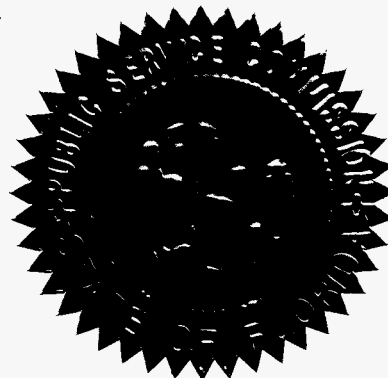


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

Docket No. 100459-EI

PETITION FOR AUTHORITY TO
IMPLEMENT A DEMONSTRATION
PROJECT CONSISTING OF PROPOSED
TIME-OF-USE AND INTERRUPTIBLE
RATE SCHEDULES AND CORRESPONDING
FUEL RATES IN THE NORTHWEST
DIVISION ON AN EXPERIMENTAL BASIS
AND REQUEST FOR EXPEDITED TREATMENT,
BY FLORIDA PUBLIC UTILITIES COMPANY.



PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 9

COMMISSIONERS
PARTICIPATING: CHAIRMAN ART GRAHAM
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER RONALD A. BRISÉ
COMMISSIONER EDUARDO E. BALBIS
COMMISSIONER JULIE I. BROWN

DATE: Tuesday, June 14, 2011

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

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

P R O C E E D I N G S

1
2 **CHAIRMAN GRAHAM:** Item Number 9.

3 **MS. BENNETT:** Good morning, Chairman and
4 Commissioners.

5 Item 9 involves a tariff which you had
6 approved previously this year. It was an experimental
7 tariff for interruptible rates and time-of-use rates
8 that FPUC, Florida Public Utilities, requested. The
9 City of Marianna appeared at that proceeding and
10 objected. This was a proposed agency action, and the
11 City of Marianna has protested the proceeding on a
12 timely basis.

13 The City of Marianna filed its petition,
14 Florida Public Utilities requested that that petition
15 be dismissed on several grounds. They also asked the
16 city of -- I mean, FPUC asked for oral argument on its
17 motion to dismiss.

18 Issue 1 is staff's recommendation on the
19 request for oral argument. Staff recommends that you
20 grant the parties five minutes per side oral argument.
21 Issue 2 is the staff's recommendation on the motion to
22 dismiss. Staff recommends that you deny the motion to
23 dismiss.

24 I am available for discussion. It would be
25 my recommendation that if you grant oral argument, FPUC

1 argue first and then the City of Marianna.

2 **CHAIRMAN GRAHAM:** Mr. Wright, is this what
3 you want to talk about?

4 **MR. WRIGHT:** No, sir. Actually I had thought
5 that Item 10 was going to have discussion. But as I
6 said earlier, we oppose the PAA amendment, and we will
7 protest it. Other things equal, I would have advocated
8 that you just set it for hearing on your own motion
9 later this year without issuing a proposed agency
10 action order. But, no, sir, I said what I needed to
11 say, and I appreciate your indulgence on that.

12 I do want to speak on this, as well, of
13 course, and very briefly on Item 11. But, no, it was
14 Item 10 that I came up about before.

15 **CHAIRMAN GRAHAM:** Okay.

16 **MR. WRIGHT:** Thank you, Mr. Chairman.

17 **CHAIRMAN GRAHAM:** Florida -- yes, ma'am.

18 **MS. KEATING:** Is the Commission granting oral
19 argument? Would you like me to proceed? We would
20 definitely like five minutes of oral argument if that
21 is the Commission's pleasure.

22 **CHAIRMAN GRAHAM:** Can you get it done in five
23 minutes?

24 **MS. KEATING:** I can definitely do that in
25 five minutes, Mr. Chairman.

1 **CHAIRMAN GRAHAM:** Can I get a motion?

2 **COMMISSIONER EDGAR:** I approve staff's
3 recommendation on Issue 1, if you approve, and would
4 ask five minutes per side.

5 **CHAIRMAN GRAHAM:** It has been moved and
6 seconded. All in favor say aye.

7 (Vote taken.)

8 **CHAIRMAN GRAHAM:** Any opposed?
9 You're up.

10 **MS. KEATING:** Thank you, Mr. Chairman and
11 Commissioners. I'm Beth Keating with the Gunster Law
12 Firm here today on behalf of FPUC. Thank you for this
13 opportunity to address you on our motion to dismiss,
14 and I will definitely be mindful of the allotted time.

15 Commissioners, first, let me start by saying
16 the company fully recognizes that the standard for a
17 motion to dismiss is high, but in this instance we
18 believe that it has been met. And at the outset let me
19 be clear that if this proceeding moves to hearing, the
20 company will definitely oppose the city's factual
21 allegations. However, here we believe that their
22 protest is simple legally insufficient and should be
23 dismissed.

24 Really, Commissioners, our position as to why
25 the protest should be dismissed comes down to a couple

1 of pretty simple arguments. In a nutshell, the company
2 submits that the cost-based fair, just, and reasonable
3 standard upon which the City relies does not apply to
4 experimental and transitional rates that are filed
5 pursuant to Section 366.075. Instead, the cost-based
6 fair, just, and reasonable standard is found in the
7 provisions of Chapter 366 that apply to your general
8 rate-setting function.

9 Now, clearly, when you are in the role of
10 setting base rates for a utility's general body of
11 ratepayers, that fair, just, and reasonable standard
12 applies. However, Section 366.075, which applies to
13 the time-of-use and interruptible service rates before
14 you, does not include that same fair, just, and
15 reasonable language.

16 Now, we believe that that is because the
17 legislature intended this provision to serve a very,
18 very different purpose, that being to provide the
19 Commission with the flexibility to encourage utilities
20 to come up with creative ideas and projects to
21 encourage conservation and efficiency in furtherance of
22 the conservation goals that are set forth in Chapter
23 366.

24 Other differences in the terminology used in
25 the more traditional rate-setting provisions, as

1 compared to that experimental rate provision, highlight
2 the legislature's intent. And, again, we think there
3 are really some very definite reasons for the
4 differences in that terminology. We believe these
5 differences were by design. Because unlike the general
6 ratemaking proceedings, Section 366.075 was implemented
7 to provide the Commission with an avenue to approve
8 experimental projects in a proceeding outside the
9 context of your general ratemaking proceeding. And
10 this interpretation of the statute is entirely
11 consistent with other provisions in Chapter 366;
12 namely, FEECA, which specifically encourages
13 experimental rates, rate structures and programs
14 designed to encourage energy efficiency and
15 conservation.

16 Now, from a practical perspective, I have a
17 little bit of a hard time figuring out how we would
18 really go to hearing on some of the factual allegations
19 that the City has put forth. For instance, the City
20 alleges that these rates don't send appropriate pricing
21 signals to consumers. But surely any testimony filed
22 by either side before these rates have been in effect
23 for some reasonable period of time would be entirely
24 speculative and unreliable. I think this really just
25 goes to show that the legislature intended that

1 experimental rates would be in effect for some period
2 of time so that they could be tested.

3 Now, the City has also failed to identify an
4 injury in fact which is of sufficient immediacy to set
5 this matter for hearing. The gist of the City's
6 argument is that it is eligible for cost-based fair,
7 just, and reasonable time-of-use and interruptible
8 service rates that it doesn't have access to. If you
9 follow that argument to its logical conclusion, if the
10 company were to just pull the time of use and
11 interruptible service rates, the City would still be
12 harmed because it would be eligible for rates that no
13 longer exist. This argument simply makes no sense.
14 And it's even more untenable given the fact that the
15 company was under no statutory obligation to file these
16 rates in the first place.

17 Furthermore, the mere allegation that the
18 rates are not cost-based, fair, just, and reasonable is
19 not a statutory defined harm that 366.075 was designed
20 to address. And taking that mere allegation, even
21 taking it as true, which you have to do, it fails to
22 identify any level of immediacy in the harm that the
23 City will incur. Particularly given the fact that the
24 City has access to other rates that this Commission has
25 already determined are, in fact, fair, just, and

1 reasonable. The City does not have to take service
2 under these experimental rates.

3 Our sense, frankly, Commissioners, is that
4 the only immediate injury that the City contemplates it
5 might incur arises in the context of proceedings not
6 here but before the Circuit Court in Jackson County.
7 In that regard, Commissioners, we just ask that you not
8 allow the city to misuse this limited regulatory
9 proceeding to bootstrap its position in the civil
10 court.

11 Thank you, Commissioners. We appreciate your
12 time, and we'd be happy to answer any questions.

13 **CHAIRMAN GRAHAM:** Thank you.

14 Mr. Wright, you have got 7-1/2 minutes.

15 **MR. WRIGHT:** Thank you, Mr. Chairman. Let's
16 see if I can keep it under that. I believe that I can.

17 In the first instance, Mr. Chairman and
18 Commissioners, naturally we support the staff's
19 recommendation, the recommendations on both Issue 2 and
20 Issue 3. We think that the law is very clear as it
21 applies to the standards for motions to dismiss, and we
22 have -- in our opinion, we have quite clearly met
23 those, that those facts were summarized very succinctly
24 by the staff in their recommendation that we are a
25 customer. You have issued an order, we have timely

1 protested or filed a petition for a formal proceeding
2 regarding those. We're a customer, we're eligible to
3 take service on five out of the six tariff schedules
4 that are in effect. The only exception being the
5 residential time-of-use rate. We are eligible for all
6 four of the general service time-of-use rates, and we
7 are eligible for service under the interruptible rate.

8 The rates -- our assertion as a factual
9 matter that the rates are not cost-based and that they
10 do not take -- that they do not send appropriate price
11 signals are appropriate factual assertions, and I will
12 go back to that in a minute. These facts, as
13 recognized by your staff's analysis, demonstrate that
14 we have standing. We are a customer, we are eligible
15 for the rates, and that we have alleged an injury of
16 sufficient immediacy to warrant a hearing pursuant to
17 the Agrico test.

18 The tariff sheets are in effect and we are
19 eligible for those. We assert that they are not
20 cost-based and that they don't send appropriate price
21 signals, and accordingly we have standing, we have
22 asked you for relief that you have the statutory
23 authority to grant. Either deny the rates as proposed
24 by FPUC or modify them after you have a factual
25 hearing. So I think that really covers the

1 straightforward analysis of the motion to dismiss
2 standard.

3 Now, to respond to a few things that Ms.
4 Keating said. One, 366.075 does permit experimental
5 rates. It specifically provides that they may be
6 limited in geographic area and for time. It says they
7 may be approved to promote energy conservation or
8 energy efficiency. It does not exempt them from the
9 other statutory criteria that rates must be fair, just,
10 and reasonable. And in particular, with respect to
11 these rates, I think that the suggestion that they are
12 somehow exempt from a factual challenge as to whether
13 they send appropriate price signals, you know, is
14 completely misplaced. If you are going to have a
15 tariff that putatively promotes energy conservation and
16 energy efficiency, almost by definition it has to send
17 appropriate price signals to encourage the behavior
18 that is under consideration, conservation of energy,
19 modification of usage patterns, being interruptible.

20 Our assertion is that as a matter of fact
21 these rates do not do this. This is a fact that is
22 squarely within the ambit of 366.075. Moreover, there
23 is no exception for rate proposals under 366.075 that
24 they don't have to be cost-based or don't have to
25 otherwise be fair, just, and reasonable. To try to

1 freight that out of the analysis of an experimental
2 rate, I think deprives you of the job that you are
3 supposed to be doing.

4 Regarding the suggestion that they were to
5 pull the rates, that would be fine. If they pulled the
6 rates and decided not to offer them, we would be left
7 with the opportunity to come in and file for
8 time-of-use rates just as any customer may petition the
9 Commission to approve time-of-use rates, but what we
10 have here is not that scenario. What we have here is a
11 scenario where the company has filed proposed
12 time-of-use and interruptible rates that we assert are
13 not cost-based and not appropriately reflective of the
14 value that usage modification or interruptibility would
15 provide.

16 I said some things about this in February
17 that I would stand by. We don't need to try the case
18 today. These are factual matters to be discussed
19 later. But regarding the assertion that we are somehow
20 involved in this for the purpose of furthering our
21 interest in the court case, that's simply not true. We
22 believe we have a very good case in court, that case in
23 the Circuit Court in Jackson County. That case is
24 where it is. It is in its proper venue, and we will
25 see how it comes out.

1 If, though, it doesn't come out the way we
2 believe it will, the way we hope it will, we will still
3 be faced with trying to mitigate what we are paying
4 under the highest rates in the state of Florida by
5 hopefully taking advantage of time-of-use and
6 interruptible rate. And we are entitled here before
7 the Florida Public Service Commission to try the
8 factual issues relative to these rates.

9 That is really all I have to say, and I
10 appreciate your time. Thank you very much.

11 **CHAIRMAN GRAHAM:** Okay. Back to the board.
12 We are on Issue Number 2.

13 Commissioner Edgar.

14 **COMMISSIONER EDGAR:** To our staff,
15 recognizing that the tariff that was the subject of
16 this is a pilot project, if this were to go to hearing,
17 how would the Commission be able to determine price
18 signals prospectively?

19 **MS. BENNETT:** I think I could guess on ways
20 that the City of Marianna might present it. I would
21 imagine that they would look to an expert witness to
22 testify, to bring testimony on similar experimental
23 projects from jurisdictions, or they might argue
24 policy, what is a time-of-use and is there some policy
25 behind time-of-use and interruptible service rates that

1 their expert might testify to. But it would be nothing
2 in our experience for this case because it is
3 experimental, and FPUC is correct on that.

4 **COMMISSIONER EDGAR:** And to the City?

5 **MR. WRIGHT:** In the first instance -- Mr.
6 Chairman, thank you. In the first instance,
7 Commissioner, it is the company's burden to prove that
8 these rates are appropriate under whatever statutory
9 criteria are to be applied. We think that an
10 appropriate examination of the rates themselves as
11 compared to the costs that the company incurs to
12 provide the service is an appropriate analysis. There
13 may be more. We don't believe that the rates
14 accurately reflect either the cost to serve or the
15 value of interruptibility to the company and its
16 general body of customers, and those at a minimum are
17 issues that we would address.

18 **COMMISSIONER EDGAR:** I'd like to hear from
19 the Company, too, especially on the point of cost of
20 service.

21 **CHAIRMAN GRAHAM:** Ms. Keating.

22 **MS. KEATING:** Thank you, Commissioner.

23 First off, certainly we have to support the
24 rates that we filed under the statute that's pertinent
25 to them, which is that they are experimental

1 transitional rates. So from our perspective, they
2 truly have to be in effect for some period of time for
3 us to be able to have the information to come back to
4 you to support whether in fact they do fulfill the
5 Legislature's intent, which is to encourage efficiency
6 when customers use power and to fulfill the general
7 goal of efficiency and conservation at FEECA.

8 So when it comes to providing testimony,
9 another point that Staff raised with regard to putting
10 on an expert witness about experience in other
11 jurisdictions, it comes back to experiential testimony
12 is really not going to get you anywhere in this
13 situation because every jurisdiction is different,
14 every rate filing is different, and in this instance in
15 particular you've got a very different company before
16 you by virtue of the fact that this company does not
17 have generation. So cost of service though, to your
18 point, Commissioner, would be this company's cost of
19 service under its PPA with Gulf Power.

20 **COMMISSIONER EDGAR:** I'd like to go back to
21 Staff, if I may.

22 **CHAIRMAN GRAHAM:** Sure. You've got the
23 floor.

24 **COMMISSIONER EDGAR:** Ms. Bennett.

25 **MS. BENNETT:** I'm sorry. I was --

1 **COMMISSIONER EDGAR:** That's okay.

2 **MS. BENNETT:** Was there another question?

3 **COMMISSIONER EDGAR:** There wasn't. I just
4 wasn't sure if you had anything else you wanted to
5 share with me. And if not, then I will move to another
6 question.

7 **MS. BENNETT:** One of the things that
8 Ms. Brubaker -- Crawford was reminding me is that if
9 you were not -- I mean, if you were to dismiss this and
10 to concur with FPUC's argument, no experimental rate
11 would ever be subject to hearing. It would always be
12 at the conclusion of the experimental time period
13 before you would evaluate those rates.

14 **COMMISSIONER EDGAR:** If indeed they were
15 approved to begin with.

16 **MS. BENNETT:** Correct.

17 **COMMISSIONER EDGAR:** I feel like what I'm --
18 and to our legal Staff, that we are hearing from FPUC
19 that the standard to grant the motion to dismiss has
20 been met, and that I'm hearing, to simplify,
21 Mr. Wright, from the City is that, that we really don't
22 have any discretion on this, so -- as to the motion to
23 dismiss.

24 So my question to you is with the information
25 that we have before us, from a legal standpoint does

1 the Commission have discretion on this?

2 **MS. BENNETT:** Only if you make a
3 determination that the petition was legally
4 insufficient. Ms. Keating made a, a statement at the
5 beginning of her argument that it's a very high
6 standard.

7 **COMMISSIONER EDGAR:** Yes.

8 **MS. BENNETT:** And so you must make a
9 determination that the petition filed by Marianna is
10 legally insufficient to state a cause of action. And
11 the statutes require, require us to allow them one bite
12 at the apple. If we were to make that determination,
13 they would be able to refile a petition and try again.

14 **COMMISSIONER EDGAR:** Ms. Keating, can you
15 summarize for my benefit the, your argument as to why
16 the standard, the high standard for a motion to dismiss
17 is met in this instance?

18 **MS. KEATING:** Absolutely, Commissioners.
19 What it comes down to is that we think the City is
20 applying the incorrect standard of review to these
21 rates and they haven't even addressed the standard that
22 is in fact applicable to these rates, which is that
23 they are experimental transitional rates and that they
24 are submitted in order to encourage conservation and
25 efficiency. The City hasn't even discussed whether

1 these rates would encourage efficiency. The closest
2 they've come is to say that these don't send
3 appropriate price signals. They haven't elaborated any
4 further on that point.

5 I submit that we have met the standard for a
6 motion to dismiss because they have absolutely failed
7 to state a cause of action upon which relief can be
8 granted pursuant to 366.075. And by the same token,
9 they've failed to identify any injury that arises as a
10 result of these experimental rates that they are not
11 obligated to take service under.

12 **COMMISSIONER EDGAR:** Mr. Wright.

13 **MR. WRIGHT:** Thank you. I believe that we
14 have identified the injury. The injury is that the
15 tariffs are in effect, it is immediate, and we are
16 entitled to have whatever tariffs are in effect, if we
17 are eligible for them, to be fair, just, and
18 reasonable.

19 We assert that, that an appropriate standard
20 even for experimental rates is that they be cost-based
21 and value-based, or at least at a minimum that the
22 Commission consider those criteria. You know, the
23 company's argument seems to be let's put them into
24 effect and see what customers do.

25 I'll tell you one of the better moments I had

1 in my career was about 20 years ago when another
2 utility company was trying to promote exactly the same
3 thing. They proposed we have these rates we want to
4 propose and they're experimental, and a Commissioner
5 said, "Well, what are they testing?" "Well, we just
6 want to see what customers will do." And the response
7 from the Commissioner was, "Not on the best day you
8 ever had is this an experimental rate." You know, just
9 put them into effect and see what they do is not an
10 experiment.

11 We have asserted factually that these, that
12 these do not send appropriate price signals. I think
13 that states a cause of action -- I'm sure that states a
14 cause of action in and of itself even if you were to
15 accept, which we don't and we think is erroneous, the
16 company's assertion that the sole criterion for
17 approval of this rate, these rates is whether they
18 would encourage efficiency and encourage conservation.
19 Again, there is no exclusion in 366.075 from the other
20 statutory criteria as to rates.

21 **COMMISSIONER EDGAR:** Why would the statute
22 encourage pilot project -- why would the statute
23 encourage pilot project demonstration, finite time
24 period, time of use rates if indeed one of the purposes
25 was to not see how they worked?

1 **MR. WRIGHT:** I think they would do it to see
2 how they worked, but that's not the sole criterion. I
3 think the -- I think -- we believe the appropriate
4 analysis is on the front end, ab initio, look at the
5 proposed rates and see whether they bear an appropriate
6 relationship to the cost and value of conserving,
7 modifying usage, or promoting efficiency if it were an
8 efficiency type proposal. That is a completely
9 appropriate front-end analysis of any proposed
10 experimental rate. These are just let's put them into
11 effect and see what they do.

12 We assert that the rates as proposed are not
13 cost-based and don't reflect the value. If you're
14 going to have an experiment, you ought to at least
15 analyze whether there is a legitimate cost basis and an
16 appropriate value basis for the proposal before you
17 test it to see what it will do.

18 **COMMISSIONER EDGAR:** Ms. Keating, and then
19 I'm done, Mr. Chairman.

20 **MS. KEATING:** Well, I think pretty obviously
21 we would dispute the City's contention that we've just
22 offered these rates to put them into effect and see
23 what they do. The company has provided a substantial
24 amount of data to support the intent behind these
25 rates, what they are designed to do, even the cost that

1 they're based upon. So I submit, Commissioners, that
2 the City's contentions simply are a red herring, if I
3 might say, and don't rise to a level of maintaining
4 their protest.

5 **COMMISSIONER EDGAR:** Commissioners, I'm, I am
6 struggling a little bit with seeing the injury in this
7 instance, but I look forward to any other questions or
8 discussion. Thank you.

9 **CHAIRMAN GRAHAM:** Commissioner Balbis.

10 **COMMISSIONER BALBIS:** Thank you, Mr. Chair.

11 A question for Staff. I remember in February
12 when we approved these time of use rates, that at the
13 time the agreement with FPUC and Gulf Power was not
14 executed. The revision to it with the elimination of
15 the ratcheting provision, which I believe we just
16 approved in Item 10, and a lot of the decision that was
17 based at that time was, was looking at the changes
18 which again we approved in Item 10. Did Staff review
19 in that, you know, from an administrative standpoint,
20 not to bring up Item 10, but did the agreement that was
21 approved in Item 10, was that consistent with what was
22 expected at the time we approved the time of use rates?

23 **MS. BENNETT:** Yes, it was.

24 **COMMISSIONER BALBIS:** Okay. And then again
25 with -- you know, fortunately with the detailed review

1 of when we went through that item in February, you
2 know, again, I agree with Commissioner Edgar on I'm
3 struggling to find an injury when it is a, an optional
4 program. If they are not appropriate and cost-based,
5 you know -- I recall that the time of use rates that we
6 did approve, and any of the legal Staff can stop me if
7 I'm not supposed to talk about what happened in
8 February, but that, you know, it was a struggle with
9 the agreement with Gulf Power to develop those, but
10 they were, you know, it was a very thought-out approach
11 to develop them on an experimental basis. And the fact
12 that it is optional, again, I'm struggling to find the
13 injury here on that, although recognizing that the
14 standards are very high. I just, I'm failing to see
15 that. That's the only comment I have.

16 **CHAIRMAN GRAHAM:** Was that a motion?

17 **COMMISSIONER BALBIS:** No.

18 (Laughter.)

19 **CHAIRMAN GRAHAM:** My lights, none of them are
20 on.

21 Commissioner Brisé.

22 **COMMISSIONER BRISÉ:** Thank you, Mr. Chair.

23 And I -- in listening to the other
24 Commissioners and seeing that they reflect some of the
25 same thoughts that I'm, and struggles that I'm having

1 at this point, I'm going to read a portion of the
2 statute here.

3 366.075, "The Commission is authorized,"
4 Section 2, "The Commission is authorized to approve the
5 geographic area used in testing experimental rates, and
6 shall specify in the order setting those rates the area
7 affected. The Commission may extend the period
8 designated for the test if it determines that further
9 testing is necessary to fully evaluate the
10 effectiveness of the experimental rates."

11 Considering that we looked at this issue in
12 February and we are now in the beginning of June, and,
13 and it's not required for everyone to be on it, I think
14 that it's only fair to allow it to run its course at
15 least initially. So I, I think I'm at -- if I
16 understand my other Commissioners' perspective, I think
17 we are getting to the same place that there probably
18 isn't enough injury or injury at this juncture to -- I
19 think I'll leave it at that for now.

20 **CHAIRMAN GRAHAM:** So you're saying you're
21 moving to dismiss the City's petition?

22 **COMMISSIONER BRISÉ:** Yes. I think that that
23 is the direction that I'm moving to.

24 **CHAIRMAN GRAHAM:** That's been moved and
25 second.

1 Commissioner Brown.

2 MR. BROWN: I was just going to clarify, we
3 are rejecting Staff's recommendation and, and moving --
4 and dismissing the, the petition for formal hearing,
5 and I just wanted that clear for the record.

6 CHAIRMAN GRAHAM: Commissioner Edgar.

7 COMMISSIONER EDGAR: Thank you. A question
8 to Staff on that. If the motion as I understand it
9 were to prevail, then my understanding is that we would
10 be granting the motion to dismiss on the basis of a
11 lack of standing, on the basis of a lack of sufficient
12 injury to meet that criteria for standing. And I guess
13 what I'm -- that is my understanding of the motion, so
14 let me turn this way first, Ms. Bennett.

15 Commissioner, not to try to, to manipulate or
16 change or -- but that is my understanding of what I
17 heard you express, and so I guess I would just like to
18 confirm if I'm understanding correctly.

19 COMMISSIONER BRISÉ: Well, I'm not the maker
20 of the motion, so I'll allow the maker of the motion to
21 --

22 COMMISSIONER BROWN: Technically I just
23 clarified, but, but that, that is the intent, yes.

24 COMMISSIONER EDGAR: Okay. Ms. Bennett, I
25 think that does it. Do you concur?

1 **MS. BENNETT:** I do. I would note that that
2 would be without prejudice; is that correct?

3 **COMMISSIONER EDGAR:** That would be my
4 preference, if indeed the majority concurs.

5 **COMMISSIONER BROWN:** Certainly.

6 **COMMISSIONER EDGAR:** Then thank you for that
7 clarification, and with that I would support the
8 motion.

9 **CHAIRMAN GRAHAM:** Ms. Bennett, did you get
10 that motion?

11 **MS. BENNETT:** I did.

12 **CHAIRMAN GRAHAM:** It's been moved and
13 seconded.

14 Commissioner Balbis.

15 **COMMISSIONER BALBIS:** Thank you.

16 I have a question for Staff. What would be
17 the next point where we would evaluate the
18 effectiveness of these experimental rates and --

19 **MS. BENNETT:** There is a possibility that you
20 will see a new petition filed by the City. If you
21 don't, it would be -- the rates are in effect for four
22 years, I believe. Is that correct, Elizabeth? Four
23 years. And at the conclusion of those four years you
24 would see an evaluation from Staff on those rates. And
25 also, and also they are filing annual reports, so we

1 would see one at the end of the first year.

2 **COMMISSIONER BALBIS:** Okay. No further
3 questions.

4 **CHAIRMAN GRAHAM:** All in favor, say aye.

5 (Affirmative vote.)

6 Any opposed? By your action, you approve the
7 dismissal of the petition, petition on Issue Number 2.

8 **MR. KISER:** Mr. Chairman. Curt.

9 **CHAIRMAN GRAHAM:** Oh.

10 **MR. KISER:** I just want to provide a little
11 anecdotal information and I didn't want it to weigh in
12 on what the Commission was going to do.

13 I was very, very much involved in the early
14 '70s when the first energy crisis hit in '73, '74 with
15 time of day pricing. I was in my first couple of years
16 of the Legislature, and I pushed very, very hard for
17 that issue to come about, hoping it would help address
18 some of the energy issues and also to help some folks
19 with the rising utility bills.

20 And a year or so after I began pushing real
21 hard on that, at that time Florida Power instituted a
22 pilot project in my community, close to my community in
23 Dunedin where they put a number of customers on time of
24 day rates. I think that may have been the first time
25 that was ever used in Florida. And it went on for, I

1 think, some 12 months or 18 months. And unfortunately
2 what happened was that the high utility bills, gas
3 prices, all of those things that were associated with
4 that first energy crisis, those things kind of started
5 to go away, so some of the impetus for using more time
6 of day prices started to go out the window.

7 Secondarily, the, most of the IOUs in the
8 state at that time were not really in favor of time of
9 day pricing. They preferred controlling the use of
10 energy by them, by controlling, you know, basically
11 rolling blackouts, interruptible service, things like
12 that. They preferred that and didn't like the time of
13 day use because what some of the early experiments and
14 to some extent what the City of Dunedin experiment was
15 about, it showed that when things did get real hot or
16 real cold, you know, people went ahead and turned up
17 the thermostat or turned it down, whatever the case may
18 be, and they claimed that wasn't as reliable as letting
19 them have that authority.

20 So as a result, it wasn't really until about
21 1980 when this statute was passed, and again I was
22 still in the Legislature and still very much supportive
23 of time of day rates, and that's kind of how that whole
24 issue started to bubble up. And, and the companies
25 have continued to use, you know, their, their

1 management issues to help control the flow of energy
2 and hoping to hold down on the use of peaking units at
3 various times.

4 But time of day use, it's, like I say, it's
5 been around since -- quite some time now. That's about
6 35 years ago that all that happened. And in my
7 opinion, frankly, there hasn't been enough
8 experimentation on it to try to see whether or not it
9 would be helpful.

10 And secondarily, the other problem is it just
11 didn't get enough publicity. Most people just didn't
12 realize and weren't enough energy conscious. But it
13 just seems like once those gasoline prices and utility
14 prices start to go up, then people seem to get more
15 interested. But then once the pressure drops, some of
16 that interest likewise goes out the window. And I just
17 wanted to add that as some additional information for
18 y'all to tuck away.

19 **CHAIRMAN GRAHAM:** Thank you, Mr. Kiser.

20 Issue Number 3, I guess someone has got to
21 make the recommendation to close the docket.

22 **COMMISSIONER EDGAR:** So moved.

23 **CHAIRMAN GRAHAM:** It's been moved and
24 seconded to close the docket. Any further discussion?
25 Seeing none, all in favor, say aye.

1 (Affirmative vote.)

2 Any opposed? By your action, you have, you have
3 approved to close the docket.

4 (Agenda item concluded.)

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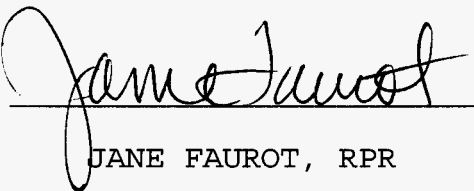
STATE OF FLORIDA)
 : CERTIFICATE OF REPORTERS
COUNTY OF LEON)

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

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

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

DATED THIS 17th day of June, 2011.

JANE FAUROT, RPR LINDA BOLES, CRR, RPR

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