

>> ALL RISE.
HEAR YE, HEAR YE, HEAR YE.
THE SUPREME COURT IN FLORIDA
IS NOW IN SESSION,
DRAW NEAR, GIVE ATTENTION.
YOU SHALL BE HEARD.
GOD SAVE THESE UNITED STATES,
GREAT STATE OF FLORIDA AND
THIS HONORABLE COURT.
>> LADIES AND GENTLEMEN, THE
SUPREME COURT OF FLORIDA.
PLEASE BE SEATED.
>> WELCOME TO THE FLORIDA
SUPREME COURT.
OUR FIRST CASE FOR THE DAY IS
CITIZENS OF THE STATE OF
FLORIDA VERSUS FLORIDA PUBLIC
SERVICE COMMISSION.
YOU MAY BEGIN.
>> GOOD MORNING.
MAY IT PLEASE THE COURT, MY
NAME IS JOSEPH MCGLOTHLIN.
I AM WITH THE FLORIDA OFFICE
OF PUBLIC COUNSEL AND I APPEAR
TODAY ON BEHALF OF THE
CITIZENS OF THE STATE OF
FLORIDA.
>> THE SETTLEMENT WAS
NEGOTIATED GUY FPL AND CERTAIN
CUSTOMERS.
THE PUBLIC COUNSEL REFUSED TO
SIGN THE SETTLEMENT DOCUMENT
AND OBJECTED TO IT
>> YOU ARE REQUIRED TO AGREE
TO THE SETTLEMENT?
OR NOT?
>> IF I COULD
>> YOU SEEM TO SAY THAT
THERE'S SOMETHING WRONG
BECAUSE YOU DID NOT AGREE TO
IT.
THE PUBLIC COUNSEL WAS CREATED
BY THE LEGISLATURE AND GIVEN
THE DUTY TO REPRESENT THE
GENERAL PUBLIC AND THEN WAS
GIVEN THOSE POWERS AS
NECESSARY TO CARRY OUT THOSE
DUTIES.
THAT LANGUAGE HAS BEEN
CONSTRUED BY THIS COURT IN THE

1976 CITIZENS V MAYO CASE AND
IN THAT CASE COURT SAID
SPECIAL CONDITIONS PERTAIN.

>> ONE ASPECT OF THE SPECIAL
CONDITIONS THAT STEM FROM THE
POWERS WHICH ARE NOT LIMITED
TO, BUT ARE ALL THOSE POWERS
NECESSARY TO CARRY OUT OUR
DUTIES IS THE RIGHT TO HAVE
OUR ISSUES ADJUDICATED ABSENT
A SETTLEMENT TO WHICH THE
PUBLIC COUNSEL AGREES.

>> IS IT YOUR POSITION THAT
ANYTIME THE OFFICE COUNSEL
OBJECTS THAT THE PSC IS
WITHOUT AUTHORITY?

>> THAT'S CORRECT.
THE PUBLIC COUNSEL IS
NECESSARY TO THE APPROVAL OF A
VALID SETTLEMENT.

>> WHAT IS THE BASIS FOR THAT
OPINION?

>> THE BASIS IS THE LANDSCAPE
THAT WAS CREATED BY THIS
COURT'S OPINION IN THE MAYO
CASE IN WHICH THE COURT
OBSERVED THAT THERE IS A
STATUTORY NEXUS BETWEEN THE
CREATION OF A STREAMLINED
PROCESS FOR DECISIONMAKING IN
RATE CASES ON THE ONE HAND AND
THE CREATION OF PUBLIC COUNSEL
TO REPRESENT RATE PAYORS WHO
WOULD BE WITHOUT
REPRESENTATION AT THE SAME
TIME.

>> I COULD UNDERSTAND YOUR
ARGUMENT IF YOU WERE SAYING
THAT THERE ARE ISSUES HERE
THAT NEED TO BE LOOKED AT
BEFORE YOU ENTER INTO AN
AGREEMENT.

IS THAT REALLY THE ESSENCE OF
WHAT YOU'RE SAYING?

YOU COULD NEVER DO ANYTHING IF
YOU ALWAYS HAD TO HAVE THE
PUBLIC COUNCIL'S AGREEMENT TO
A SETTLEMENT.

BUT ARE YOU REALLY SAYING THAT
AS LONG YOU CAN'T ENTER

INTO THE SETTLEMENT UNTIL THOSE ISSUES THAT HAVE BEEN RAISED IN THE PUBLIC INTEREST ARE ADDRESSED?

>> THE ISSUES ARE IDENTIFIED IN THE PREHEARING PROCESS THAT THE COMMISSION CONDUCTS AND ARE THE RESULT OF DISCOVERY AND PRETRIAL TESTIMONY AND FREQUENT NEGOTIATIONS TO SEE IF A SETTLEMENT IS POSSIBLE.

>> WELL, LET'S SAY HERE THE SETTLEMENT AGREEMENT HAD BEEN WHAT THE PSC CAME OUT WITH AFTER A FULL HEARING AND THE PUBLIC COUNCIL STILL OBJECTED. CLEARLY THIS COURT'S REVIEW WOULD BE WHETHER IT WAS THE VARIOUS FACTORS.

NOW, WHAT I UNDERSTAND HERE YOU WERE TALKING ABOUT THE PROCEDURAL HISTORY.

THIS WAS ABOUT TO GO TO A FULLBLOWN HEARING ON ALL OF THE ISSUES THAT HAD BEEN RAISED.

NO QUESTION PUBLIC COUNSEL HAD INTERVENED.

AND THEN A POST SETTLEMENT AGREEMENT WAS REACHED.

AND AT THAT POINT IT WASN'T LET'S JUST GO TO WHAT HAPPENED.

IT'S NOT THAT THE PSC RUBBER STAMPED IT OR YOU DIDN'T HAVE ANY CHANCE TO RAISE THE ISSUES THAT CONCERNED YOU.

DIDN'T IT THEN GO TO A WHOLE SET OF OTHER PROCEEDINGS WHERE PUBLIC COUNSEL CITIZENS HAD THE CHANCE TO RAISE THE ISSUES THAT CONCERNED THEM ABOUT THE SETTLEMENT AND THE PSC LOOKED AT THAT?

SO IF YOU COULD ELABORATE ON WHAT ABOUT THAT PROCESS OCCURRED?

I MEAN, IT WASN'T LIKE A TRIAL COURT MAY TAKE OR THIS COURT MAY TAKE A SETTLEMENT AND THEN

WE DON'T CONCERN OURSELVES
WITH WHAT'S IN THE SETTLEMENT,
THE CASE IS DISMISSED OR
WHATEVER.

THAT'S NOT WHAT HAPPENED HERE.
SO PLEASE GO TO THAT ISSUE.

WHAT WAS WRONG WITH THE
PROCESS AFTER THE SETTLEMENT
WAS REACHED?

>> BEAR IN MIND THAT BY THE
TIME OF THE PREHEARING
CONFERENCE, THE ISSUANCE OF
THE PREHEARING ORDER, PUBLIC
COUNSEL AND OTHER PARTIES HAD
IDENTIFIED AND KEYED UP TO BE
ADDRESSED AND ADJUDICATED
CLOSE TO 200 SEPARATE ISSUES,
MANY OF THEM RAISED BY PUBLIC
COUNSEL AND MOST OF THEM
HAVING TO DO WITH THE ISSUE OF
OVERALL REVENUE, ITEM BY ITEM,
ACCOUNT BY ACCOUNT, ACTIVITY
BY ACTIVITY.

>> DO YOU FEEL THAT THERE WERE
ISSUES WASN'T THERE A
HEARING AFTER THE PROPOSED
SETTLEMENT AGREEMENT WAS
REACHED WHERE YOU HAD THE
CHANCE TO ADDRESS SUBSTANTIVE
ISSUES REGARDING SETTLEMENT?

>> THE SEQUENCE WAS FOLLOWS.
FIRST

>> BUT THAT FIRST, YES?
BECAUSE IN MAYO YOU USED
MAYO, BUT I THOUGHT IN MAYO IT
WAS THE FACTS WERE PRETTY
DIFFERENT.

DIDN'T YOU DIDN'T PUBLIC
COUNSEL AND, AGAIN, I
APPRECIATE YOUR ROLE IS TO
REPRESENT THE CITIZENS OF THE
STATE OF FLORIDA.

SO THIS IS TRYING TO
UNDERSTAND THIS.

DIDN'T CITIZENS' PUBLIC
COUNSEL HAVE THE CHANCE TO
ADDRESS ISSUES RAISED FOR THE
SETTLEMENT AGREEMENT WAS
REACHED?

>> WE DID PARTICIPATE IN THAT

HEARING.

BUT I WISH TO ADD THAT THE HEARING WAS IN LIEU OF THE FORMAL ADJUDICATION ISSUE BY ISSUE OF THE ISSUE THAT WE HAD RAISED THAT STEMMED FROM THE PETITION THAT WAS FILED IN

>> WELL, CAN YOU IDENTIFY BECAUSE WE'RE HERE TO SEE WHETHER THIS WAS A FAIR WHATEVER THE SPECIFIC STANDARD IS, WHETHER THESE RATE INCREASES ARE GOING WERE FAIR, REASONABLE, JUST.

I'M NOT USING THE EXACT WORDS. SO WAS THERE TESTIMONY IN THE 200 ISSUES THAT HAD BEEN RAISED POSTTESTIMONY THAT IF THAT WAS IN THIS RECORD, THE COURT WOULD SEE THAT THIS SETTLEMENT WAS SOME TYPE OF A SHAM, THAT REALLY NONE OF THIS WAS IN THE PUBLIC INTEREST?

I MEAN, ISN'T THAT WHAT GETTING DOWN TO BEYOND PROCESS ISSUES, ISN'T THAT WHAT WE'RE CONCERNED ABOUT?

>> THE RECORD OF THAT FIRST HEARING IS WAS LOOKED AT BY THE COMMISSION.

HOWEVER, IN LIEU OF THE ISSUE BY ISSUE ADJUDICATION, THEY SHIFTED TO THE CONSIDERATION OF THE SETTLEMENT PROPOSAL.

>> I UNDERSTAND THAT, BUT THAT'S PROCESS, AND YOU'RE SAYING THEY CAN'T DO THAT. IF WE DISAGREE WITH YOU, STILL THE QUESTION IS WAS THE RESOLUTION FAIR OR UNFAIR AND DID YOU NOT HAVE THE CHANCE TO PRESENT EVIDENCE THAT WOULD HAVE SHOWN THAT THIS SETTLEMENT THAT ONLY INVOLVED AN AGREEMENT OF 1% OF THE FP&L USERS WAS UNFAIR TO THE REMAINING 99% OF THE USERS AND REALLY UNJUSTIFIED FOR WHAT THEY WERE DOING.

>> WE DID PARTICIPATE IN THE

HEARING.

WE DID CONTEND THAT THE SETTLEMENT WAS NOT A GOOD DEAL FOR CUSTOMERS.

>> WELL, BUT YOU GOT TO AGAIN, I'M TRYING TO DRILL DOWN.

WHAT DIDN'T YOU GET TO PRESENT THAT WOULD HAVE IF IT WAS IN THIS RECOVERED WOULD HAVE SHOWN THAT WHEN THE PSC DID WAS NOT BASED ON THE PROPER STANDARD?

>> WITH RESPECT, WHAT WE DIDN'T GET WAS THE ISSUEBYISSUE ADJUDICATION.

>> WE'RE OBVIOUSLY PASSING EACH OTHER.

SOMEONE COULD SAY I HAD 200 ISSUES OR 20 WITNESSES AND THE COURT ONLY LET ME PUT ON FIVE AND YOU'D HAVE TO SHOW THAT IN THE 15 THERE WAS SOMETHING THERE THAT REALLY DENIED THE SOMETHING THAT WAS MATERIAL TO THE RESOLUTION OF THE CASE. COURTS DO THAT ALL THE TIME AS FAR AS LIMIT WHAT HAS TO BE PRESENTED.

SO JUST SAYING YOU HAD 200 ISSUES AND YOU COULDN'T PRESENT EVIDENCE ON 200 ISSUES DOESN'T DO THAT.

>> WE DID PRESENT THE EVIDENCE ON THE 200 ISSUES OR THAT WE WERE CONCERNED WITH.

BUT THEN THE COMMISSION ENTERTAINED A SETTLEMENT THAT INCORPORATED ELEMENTS THAT WERE FOREIGN TO THE ORIGINAL PETITION.

>> THAT'S A DIFFERENT ISSUE.

>> YES.

>> OKAY.

SO IS THAT A SECOND ISSUE, THAT THEY WENT AHEAD AND THEY EXPANDED THIS IS THIS TERM THAT I GSBA OR THEY EXPANDED WHAT WAS IN THE ORIGINAL ADJUDICATION AND

THAT'S WHAT YOU'RE OBJECTING TO?

>> THAT IS A SEPARATE GROUNDS FOR APPEAL, YES.

>> IN CONNECTION WITH THE SECOND GROUND, AM I CLEAR THAT IT IS A GENERAL DUE PROCESS ARGUMENT AS A BASIS FOR RELIEF AND NOT A PARTICULAR RULE VIOLATION?

>> IT IS ACTUALLY BOTH, YOUR HONOR.

WE CONTEND THAT THE COMMISSION FAILED TO COMPLY WITH ITS OWN RULES IN

>> WHAT IS THE RULE VIOLATION?

I'M NOT CLEAR ON THAT AFTER GOING THROUGH THE BRIEFS.

I UNDERSTOOD THE DUE PROCESS ARGUMENT, BUT WHAT RULE WAS VIOLATED?

>> ONE COMPONENT OF THE SETTLEMENT AGREEMENT WAS THE PROVISION THAT FLORIDA POWER AND LIGHT COMPANY COULD INCREASE BASE RATES IN 2014 AND 2016 TO RECOVER COSTS OF FUTURE GENERATING UNITS. THOSE RATES WERE NOT A COMPONENT OF THIS MARCH, 2012 PETITION.

THE PETITION WAS LIMITED TO ONLY TWO INCREASES, BOTH OCCURRING IN THE YEAR 2013.

>> I UNDERSTAND THAT, BUT IS THERE A RULE THAT PROHIBITS A MODIFICATION OF WHAT IS BEING SOUGHT AS THE MATTER IS BEFORE THE PSC AND, IF SO, WHAT IS THAT RULE?

>> WELL, RULE 256.043 REQUIRES THAT THE APPLICANT WHO APPLIES TO INCREASE RATES SUBMIT MINIMUM FILING REQUIREMENTS, WHICH ARE THE VOLUMINOUS ACCOUNTING AND FINANCIAL DATA THAT ACCOMPANY A REQUEST TO INCREASE RATES. OTHER RULES REQUIRE

>> OKAY.

WAIT.

THEY DID NOT DO THAT WITH REGARD TO THE EXPANSION OF THE REQUEST?

>> THAT'S CORRECT.

>> THESE OTHER ISSUES WERE GOING TO BE ADDRESSED?

>> IT IS A NOTICE ISSUE AND MORE.

THE SETTLEMENT WAS SUBMITTED FIVE MONTHS AFTER THE PETITION WAS FILED, FIVE DAYS BEFORE THE START OF THE HEARING ON THAT PETITION, AND AMONG OTHER THINGS COMMISSION RULES REQUIRE AN APPLICANT TO PROVIDE NOTICE TO CUSTOMERS IN THE FORM OF BILL INSERTS AND CASE SYNOPSES LODGED IN PUBLIC PLACES.

>> SO THE SETTLEMENT WAS ISSUED BEFORE YOU HAD AN OPPORTUNITY TO HAVE A HEARING? IS THAT WHAT YOU JUST SAID?

>> THE SETTLEMENT WAS SUBMITTED FOR APPROVAL FIVE DAYS BEFORE THE BEGINNING OF THE HEARING ON THE ORIGINAL PETITION.

THE COMMISSION PROCEEDED TO CONDUCT THAT HEARING ON THE FIRST PETITION, BUT BEFORE ADJUDICATING THE MANY ISSUES, INCLUDING OURS, ON AN ISSUEBYISSUE BASIS, THEY SHIFTED TO ENTERTAIN AND APPROVE A SETTLEMENT PROPOSAL THAT HAD FIVE OR SIX ISSUES UNDER A STANDARD DEEMED IS IT IN THE PUBLIC INTEREST. BUT WE CONTEND THAT THE THERE IS NO HEARING ON DISPUTED FACTS UNLESS THE HEARING IS ACCOMPANIED BY THE ADJUDICATION.

AND THAT IS CONSISTENT WITH THE MAYO CASE.

>> LET ME ASK YOU ABOUT THOSE INCREASED BASE RATES FOR FLORIDA POWER AND LIGHT FOR

20142015.

IS THAT AUTOMATIC OR DID THEY HAVE TO COME IN AND REQUEST THAT?

>> IT'S NOT AUTOMATIC.

I'M SORRY.

THEY DO NOT HAVE TO COME BACK AGAIN.

IT IS AUTOMATIC IN THE SENSE THAT THOSE INCREASES HAVE BEEN APPROVED AS A COMPONENT OF THE SETTLEMENT.

THERE IS

>> THEY DON'T HAVE TO SEPARATELY FILE THE PETITION TO GET A RATE INCREASE FOR THOSE YEARS?

>> THERE IS ONLY THE ONLY THE TRUEUP OF AMOUNTS THAT VARY FROM THE ESTIMATED COST OF THE UNIT THAT HAD BEEN APPROVED, BUT

>> APART JUST FROM THE STATUTORY FRAMEWORK, APART FROM YOUR CHALLENGE HERE TODAY, CAN YOU SEPARATELY FILE A CHALLENGE FOR THOSE RATE INCREASES?

>> NO.

THAT IS PART OF THE ORDER APPROVING THE SETTLEMENT. AND THOSE WILL BE IMPLEMENTED UNLESS THE ORDER IS OVERTURNED.

AND ONE ASPECT OF OUR OBJECTION IS THAT THESE INCREASES ASSOCIATED WITH NEW UNITS ARE INCREMENTAL IN NATURE.

THEY SIMPLY TACK ON THE REVENUE OF THE NEW UNIT WITHOUT CONSIDERING WHETHER EARNINGS OVER TIME HAVE INCREASED TO THE POINT THAT THE COMPANY COULD ABSORB SOME OR ALL OF THE COST OF THE NEW UNIT WITHOUT A DOLLAR FOR DOLLAR INCREASE AT THAT TIME.

>> WHAT WAS THE POSITION OF PUBLIC COUNSEL, THE CITIZENS,

REGARDING THE RATE INCREASE
THAT WAS SOUGHT?

THAT NONE SHOULD BE SOUGHT OR
JUST THE LESSER AMOUNT?

>> OPPOSITION WAS THAT THE
EXISTING RATES WERE TOO HIGH
AND SHOULD BE REDUCED BY \$253
MILLION ANNUALLY.

>> WHICH WOULD MEAN WHAT
PERCENTAGE?

>> I DON'T HAVE A PERCENTAGE
OFFHAND.

BUT IT'S OBVIOUSLY A MARKED
DIFFERENCE BETWEEN THE
COMPANY'S POSITION

>> SO IT'S A MATERIAL
DIFFERENCE BETWEEN

>> OH, CERTAINLY.

>> BECAUSE WHAT THEY APPROVED
WAS AN INCREASE AND YOU WERE
SEEKING A DECREASE.

>> CERTAINLY.

>> AND WAS THE INCREASE THAT
WAS APPROVED, WAS IT IT WAS
A LITTLE LESS THAN WHAT HAD
BEEN SOUGHT?

>> THE COMPANY SOUGHT TWO
INCREASES, \$516 MILLION TO
BEGIN JANUARY†OF 2013, AND AN
ADDITIONAL \$173 MILLION WHEN
THE UNIT WENT INTO

>> OF THE

>> OF THAT THE SETTLEMENT
APPROVED \$350 MILLION IN
JANUARY†AND THEN AUTHORIZED
THE ADDITIONAL INCREASES,
WHICH OVER TIME WOULD ACTUALLY
AUTHORIZE FPL TO RECOVER FROM
CUSTOMERS MORE DOLLARS THAN IT
ORIGINALLY REQUESTED BECAUSE
OF THE IMPACT OF THOSE
ADDITIONAL FUTURE INCREASES.
ONE BASIS FOR OBJECTION TO THE
SETTLEMENT.

>> YOU'RE IN YOUR REBUTTAL
TIME.

>> I'LL RESERVE MY COMMENTS.
BUT IF I WOULD JUST ADD ONE
MORE THING, AND THIS IS IN
RESPONSE TO A QUESTION.

THE QUESTION WAS ASKED ARE WE
CONTENDING THAT WE ARE
NECESSARY.

CONSIDER THE FACT THAT UNDER
THE REGIME THAT WOULD BE
APPROVED BY THE ORDER, THE
UTILITY WOULD HAVE A
UNILATERAL VETO POWER OVER ANY
SETTLEMENT.

NO SETTLEMENT COULD TAKE PLACE
THAT WAS UNACCEPTABLE TO THE
UTILITY, BUT SETTLEMENTS COULD
TAKE PLACE THAT ARE
UNACCEPTABLE TO THE STATUTORY
REPRESENTATIVE OF ALL THE
CITIZENS.

WE DON'T ASK FOR ANY SPECIAL
ADVANTAGE.

WE ASK FOR THE EQUAL FOOTING
THAT WOULD ALLOW US TO
REPRESENT THE CITIZENS IN THE
MANNER THAT THIS COURT IN THE
MAYO CASE SAID THE LEGISLATURE
INTENDED.

>> JUST LET ME BECAUSE
SINCE YOU RAISED THAT, SO IF
I MAY YOU MAY HAVE
ANSWERED IT.

IF IT HAD GONE TO THE HEARING
AND THE THIS WHAT WAS
REQUESTED IN THE SETTLEMENT
AGREEMENT WAS WHAT WAS
REQUESTED AND THE PSC HAD COME
TO THE CONCLUSION THAT THAT
WAS APPROPRIATE, YOU WOULDN'T
BE OBJECTING.

WOULD YOU STILL BE OBJECTING?

>> ONLY IF WE THOUGHT THERE
WAS SOMETHING, ASPECT OF THE
DECISION, MAYBE NOT

>> WELL, THE SAME EXACT TERMS
THAT ARE IN THE SETTLEMENT
AGREEMENT.

YOU'D STILL BE OBJECTING
BECAUSE YOU'D SAY THERE WAS NO
JUSTIFICATION FOR THE
INCREASE.

>> YES, BUT ON REVIEW THE TEST
WOULD BE WHETHER THE ORDER WAS
SUPPORTED BY

>> YOU'RE SAYING THERE SHOULD BE LESS DEFERENCE OR NO DEFERENCE BECAUSE IT WAS A SETTLEMENT AGREEMENT TO WHICH THE PUBLIC COUNSEL OBJECTED.

>> IN FACT, IN RESPONSE TO YOUR QUESTION, I'D LIKE TO POINT OUT THAT UNDER THE EMPOWERING STATUTE, THE LEGISLATURE HAS INSTRUCTED THE PUBLIC COUNSEL TO OPERATE INDEPENDENTLY.

SO THIS IS SOMETHING THAT SETS THIS CASE APART FROM THE TYPICAL REVIEW OF THE PSC ORDER BECAUSE THE PSC DOES NOT ADMINISTER OR ENFORCE THE STATUTE THAT CREATES AND EMPOWERS THE PUBLIC COUNSEL. FOR THAT REASON, THERE IS NO DEFERENCE INVOLVED IN YOUR DE NOVO REVIEW OF OUR INTERPRETATION OF THE STATUTE AND THAT ISN'T ALTERED BY THE FACT THAT DESPITE OUR NUMEROUS OBJECTIONS THE COMMISSION WAS SILENT ON OUR LEGAL STANDARD. I'LL RESERVE MY TIME.

THANK YOU.

>> MAY IT PLEASE THE COURT, MY NAME IS ROSEANN.

MR. †KAISER AND I WILL ARGUE THE COMMISSION'S RIGHT TO RULE ON THE SETTLEMENT AGREEMENT AND THE DUE PROCESS ISSUE AND MR. †DAVIS WILL ARGUE THE MERITS OF THE SETTLEMENT AGREEMENT AND THE FINAL ORDER APPROVING IT.

PUBLIC COUNSEL MISCONSTRUES ITS ENABLING STATUTE AND THIS COURT'S DECISION IN CITIZENS V MAYO TO ALLOW IT TO PRECLUDE THE COMMISSION FROM RULING ON THE SETTLEMENT AGREEMENT. THAT WOULD HAVE THE EXACT SAME EFFECT AS ALLOWING PUBLIC COUNSEL TO DENY THE SETTLEMENT AGREEMENT.

IT'S A MISREPRESENTATION OF

THE LAW AND IT WOULD ENCROACH ON JURISDICTION TO REGULATE THE RATES AND SERVICES OF PUBLIC UTILITY COMPANIES.

>> WHAT IS REALLY OF CONCERN TO ME HERE IS THEIR ARGUMENT THAT THE SETTLEMENT AGREEMENT ACTUALLY WAS ENTERED INTO PRIOR TO EVEN HAVING THE HEARING ON THE ISSUES THAT THE PUBLIC COUNSEL WAS RAISING. AND SO TO ME, WITHOUT HEARING THESE KINDS OF ISSUES, HOW DO YOU ENTER INTO A SETTLEMENT? SO WHY WOULD YOU HAVE A PROCESS WHERE YOU'VE GOT THE SETTLEMENT BEFORE YOU'VE GOT THE DISCUSSION OF THE ISSUES THAT ARE INVOLVED?

>> YOUR HONOR, THE COMMISSION CONDUCTED A FULL EVIDENTIARY HEARING ON THE ISSUE

>> AFTER THE SETTLEMENT.

>> IN THE RATE CASE.

FIRST WE CONVENED THE HEARING AND WE TOOK ALL THE EVIDENCE ON THE RATE CASE ISSUE FIRST.

>> OKAY.

>> AND THEN

>> LET ME JUST MAKE SURE I UNDERSTAND THE PROCEDURE HERE.

>> SURE.

>> THERE WAS NO SETTLEMENT PRIOR TO HAVING THE HEARING? I MEAN, THERE WAS NO AT LEAST I GUESS PROPOSED SETTLEMENT PRIOR TO THE HEARING.

>> THERE WAS A PROPOSED SETTLEMENT PRIOR TO THE HEARING.

YES, YOUR HONOR.

THERE WAS A PROPOSED SETTLEMENT.

THE COMMISSION DEFERRED EVEN TAKING EVIDENCE ON THE PROPOSED SETTLEMENT UNTIL AFTER IT TOOK ALL THE EVIDENCE ON THE RATE CASE ISSUES.

THE PRESIDING OFFICER DETERMINED TO DO IT THAT WAY

BECAUSE OF THE DIFFICULTIES INVOLVED IN RESCHEDULING A FULL EVIDENTIARY HEARING ON A BIG, MAJOR RATE CASE OVER THE COURSE OF TWO WEEKS IN THE EVENT THAT THE SETTLEMENT AGREEMENT WERE NOT TO BE APPROVED BECAUSE OF THE CONTESTED NATURE OF IT.

>> I GUESS I'M A LITTLE BIT CONFUSED HERE BECAUSE I THOUGHT THE SETTLEMENT CONCERNED THE RATES.

AND SO

>> IT DOES CONCERN THE RATES, YOUR HONOR.

YOU'RE RIGHT.

BUT THE COMMISSION AFTER WE CONCLUDED TAKING THE EVIDENCE ON THE RATE CASE, WE CONTINUED THE HEARING AND THEN WE HAD AN ORAL ARGUMENT TO DETERMINE THE BEST WAY TO ADDRESS THE SETTLEMENT AGREEMENT AND DETERMINED DURING THE ORAL ARGUMENT THAT THERE WERE MATERIAL ISSUES OF DISPUTED FACT THAT WERE ADDITIONAL TO THE RATE CASE ISSUES.

AND THEREFORE THE COMMISSION CONTINUED THE HEARING A SECOND TIME IN ORDER TO TAKE EVIDENCE ON THE SPECIFIC ISSUES OF THE SETTLEMENT AGREEMENT THAT ARE IN ADDITION TO THE RATE CASE ISSUES.

SO NOW WE HAVE A BIG, HUGE RECORD THAT CONTAINS COMPETENT, SUBSTANTIAL EVIDENCE ON BOTH SIDES OF THE DISPUTE.

>> ARE THESE THE ISSUES THAT THEY CONTEND WERE NOT IN THE ORIGINAL PETITION?

>> THAT'S CORRECT.

>> AND SO WHEN WAS PUBLIC COUNSEL ON NOTICE ABOUT THESE ADDITIONAL ISSUES?

>> AS SOON AS THAT SETTLEMENT AGREEMENT WAS FILED, IF NOT

BEFORE.
AS SOON AS THE PROPOSED
SETTLEMENT AGREEMENT WAS FILED

>> SO THE ADDITIONAL ISSUES
FROM YOUR HAVING THE PROPOSED
SETTLEMENT AGREEMENT.

>> YES, MA'AM.

AND THE COMMISSION CONTINUED
THE HEARING FOR THREE FULL
MONTHS BEFORE WE RECONVENED IN
ORDER TO TAKE EVIDENCE ON THE
SETTLEMENT ISSUES.

>> OKAY.

DID THEY HAVE AN OPPORTUNITY
TO ADDRESS FLORIDA POWER &
LIGHT INCREASE FOR THE
2014'15 YEARS?

>> YES, SIR.

>> HOW SO?

>> IN THE HEARING IN THE
CONTINUATION OF THE FULL
EVIDENTIARY HEARING ON THE
SETTLEMENT ISSUES, THOSE
ISSUES CONCERNING WHAT WE
LABEL THE GBRUP PLAN IS THE
STEP INCREASE TO ALLOW THE
ADDITIONAL OF THOSE ADDITIONAL
PLANTS THAT WILL COME ONLINE
IN 2014 AND 2016.

THOSE WERE SPECIFIC ISSUES
CONTAINED IN THE SETTLEMENT
AGREEMENT THAT THE COMMISSION
AND THE COMMISSION DID HAVE A
FULL EVIDENTIARY HEARING ON
THOSE ISSUES AS WELL AS THE
OTHER ISSUES THAT WERE IN
ADDITION.

>> AND THEY PARTICIPATED.

>> ABSOLUTELY.

>> HE SAYS AND THIS IS
WHERE AGAIN, GOING BACK TO
THOSE AMENDMENTS, WE KNOW WE
HAVE RULES THAT APPLY.

AND I UNDERSTOOD HIS DUE
PROCESS ARGUMENT.

BUT HE ALSO SAYS THAT THERE'S
A RULE VIOLATION AND DECIDED
256.03.

>> YES, YOUR HONOR.

>> HOW DOES ONE INVOLVED IN THIS PROCESS AMEND THE PLEADINGS, SO TO SPEAK? IS THERE A RULE? AND WHAT'S YOUR VIEW ON THIS?

>> THE RULE THAT PUBLIC COUNSEL CITES TO IS THE RULE THAT IMPLEMENTS THE FILE AND SUSPEND RATE CASE STATUTE. THAT RULE PERTAINS TO THE RATE PETITION ITSELF. IT DOESN'T PERTAIN TO SETTLEMENT AGREEMENTS THAT ARE OFFERED TO RESOLVE A RATE PETITION.

>> HOW ABOUT ADDITIONAL ISSUES?

I GO IN, ASK THE PUBLIC SERVICE COMMISSION I WANT A RATE HIKE FOR MY CUP OF COFFEE. WHILE WE'RE FUSSING ABOUT THAT, I WANT ADDITIONAL RATE INCREASES FOR MY MICROPHONE. ARE THERE RULES TO AMEND AND CHANGE THE ISSUES DURING THE PROCEEDING?

YOU ALL SEEM TO BOTH SIDES SEEM TO GO AROUND THIS. IS THIS A STUPID QUESTION? I'M TRYING TO UNDERSTAND HOW YOU CHANGE WHAT'S INVOLVED IN THE DISPUTE WHILE THE DISPUTE IS PENDING.

>> THE PARTIES ENTERED INTO A NEGOTIATED SETTLEMENT AGREEMENT AND CAME UP WITH ISSUES THAT WERE IN ADDITION TO THE RATE CASE ISSUES. THERE ARE NO RULES THAT THE COMMISSION HAS THAT SPECIFICALLY SAYS

>> OKAY.

>> THAT THERE ARE CERTAIN THINGS THAT YOU HAVE TO DO WITH RESPECT TO A SETTLEMENT AGREEMENT. AND THE

>> WELL, LET ME MAKE SURE THEN.

DOES THAT MEAN THAT IF WE HAVE A DISPUTE OVER THE RATES FOR THAT CUP OF COFFEE, BEFORE THAT PROCEEDING'S OVER, IT CAN BE EXPANDED TO INCLUDE ANY NUMBER OF ISSUES WITHOUT THE REQUIREMENTS GOING BACK FOR THE ORIGINAL NOTICE AND FILINGS AND ALL THAT?

IT SEEMS TO BE WHAT YOU'RE SAYING TO ME, IS THAT THIS HAS GOT TO BE DIFFERENT, BECAUSE WE HAD SOMETHING WE ASKED FOR, AND BECAUSE IT'S SUBJECT OF A SETTLEMENT, WE CAN INCLUDE EVERYTHING IN THE WORLD IN THAT SETTLEMENT.

SOMETHING HERE'S JUST NOT SOUNDING RIGHT.

>> THE ONLY THING THAT'S DIFFERENT ABOUT IT IS THAT THE SIGNATORY PARTIES OFFERED TO SETTLE THE CASE.

SETTLEMENT AGREEMENTS TYPICALLY CONTAIN ISSUES THAT ARE DIFFERENT FROM THE UNDERLYING CASE.

THAT'S WHAT WE HAVE HERE.

>> THE PARTIES THIS IS WHAT I'M HAVING TROUBLE WITH. IN A TYPICAL CASE OR ANY CASE, THE PARTIES ENTER INTO A SETTLEMENT AGREEMENT.

IN THIS CASE THE PARTIES, THE 99% PARTY BEING THE INTERVENOR, THE CITIZENS OF THE STATE OF FLORIDA, WEREN'T A PARTY AND OBJECTED.

I MEAN, THE PERCEPTION IS THAT 1%, WHICH WERE COMMERCIAL USERS, THEY AGREED, BUT HOW IS THAT HOW CAN YOU HAVE A SETTLEMENT AGREEMENT IF YOU DON'T HAVE ALL THE PARTIES THAT HAVE AN INTEREST? THAT'S I'M HAVING TROUBLE WITH THAT.

>> THE SETTLEMENT AGREEMENT IS PERTAINS PERTAINS TO PARTIES THAT ARE ON BOTH SIDES

OF THE DISPUTE.

NOT ALL THE PARTIES

>> THEY WERE COMMERCIAL USERS.

>> YES, MA'AM.

>> WE'RE TALKING ABOUT THE
REST AREN'T WE TALKING
ABOUT THE REST OF THE
RESIDENTIAL USERS THAT ARE
GOING TO BE AFFECTED BY THIS?

>> THAT'S EXACTLY WHY THE
COMMISSION CONTINUED THE
HEARING, IN ORDER TO TAKE
FURTHER EVIDENCE OF ALL OF
THOSE ISSUES SO THAT ALL OF
THE PARTIES TO THE CASE HAVE
THEIR FULL DUE PROCESS RIGHTS.
EVERYBODY HAD A CHANCE TO

>> WAS THERE ANY CHANGE MADE
TO AFTER THIS FULL HEARING
YOU KEEP TALKING ABOUT, WERE
THERE ANY CHANGES MADE TO THE
PROPOSED SETTLEMENT?

>> THERE WERE CHANGES, YOUR
HONOR.

THE COMMISSION WHEN IT
DELIBERATED ON THE PROPOSED
SETTLEMENT AGREEMENT
DETERMINED THAT IT WAS UNABLE
TO SUPPORT IT AS FILED AND
SUGGESTED A NUMBER OF
MODIFICATIONS TO IT, WHICH THE
SIGNATORY PARTIES ACCEPTED AND
INCORPORATED.

>> WERE THE CHANGES MADE
PURSUANT TO THE ARGUMENTS MADE
BY PUBLIC COUNSEL?

>> THEY WERE PURSUANT TO THE
ARGUMENTS MADE BY PARTIES TO
BOTH SIDES OF THE CASE, YOUR
HONOR, YES, INCLUDING PUBLIC
COUNSEL AND I SEE THAT MY TIME
IS EXPIRING, SO I WILL REQUEST
THE COURT IS AFFIRM THE ORDER
BECAUSE IT IS BASED ON
SUBSTANTIAL, COMPETENT
EVIDENCE AND IT COMPORTS WITH
THE ESSENTIAL REQUIREMENTS OF
LAW.

THANK YOU.

>> MAY IT PLEASE THE COURT,

I'M KURT KAISER, GENERAL
COUNSEL.
I'M GOING TO WAIVE MY TIME AND
WE'LL GO TO OUR FINAL SPEAKER.
>> THANK YOU.
>> IS HE GOING TO ALSO ADDRESS
THE PROCESS ISSUE WE'VE BEEN
TALKING ABOUT?
BECAUSE I DON'T CONSIDER THAT
TO HAVE BEEN ANSWERED
SATISFACTORILY YET.
>> CERTAINLY IS.

>> ALVIN DAVIS FOR FPL.
I'D LIKE TO ADDRESS A COUPLE
OF ISSUES THAT HAVE COME UP,
INCLUDING YOURS, JUSTICE
LEWIS.
LET ME CLARIFY ABOUT THE 200
ISSUES AND WHAT WAS BEFORE
THEM WHEN.
THE 200 ISSUES BEING REFERRED
TO ARE ISSUES THAT WERE RAISED
IN THE RATE CASE.
I'M TALKING JUST ABOUT THE
RATE CASE NOW.
AND THOSE ISSUES, THE 200
ISSUES, HOW COULD THERE BE 200
ISSUES, BUT THERE WERE, HAS TO
DO WITH IS THIS EXPENSE A
REASONABLE EXPENSE AND IS THIS
THE PROFIT THAT FPL IS LIKELY
TO EARN.
IT ALL GOES INTO WHAT ARE THEY
GOING TO NEED?
WHAT ARE THEIR REVENUE
REQUIREMENTS.
SO THERE ARE ALL SORTS OF
LITTLE ISSUES THEY RAISED.
>> THEY'RE LITTLE, BUT THAT'S

>> NO.
I'M NOT TRIVIALIZING THEM AT
ALL.
BUT THEY WERE ISSUES IN THE
RATE CASE AND THEY WERE
RESOLVED BY THE COMMISSION IN
TERMS OF WHAT THE RATE
INCREASE WOULD BE.
THOSE ISSUES WERE NOT IGNORED.

THEY WERE FULLY ADJUDICATED.
THERE WAS TEN DAYS OF
TESTIMONY ON EVERY SINGLE ONE
OF THOSE ISSUES.
I MEAN, THE RECORD GROANS WITH
THE FACT.
SO THOSE WERE ALL BEFORE THE
COMMISSION AND THEY ALL
RELATED TO THE RATE CASE.
>> JUST ON THAT ONE, BECAUSE
WE GO TO THE OTHER PART THAT
WAS THE ADDITIONAL PART THAT
JUSTICE LEWIS IS ASKING ABOUT,
ON THAT ARE YOU SAYING THAT IF
INSTEAD OF THAT BEING THE
SUBJECT OF A SETTLEMENT
AGREEMENT, THAT THE PSC HAD
ISSUED AN ORDER APPROVING THAT
RATE INCREASE.
THE EVIDENCE IN THE RECORD
WOULD BE THE SAME.
>> YES.
>> SO TO ME THAT'S WHERE FORM
OVER SUBSTANCE, WE'VE GOT TO
BE CAREFUL, RIGHT, BECAUSE
WHAT YOU'RE SAYING IS NOBODY
WAS DENIED THE RIGHT TO
PRESENT ON THE RATE CASE.
>> EXACTLY.
>> ALL RIGHT.
NOW GO TO
>> THOSE ARE THE 200 ISSUES.
NOW, LET'S MOVE TO THE
SETTLEMENT.
THE SETTLEMENT LET'S BE
CLEAR ON THE CHRONOLOGY,
BECAUSE THIS IS IMPORTANT.
THIS WAS NOT SPRUNG ON PUBLIC
COUNSEL AT THE LAST MINUTE.
THEY WERE INVITED TO
PARTICIPATE IN THE SETTLEMENT
WHEN IT WAS FIRST BROACHED BY
FPL.
THEY SIGNED A CONFIDENTIALITY
AGREEMENT SO THEY COULD OBTAIN
THE INFORMATION.
FOR WHATEVER REASON, THEY
DECLINED TO PARTICIPATE IN THE
SETTLEMENT.
THE ARGUMENT IS, WELL, YOU

SHOULD HAVE COME BACK TO US OR
YOU WERE WAITING FOR US.
THAT'S NOT THE POINT.
THEY KNEW THERE WAS A
SETTLEMENT BEING CONSIDERED.
THEY DID NOT PARTICIPATE IN
IT.

A SETTLEMENT AGREEMENT IS AN
AGREEMENT, BUT NOTHING IS
FINAL UNTIL THE PSC APPROVES
IT, BUT A SETTLEMENT AGREEMENT
AMONG THOSE PARTIES THAT WERE
WILLING TO DISCUSS SETTLEMENT
WAS ARRIVED AT IN JULY.
NOW, IT'S IMPORTANT TO HAVE
THIS CHRONOLOGY IN MIND.
IN JULY, A COPY OF THAT
PROPOSED AGREEMENT WAS
FURNISHED TO THE OPC.
THE HEARING ON THAT WAS
NOVEMBER 19, FIVE MONTHS
LATER.

SO THEY WERE AWARE OF ALL OF
THE ISSUES IN THE SETTLEMENT
THAT HAD NOT BEEN IN THE RATE
CASE FOR A PERIOD OF FIVE
MONTHS.

>> OKAY.

SO LET'S JUST STOP RIGHT
THERE.

>> YES.

>> IS THAT THE FIRST PART
IS COVERED.

WE HAVE A RATE CASE, WE FOUGHT
ABOUT IT AND THAT'S NOW GOING
TO BE INCLUDED IN THE
SETTLEMENT.

BUT APPARENTLY THIS IS THE
NEXT STEP.

THERE ARE SOME OTHER THINGS
THAT INVOLVE MONETARY
CONSIDERATIONS THAT WERE NOT
PART OF THE RATE CASE, IS WHAT
I UNDERSTAND THEY'RE ARGUING,
AND THAT YOU CANNOT JUST ALL
OF A SUDDEN PIGGYBACK THAT
INTO A RATE CASE AND SAY, OH,
WE'RE SETTLING THESE OTHER
THINGS, WITHOUT FOLLOWING THE
FORMAL PROCEDURES.

THAT'S WHAT IT SEEMS TO ME
THEY'RE SAYING.
I DON'T KNOW IF YOU CAN OR
CAN'T.
THAT'S WHY I'M TRYING TO GET
TO
>> I'M HAPPY TO ADDRESS THAT.
>> TO GET TO THAT POINT,
BECAUSE IT MAKES SENSE TO ME
THAT IF YOU HAVE, A, RATE
INCREASE AND BUT DURING
WHILE YOU'RE LITIGATING THAT
OR NOT LITIGATING IT, BUT
YOU'RE PROCESSING THAT, THEN
ALL OF A SUDDEN YOU COME IN
WITH TEN MORE RATE INCREASES,
IS THAT I'M NOT SO SURE YOU
CAN JUST PIGGYBACK THAT ON
WHAT'S THERE AND SAY FORGET
ABOUT ALL THE NOTICE AND
WHATEVER'S REQUIRED.
THAT'S WHAT MY CONCERN IS.
>> I WILL ADDRESS THAT AS
PRECISELY AS I CAN.
>> OKAY.
>> THE SETTLEMENT AGREEMENT
WAS GIVEN TO THEM.
IT WAS THEN FILED WITH THE PSC
IN AUGUST.
THE PSC DETERMINED THAT THERE
WERE ADDITIONAL ISSUES IN THE
SETTLEMENT THAT HAD NOT BEEN
INCLUDED IN THE RATE CASE.
THE PSC IDENTIFIED THOSE FIVE
ISSUES IN AUGUST.
IT THEN ALLOWED FOR A
THREEMONTH PERIOD OF
DISCOVERY ON THOSE ISSUES.
IT THEN HELD A TWODAY
EVIDENTIARY HEARING ON THOSE
ISSUES.
THE HEARING ON THE
SUPPLEMENTAL ISSUES WAS DULY
NOTICED, PROPERLY NOTICED IN
ACCORDANCE WITH THE NOTICE
REQUIREMENTS.
NOW, THIS IS AN ESSENTIAL
POINT AS WELL.
WHEN THE PUBLIC SERVICE
COMMISSION IDENTIFIED THESE

ISSUES AND SAID WE NEED AND I THINK TO ITS CREDIT, FPL REQUESTED AN EVIDENTIARY HEARING ON THOSE ISSUES SO THAT THERE WOULD BE A FULL RECORD.

THE COMMISSION GRANTED THE EVIDENTIARY HEARING AND SAID THESE ARE THE FIVE ISSUES. ARE THERE ANY OTHER ISSUES THAT YOU BELIEVE NEED TO BE IDENTIFIED IN THIS SETTLEMENT AGREEMENT?

AND THE OPC DID NOT IDENTIFY A SINGLE ADDITIONAL ISSUE. THE OPC CONCURRED THAT THOSE WERE THE FIVE.

AND THEY'RE THE FIVE CENTRAL ISSUES THAT ARE DISCUSSED IN THE BRIEF.

SO THEY WERE IDENTIFIED MONTHS BEFORE THE HEARING, THERE WAS DISCOVERY CONDUCTED ON THEM.

AND I WOULD NOTE THE GRBRUP MECHANISM, IT JUST STANDS FOR GENERATIONBASED RATE ADDITION.

THEY HAVE TO COME UP WITH AN ACRONYM.

IT JUST MEANS WHEN THESE PLANTS COME ONLINE THEY'RE GOING TO ADD THOSE TO THE RATE BASE.

THAT WAS SPECIFICALLY ADDRESSED IN DETAIL IN THESE PROCEEDINGS.

>> LET ME JUST ASK YOU, BEFORE YOU CONTINUE WITH THAT, YOU SAID THIS G THING

>> YES.

I'M HAPPY TO NEVER DISCUSS IT AGAIN.

>> THAT THESE RATES WOULD BE APPLICABLE IF A NEW FACILITY COMES ONLINE?

>> IT'S NOT IF.

IT'S WHEN.

>> SO IF FOR SOME REASON THE NUCLEAR PLANT THEY GOT A RATE FOR AND DECIDED THEY WEREN'T

GOING TO HAVE THEM, IF FOR SOME REASON THESE DON'T COME ONLINE, WHAT HAPPENS THEN?

>> NO INCREASE.

THERE'S ONLY I MEAN, WE'RE EXPECTING THEM TO COME ONLINE. THEY ARE UNDER CONSTRUCTION.

WHEN THEY COME ONLINE,

>> THEN THAT'S AUTOMATIC.

>> WILL GO INTO EFFECT.

>> I MEAN, THERE'S NO I GUESS THERE'S COMING ONLINE AND IS THERE ANY INSPECTION BY THE PUBLIC SERVICE COMMISSION OR SOMETHING BEFORE THE RATES ACTUALLY KICK IN?

>> YES.

THERE HAS TO BE A SUBMISSION BY FPL AT THAT TIME DEMONSTRATING WHAT THE ACTUAL COSTS WERE, BECAUSE THE RATE INCREASE IS BASED ON THE ACTUAL COST.

AND IF THEY BRING THE PLANT IN AT LESS THAN THE COST, THAT ADDITIONAL AMOUNT GOES BACK TO THE RATE PAYORS.

AND JUSTICE POLSTON, I NEED TO ADDRESS ONE POINT RIGHT HERE.

CAN THEY COME ON AND NO ONE CAN OBJECT TO THEM?

THAT IS NOT CORRECT.

THE PARTIES TO THE SETTLEMENT CANNOT OBJECT TO THE INCREASE RELATED TO THE 14 AND 16 PLANTS.

PUBLIC COUNSEL IS FREE TO OBJECT TO THOSE INCREASES WHEN THEY GO IN EFFECT IF THEY CAN DEMONSTRATE THAT THE CONSEQUENCE OF THAT WILL BE THAT FPL'S RATES WILL BE ABOVE THE AUTHORIZED REO.

>> AND YOUR POSITION TO THE COURT IS THAT THIS IS TOTALLY, TOTALLY FORM OVER SUBSTANCE BECAUSE THERE'S NO RULE THAT REQUIRED THAT SUBJECT MATTER TO BE INDEPENDENTLY AND SEPARATELY FILED AND THERE'S

NO RULE VIOLATION TO INCLUDE THAT AS PART OF THE DISCUSSION AS OCCURRED HERE.

>> THAT IS OUR POSITION AS PART OF A SETTLEMENT IS NOT REQUIRED, AS LONG AS THERE HAS BEEN THE DUE PROCESS THAT THEY WERE ENTITLED TO AND THAT THEY RECEIVED.

I WOULD POINT OUT TO THE COURT THAT GBRA MECHANISM HAS BEEN APPROVED IN PRIOR SETTLEMENTS, INCLUDING SETTLEMENTS THAT THE OPC AGREED TO.

>> WELL, I DON'T THINK THAT'S THAT'S NOT THE POINT.

I MEAN, NO ONE'S SAYING THAT YOU CAN'T HAVE

>> NO, OF COURSE NOT.

>> WHATEVER THAT IS, GBRA.

>> THE POINT OF IT IS IS THAT IN TERMS OF THIS SETTLEMENT WAS FOR A FOURYEAR PERIOD.

WE PROVIDED RATE CERTAINTY FOR A FOURYEAR PERIOD.

SOMETHING HAD TO BE ADDRESSED IN THE SETTLEMENT FOR THESE TWO NEW PLANTS OR YOU WOULD HAVE HAD TO HAVE HAD ANOTHER RATE CASE IN '14 AND ANOTHER RATE CASE IN '16.

>> MAYBE THAT'S WHAT THEY'RE SAYING, THAT WOULD BE APPROPRIATE.

NOW, MY CONCERN ABOUT THE SETTLEMENT AGAIN, WHETHER IT'S FORM OVER SUBSTANCE AND WHETHER YOU GOT ENOUGH IN THIS RECORD, IS THAT SOME OF THE CASES WHERE THERE'S BEEN APPROVAL OCCURRED, LIKE WHERE THERE WAS A TERRITORIAL DISPUTE, AND THEN THE TWO PARTIES TO THE TERRITORIAL DISPUTE RESOLVED THEIR ISSUES, AND SO THE USERS ARE REALLY NOT AFFECTED BY WHETHER IT'S ONE I MEAN, THEY MAY BE, BUT IT'S NOT THE SAME AS THE RATE INCREASE.

AND THEN THERE WAS ANOTHER
CASE WHERE THERE WAS ACTUALLY
A RATE DECREASE THAT SOMEBODY
OBJECTED TO.

IS THIS THE FIRST CASE THAT WE
HAVE WHERE THERE HAS BEEN AN
APPROVED RATE INCREASE THAT
HAS OCCURRED AS A RESULT OF A
SETTLEMENT?

NOT THAT IT'S NONUNANIMOUS,
BUT WITH ESSENTIALLY
COMMERCIAL USERS AGREEING, BUT
THE CITIZENS OF THE STATE NOT
BEING A PARTY TO IT?

>> WELL, I CAN'T ANSWER THAT
QUESTION WITH PRECISION.

THERE HAVE BEEN OTHER

>> WELL, NO CASE

>> SETTLEMENTS.

>> I UNDERSTAND, BUT, AGAIN, I
GAVE YOU TWO EXAMPLES OF WHERE
IT'S REALLY, TO ME, VERY
DIFFERENT, YOU KNOW,
TERRITORIAL DISPUTE OR A RATE
REDUCTION.

WE DON'T HAVE ANY CASES, DO
WE, WHERE WE'VE ALLOWED THIS
PROCEDURE TO OCCUR.

NOT THAT WE'VE HAD CASES WHERE
WE DIDN'T ALLOW IT.

>> I DON'T BELIEVE THERE WAS A
CASE A CASE HAS BEEN
PRESENTED TO THIS COURT THAT
RAISED THAT FACTUAL ISSUE.

BUT I'D LIKE TO ADDRESS THIS
1% AND 99% HAS BEEN IN SEVERAL
CONTEXTS OF RECENT YEARS, BUT
THIS 1% ARGUMENT.

IT IS TRUE THAT THEY REPRESENT
OPC REPRESENTS AND
REPRESENTS WELL THE RATE
PAYORS.

OF COURSE, THE RATE PAYORS
ALSO INCLUDE THE SETTLING
PARTIES BECAUSE THEY'RE RATE
PAYORS AS WELL.

BUT THE POINT IS THAT THEY HAD
THE OPPORTUNITY TO REPRESENT
THOSE RATE PAYORS IN THESE
PROCEEDINGS AND DID SO IN

GREAT DETAIL AND GREAT LENGTH AND, IN MY VIEW, ADMIRABLY.

>> AGAIN, WE'RE REALLY FORM OVER SUBSTANCE.

THIS IS NOT A DUE PROCESS VIOLATION OR A VIOLATION OF WHAT THE PSC IS TO DO, AND THEN IF WE APPROVE IT, FROM MY POINT OF VIEW AND THIS IS WHAT I HAVE TO SATISFY MYSELF OF IT'S JUST NOT DIFFERENT THAN IF THE PSC HAD DECIDED ON THIS RESOLUTION NOT JUST APPROVING THE SETTLEMENT AGREEMENT, BUT JUST HAD ADJUDICATED

>> IF SOMEHOW ALL OF THE COMPONENTS HAD BEEN WRAPPED INTO A RATE CASE AND IT WAS APPROVED, YOU'RE IN THE SAME POSTURE OF HAVING APPROVED THE SETTLEMENT SEPARATELY.

IT IS THE PUBLIC SERVICE COMMISSION THAT HAS THE JURISDICTION TO APPROVE RATES. THEY HAVE A STRONG ROLE, BUT THEY DON'T HAVE AN APPROVAL ROLE.

SO IT IS THE PUBLIC SERVICE COMMISSION, ALL FIVE COMMISSIONERS, THAT HAD THE OBLIGATION TO EXAMINE THE RATE CASE AND THE SETTLEMENT AND DETERMINE THAT IT WAS IN THE PUBLIC INTEREST.

AND THEY DETERMINED THAT ALL OF THESE FACTORS ALLOWED FOR A FOURYEAR PERIOD OF RATE STABILITY FOR FPL, FOR ALL OF THE RATE PAYORS AND FOR THE INVESTMENT COMMUNITY.

FPL IS GOING TO INVEST \$9 BILLION OVER THE NEXT FOUR YEARS UPGRADING AND MODERNIZING ITS FACILITY. IT COULD NOT DO THAT ON A YEAR TO YEAR BASIS BECAUSE THE INVESTMENT COMMUNITY WOULD BE LOOKING AT IT ON A YEAR TO YEAR BASIS.

THIS ALLOWED LONGTERM
PLANNING TO PROCEED.
IT ALLOWS ALL OF THE RATE
PAYORS, WHICH THE PUBLIC
SERVICE COMMISSION FOUND RATE
PAYORS ARE VERY CONCERNED WITH
THE PREDICTABILITY OF THE
RATES AND STABILITY OF THE
RATES.

SO IT ALLOWED FOR THAT AS WELL
AND IT ALLOWED FOR THE
INVESTMENT COMMUNITY TO KNOW
WHETHER OR NOT TO INVEST IN
FPL BONDS OR STOCK.

SO THE SETTLEMENT HAS TO BE
VIEWED AS ALLOWING THIS
FOURYEAR PERIOD OF STABILITY.
YES, THEY COULD HAVE RATE
CASES IN '14 AND '16 AND YEARS
PAST THEY HAD THEM SO OFTEN
THEY CAME UP WITH A TERM.
THEY WERE CALLED PANCAKE RATE
CASES, BECAUSE IT WAS ONE
AFTER THE NEXT AFTER THE NEXT
EVERY TIME THEY ADDED A
FACILITY.

IT'S AN EXHAUSTIVE PROCESS.
IT CONSUMES ENORMOUS RESOURCES
OF THE COMMISSION, OF THE
PARTIES.

THIS WAS INTENDED TO COME TO A
FAIR RESOLUTION OF ALL THOSE
ISSUES ON BEHALF OF ALL OF THE
RATE PAYORS.

IF THERE ARE NO FURTHER
QUESTIONS ABOUT GBRA, THANK
YOU.

>> THANK YOU.

REBUTTAL?

>> COUNSEL FOR THE COMMISSION
SAID THAT OPC MISCONSTRUES THE
MAYO CASE.

I WANT TO QUICKLY DRAW TWO
DIRECT PARALLELS BETWEEN THE
MAYO DECISION AND THE CASE
BEFORE YOU TODAY.

IN THE MAYO DECISION, THIS
COURT SAID SPECIAL CONDITIONS
PERTAIN TO CASES IN WHICH THE
PUBLIC COUNSEL INTERVENES.

AND IT RULED THAT IN THAT CASE, THE COMMISSION ERRED WHEN IT PROHIBITED PUBLIC COUNSEL FROM HAVING A FULL HEARING ON THE INTERIM INCREASE REQUEST, WHICH
>> WELL, NOW, WHICH BRINGS UP THE ISSUE.

I THOUGHT I HEARD THEM SAY THE PUBLIC COMMISSION REPRESENTATIVES AND THE FPL REPRESENTATIVE SAY THAT YOU HAD AN OPPORTUNITY TO RAISE ALL OF YOUR ISSUES AT THE HEARING.

AND IS THAT OR IS THAT NOT TRUE?

>> IT IS TRUE THAT WE HAD A CHANCE TO RAISE ALL THOSE ISSUES.

WHAT WE DID NOT GET WAS THE ITEM BY ITEM, VOTE BY VOTE ADJUDICATION OF THOSE ISSUES, WHICH

>> YOU MEAN NOW, THEY SAY THAT THAT SOME OF THEM HAD TO DO WITH SPECIFIC AMOUNTS OF MONEY FOR VARIOUS THINGS. YOU WANTED THE PUBLIC SERVICE COMMISSION TO SAY THIS AMOUNT OF MONEY WAS OKAY OR THIS AMOUNT SHOULD BE REDUCED BY \$500 OR \$5,000, WHATEVER. YOU WANTED THE PUBLIC SERVICE COMMISSION TO TAKE EACH OF THE 200 ITEMS AND SAY WHAT OR WHAT THEY WERE GOING TO DO WITH THEM.

>> WHICH IS THE ROUTINE THAT THE COMMISSION FOLLOWS IN UNLITIGATED RATE CASE IN THE ABSENCE OF A VALID SETTLEMENT. I CERTAINLY DON'T DISAGREEMENT WITH THE COMMENT THAT IT IS THE COMMISSION THAT SETS RATES AND NOT THE PUBLIC COUNSEL, BUT WE ARE THE PUBLIC'S ADVOCATES.

>> SO IF WE SENT IT BACK AND SAID PUBLIC SERVICE

COMMISSION, COME UP WITH AN ANSWER TO THE 200 ISSUES, IT WOULDN'T BASED ON WHAT EVERYONE'S SAYING, THERE WOULDN'T HAVE TO BE AN ADDITIONAL EVIDENTIARY HEARING BECAUSE ALL THE EVIDENCE IS IN THE RECORD?

>> THAT'S CORRECT.

>> AND THEN IF THEY CAME UP WITH THE SAME CONCLUSION, WOULD YOU WOULDN'T THERE BE COMPETENT, SUBSTANTIAL EVIDENCE TO SUPPORT IT?

>> WE CAN'T PREDICT WHAT THE CONCLUSION WOULD BE, BUT THE TEST WOULD BE WHETHER THE COMMISSION'S REASONING WAS SUPPORTED AND WHETHER IT COMPLIED WITH

>> NOW, DO THEY HAVE TO ONCE YOU RAISE 200 POINTS, THEY HAVE TO UNDER PROCEDURE HAVE TO ACTUALLY COME UP WITH AN ANSWER TO ALL 200?

THEY CAN'T SAY 100 OF THOSE IS DUPLICATE OF THE FIRST 100?

>> WELL, THERE IS A PROCESS IN WHICH THE OFFICER ULTIMATELY DECIDES WHAT IS A VALID, GERMANE ISSUE AND WHAT IS NOT.

>> HAVE THEY ALREADY DONE THAT?

>> THAT IS CORRECT.

THE PRETRIAL ORDER SET OUT THE ISSUES.

>> ARE YOU SAYING THEY DID NOT GO THROUGH THAT PROCESS? THEY SIMPLY DID NOT REDUCE IT TO WRITING?

>> THEY DID NOT GO THROUGH THE PROCESS.

THEY ISSUED THE POINT THE ORDER WAS ISSUED, TEEING UP THE 190 ODD ISSUES.

THEY CONDUCTED A HEARING ON THOSE ISSUES.

THEY RECEIVED POSTHEARING BRIEFS.

AND THEN THEY STOPPED TO

ENTERTAIN A VALID THAT WAS INVALID BECAUSE OF THE SPECIAL ROLE THE PUBLIC COUNSEL PLAYS IN RATEMAKING PURSUANT TO OUR EMPOWERING STATUTE AND THIS COURT'S CONSTRUCTION OF THAT STATUTE.

AND THE PARALLEL TO BE DRAWN IS THIS.

THE PUBLIC COUNSEL WAS NOT THE ONLY INTERVENOR IN THE MAYO CASE THAT WAS DISADVANTAGED BY A TRUNCATED HEARING.

THERE WERE OTHER INTERVENORS. THE COURT SAID THE COMMISSION ERRED WHEN IT REFUSED PUBLIC COUNSEL THAT OPPORTUNITY BECAUSE OF THE SPECIAL CONDITIONS THAT PERTAIN.

SO I'M NOT SAYING HERE FOR THE FIRST TIME THAT WE'RE IN A DIFFERENT CATEGORY THAN OTHER INTERVENORS.

WE HAVE STATUTORY STANDING TO INTERVENE AND WE CONTEND WHEN WE SPEND PUBLIC MONEY TO ENGAGE CONSULTANTS AND PUT ON TESTIMONY AND ADVOCATE ADJUSTMENTS, THAT WE AND NOT OTHER PARTIES SHOULD BE THE ONES TO DETERMINE WHETHER SETTLEMENT TERMS OFFERED BY THE UTILITY ARE AN ACCEPTABLE RESOLUTION OR NOT.

IF I HAVE TIME, I'D LIKE TO DO I HAVE TIME?

>> YOU REALLY DON'T, BUT YOU CAN SUM UP.

>> THANK YOU, YOUR HONOR. I WOULD LIKE TO SUM UP THIS WAY.

OUR POSITION IS CONSISTENT WITH MAYO IN THAT WE CONTEND THAT THE SPECIAL CONDITIONS INCLUDE THE ROLE OF DETERMINING WHETHER THE ISSUES WE DEEM TO BE IN THE PUBLIC INTEREST SHOULD BE ADJUDICATED OR WHETHER THERE HAS BEEN OFFERED TERMS THAT WARRANT A

SETTLEMENT.

SINCE MAYO THERE HAS NEVER BEEN A SITUATION WHERE THE COMMISSION HAS APPROVED A SETTLEMENT TO WHICH A PUBLIC COUNSEL OBJECTED.

>> ARE YOU SAYING YOU USED TO HAVE A VETO POWER?

>> NO MORE THAN THE VETO POWER THAT THE UTILITY HAS.

>> DO THEY HAVE A VETO POWER?

>> UNDER THE REGIME ORDER, THERE WOULD BE NO SETTLEMENT UNLESS THE UTILITY

>> ARE YOU SAYING YOU SHOULD HAVE A VETO POWER?

>> I'M SAYING WE SHOULD BE ON AN EQUAL FOOTING.

>> THEY HAVE VETO POWER, SO YOU SHOULD HAVE ONE IS WHAT YOU'RE SAYING.

>> WHICH IS CONSISTENT WITH THE POSITION THAT THE PUBLIC COUNSEL IS A COUNTER BALANCE.

>> IS THAT YES OR NO?

>> YES, YOUR HONOR.

WE SEEK AN EQUAL FOOTING AND EQUILIBRIUM.

>> I UNDERSTAND.

I KNOW WHAT EQUAL FOOTING MEANS.

I UNDERSTAND.

THANK YOU.

>> THANK YOU ALL FOR YOUR ARGUMENTS.