is called for, given all those circumstances that we did not have in the, in the precedent that staff was trying to follow. And I understand where they're coming from, I understand where Mr. Beck and Commissioner Skop as well are coming from, but I think in this case it calls for beginning the amortization in 2010.

CHAIRMAN CARTER: Thank you, Commissioner McMurrian. And, Commissioner, so I won't bore y'all, I'll adopt Commissioner McMurrian's statements and kind of pick up on what Commissioner Argenziano said. It's the fairness issue. I do remember voting at the determination of need for the coal plants, and the whole perspective today is, is the treatment of the amortization schedule.

I do know that when we went through the storm cost recovery we talked about going to the capital markets and allowing the companies to be able to borrow money. And I do recognize, as we all do, about the current state of affairs financially in this country. And a lot of what we're talking about as we go forward with renewables and other kind of processes like that and asking plants and companies to do certain things, there is -- in fact, I saw something just yesterday where even after the government had loaned money to the banks to help the people with their mortgage problems they weren't loaning any money to help people do that. So I think that in the context of allowing the company to amortize this beginning in 2010 is the proper things to do. It's the fair thing to do, and it will send a message that when, when we say that we are the leader in the nation, that we are financially looking at a way to, to create an environment for businesses to fundamentally stay in business so we can keep the lights on. But secondly is that to provide continued low cost, reasonable cost, safe cost to our consumers we need to do this.

And I think that in this case here based upon the fact that the company is asking -- they're due the money. Staff is not saying they're not due the money. It's a question of the amortization schedule. And I think that the company probably, particularly in this economic climate that we're in, they know far better in terms of the response because they have to go to the capital markets every day. They know far better about how to amortize this than anyone else not similarly situated. But I do think in the context of fairness, and going back, just trying to be real simple, like Commissioner Argenziano says, simpleness and fairness, is that I think the company is entitled to recover this and to recover it based upon the 2010 time frame. Commissioner Argenziano.

COMMISSIONER ARGENZIANO: Thank you, Mr. Chair.

I just want to let Commissioner Skop know that some, I believe some of what he said factually may be correct, I'm just not sure that I'm persuaded to your position and that I'm not sure that it's good policy at this point not to -- and certainly isn't, and isn't a good message to send to investors I think in the state of current affairs with our economy. I just think it is also a fairness issue.

So with that, Mr. Chairman, I do move to deny staff's recommendation and move to begin the amortization in 2010, unless I'm forgetting anything else in that motion. That's just how I feel at this point. I understand the other parties and I understand what they're trying to do. I just don't think in a fairness issue that I could do it any other way.

CHAIRMAN CARTER: Commissioner Edgar.

COMMISSIONER EDGAR: Thank you. Mr. Chairman, if I may, with the clarification for my own understanding from Commissioner Argenziano's motion, my understanding is that that would be agreeing with the staff recommendation on Issue 1 and on Issue 2, but a change to Issue 3 for the amortization date from January 1, 2008, to January 8, 2010.

COMMISSIONER ARGENZIANO: 2010.

COMMISSIONER EDGAR: And, of course, then to close the docket after everything happens that needs to happen. And with that understanding I would second the motion.

CHAIRMAN CARTER: Thank you. It's been moved and properly second. We've got a question. Commissioner Skop.

COMMISSIONER SKOP: I guess I've heard the discussion. It could go either way. It again seems that the majority has, has spoken in terms of the policy reasons to consider FPL's position. Again, my interest is one of that in being fair. There's many ways to achieve the same result.

Again, I was just trying to articulate the, the cost impact, although, you know, not substantial but there is some. But, again, from a policy perspective, again, I think I can be persuaded to the majority's side. So in light of the concerns I raised, I think I would have probably seconded the motion. But, again, I thought it was important to raise the concern, but it's equally important to build consensus, so.

CHAIRMAN CARTER: Thank you. Any further debate, comments, questions?

COMMISSIONER EDGAR: Mr. Chairman.

CHAIRMAN CARTER: Commissioner Edgar.

COMMISSIONER EDGAR: Just a brief question, thank you, as a follow-up to that. I think the discussion here has been very helpful to me as to the accounting treatment. Again, after reviewing the information, when I walked in today I was comfortable in my mind with amortizing for all of the reasons that have been discussed. I was not clear as to the date and I was looking forward to the discussion and the clarification that we've had from everybody who has participated. So I thank one and all because that was very helpful to me. And whenever you're ready, I'm ready to vote.

CHAIRMAN CARTER: Any further debate? Any further comments? Hearing none, all those in favor, let it be known by the sign of aye.

(Unanimous affirmative vote.)

All those opposed, like sign. Show it done.

(Agenda Item 9 concluded.)

* * * * *

STATE OF FLORIDA)
: CERTIFICATE OF REPORTER
COUNTY OF LEON)

I, LINDA BOLES, RPR, CRR, Official Commission Reporter, 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' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 19th day of December, 2008.

Linda Boles

LINDA BOLES, RPR, CRR
FPSC Official Commission Reporter
(850) 413-6734

P.O. Box 029100, Miami, FL 33102

FPL

070432-EI

Parties/Staff Handout
Internal Affairs/Agenda
on 12/16/08
Item No. 9

February 13, 2008

Mr. John Slemkewicz
Public Utilities Supervisor of Electric and Gas Accounting
Division of Auditing and Financial Analysis
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Dear Mr. Slemkewicz,

Re: Rate of Return Report

Enclosed is a copy of Florida Power & Light Company's (Company) Rate of Return Surveillance Report to the Florida Public Service Commission for December 2007. This report was prepared using a thirteen month average and year-end rate base and adjustments consistent with Docket No. 830465-EI, Order Nos. 13537 and 13948; Docket No. 001148-EI, Order No. PSC-02-0501-AS-EI; Docket No. 050045-EI, Order No. PSC-05-0902-AS-EI. The required rate of return was calculated using the return on common equity as authorized in Docket No. 050045-EI, Order No. PSC-05-0902-AS-EI.

This report also includes certain pro forma adjustments to net operating income which reflect the annual effect of known future events. The pro forma return on common equity is 11.96% and includes the following adjustments:

- Revenue normalization due to abnormal weather conditions.

This report was prepared consistent with the guidelines provided in Commission Form PSC/AFA 14.

Very truly yours,

H. Antonio Cuba

H. Antonio Cuba
Director Regulatory
and Tax Accounting
DLB:TTK

Enclosures
Copy: B. D. Smith, Office of Public Counsel

FLORIDA POWER & LIGHT COMPANY
AND SUBSIDIARIES
EARNINGS SURVEILLANCE REPORT SUMMARY
DECEMBER, 2007

	ACTUAL PER BOOKS	FPSC ADJUSTMENTS	FPSC ADJUSTED	PRO FORMA ADJUSTMENTS	PRO FORMA ADJUSTED
I. AVERAGE RATE OF RETURN (JURISDICTIONAL)					
NET OPERATING INCOME	$ 1,151,885,779 (A)	(77,678,062) (B)	1,074,207,717	2,848,147	$ 1,077,055,864
RATE BASE	$ 13,126,661,612	727,987,676	13,854,649,288	0	$ 13,854,649,288
AVERAGE RATE OF RETURN	8.78%		7.75%		7.77%
II. YEAR END RATE OF RETURN (JURISDICTIONAL)					
NET OPERATING INCOME	$ 1,151,885,779 (A)	(68,452,789) (B)	1,083,432,990	2,848,147	$ 1,086,281,137
RATE BASE	$ 13,824,610,598	592,350,422	14,416,961,019	0	$ 14,416,961,019
YEAR END RATE OF RETURN	8.33%		7.51%		7.53%

(A) INCLUDES AFUDC EARNINGS (B) INCLUDES REVERSAL OF AFUDC EARNINGS

III. REQUIRED RATES OF RETURN AVERAGE CAPITAL STRUCTURE (FPSC ADJUSTED BASIS)

LOW	7.18%	
MIDPOINT	7.67%	
HIGH	8.16%	

IV. FINANCIAL INTEGRITY INDICATORS

A. TIMES INTEREST EARNED WITH AFUDC	5.16	(SYSTEM PER BOOKS BASIS)
B. TIMES INTEREST EARNED WITHOUT AFUDC	5.04	(SYSTEM PER BOOKS BASIS)
C. AFUDC AS PER CENT OF NET INCOME	3.71%	(SYSTEM PER BOOKS BASIS)
D. PERCENT OF CONSTRUCTION GENERATED INTERNALLY	43.03%	(SYSTEM PER BOOKS BASIS)
E. LTD TO TOTAL INVESTOR FUNDS	35.65%	(FPSC ADJUSTED BASIS)
F. STD TO TOTAL INVESTOR FUNDS	3.27%	(FPSC ADJUSTED BASIS)
G. RETURN ON COMMON EQUITY (AVERAGE)	11.92%	(FPSC ADJUSTED)
H. RETURN ON COMMON EQUITY	11.96%	(PROFORMA ADJUSTED)

NOTE: THIS REPORT HAS BEEN PREPARED USING A THIRTEEN MONTH AVERAGE AND END OF PERIOD RATE BASE AND ADJUSTMENTS CONSISTENT WITH DOCKET NO. 830465-EI, ORDER NOS. 13537 AND 13948 AND DOCKET NO. 001148-EI, ORDER NO. PSC-02-05-01-AS-EI AND DOCKET NO. 050045-EI, ORDER NO. PSC-05-0902-S-EI. THIS REPORT DOES NOT NECESSARILY REPRESENT THE OPINION OF THE COMPANY AS TO THE ACTUAL EARNED RATE OF RETURN FOR THE PERIOD COVERED.

I AM AWARE THAT SECTION 837.06, FLORIDA STATUES, PROVIDES:
WHOEVER KNOWINGLY MAKES A FALSE STATEMENT IN WRITING WITH THE INTENT TO MISLEAD A PUBLIC SERVANT IN THE PERFORMANCE OF HIS OFFICIAL DUTY SHALL BE GUILTY OF A MISDEMEANOR OF THE SECOND DEGREE, PUNISHABLE AS PROVIDED IN S. 775.082, S. 775.083, OR S. 775.084.

for K. M. DAVIS
(VICE PRESIDENT AND CONTROLLER)

(SIGNATURE)

2/13/08
(DATE)