South Florida Health Care Ass'n v. Lila A. Jaber

MARSHAL: PLEASE RISE. HEAR YE. HEAR YE. HEAR YE. THE SUPREME COURT OF THE GREAT OF FLORIDA IS NOW IN SESSION. ALL WHO HAVE CAUSE TO PLEA, DRAW NEAR, GIVE ATTENTION AND YOU SHALL BE HEARD. GOD SAVE THESE UNITED STATES, THE GREAT STATE OF FLORIDA AND THIS HONORABLE COURT. LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT. PLEASE BE SEATED.

CHIEF JUSTICE: GOOD MORNING EVERYONE AND WELCOME TO THE FLORIDA SUPREME COURT. WE APPRECIATE COUNSEL BEING READY ON THE FIRST CASE ON THE DOCKET THIS MORNING. SO WITHOUT ANY FURTHER ADO, WE WILL CALL THAT CASE. SOUTH FLORIDA HEALTH CARE ASSOCIATION ET AL., VERSUS LILA JABER ET AL. COUNSEL READY?

YES, YOUR HONOR.

CHIEF JUSTICE: YOU MAY PROCEED.

GOOD MORNING. KENNETH WISEMAN, COUNSEL FOR SOUTH FLORIDA HEALTH CARE ASSOCIATION AND THE APPROXIMATELY 35 HOSPITALS THAT SERVE SOUTHEAST FLORIDA. MAY IT PLEASE THE COURT. THIS CASE IS BEFORE YOU THIS MORNING ON APPEAL OF AN ORDER OF THE PUBLIC SERVICE COMMISSION THAT APPROVED A NON-UNANIMOUS STIPULATION THAT SET RATES FOR FLORIDA POWER & LIGHT COMPANY FOR APPROXIMATELY A FOUR-YEAR PERIOD, JUST LESS THAN A FOUR-YEAR PERIOD, ENDING DECEMBER 31, 2005.

IS THERE A STANDING ISSUE IN THIS CASE?

YES, THERE ARE.

COULD YOU BRIEFLY ADDRESS. THAT.

I WOULD BE HAPPY, TO YOUR HONOR. APPELLEES HAVE CLAIMED THAT THE APPELLANTS LACK STANDING, BECAUSE THEY ARE ALLEGEDLY NOT INJURED BY THE COMMISSION'S ORDER APPROVING THE RATE REDUCTION VIA THE SETTLEMENT, THE STIPULATION. THERE IS NO FLORIDA CASE LAW THAT DIRECTS THE STANDING OF A RATE PAYER IN THE CONTEXT OF A RATE REDUCTION, BUT THERE IS A DECISION WE CITE IN OUR REPLY BRIEF, A INDIANA CASE, TERRA HAUTE GAS COMPANY V JOHNSON, AND IN THAT CASE THE INDIANA SUPREME COURT SAID THAT RATE PAYERS ARE ADVERSELY AFFECTED, EVEN IN THE FACE OF A RATE REDUCTION, IF THEY BELIEVE THAT THE REDUCED RATES ARE EXORBITANT, AND THAT IS THE EXACT SITUATION THAT WE ARE IN HERE, TODAY.

SO THAT I AM CLEAR, THERE IS NOTHING THAT YOU ARE ALLEGING GIVES YOU GREATER STANDING THAN ANY OF THE MILLIONS OF OTHER, EITHER COMMERCIAL OR RESIDENTIAL RATE PAYERS FOR FLORIDA POWER & LIGHT.

WELL, ONLY IN THE, OF COURSE, WE PARTICIPATEDED IN THE PROCEEDINGS BELOW.

THERE IS NOTHING, YOU ARE NOT ALLEGING IT COULD BE ANY RESIDENT, IN FACT THERE WERE SEVERAL RESIDENTIAL CUSTOMERS THAT WERE ACTUALLY INTERVENEORS IN THE PUBLIC SERVICE COMMISSION CASE, IS THAT CORRECT?

YES. THAT'S CORRECT.

I KNOW STANDING HAS BEEN ALLEGED, BUT WHAT I WANTED YOU TO DIRECT YOUR ATTENTION TO, IS WHAT IS THE RELIEF THAT YOU ARE SEEKING? YOU ARE NOT SEEKING, AS I UNDERSTAND IT, TO SET ASIDE THIS SETTLEMENT THAT HAS PROVIDED, ADMITTEDLY, RATE REDUCTIONS FOR THE CUSTOMERS OF FP AND L, ARE YOU? YOU ARE NOT?

WE ARE NOT ASKING THE COMMISSION TO SET IT ASIDE. WHAT WE ARE ASKING THE COURT TO DO IS TO REMAND THIS CASE TO THE COMMISSION, WITH DIRECTIONS TO FOLLOW PROCEDURES THAT HAVE BEEN FOLLOWED IN A NUMBER OF OTHER STATES, FRANKLY I HAVE NOT CONDUCTED A NATIONWIDE SURVEY, TO SEE HOW MANY STATES FOLLOW THIS PROCEDURE, BUT I WANT TO TALK ABOUT A CASE IN ARKANSAS, THAT IS CITED, IRONICALLY BY THE PSC IN ITS OWN BRIEF, WHICH CLEARLY SPECIFIES THE TYPE OF RELIEF WE ARE SEEKING, AND LET ME JUST SAY THAT THE PROCEDURE THAT WE ARE TALKING ABOUT IS ONE THAT IS FOLLOWED IN PENNSYLVANIA, TEXAS, NEW MEXICO, NEW YORK, CALIFORNIA, MARYLAND --

BUT GET RIGHT TO THE PROCEDURE THAT YOU ARE ASKING US TO MANDATE THE COMMISSION --

WHAT WE ARE ASKING TO YOU DO IS TO REMAND THIS CASE TO THE COMMISSION, WITH DIRECTIONS THAT IT CONDUCT A HEARING UNDER SECTION 120.571-B OF THE FLORIDA STATUTES, AND IN THAT HEARING --

THIS WOULD BE BECAUSE ANYONE WHO DOES NOT AGREE, ANYONE WHO IS AN INTERVENOR IN THESE KINDS OF PROCEEDINGS AND DEMAND A HEARING ON THIS.

IN THESE TYPES OF HEARINGS, THAT WOULD BE CORRECT.

HOW FAR WOULD YOU TAKE THIS? I KNOW IN THIS CASE, THE RATE REDUCTION WAS ABOUT $250 MILLION, AND YOU ARE ASSERTING THAT IT SHOULD HAVE BEEN MORE IN THE NEIGHBORHOOD OF $500 MILLION, CORRECT?

WE THINK THAT WE HAVE EVIDENCE TODAY THAT WILL PRODUCE $535 MILLION IN RATE REDUCTIONS. THERE IS STILL OUTSTANDING DISCOVERY THAT WAS NEVER COMPLETED, THAT WE BELIEVE IF THAT IS COMPLETED, MAY LEAD TO RATE REDUCTION INS EXCESS OF $500 MILLION.

SO MY -- REDUCTIONS IN EXCESS OF $500 MILLION.

HOW FAR DO WE TAKE THIS? DO YOU HAVE TO SHOW DISPARITY BETWEEN WHAT SHOULD HAVE BEEN AND WHAT IS A PART OF SETTLEMENT OR ANY AMOUNT OF DIFFERENCE, YOU WOULD BE ENTITLED TO A HEARING?

I THINK THE LAW IN FLORIDA IS VERY CLEAR THAT, WHERE THERE ARE DISPUTES OF MATERIAL FACTS, WHETHER IT IS --

AND THOSE FACTS WOULD BE WHAT?

IN THIS PARTICULAR --

IN THIS CASE, WELL, WE DISCUSS THEM BRIEFLY AT PAGE 28 OF OUR INITIAL BRIEF. FIRST OF ALL, THERE ARE QUESTIONS ABOUT AFFILIATE DEALINGS BETWEEN FPL AND UNREGULATED AFFILIATES. WE HAVE PRESENTED EVIDENCE, ALREADY, TO THE COMMISSION, THAT SHOWS THAT FPL WAS ENGAGED IN ACTIVITIES WITH UNREGULATED AFFILIATES, WHERE IT GAVE THE UNREGULATED AFFILIATES THE USE OF FPL RIGHTS OF WAY THAT HAD BEEN PAID FOR BY RATE PAYERS.

LET ME, AGAIN, BECAUSE WE HAVE GOT LIMITED TIMED. NOTHING PREVENTS YOU FROM, AND THE PSC HAS SAID THIS, FROM FILING YOUR OWN SEPARATE ACTION AGAINST FLORIDA POWER & LIGHT, BUT WE ARE IN A POSTURE WHERE AN AGENCY, THE PUBLIC SERVICE COMMISSION, HAS ENTERED INTO A SETTLEMENT WITH FLORIDA POWER & LIGHT, WITH THE PUBLIC COUNSEL NOT ONLY AGREEING BUT ADVOCATING FOR IT, AND I DON'T UNDERSTAND WHAT AUTHORITY THIS COURT WOULD HAVE, TO MANDATE A DIFFERENT PROCEDURE, WHEN SETTLEMENTS ARE BEING MADE BY THE PUBLIC SERVICE COMMISSION. IT IS NOT LIKE THIS IS, THIS WASN'T A RATE-MAKING PROCEEDING. THIS WAS A SETTLEMENT BEFORE, AND I AM SURE FLORIDA POWER & LIGHT WOULD SAY YOU KNOW WHAT? WE THINK THAT WOULD BE TOO GREAT A RATE REDUCTION AND IF WE REALLY HAD TO CONTEST IT, WE GAVE UP SOME OF OUR RIGHTS. THAT IS WHAT SETTLEMENTS ARE ABOUT.

YOUR HONOR, WE HAVE NEVER TAKEN THE POSITION THAT THE COMMISSION IS WITHOUT AUTHORITY TO APPROVE A SETTLEMENT, BUT THERE ARE PROCEDURES, THERE ARE DUE PROCESS RIGHTS THAT WE ARE ENTITLED TO. THERE ARE STATUTORY RIGHTS THAT WE ARE ENTITLED TO.

WHAT STATUTORY RIGHTS HAVE BEEN VIOLATED. NOW YOU ARE SAYING, TELLING US ABOUT OTHER STATES THAT HAVE PROCEDURES. NOW,ION IF THAT IS THE COMMISSION THAT MANDATED IT OR THE LEGISLATURE, BUT DID ANY OF THOSE STATES HAVE THE COURTS REGULATE WHAT THE PROCEDURES SHOULD BE? AND IF THEY ARE STATUTORY RIGHTS, WHICH STATUTORY RIGHTS WERE VIOLATEED?

WELL, THE STATUTORY RIGHTS IN FLORIDA THAT WERE VIOLATED, ARE THE RIGHTS THAT WERE RECORDED BY SECTION 120.571(B) THAT EXPRESSLY SAYS THAT, IF THERE ARE DISPUTES OF MATERIAL FACTS, A PARTY IS ENTITLED TO A HEARING. FRANKLY THAT IS LANGUAGE THAT, TO ME I BELIEVE, IS PROBABLY UNIQUE TO FLORIDA. BUT THAT IS WHAT THE LEGISLATURE HAS MANDATED, AND HAVING MANDATEDED THAT, WE ARE ENTITLED TO A HEARING, AND IN FACT, I POINT TO YOU SADDLE BROOKE RESORTS VERSUS WIRE GRASS RANCH.

HOW DOES THAT RELATE TO THE FINALITY ISSUE? DO YOU AGREE OR DISAGREE THAT YOU STILL HAVE THE OPTION, EVEN UNDER THE SETTLEMENT AGREEMENT, TO PURSUE A FILING PETITION AND PROCEED BEFORE THE SERVICE COMMISSION, AS TO HOW THESE RATES AFFECT YOU AND YOUR CLIENTS?

APPELLEES HAVE MADE THE ARGUMENT, AND I I WOULD SUGGEST TO YOU THAT WHAT THEY WOULD DO IS PUT THE HOSPITALS IN A CLASSIC CATCH-22 SITUATION. WHAT THEY ARE SAYING HERE IS WE LACK STANDING BEFORE THE COURT. ALLEGEDLY NOT ADVERSELY IMPACTED, BECAUSE WE CAN TURN AROUND TOMORROW AND FILE A NEW PETITION WITH THE COMMISSION SEEKING TO REDUCE THE STIPULATED RATES THAT WERE JUST APPROVED BY THE COMMISSION. BUT YOU HAVE TO REMEMBER THAT THE HOSPITALS FILED A PETITION WITH THE COMMISSION ON AUGUST 2001, WHERE WE ASKED FOR FPL'S RATES TO BE REDUCED. THOSE WERE THE RATES THAT HAD BEEN APPROVED UNDER A PRIOR STIPULATION ENTERED INTO IN 1999. FPL ARGUED TO THE COMMISSION, NO, NO, NO. YOU HAVE TO DISMISS THE COMPLAINT, BECAUSE ONCE THE COMMISSION ACTED ODD THE 1999 STIPULATION AND APPROVED IT, IT WAS BINDING ON SIGNATORIES AND NONSIGNATORY PARTIES AS WELL. WHAT DID THE COMMISSION DO? THE COMMISSION IN FACT, DISMISSED THE COMPLAINT AND SAID IT WAS A COLLATERAL ATTACK ON A PRIOR COMMISSION ORDER, SO WHAT WILL AND ENHERE IF THE -- WHAT WILL HAPPEN HERE, IF THE APPELLEE'S ARGUMENT IS SEND? WE ARE NOT ADVERSELY IMPACTED BECAUSE WE CAN FILE A PETITION, AND IF WE GET BEFORE THE COMMISSION, THE COMMISSION IS GOING TO RULE, NO, YOU CAN'T PURSUE YOUR PETITION HERE BECAUSE IT IS A COLLATERAL ATTACK ON THE JUST-APPROVED STIPULATION. IT IS A COLLATERAL REMEDY, SO WE DON'T AGREE THAT WE CAN JUST GO OUT AND FILE A NEW PETITION. ON THE STANDING ISSUE, I WANT TO RAISE ANOTHER VERY IMPORTANT POINT, I THINK. LET'S PUT THE SHOE ON THE OTHER FOOT, AND LESS ASSUME, FOR A MOMENT THAT, FPL HAD SOUGHT A RATE INCREASE FROM THE COMMISSION. LET'S ASSUME THAT

THE COMMISSION DIDN'T GIVE FPL EVERYTHING IT WANTED, BUT IN FACT DID INCREASE RATES. WELL, THERE IS NO QUESTION THAT, IN THAT SITUATION, FPL WOULD BE THE BENEFICIARY OF THAT ORDER. AND AS A BENEFICIARY OF THAT ORDER, UNDER THEIR REASONING, THEY WOULD BE, THEY WOULD HAVE NO STANDING TO APPEAL, EVEN THOUGH FPL MIGHT THINK THAT THE INCREASED RATES WERE BETTER, WERE INSUFFICIENT IN LIGHT OF THE RATE INCREASE THAT FPL HAD SOUGHT ITSELF.

DO YOU IS SEE ANY DISTINCTION BETWEEN THAT RATE INCREASE REQUEST PROCEEDING AND THIS PROCEEDING UNDER 366.076 OF THE STATUTE, WHICH AUTHORIZES A LIMITED PROCEEDING?

I THINK THERE ARE TWO IMPORTANT POINTS. FIRST OF ALL, WHEN THE COMMISSION CITED 366.076, IT WAS IN THE PROCEEDING WHETHER IT FELL APART AND ALSO THE PLAN FOR UTILITIES TO JOIN GRID FLORIDA. IN THIS PHASE OF THE PROCEEDING, IT DIDN'T REFERENCE 366.076. WHAT IT SAID IS, WE ARE PROCEEDING IN THE RATE COMMISSION MEETING, AND IT WILL BE RESOLVED IF EVERYONE QUOTE/UNQUOTE, CAN AGREE. I DON'T THINK THAT 366.076 WAS EVER INTENDED TO APPLY IN THE CONTEXT OF A RATE PROCEEDING. 366.076 APPLIES TO INVESTIGATIONS SUCH AS THE ONE THAT WAS IMPLEMENTED HERE INITIALLY, BUT A RATE PROCEEDING IS DIFFERENT. THIS COURT HAS HELD, IN NUMEROUS CASES, THAT IN RATE PROCEEDINGS, DUE PROCESS IS REQUIRED, THAT TRADITIONAL PROCEDURES ARE REQUIRED. I DON'T WANT TO, IF YOU WILL ACCOMMODATE ME, I DON'T WANT TO HARP BACK, TOO MUCH, TO LAW IN OTHER STATES, BUT THE PROCEDURE THAT WAS FOLLOWED IN BRYANT VERSUS ARKANSAS PSC, IS DIRECTLY, I BELIEVE, THE PROCEDURE THAT IS MANDATED UNDER FLORIDA LAW AS WELL. WHAT HAPPENED IN THAT CASE, WAS THAT THE ARKANSAS PSC REQUIRED THE PROPONENTS OF THE STIPULATION THERE, TO PUT ON TESTIMONY DEMONSTRATING WHY THE STIPULATION, IN THEIR VIEW, WAS JUST AND REASONABLE. THE OPPONENT DID THE STIPULATION, WAS GIVEN THE OPPORTUNITY TO PRESENT OPPOSING TESTIMONY. THERE WAS THEN A HEARING, WHERE ALL PARTIES WERE PERMITTED TO SUBMIT ADDITIONAL EVIDENCE, AND THE PARTIES WERE PERMITTED TO CONDUCT CROSS-EXAMINATION. FOLLOWING THAT, THERE WAS A HEARING, AND THEN THE COMMISSION ISSUED A DECISION, IN WHICH IT DETERMINED WHETHER OR NOT THIS NONUNANIMOUS STIPULATION RESULTED IN JUST AND REASONABLE RATES. THAT IS WHAT WE ARE ASKING THAT HAPPENS HERE. AND WE BELIEVE THAT SECTION ONE, THAT IS A PROCEDURE THAT IS REQUIRED UNDER SECTION 120.571(B) OF THE FLORIDA STATUTES.

IN THE PSC PROCEEDINGS, DID YOU ASK FOR A HEARING, BECAUSE IT SEEMS TO ME THERE WERE SOME ARGUMENTS MADE ABOUT THE STIPULATION AND COUNSEL FOR SOUTH FLORIDA SAID THAT THEY ASKED HOW MUCH TIME WAS NEEDED FOR THEM TO PRESENT WHAT THEY WANTED TO PRESENT, AND THEY SAID A HALF-HOUR, I BELIEVE, OR SOMETHING TO THAT EFFECT, SO DID YOU ASK AT THAT POINT, TO HAVE THIS FULL-BLOWN HEARING THAT YOU ARE WANT SOMETHING.

YES. YES. THE, THERE WAS AN AGENDA CONFERENCE HELD TO HEAR COMMENTS ON THE STIPULATION. IT WAS REALLY, IN SOME SENSE, A REMARKABLE SETTING, BECAUSE EVERYONE WAS GIVEN FIVE MINUTES TO COMMENT ON THE SETTLEMENT, INCLUDING THE HOSPITALS, WHO OPPOSED THE SETTLEMENT. I WAS, THEN, ASKED, I WAS THE ATTORNEY BELOW AND WAS ASKED HOW MUCH TIME DO YOU NEED? I SAID I NEED AT LEAST A HALF AN HOUR. I WAS ULTIMATELY GIVEN 15 MINUTES. THAT WAS TO PRESENT ORAL ARGUMENT, JUST COMMENTS ON THE STIPULATION, BUT AT THE END OF THAT PRESENTATION, I EXPRESSLY ASKED THE COMMISSION TO DEFER RULING ON THE STIPULATION, TO HOLD IT HERE, FIRST TO ALLOW DISCOVERY TO BE COMPLETED WHICH HAD NEVER BEEN COMPLETED, AND THEN TO HOLD A HEARING ON THE MERITS OF THE STIPULATION, TO DETERMINE WHETHER IT RESULT IN JUST AND REASONABLE RATES, AND THAT IS WHAT WE ARE STILL SEEKING TODAY.

SO WE DON'T HAVE BEFORE, I THINK THERE WAS AT LEAST AN ASSERTION THAT THERE WAS NO PLEADING OR REQUEST BEFORE THE DATE OF THE APPROVAL FOR ANY OTHER RELIEF ON YOUR

CLIENT'S BEHALF.

THERE WOULD HAVE BEEN NO REASON FOR US TO HAVE FILED A REQUEST FOR A HEARING PRIOR TO THAT, BECAUSE ONE WAS SCHEDULED. A HEARING WAS SCHEDULED TO TAKE PLACE ON APRIL 10, 2002, THEN IT WAS OBVIOUSLY MOOTED, ONCE THE COMMISSION APPROVED THE STIPULATION.

YOU KNEW, BUT THE DAY THAT YOU APPEARED, WAS THE DAY THAT THE STIPULATION WAS BEING APPROVED. IS THAT WHAT WAS HAPPENING?

THAT WAS THE DAY THAT THE COMMISSION CONSIDERED THE STIPULATION.

SO THERE IS NOTHING IN THIS RECORD, THOUGH, YOU SAID THERE IS ALL SORTS OF THINGS AS TO HOW, WHY THIS STIPULATION AND SETTLEMENT IS, REALLY, CONTRARY TO THE INTERESTS OF ALL OF THE RATE PAYERS IN THE STATE OF FLORIDA. THERE IS NOTHING IN THIS RECORD THAT HAS EVER BEEN FILED BY YOU, TO GIVE ANY OF THE, SUBSTANCE TO THESE ALLEGATIONS.

WE SUBMITTED TESTIMONY IN THE, UNDER THE REGULAR PROCEDURAL SCHEDULE. THAT TESTIMONY IS ON FILE WITH THE COMMISSION. IT IS IN THE RECORD HERE. AND THAT TESTIMONY CONTAINS TESTIMONY CONCERNING RATE REDUCTIONS IN THE AMOUNT OF 475 MILLION. THAT WE WOULD SEEK AND EVIDENCE TO SUPPORT THAT. WE INDICATED TO THE COMMISSION THAT, THROUGH CROSS-EXAMINATION, WE BELIEVED WE COULD PROVE THAT THERE WAS ANOTHER $60 MILLION ABOVE THAT, WHICH IS IMPROPERLY INCLUDED IN RATES, AND, AGAIN, DISCOVERY HAD NEVER BEEN COMPLETED CONCERNING AFFILIATE TRANSACTIONS AND FPL'S RESOURCE PLANNING PROCESS, WHICH WE BELIEVE MAY LEAD TO ADDITIONAL. MR.^CHIEF JUSTICE

THE MARSHAL HAS SAID YOU ARE IN YOUR REBUTTAL TIME, IF YOU WANT TO SAVE THE TIME REMAINING FOR THAT PURPOSE.

YES, THANK YOU, YOUR HONOR.

CHIEF JUSTICE: GOOD MORNING.

MAY IT PLEASE THE COURT. I AM DAVID SMITH, REPRESENTING THE FLORIDA PUBLIC SERVICE COMMISSION. WITH ME AT COUNSEL TABLE ARE ALAN B. DAVIS AND STEVE BURGESS, OF THE OFFICE OF PUBLIC COUNSEL. WE HAVE AGREED TO SHARE OUR TIME NINE MINUTES FOR ME, 8 FOR MR. DAVIS AND THREE FOR MR. BURGESS.

WOULD YOU START AND OUTLINE THE PROCEDURE THAT WAS FOLLOWED HERE AND WHY THAT WAS THE APPROPRIATE PROCEDURE, UNDER THE CIRCUMSTANCES BEFORE RESPONDING DIRECTLY TO THE ARGUMENTS MADE HERE.

YES. I CERTAINLY WILL. AS MR. WISEMAN MENTIONED, THIS WAS THE COMMISSION'S PROCEEDINGS UNDER 367.07 OF THE FLORIDA STATUTES. IT IS IMPORTANT BECAUSE IT ALLOWS THE COMMISSION EXPRESSLY TO DETERMINE THE SCOPE OF THE PROCEEDING, TO DETERMINE WHAT ISSUES WILL BE HEARD AND TO DESIGN A PROCEDURE THAT IS APPROPRIATE FOR THE MATTER THAT IT IS ADDRESSING. IT, ALSO, EXPRESSLY ALLOWS THE COMMISSION TO DENY REQUESTS FOR EXPANDING THE SCOPE OF THE PROCEEDING, IF OTHER PERSONS WOULD LIKE TO DO THAT. BASICALLY IT SAYS THAT THE COMMISSION IS IN CHARGE. IT CAN DECIDE WHAT ISSUES IT WILL HEAR AND CONDUCT THE PROCEEDINGS ACCORDINGLY. NOW, IN THIS CASE, FROM DAY ONE, THE COMMISSION DID NOT PROMISE OR EXPRESSLY STATE THAT THERE WOULD NECESSARILY BE A HEARING IN THE CASE. IN FACT, FROM DAY ONE, IT ENCOURAGED THE PARTIES TO REACH A STIPULATION. AND THE VERY FIRST ORDER ON PROCEDURE, WHICH BEGAN BACK IN THE FALL OF 2000, WHEN THE ISSUES BEFORE THE COMMISSION WERE THE FORMING OF A RTO, REASONABLE TRANSMISSION ORGANIZATION, AND A PROPOSED MERGER WITH ENERGY CORPORATION, FPL'S PROPOSED MERGER AND THE CORPORATION WAS CONCERNED ABOUT THE

EFFECT IT MIGHT HAVE ON RATES, SO IT BEGAN THIS PROCEEDING AS A LIMITED PROCEEDING. IT CONTINUED THAT THROUGH THE TIME IT REQUIRED THE FILING OF MFR, SO IT IS NOT CORRECT THAT THE COMMISSION SUDDENLY SWITCHED GEARS, IN TERMS OF THE PROCEDURE IT WAS FOLLOWING. IT REQUIRED THEM TO FILE.

DO YOU AGREE THAT THERE CAN BE AN INJURY, IN FACT, BY A RATE PAYER, CLAIMING THAT THE RATE REDUCTION IS NOT SUFFICIENT, BASED UPON EVIDENCE? CAN THERE BE AN INJURY --

DO I BELIEVE WE HAVE STANDING TO CONTEST?

YES, SIR.

NO, YOUR HONOR, I DO NOT BELIEVE THAT, AND I DO NOT BELIEVE FLORIDA LAW --

THERE COULD NOT AND INJURY IN FACT?

NO. IT WOULD NOT BE AN INJURY IN FACT. IT IS THE BENEFIT IN FACT, IF IT IS ANYTHING, AND IF ANYTHING, THE HOSPITAL ASSOCIATION IS NOT EVEN DENYING THAT THEY LIKE THE STIPULATION THAT IT IS TO THEIR BENEFIT, AND IT IS A BENEFIT TO EVERY OTHER FLORIDA RATE PAYER.

WHAT DO YOU UNDERSTAND THEY ARE CLAIM SOMETHING.

THEIR CLAIM IS THAT THEY ARE INJURED, SIMPLY BECAUSE THEY WERE NOT GIVEN AN OPPORTUNITY TO HAVE A FURTHER PROCEEDING AFTER THE STIPULATION TO CONTEST THE COMMISSION'S APPROVAL OF THE STIPULATION.

AND WHAT DO YOU UNDERSTAND TO BE WHAT THEY WANTED TO CONTEST ABOUT THE STIPULATION?

WHAT IT IS THEY WOULD LIKE TO ATTACK ON THE STIPULATION?

RIGHT.

WELL, THEY BELIEVE THAT THEY COULD SHOW THAT THEY HAVE EVIDENCE THAT WOULD PRODUCE A GREATER RATE REDUCTION, IF THE COMMISSION CONSIDERED IT.

AND IF THE EVIDENCE WAS PRESENTED, THAT THERE WAS A BASIS FOR A GREATER RATE REDUCTION THAN IS IN THE STIPULATION, WOULD THAT, WOULD ANYBODY HAVE STANDING TO MAKE THAT ARGUMENT?

-- THAT ARGUMENT? WOULD ANY RATE PAYER?

YES. ANY RATE PAYER WOULD BE IN THE SAME POSITION, IF THEY DIDN'T LIKE THE STIPULATION. OF COURSE THEY WOULD HAVE TO MAKE SOME KIND OF APPEARANCE IN THE PROCEEDING AS A PARTY BURKES THAT ARGUMENT CAN BE MADE IN VIRTUALLY ANY RATE PROCEEDING. THE IDEA IS NOT TO, IN THE CONTEXT OF THE STIPULATION.

HELP US IN THE TERMS OF UNDERSTANDING THIS. YOU SAID THIS WAS TO BE A LIMITED PROCEEDING AND THE PSC ENCOURAGED THE PARTIES TO REACH A STIPULATION. WHO WERE THE PARTIES, THEN, TO THE STIPULATION?

THE PARTIES TO THE STIPULATION WERE THE PUBLIC ADVOCATE, THE OFFICE PUBLIC COUNSEL WHO REPRESENTS ALL OF THE RATE PAYERS OF FLORIDA. THERE WAS A LARGE INDUSTRIAL USER GROUP CALLED THE FLORIDA INDUSTRIAL POWER USERS GROUP, THE FEDERAL, THE FLORIDA RETAIL FEDERATION, PUBLIX SUPERMARKETS, LEE COUNTY, AND AN INDIVIDUAL REPRESENTING

HIS PARENTS AS INDIVIDUAL RATE PAYERS.

SO THAT THE HOSPITAL ASSOCIATION WOULD HAVE BEEN ONE OF THE PARTIES TO THIS STIPULATION?

I AM SORRY?

WOULD MR. WISE MAN'S CLIENT, IF THEY WOULD HAVE AGREED TO IT, WOULD HAVE ENTERED INTO THIS STIPULATION?

YES, MA'AM.

SO THEY WOULD HAVE BEEN ENCOURAGED TO REACH A STIPULATION?

THEY WOULD HAVE HAD THE OPPORTUNITY TO REACH A STIPULATION, THAT'S RIGHT.

NORMALLY THE PSC, IN A COURT PROCEEDING, YOU HAVE GOT, THE JUDGE MORE THAN HAPPY TO HAVE, IF PARTIES CAN RESOLVE A DISPUTE AMICABLY. THEY ARE VERY HAPPY AND BASICALLY WILL APPROVE STIPULATIONS OF SETTLEMENT. WHAT IS THE PROCEEDING, EVEN IF IT IS LIMITED, TO SEE THAT THE AMOUNT OF RATE REDUCTION OR RATE INCREASE IS IN THE PUBLIC'S INTEREST. IS THERE A ROLE THAT THE PSC IS REQUIRED TO FOLLOW?

ABSOLUTELY, IN TERMS OF FINDING A REASONABLE BASIS FOR THE STIPULATION AND DECIDING THAT THE RATES ARE JUST AND REASONABLE AND IN THE PUBLIC INTEREST, AND THAT IS PRECISELY THE RESULT THAT WAS ACHIEVED IN THIS CASE. THIS PROCEEDING WENT ON FOR SOMETHING LIKE 18 MONTHS, DURING WHICH TIME THERE WAS A GREAT DEAL OF DISCOVERY, AND ANALYSIS BY ALL OF THE PARTIES, AND OF COURSE THE FILING OF THE MFR IS AN ENORMOUS AMOUNT OF INFORMATION, AND THERE WAS ALSO AN AUDIT BY THE PUBLIC SERVICE COMMISSION STAFF, AND THE BOTTOM LINE IS --

WHAT IS WRONG WITH THE PROCEDURE THOUGH, AND I GUESS THE QUESTION IS WHETHER IT IS INCIDENT TO 120.57(B) OR PART OF THE LIMITED PROCEEDING, THAT IF A PARTY GIVING REASONABLE NOTICE, WHO HAS BEEN INVOLVED AS ONE OF THE INTERVENEORS, HAS CONCERNS THAT THIS IS REALLY, YOU KNOW, AGAIN, THIS IS $250 MILLION, WHICH SOUNDS LIKE A REALLY GOOD RATE REDUCTION, BUT LET'S ASSUME IT WAS ONLY A $10 MILLION REDUCTION, AND THE PARTIES HAD STARTED OUT ABOUT HAVING A $500 MILLION REDUCTION, AND ALL OF A SUDDEN YOU ARE AT TEN MILLION. ISN'T THERE A PROCESS THAT ALLOWS THAT PARTY THAT OBJECTS TO HAVE A HALF A DAY OR WHATEVER, TO PUT ON TESTIMONY AS TO WHY THIS IS, WOULD BE, REALLY, NOT IN THE PUBLIC'S INTEREST?

I DON'T THINK THERE IS A FORMAL PROCEDURE UNDER 120.57, WHICH IS WHAT MR.^WISEMAN HAS ARGUED, AND IN ORDER TO HAVE STANDING TO ASK FOR A HEARING UNDER THAT PROCEDURE, AND, AGAIN, I HAVE TO POINT OUT THE HEARING IS ASKING FOR, TO CONTEST THE STIPULATION, NOT A REGULAR RATE PROCEEDING, NOT A FULL RATE PROCEEDINGS T SIMPLY WAS TO CONTEST THE STIPULATION, AND UNDER 120.57, IN ORDER TO HAVE STANDING TO ASK FOR A HEARING, A PARTY MUST SHOW THAT THEY ARE SUBSTANTIALLY AFFECTED, AND THAT REQUIRES A SHOWING THAT THERE IS A INJURY IN FACT, NOT A REMOTE OR SPECULATIVE INJURY, WHICH MAY OR MAY NOT OCCUR SOMETIME IN THE FUTURE.

WELL, ISN'T IT SORT OF A CATCH-22? BECAUSE IF YOU HAD EVIDENCE, HARD EVIDENCE THAT, AND, AGAIN, I AM SPEAKING WITHOUT, YOU KNOW, JUST WE ARE TALKING ABOUT NUMBERS NOT HOW YOU WOULD GET TO THEM, THAT, BECAUSE THESE WERE RATES THAT WERE BEING PAID FOR SEVERAL YEARS, AND NOW THEY ARE SAYING WE ARE GOING TO GIVE SOME BACK PLUS WE ARE GOING TO HAVE THIS DIFFERENT STRUCTURE IN THE FUTURE. BUT IF THEY HAD HARD EVIDENCE THAT, REALLY, THERE WAS $50 MILLION THAT SHOULD HAVE BEEN YOU KNOW, INCLUDED IN

THERE AS PART OF THE REDUCTION, YOU KNOW, OVER EITHER THE LONG-TERM OR FROM THE PAST, HOW IS IT NOT, HOW IS THAT NOT AN INJURY IN FACT, AND I GUESS IT IS GOING TO ALLOW THEM TO BE ABLE TO PUT ON THAT EVIDENCE BEFORE THE PSC APPROVES THE STIPULATION.

BASICALLY, NUMBER ONE, THEY DID GET THE OPPORTUNITY TO ASK FOR. THEY DIDN'T PETITION FOR A FORMAL HEARING BEFORE THEY CAME TO THE AGENDA TO DISCUSS THE STIPULATION. AND SECONDLY, WHAT THEY ARE TALKING ABOUT IS BASICALLY A WISH LIST OF ISSUES THEY WOULD LIKE TO RAISE BEFORE THE COMMISSION. EVERYONE ELSE HAS A WISH LIST, AND IT IS WITHIN THE COMMISSION'S DISCRETION TO MR.^CHIEF JUSTICE

THE MARSHAL HAS GIVEN ME A NOTE TO REMIND ME THAT YOU HAVE USED UP THE NINE MINUTES THAT YOU WERE GOING, OF COURSE THAT, IS WITH OUR HELP. ION HOW YOU ALL WANT TO WORK THAT OUT.

GOOD MORNING. ALVIN DAVIS FOR FLORIDA POWER & LIGHT. I WOULD LIKE TO ADDRESS THE CATCH-22 THAT HAS BEEN RAISED THAT JUSTICE PARIENTE MENTIONED. THE PROCEDURE THAT WAS FOLLOWED HERE WAS A PROCEDURE THAT WAS INITIATED BY THE PUBLIC SERVICE COMMISSION, YET AT THE OUTSET DEFINED WHAT THE SCOPE OF THE PROCEDURE WOULD BE, WHAT PROCEDURES WOULD BE FOLLOWED, AND IT SPECIFICALLY SAID, AT THE OUT SET, WE CAN TERMINATE THIS AT ANY TIME IF THERE IS A STIPULATION THAT SATISFIES THE PUBLIC SERVICE COMMISSION THAT ITS OBJECTIVES HAVE BEEN MET. THEY ENDED AN INVESTIGATION OF FPL'S RATES, TO DETERMINE WHETHER THEY WERE REASONABLE. THE STIPULATION REPRESENTED THE CONCLUSION BY THE PUBLIC SERVICE COMMISSION, THAT ITS OBJECTIVES HAD BEEN MET THAT, THE RATES THAT HAD BEEN AGREED TO BY THE PARTIES WERE REASONABLE AND CONCLUDED THE PROCEEDING. NOW, THE ISSUE THAT IS BEING RAISED HERE, IS WE DIDN'T GET A CHANCE TO SAY THAT THE RATES SHOULD HAVE BEEN LOWER, AND WE DIDN'T HAVE THAT OPPORTUNITY, AND THEREFORE IT BECOME AS DUE PROCESS ARGUMENT. THE FLAW IN THAT IS THIS. THIS WAS A COMMISSION PROCEEDING. THEY HAVE THE RIGHT, UNDER THE LAW, 366, TO INITIATE THEIR OWN PROCEEDING AT ANY TIME, IF THEY BELIEVE THAT THE RATES THAT ARE BEING CHARGED ARE NOT REASONABLE.

ARE THEY NOT SUBJECT TO THE REQUIREMENTS OF CHAPTER 120 IN THE PROVISIONS FOR A HEARING?

NO.

THEY ARE NOT.

NO. THEY ARE NOT. 366, THEY HAVE TO FILE A PETITION WITH THE COMMISSION, SATISFY THE COMMISSION THAT IS THERE A REASONABLE BASIS FOR PROCEEDING AND THEN PROCEED.

THEN CAN YOU ADDRESS SPECIFICALLY, HIS ESTOPPEL ARGUMENT.

YES. THAT IS PRECISELY WHY IT POPPED UP. I DIDN'T MEAN TO DRAG MR. SMITH DOWN QUITE SO QUICKLY, BUT THE ARGUMENT THEY ARE MAKING IS, WELL, IT IS A FALSE REMEDY, BECAUSE WE TRIED THAT, AND THE COMMISSION TOLD US NO, SO NOW WHAT THEY ARE SAYING IS YOU DON'T HAVE A ROLE HERE, AND WHEN WE TRY OUR INDEPENDENT ROLE, THEY ARE GOING TO SAY YOU DON'T HAVE A ROLE THERE, EITHER, AND HERE WE ARE WITHOUT A REMEDY, BUT LET'S ADDRESS THAT SPECIFICALLY. THEY FILED A COMPLAINT, A SEPARATE COMPLAINT, SEPARATE DOCKET, ONCE THIS PROCEEDING WAS UNDER WAY. AND THAT, THERE WAS A MOTION TO DISMISS THAT COMPLAINT PETITION, AND IT WAS DISMISSED, AND ON THAT BASIS, THEY SAY, WELL, SEE, WE CAN'T HAVE A RATE CASE.

WHY WAS IT DISMISSED?

THAT IS THE KEY. FIRST OF ALL, IT WAS NOT A RATE PROCEEDING. IT WAS A PETITION TO HAVE INTERIM RATES IMPOSED, DURING THE PROGRESS OF THIS INVESTIGATION. THE COMMISSION HAD PREVIOUSLY DECIDED THAT INTERIM RATES WERE NOT REQUIRED IN THIS PROCEEDING, BECAUSE THERE WAS IN PLACE, BASED ON THE 1990 STIPULATION, A RATE SHARING FORMULA, SO THAT IF, IN FACT, FPL ACHIEVED GREATER AMOUNTS THAN IT WAS EXPECTED, THOSE COULD BE SHARED WITH THE RATE PAYERS. THE INTERIM RATE PROCEEDING SERVES THAT SAME PURPOSE. IT SAYS IF IT IS DETERMINED THAT YOUR RATES WERE TOO HIGH, THESE AMOUNTS SUBJECT TO INTERIM WILL BE RETURNED, SO THE COMMISSION DETERMINED THAT THERE WAS IN PLACE, A PROCESS THAT WAS FAIR TO THE RATE PAYERS, AND THERE WAS NO NEED FOR AN INTERIM, FOR INTERIM RATE RELIEF. THAT IS WHAT THEIR PETITION SOUGHT, THAT MOTION WAS TO DISMISS IT WAS GRANTED, ONLY BECAUSE THE COMMISSION DETERMINED, AND THE ORDER IS VERY CAREFULLY WRITTEN, THE COMMISSION DETERMINED THAT THAT PETITION FOR INTERIM RELIEF, NOT FOR A RATE CASE, CONSTITUTED A COLLATERAL ATTACK ON ITS EARLIER ORDER, WHICH SAID THERE WOULD BE NO INTERIM RELIEF. WHAT THE COMMISSION SAID WAS, IF YOU WANTED TO CHALLENGE THE FACT THAT THERE WOULD BE NO INTERIM RELIEF, THE WAY TO DO IT IS A MOTION FOR RECONSIDERATION OF THAT ORDER AND NOT STARTING A COLLATERAL PROCEEDING. SO THE DISMISSAL WAS NOT A DISMISSAL OF A RATE CASE. IT SAID NOTHING ABOUT A RATE CASE. IN FACT, IF YOU READ THE ORDER, IT SAID THEY ARE PERFECTLY FREE TO START A RATE CASE, BECAUSE THE '99 STIPULATION DOESN'T APPLY TO THEM.

THAT IS IN THE ORDER DISMISSING?

YES. IT IS A VERY DETAILED ORDER. I COMMEND IT TO THE COURT, BUT DON'T TRY TO READ IT ONCE.

WHAT PARAMETERS ARE THERE ON THEM INITIATING A RATE CASE NOW?

NONE.

ANY TIME?

ANY TIME. NONE. THAT IS WHAT THEY ARE PROCEEDING WITH HERE. THIS HAS RESULTED IN $250 MILLION A YEAR IN SAVINGS AND HAS BEEN IN PLACE ALMOST TWO YEARS, IN ADDITION TO ADDITIONAL AMOUNTS.

SO THIS KIND OF PROCEEDING, NO ONE WOULD HAVE STANDING TO CONTEST THE STIPULATION.

NOT ON THE GROUNDS THAT THEY ARE ASSERTING. COULD THERE CONCEIVABLY BE GROUNDS? I DON'T KNOW. BUT NO, IN THIS INSTANCE IF THE PUBLIC SERVICE COMMISSION STARTS IT, SATISFIES ITSELF, AND AS MR. SMITH POINTED OUT THERE, IS A VOLUMINOUS BODY OF INFORMATION THAT WAS DEVELOPED OVER SIX MONTHS. I MEAN, FPL FILED 169 SCHEDULES OF WHAT THEY CALLED A MINIMUM FILING REQUIREMENTS. I SHUDDER TO THINK WHAT THE MAXIMUM WOULD BE.

WAS THERE RES JUDICATA, THOUGH, IN THOSE RATE PROCEEDINGS?

NO, YOUR HONOR, ONLY BECAUSE THEY HAVE THE RIGHT TO WALK IN THE DOOR AND THEY HAD THAT RIGHT THE DAY AFTER THIS STIPULATION WAS FILED. THAT IS WHY THE CATCH-22 IS A BOGUS ARGUMENT, WITH ALL DUE RESPECT.

ONE OF THE ISSUES THAT THEY HAVE RAISED IS THIS QUESTION OF WHETHER THERE IS SOME IMPROPER BUSINESS DEALINGS, I GUESS, WITH THE, WITH ADELPHIA, QUESTIONING SOME OF THE COMMISSION'S DEALINGS, SO YOU ARE SAYING NOTHING IN THE STIPULATION OR IN WHAT THE PSC LOOKED INTO, ADJUDICATES THAT ISSUE.

THEY ARE NOT PRECLUDED FROM RAISING A SINGLE POINT.

DOES THE FACT THAT THIS AROSE FROM A PROCEEDING, IS THAT DIFFERENT THAN IF IT HAD BEEN, IS THAT DIFFERENT THAN A NORMAL RATE PROCEEDING?

YES. IF THEY HAD INITIATED, IF THEY DO INITIATE A RATE PROCEEDING, THE COMMISSION CAN'T SETTLE IT OUT FROM UNDER THEM. IT HAS TO DETERMINE THERE IS A REASONABLE BASIS FOR IT. IT GOES THROUGH. LET ME POINT OUT ONE OTHER THING ABOUT THE RECORD. THIS $500 MILLION RATE REDUCTION THAT THEY ARE TALKING ABOUT ACHIEVING. FIRST OF ALL, FPL CAME INTO IT SAYING NO RATE INCREASE IS REQUIRED. THEY ARE SAYING IT SHOULD BE $500 MILLION. THE STIPULATION WAS 250 MILLION AND THE STIPULATION IS WHERE BOTH SIDES GIVE, SO IT IS NOT AN UNREASONABLE AMOUNT TO START WITH, BUT MORE IMPORTANTLY, EVERY SINGLE AMOUNT THAT THEY ARE RAISING TO CONTRIBUTE TO THIS $550 MILLION INCREASE WAS BEFORE THE COMMISSION, BEFORE THE STIPULATION WAS ACCEPTED. NOW, THEY WANTED MORE. THEY WANTED TO GO INTO ADELPHIA AND WHAT CABLE NEWS CHANNELS THEY WERE USING AND WHATEVER INFORMATION THEY WANTED TO FIND OUT ABOUT ADELPHIA, BUT IF YOU LOOK AT THE AGENDA CONFERENCE, HE RECITES THE SAME POINTS AND SAYS THERE IS EVIDENCE OF X AND EVIDENCE IN THE RECORD OF Y AND EVIDENCE IN THE RECORD OF Z, AND THEY ADD UP TO THE VERY AMOUNT HE HAS JUST MENTIONED THIS MORNING.

BUT NOTWITHSTANDING THE PRESENCE IN THIS RECORD, THEY STILL WOULD NOT BE BARRED.

THEY WOULD NOT BE BARRED. MY POINT IS THIS WAS NOT A RUSH TO JUDGMENT BY THE COMMISSION. THE COMMISSION HAD ALL OF THAT BEFORE IT. THEY FILED A 26-PAGE MEMORANDUM PRIOR TO THE AGENDA CONFERENCE, THAT DETAILED ALL OF THIS. THEIR EXPERTS FILED TESTIMONY THAT ADDRESSED IT. SO IT IS NOT AS IF THE PUBLIC SERVICE COMMISSION SAID WE DON'T WANT TO HEAR FROM YOU.

BUT THEY WOULD GET A FRESH CRACK.

FRESH CRACK.

ON FACTS THAT THEY CAN PRESENT.

THEY CANNOT. THEY CAN RESUME THEIR EXPERTS AND PROP THEM UP AGAIN AND THEY CAN SAY THE SAME THING.

I AM NOT SURE ABOUT YOUR TIME SITUATION. I KNOW YOU HAVE ANOTHER COLLEAGUE THAT IS GOING TO HAVE SOME TIME.

UNLESS THE COURT HAS FURTHER QUESTIONS, I HAVE COVERED WHAT I WANTED TO COVER. THANK YOU.

GOOD MORNING. MAY IT PLEASE THE COURT. MY NAME IS STEVE BURGESS. I AM WITH THE OFFICE OF PUBLIC COUNSEL, AND I WOULD LIKE TO USE THE REMAINING MINUTE OR TWO, TO ADDRESS FROM THE PUBLIC COUNSEL'S PERSPECTIVE, BOTH THE PROCESS AND THE EFFECT OF OBTAINING THIS STIPULATION.

DO YOU CONCUR WITH MR. DAVIS THAT THERE IS WITHOUT, THAT THIS STIPULATION IS WITHOUT PREJUDICE TO OPPONENTS' CLIENTS.

EXCUSE ME. YES, YOUR HONOR, I ABSOLUTELY --

TO RAISE ANYTHING IN A FUTURE --

ABSOLUTELY. THAT IS THEIR ENTREE. THEY HAVE AN OPPORTUNITY TO ARGUE THE RIGHTS THAT THEY ARE SEEKING. THEY ARE JUST DOING IT THROUGH THE WRONG PROCESS.

WHAT IMPACT, IF ANY, DO YOU ATTRIBUTE TO THE NATURE OF THE LIMITED PROCEEDING THAT WAS INITIATED WITH REGARD TO INVESTIGATION OF THE RTO, AND THE PROPOSED OR PLANNED MERGER, AND THE TRANSFORMATION OF THAT INTO A LIMITED RATE ANALYSIS PROCESS?

WELL, I THINK THAT, BY STARTING WITH THE LIMITED PROCEDURE, WHICH IS A STATUTORILY-SANCTIONED PROCESS OF THE PUBLIC SERVICE COMMISSION, IT GAVE THE PUBLIC SERVICE COMMISSION THE, PUT THEM IN THE POSITION OF DEFINING THE PROCESS, AND, AGAIN, IT, CONTRARY TO WHAT COUNSEL HAS STATED, LIMITED PROCEEDINGS ARE USED IN ESTABLISHING RATES, AND IN THIS CASE, IT BASICALLY PUT THE PUBLIC SERVICE COMMISSION USED THAT VEHICLE FOR THE PURPOSE OF DEFINING WHAT THE BREADTH OF THIS INVESTIGATION WOULD BE, AND SO I THINK --

WHAT WOULD BE THE CONTROLLING POLICY OR LAW THAT WOULD ALLOW A CONSUMER TO GO IN AND ASK FOR A FURTHER RATE DECREASE? IN OTHER WORDS WHAT, WHAT ARE THE STANDARDS OUT THERE, EITHER IN THE RULES OR THE STATUTES, THAT WOULD ALLOW A CONSUMER TO COME IN AND SAY WE WANT YOU TO ORDER A PROVIDER OF POWER IN THIS CASE, OF ENERGY, TO REDUCE THEIR RATES? WHAT, IN OTHER WORDS, WHAT DO THEY HAVE TO SET OUT TO STATE A CAUSE OF ACTION FOR THAT KIND OF RELIEF, BEFORE THE PUBLIC SERVICE COMMISSION?

WELL, OUR OFFICE, AS REPRESENTATIVES OF ALL THE CONSUMER GROUPS, HAS FILED FOR RATE DECREASE CASES BEFORE, AND WE HAVE PRESENTED TO THE COMMISSION, PRIMA FACIE CASE, WHY THERE NEEDS TO BE A RATE --

WHAT IS A PRIMA FACIE CASE? IS IT, ARE THERE SOME STANDARDS WITH CERTAIN PERCENTAGES OF PROFIT OR YOU KNOW, WHAT, WHAT, WHAT CIRCUMSTANCES WOULD ENTITLE THE PUBLIC ADVOCATE, ON BEHALF OF THE CONSUMERS, TO HAVE A RATE DECREASE?

A DEMONSTRATION THAT THE UTILITY IS EARNING BEYOND A REASONABLE RETURN, AND THAT WOULD BE NOT ONLY THE USE OF THE PREVIOUSLY ESTABLISHED RATE OF RETURN BUT, ALSO, COULD BE A DEMONSTRATION, PRIMA FACIE DEMONSTRATION THAT THE RATE OF RETURN BEING USED, NEEDS TO BE LOWERED AS WELL.

WILL ALL OF THE MFR'S BE AVAILABLE, SHOULD A SUBSEQUENT BE FILED? AND BE AVAILABLE FOR USE AND ADMISSIBLE, OR WHAT IS THE LAW WITH REGARD TO THAT, IN YOUR VIEW?

I BELIEVE THAT, IF HOSPITALS FILED FOR A RATE DECREASE CASE THAT, THEY WOULD BE ENTITLED TO USE ALL OF THE MFR'S, TO PRESENT, TO TRY TO PRESENT THEIR CASE.

CHIEF JUSTICE: ALL RIGHT. WITH OUR HELP, WE HAVE CONSUMED ALL YOUR TIME ON THAT SIDE. THANK YOU.

THANK, YOUR HONOR.

CHIEF JUSTICE: HOW MUCH TIME IS LEFT FOR REBUTTAL? OKAY.

THANK YOU, YOUR HONOR.

WITH THOSE CONCESSIONS, YOUR POSITION SEEMS TO BE, YOU ARE SAYING YOU CAN'T DO WHAT THEY SAY YOU CAN DO. WHY IS THEIR ARGUMENT WRONG? WHERE IS THEIR POSITION WRONG?

THEIR POSITION IS WRONG BECAUSE WHAT THEY ARE SAYING IS THAT WE HAVE THE RIGHT TO

FILE A PETITION. I DON'T DISPUTE THAT WE HAVE THE RIGHT TO FILE A PETITION. WHAT NONE OF THEM HAS SAID IS THAT THE COMMISSION WOULD ACTUALLY ENTERTAIN THE COMPLAINT. IF THE COMMISSION FOLLOWS THE SAME REASONING THAT IT FOLLOWED WHEN IT DISMISSED OUR PRIOR COMPLAINT, THEN THE COMMISSION HAS TO DISMISS THE NEW PETITION THAT WE WOULD FILE.

IS THERE A DISTINCTION THAT HAS TO DO WITH THE FACT THAT THE RELIEF, DO YOU AGREE THE RELIEF YOU WERE SEEKING THEN WAS ONLY INTERIM RATE REDUCTION?

THAT IS A DIFFERENCE WITHOUT DISTINCTION IN THIS INSTANCE, BECAUSE THE SIGNIFICANT POINT IS THE COMMISSION SAID THAT OUR PRIOR PETITION WAS A COLLATERAL ATTACK ON AN EXISTING COMMISSION ORDER. IF WE FILE A NEW PETITION TO REDUCE RATES, THAT IS GOING TO BE, IN THE COMMISSION'S VIEW, A COLLATERAL ATTACK ON THE ORDER THAT IS NOW BEFORE THE COURT. BECAUSE --

YOU HEARD THE PUBLIC ADVOCATE SAY THAT THAT OFFICE HAS FILED PETITIONS LIKE THIS, AND I ASSUME THAT PART OF THAT STATEMENT WAS THAT THEY HAVE BEEN PROCESSED BY THE COMMISSION AS A REPRESENTATIVE OF CONSUMERS, SO WHY WOULDN'T YOU BE ENTITLED, ON BEHALF THE HOSPITALS, TO DO THE SAME THING?

BECAUSE PUBLIC COUNSEL DIDN'T SAY THEY DID IT IN THIS CONTEXT. IN THIS CONTEXT, IT IS DIFFERENT. THE COMMISSION HAS APPROVED A STIPULATION. UNDER THAT STIPULATION, IT PROVIDES A MECHANISM FOR FPL'S OVER RECOVERIES OF COSTS TO BE APPORTIONED BACK TO RATE PAYERS AND SOME OF IT BORNE BY SHAREHOLDERS AS WELL. IT ALSO SET RATES FOR A DISTINCT 3 3/4-YEAR PERIOD. SO THAT WHEN WE WOULD COME IN AND FILE A PETITION, WHAT WE WOULD BE SAYING IS THAT THE RATES THAT THE COMMISSION JUST APPROVED AND THAT THE COMMISSION HAS SAID SHOULD BE IN EFFECT THROUGH DECEMBER 31, 2005, ARE IN FACT UNJUST AND UNREASONABLE AND THE COMMISSION SHOULD REDUCE THEM, AND THAT WILL BE A COLLATERAL ATTACK ON THE ORDER THAT IS BEFORE THE COURT RIGHT NOW, SO WE WILL BE IN EXACTLY THE SAME POSITION THAT WE WERE IN TWO YEARS AGO, WHEN WE FILED OUR PRIOR PETITION.

MR. DAVIS SAYS THAT THE ORDER DISMISSING THE PRIOR PETITION THAT YOU FILED EXPLICITLY STATED THAT YOU WERE FREE TO FILE ANOTHER RATE PETITION.

ACTUALLY, I DON'T KNOW THAT, I HAVE NOT SEEN THAT LANGUAGE IN THE ORDER AND I AM GLAD YOU BROUGHT THAT UP, THOUGH, BECAUSE WHAT THE COMMISSION DID SAY, IS THAT, AND THIS IS AT PAGE TWELVE OF THE OPINION OF THE COMMISSION, IT SAYS IT APPEARS THAT SFHA's SECOND REQUEST FOR RELIEF ASKS FOR A PROCEEDING THAT WE HAVE ALREADY UNDERTAKEN, SO WHAT THE COMMISSION DID IS, ON THE ONE HAND IT WAS TELLING YOU SAY YOU CAN'T FILE YOUR PETITION, BECAUSE WE HAVE ALREADY UNDERTAKEN THAT PROCEEDING.

WELL, THAT WAS THE INTERIM RATE ISSUE, THOUGH, WAS IT NOT?

NO. I BELIEVE ACTUALLY, WELL, WE HAD ASKED FOR INTERIM RATE RELIEF, BUT THE PROCEEDING THAT THE COMMISSION IS TALKING ABOUT IN THIS ORDER, WAS NOT FOR INTERIM RATE RELIEF. THE PROCEEDING THE COMMISSION WAS TALKING ABOUT IS THE PROCEEDING THAT RESULTED IN THE STIPULATION THAT WE ARE HERE ON TODAY.

THANK YOU. THANK YOU ALL VERY MUCH, ESPECIALLY FOR RESPONDING TO OUR ARGUMENTS. [I