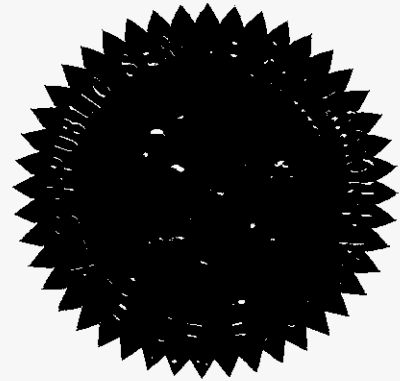


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

UNDOCKETED

FPL SUSPENSION OF CAPE CANAVERAL
AND RIVIERA BEACH CONVERSION
PROJECTS.



PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 17

COMMISSIONERS
PARTICIPATING: CHAIRMAN NANCY ARGENZIANO
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER NATHAN A. SKOP
COMMISSIONER DAVID E. KLEMENT
COMMISSIONER BEN A. "STEVE" STEVENS III

DATE: Tuesday, March 2, 2010

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

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

DOCUMENT NUMBER-DATE

01981 MAR 22 09

FPSC-COMMISSIONER

P R O C E E D I N G S

1
2 **CHAIRMAN ARGENZIANO:** Okay. If everyone
3 takes their seats, we'll resume. And what we will do
4 is, Commissioner Skop, we will go to you, and staff is
5 not ready yet on Issue 9, to go back to Issue 9. So if
6 we get done before staff is ready, we'll just have to
7 either take a lunch or a break, whatever the Commission
8 decides to do. And, Marshall, if you will let me know.
9 I know they need some time, so we can give them the
10 time they need.

11 Okay. Commissioner Skop, you're recognized.

12 **COMMISSIONER SKOP:** Thank you, Madam
13 Chairman.

14 Commissioners, this is a separate and
15 distinct procedural matter regarding the FPL
16 suspension of the Cape Canaveral and Riviera Beach
17 conversion projects. Specifically, Commission staff
18 will be requested to prepare a Proposed Agency Action,
19 PAA recommendation for consideration at the March 16th
20 agenda conference.

21 Prior to moving forward, I wish to strongly
22 emphasize that this procedural request is not related
23 to nor should it be construed to be related to any
24 docketed matter currently pending before the
25 Commission.

1 On January 20th, 2010, FPL Group made a Form
2 AK filing with the Securities and Exchange Commission
3 formally stating in pertinent part that FPL had
4 suspended modification of the Cape Canaveral and
5 Riviera Beach power plants. More importantly, during
6 the three weeks subsequent to this SEC filing, on
7 January 26th, 2010, FPL reported healthy fourth
8 quarter earnings of \$168 million and full year
9 earnings of \$831 million.

10 On February 3rd, 2010, FPL raised half a
11 billion dollars in cash at a favorable long-term
12 interest rate of 5.69 percent. And most recently,
13 after the close of business on Friday, February 12th,
14 FPL Group quietly raised its quarterly dividend nearly
15 6 percent with little fanfare.

16 Two brief observations regarding the
17 dividend increase. First, the last that a company
18 would do if it really thought it had a cash flow
19 problem would be to raise its dividend, particularly
20 in this economic environment. After all, this is the
21 worst recession that our country has faced since the
22 Great Depression.

23 Second, publicly traded companies always
24 brag when they raise their dividend. That didn't
25 happen in this case. In fact, the press release never

1 mentioned the fact that the dividend increased. You
2 had to do the math yourself to figure it out.

3 In view of the aforementioned, it is
4 difficult to understand exactly why FPL has not yet
5 reinstated the Cape Canaveral and Riviera Beach
6 conversion projects. In summary, FPL's actions appear
7 to be inconsistent with its representations.

8 Based on the above, one has to wonder
9 whether it is fair, just, and reasonable for FPL
10 ratepayers to continue to incur AFUDC carrying costs
11 for the Cape Canaveral and Riviera Beach projects that
12 FPL unilaterally suspended. Accordingly, in the
13 interest of FPL ratepayers, I am formally requesting
14 Commission staff to assess whether it would be
15 appropriate for the Commission to immediately suspend
16 the AFUDC accruals for the Cape Canaveral and Riviera
17 Beach projects from the date of the FPL suspension
18 until such time as FPL reinstates these projects.
19 Commission staff is further requested to present their
20 recommendation as a proposed agency action, PAA, for
21 consideration at the March 16th agenda conference. I
22 would assume this would be a late-filed recommendation
23 given the time crunch involved but, again, it should
24 be doable.

25 Furthermore, the Commission order for the

1 Cape Canaveral and Riviera Beach need determinations
2 specifically required the reporting of annual costs,
3 and in that order, annual reporting of costs, FPL has
4 agreed that it will report on an annual basis budgeted
5 and actual costs compared to the estimated total in
6 service cost of the proposed WEC 3, Cape Canaveral and
7 Riviera units, the report shall be submitted to the
8 Director of the Division of Economic Regulation. In
9 addition, FPL has also agreed that a different
10 combustion turbine design from one presented in the
11 proceedings is chosen, FPL will report to us regarding
12 the comparative cost advantage of the alternative
13 design chosen. Such a selection would only be made if
14 the projected cost to FPL customers would be lower as
15 a result of using an alternate design.

16 **COMMISSIONER EDGAR:** Commissioner Skop, you
17 are going way too fast for me, and I'm thinking maybe a
18 little fast for the court reporter. Could you read
19 that last paragraph or two again for both of our
20 benefits.

21 **COMMISSIONER SKOP:** I'll start over with this
22 section. Furthermore, the Commission order for the
23 Cape Canaveral and Riviera Beach need determinations
24 specifically required the annual reporting of costs.
25 And in that order, FPL has agreed that it will report

1 on an annual basis budgeted and actual costs compared
2 to the estimated total in-service cost of the proposed
3 WEC 3, Cape Canaveral, and Riviera units. The report
4 shall be submitted to the Director of the Division of
5 Economic Regulation.

6 In addition, FPL also agreed that if a
7 different combustion turbine design from the one
8 presented in these proceedings is chosen, FPL will
9 report to us regarding the comparative cost advantage
10 of that alternate design chosen. Such a selection
11 would only be made if the projected cost to FPL
12 customers would be lower as a result of the use of the
13 alternate design.

14 FPL was late in filing that annual report.
15 In fact, it was filed upon staff request on
16 February 25th. The report as filed was incomplete.
17 It had no actual cost data for the Riviera Beach or
18 Cape Canaveral conversion projects. FPL subsequently
19 resubmitted this information, which was filed
20 yesterday, and the resubmitted report lacked
21 sufficient detail to ascertain what the specific AFUDC
22 costs would be as they have been incurred to date. So
23 I would ask staff to get with FPL to resolve those
24 discrepancies, to give a little better insight as to
25 what charges are being accrued in support of the

1 recommendation I've requested.

2 In closing, constructive regulation requires
3 a framework of mutual respect. Unfortunately, as
4 FPL's conduct clearly demonstrates, we're not there
5 yet. While FPL is certainly free to diminish its
6 future earnings potential by failing to make
7 additional investments to plant, property, and
8 equipment, the question of whether FPL ratepayers
9 should continue incurring carrying costs for projects
10 that -- excuse me -- the question of whether FPL
11 ratepayers should continue incurring carrying costs
12 for projects that FPL unilaterally suspended remains
13 to be answered.

14 Thank you, Madam Chairman, and I'd like to
15 thank my colleagues for your time.

16 **CHAIRMAN ARGENZIANO:** Commissioner Stevens.

17 **COMMISSIONER STEVENS:** Madam Chair, did we --
18 did staff notice FPL that this was going to be on the
19 agenda today?

20 **CHAIRMAN ARGENZIANO:** Mary Anne.

21 **MS. HELTON:** Sorry. I'm having a hard time
22 getting to the button.

23 When I learned from Commissioner Skop that
24 he wanted to have this item added to the agenda, I
25 went to the Chairman's Office and filled out the

1 paperwork to do that. And immediately after we filled
2 out the paperwork and filed this item with the Clerk,
3 I called Wade Litchfield with Florida Power and Light
4 to let him know that this item had been added.
5 Although I didn't know the detail at the time, all I
6 knew was what I included in the paperwork.

7 **COMMISSIONER STEVENS:** Thank you, Madam
8 Chair.

9 **CHAIRMAN ARGENZIANO:** Any other comments?
10 Commissioner Klement.

11 **COMMISSIONER KLEMENT:** I wonder from
12 Commissioner Skop what -- are you recommending any
13 action by this Commission? And I also wonder why FPL
14 isn't -- I don't see a representative here.

15 **MS. HELTON:** Commissioner Klement and
16 Commissioners, John Butler from Florida Power and Light
17 called me yesterday and said that he would be here.
18 Although Mr. Butler also did not know the specific
19 nature of what was going to be addressed. I think he
20 is in the audience. I saw him earlier.

21 **CHAIRMAN ARGENZIANO:** Commissioners?
22 Commissioner Klement.

23 **COMMISSIONER SKOP:** Well, I think
24 Commissioner Klement had two questions for me, if he
25 could just repeat his question, please.

1 **COMMISSIONER KLEMENT:** The one question I
2 had, are you expecting an action by the Commission
3 based on what you just said?

4 **COMMISSIONER SKOP:** The answer to that
5 question is I'm not expecting Commission action at this
6 agenda today because this is a procedural matter. What
7 I have done is made a formal request of staff to assess
8 whether it would be appropriate for the Commission to
9 immediately suspend the AFUDC accruals for the Cape
10 Canaveral and Riviera Beach projects from the date of
11 the FPL suspension until such time as FPL reinstates
12 these projects. And I have further asked Commission
13 staff to present this recommendation as a proposed
14 agency action for consideration at the March 16th
15 Agenda Conference, which is the next agenda conference,
16 as it pertains to protecting the FPL ratepayers.

17 **COMMISSIONER KLEMENT:** Can staff provide any
18 indication of the impact of that, any range, or is this
19 just falling on your heads as it is ours?

20 **MR. WILLIS:** Well, there is no impact on
21 customers at this point in time because AFUDC during a
22 construction project is being accumulated in the
23 construction work in progress account. It won't
24 actually affect customers until it goes into commercial
25 service.

1 At this point, even though the projects
2 according to FPL have been suspended, I would imagine
3 they are still accruing AFUDC. They haven't advised
4 us of any other approach they have taken at this
5 point. And I do see Mr. Butler coming forward.

6 **COMMISSIONER KLEMENT:** Madam Chair, we
7 received these responses to staff's interrogatories
8 regarding the future of FPL's plans for these plants,
9 and they said -- the responses, I believe, said that
10 they are not still ready to have made that decision.
11 They are still waiting on the Wall Street response and
12 indications of the effect on their bond ratings.

13 **CHAIRMAN ARGENZIANO:** Hang on a second. I
14 could see -- hang on. Commissioner Skop, do you want
15 to respond? And then, perhaps, you may want to
16 clarify, briefly if you can, in your own words, what
17 you are attempting to do.

18 **COMMISSIONER SKOP:** Thank you, Madam Chair.

19 **CHAIRMAN ARGENZIANO:** And then we'll hear
20 from Mr. Butler.

21 **COMMISSIONER SKOP:** I would like to briefly
22 respond to Commissioner Klement's comments. I am aware
23 of the staff data request that FPL has responded to.
24 Frankly, again, FPL is entitled to do what it wants to
25 do. Its action are certainly inconsistent with its

1 representations. Again, you're raising half a billion
2 dollars at a favorable long-term interest rate of 5.69;
3 you raised the dividend at Group by nearly 6 percent
4 with little fanfare; reported healthy fourth quarter
5 earnings. Again, I would see no reason why FPL would
6 seek to diminish its future earning potential by
7 failing to make additional investments in plant,
8 property, and equipment.

9 But, nevertheless, my concern, independent
10 of FPL's conduct, is to ensure that ratepayers are not
11 incurring unnecessary costs. And, again, one has to
12 wonder, in light of the circumstances, whether it's
13 fair, just, and reasonable for FPL ratepayers to
14 continue to incur AFUDC carrying costs for the Cape
15 Canaveral and Riviera Beach projects that FPL
16 unilaterally suspended.

17 The Commission rule does not contemplate a
18 unilateral suspension on the part of FPL. It
19 contemplates, perhaps, force majeure or something like
20 that, but the bottom line here is that I see no
21 reason, given my financial background -- and, again,
22 FPL may certainly disagree -- but I see no reason why
23 these plants have not already been reinstated. And,
24 again, that's difficult to understand for me.

25 If FPL wants to take its time, that's fine,

1 but in the interim, again, I'm questioning whether
2 it's appropriate for ratepayers to continue to incur
3 interest on the approximate \$9 million that has
4 already been spent to date, assuming the FPL report is
5 accurate. And, again, I would look to staff to
6 provide that recommendation.

7 **CHAIRMAN ARGENZIANO:** Mr. Butler.

8 **MR. BUTLER:** Thank you, Madam Chairman.

9 I just wanted to advise the Commission -- I
10 just confirmed that FPL, it has suspended the accrual
11 of AFUDC. The last AFUDC was recorded in
12 December 2009, so we are not recording it for January,
13 they are not recording it for February, and it will
14 not recommence.

15 You know, I really can't speak to when it
16 would recommence. It obviously depends on what
17 happens with the suspension, and there's lots of
18 factors there, but I can confirm to you that there has
19 been no AFUDC recorded in 2010, and that's the status
20 of it today.

21 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

22 **COMMISSIONER SKOP:** Thank you, Madam Chair.

23 And thank you, Mr. Butler, for clarifying
24 that. Again, pursuant to Commission rule, FPL has six
25 months to advise the Commission and submit proposed

1 accounting treatment for the suspended project.
2 Again, I would hope that we would get some resolution
3 for that in the forthcoming future. But if FPL has
4 suspended the AFUDC accruals for the funds currently
5 expended on those conversion projects, I think that
6 addresses my concern and would make my request on
7 staff moot.

8 Again, though, in light of the developments
9 that I have raised, again, I fail to understand
10 exactly why FPL has not reinstated the Cape Canaveral
11 and Riviera Beach Conversion projects yet. And I will
12 leave it at that. Thank you.

13 **CHAIRMAN ARGENZIANO:** Any other comments?
14 Discussion? Sorry, Commissioner Edgar.

15 **COMMISSIONER EDGAR:** Thank you. A couple of
16 questions.

17 The first is, Commissioner Skop, I think I
18 understood when you first started speaking to this
19 that you were either for your yourself or for all of
20 us, I'm not sure which, but asking or directing staff
21 to prepare a recommendation and bring that back to us.
22 Is that correct?

23 **COMMISSIONER SKOP:** I requested that staff
24 prepare a Proposed Agency Action and bring it back to
25 us, that's correct.

1 **COMMISSIONER EDGAR:** Okay. But I also think
2 I heard you say that you were not asking this
3 Commission to take any action, you know, and I do think
4 that words are important. It sounds to me like if we
5 are asking or directing staff to do something, that
6 that is, indeed, taking some action. It is not taking
7 final agency action, but it is taking action. So,
8 again, two statements that to me don't necessarily seem
9 to mesh.

10 I think you also said in your opening
11 comments that this discussion here, and this potential
12 action by our staff does not relate in any way to any
13 docketed matter. And has the FPL rate case docket
14 closed?

15 **MS. BENNETT:** (Indicating no.)

16 **COMMISSIONER EDGAR:** It does seem to me that
17 this is related to the rate case and the decision that
18 we made. So, again, if we are going to move forward, I
19 think it's careful -- I want to be sure that I
20 understand exactly what it is that we are saying and
21 doing. And I have two other questions or points.

22 You said that the utility's actions were
23 inconsistent with their representations. Can you be
24 more specific as to what action and what
25 representation are inconsistent.

1 **COMMISSIONER SKOP:** Do you have other
2 additional questions?

3 **COMMISSIONER EDGAR:** I have one more, one for
4 staff.

5 **COMMISSIONER SKOP:** So the question to me,
6 addressing them in the order that you raised them, this
7 is a procedural item, it is separate and distinct, not
8 in relation to any docketed matter. There was no
9 decisional action or agency action requested of this
10 Commission. It was an action item requesting staff to
11 make a recommendation as to protecting the ratepayers
12 from incurring additional AFUDC charges and looking to
13 staff to make that recommendation so we can move
14 forward as a Commission doing our job independently of
15 what FPL may choose to do or not do.

16 With respect to relation to a docketed
17 matter, obviously you're mistaken. There is no
18 relation to a docketed matter by asking -- merely
19 asking staff to prepare a recommendation as to the
20 disposition of AFUDC carrying costs for a conversion
21 project. Both of those dockets are closed. The need
22 determinations is the on-going cost that FPL customers
23 are continuing to accrue subject to Mr. Butler's
24 comments, so I take strong exception of any reference
25 to this being related to a docketed matter.

1 This is separate and distinct, and it merely
2 requested that staff make a recommendation to be
3 brought forward as a Proposed Agency Action. That's
4 strictly procedural. I'm asking staff to do
5 something. I'm not talking about the merits of a rate
6 case; I'm not talking about the merits of anything;
7 I'm asking staff to do something. That was very clear
8 and articulately stated in my comments.

9 As to your last question, I just really
10 don't have anything to add other than what I stated
11 for the record. So, thank you.

12 **COMMISSIONER EDGAR:** I'm not sure what you
13 stated for the record, though. I heard you say the
14 utility's actions are inconsistent with their
15 representations. And that may or may not be true, but
16 I'm just not sure what actions you were speaking of and
17 what representations.

18 **COMMISSIONER SKOP:** Again, I stated my
19 comment. And, again, my presentation is what I stated
20 for the record, and that's my own personal comments
21 related to asking staff to take a procedural action, so
22 I have no further comment.

23 **COMMISSIONER EDGAR:** I do have one follow-up
24 question for staff.

25 Commissioner Skop has asked that you bring

1 forward an item at our next -- and I don't have a
2 calendar in front of me, but I guess at our next
3 agenda conference. And I guess my question to staff
4 is does that give sufficient time? Would that give
5 sufficient time?

6 **MR. WILLIS:** Commissioner Edgar, I think it
7 is moot now. I think what I heard was that it is moot
8 now because the company has agreed -- they have
9 discontinued AFUDC. So I think what I just heard a
10 little while ago is he has revoked that request, you
11 might say.

12 **COMMISSIONER SKOP:** Thank you, Madam Chair.

13 Yes. In the course of the discussion, based
14 upon my concerns and my request upon staff, Mr. Butler
15 had explained to the Commission that FPL had taken the
16 appropriate action to address my concern to protect
17 FPL ratepayers, making my request upon staff moot.
18 So, again, with respect to this procedural matter and
19 this procedural request which is separate and distinct
20 from any docketed matter, that request is now moot.

21 **COMMISSIONER EDGAR:** Okay. At this point, no
22 action is being requested?

23 **CHAIRMAN ARGENZIANO:** Absolutely.

24 **COMMISSIONER SKOP:** None from me.

25 **CHAIRMAN ARGENZIANO:** Anybody else?

1 Commissioner Klement.

2 **COMMISSIONER KLEMENT:** Thank you, Madam
3 Chair.

4 Is it appropriate to give Mr. Butler an
5 opportunity to respond to any of the things that
6 Commissioner Skop has said about the company's actions
7 since the rate case decision?

8 **CHAIRMAN ARGENZIANO:** He is sitting there.
9 He is very welcomed to add comments, if he would like.

10 **MR. BUTLER:** Sometimes honors are best
11 declined. I don't really have anything at this point
12 to state other than what we have already provided,
13 Commissioner Klement. FPL is still having
14 communications with the investment community. We had
15 indicated on January 26th that we anticipated about a
16 60 to 90-day process for doing that, and we are about
17 five weeks into that process still having the
18 communications. And, again, the company wants to do
19 what's right, use the funds that are available on
20 reasonable terms from the investment community to the
21 best purposes, and we are still evaluating it. I
22 really can't comment on it further than that, but
23 that's the current status.

24 Thank you.

25 **CHAIRMAN ARGENZIANO:** Okay. Given that,

1 Staff, are we anywhere close to having Issue 9? If
2 not, just let me know.

3 **MR. WILLIS:** We are not, Chairman.

4 **CHAIRMAN ARGENZIANO:** We are not. Okay. Do
5 you have a feel for how much time?

6 **MR. WILLIS:** If you could give us -- if it
7 would be appropriate to give us an hour lunch break, we
8 can get back here.

9 **COMMISSIONER STEVENS:** I appreciate Mr.
10 Butler being here. Thank you.

11 **MR. BUTLER:** My pleasure.

12 * * * * *

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 19th day of March, 2010.



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