

>> NEXT CASE ON THE DOCKET IS
CITIZENS OF STATE OF FLORIDA
VERSUS ART GRAHAM.

WHEN EVER YOU'RE READY.

>> MAY IT PLEASE THE COURT.

MY NAME IS CHARLES JOHN
REHWINKEL.

DEPUTY PUBLIC COUNSEL.

WITH ME IS STEPHANIE MORRIS,
ASSOCIATE PUBLIC COUNSEL.

I'M HERE ON BEHALF OF THE
CITIZENS OF FLORIDA AND
RATE-PAYERS OF FLORIDA PUBLIC
UTILITIES.

I WOULD LIKE TO RESERVE EIGHT
MINUTES OF MY TIME.

YOUR HONORS, THE CASE WE ARE
HERE ABOUT TODAY IS A DEAL IS A
DEAL.

THE PUBLIC SERVICE COMMISSION
IGNORED AND FAILED TO IMPLEMENT
AN ESSENTIAL PART OF A
SETTLEMENT THEY APPROVED IN 2014
THAT SETTLE AD RATE CASE.

FOR THIS FAILURE, YOUR HONORS,
SECTION 1128.67, E-3, REQUIRES
THAT A DECISION OF THE
COMMISSION ON THE PARTICULAR
POINT ON APPEAL BE REVERSED AND
SET ASIDE.

WE ARE HEAR TODAY BECAUSE THE
COMMISSION ALLOWED FLORIDA
PUBLIC UTILITIES, THE UTILITY,
TO SHIFT 31/2 MILLION DOLLARS
OF COST RESPONSIBILITY FOR A
TRANSMISSION ASSET FROM BASE
RATES, WHERE IT TRADITIONALLY
AND HISTORICALLY THEN RECOVERED,
THAT TYPE OF ASSET, TO THE FUEL
CLAUSE FOR RECOVERY IN
ABROGATION OF A SPECIFIC
PROVISION OF THE SETTLEMENT
AGREEMENT.

>> COULD WE JUST AS A BASELINE,
I WOULD LIKE BOTH PARTIES TO
ADDRESS THIS.

IN LOOKING AT THE FUEL
ADJUSTMENT CLAUSE AND GOING BACK
THREE YEARS BACK TO 1951, 1974,
IT HAS BEEN EXPLAINED AS A

PROVISION ALLOWS FOR THE VOLATILITY OF FUEL AND COST FOR THAT FUEL TO BE PASSED ON DURING TIMES BETWEEN THE RATE FIXING, AND IT WOULD SEEM THAT, AS I LOOK AT IT.

AS WE AS LAWYERS LOOK AT THESE THINGS, IT SEEMS, WELL, THIS IS NOT, I MEAN NOT A FUEL PASS-ON. THIS PROVIDER DOESN'T EVEN GENERATE POWER.

SO BUT IT DOES BUY POWER. THEN WE LOOK AND WE SEE THAT, IT HAS BEEN USED AND APPLIED FOR RAILCARS.

IT HAS BEEN APPLIED FOR PIPELINES.

WHAT DOES THIS CLAUSE MEAN?

I WOULD LIKE BOTH SIDES TO TELL US WHERE YOU THINK THIS PLACES US WITH REGARD TO DISCUSSING THE LAW IN THIS AREA?

I MEAN CLEARLY THIS IS AN ADDITIONAL COST AND YOU LOOK AT IT, FROM THE EVIDENCE PRESENTED AND A GOOD IDEA TO BE ABLE TO HAVE MORE COMPETITIVE RATES TO PURCHASE THE ENERGY.

TO HAVE REDUNDANCY AND PROTECTION FOR STORMS.

THERE ARE SOME COMPELLING ARGUMENTS AND FACTS WITH REGARD JUST DOING IT YET WE COME BACK TO THIS FUEL ADJUSTMENT THAT JUST AS I, I SAY, LEAVES US, WHAT'S THE CLAUSE?

WHAT DOES IT REALLY MEAN IF WE DON'T LIMIT IT TO THAT AND WE USE IT FOR THESE OTHER THINGS.

>> YOUR HONOR, JUSTICE LEWIS, YOU HAVE HIT ON THE GRAVAMEN OF THE REASON FOR THIS PROVISION IN THE SETTLEMENT AGREEMENT, THE CONSIDERATION WE GOT FOR THE RATE INCREASE THAT THEY GOT, WHICH WAS TO TRY TO STAUNCH WHAT STARTED OUT AS A TRICKLE IN 1985 AND, ENGAGED IN SOME MISSION CREEP AND NOW IS A VIRTUAL STAMPEDE TO TAKE COST OUT OF

BASE RATES AND PUT THEM IN THE FUEL CLAUSE.

SO THAT PROVISION IS TO HOLD THE LINE, KEEP THE THINGS THAT BELONG IN BASE RATES IN BASE RATES.

SO--

>> HAS THIS COURT PARTICIPATED IN SUPPORTING THAT SLIDE OR THAT MOVEMENT?

>> THIS COURT RECENTLY EARLIER THIS YEAR HELPED STAUNCH THE TIDE IN THE WICKFORD CASE. I THINK IT WAS POINTED OUT IN THAT DECISION THAT TRADITIONALLY FUEL WAS A PASS THROUGH OF THE COST OF THE COMMODITY AND THERE WAS A, NOT A PROFIT OR A RETURN GIVEN TO SHAREHOLDERS BUT THESE 20 ORDERS THAT YOU'VE SEEN A SUBSTANTIAL PORTION OF THEM IN RECENT TIMES HAVE ALLOWED FOR CAPITAL COSTS, NOT EXPENSES, BUT CAPITAL COSTS TO GIVE TO SHAREHOLDER PROFIT TO BE INTO FUEL.

THERE HAVE BEEN SOME VALID REASONS FOR THAT.

THE COURT HAS NOT REALLY HAD AN OPPORTUNITY TO WEIGH IN ON A GREAT DEAL ON THE LINE BETWEEN BASE RATES AND FUEL, EXCEPT IN THE WOODFORD CASE WHERE YOU FOUND IT WAS NOT APPROPRIATE CASE FOR THAT INVESTMENT TO RESIDE.

THAT'S WHAT WE'RE HERE.

THAT UNDERLIES EVERYTHING THAT WE'RE ADVOCATING TO THIS COURT WHICH IS WE WANT THE DEAL ENFORCED BECAUSE THE DEAL HOLDS THE LINE AND IT JUST LIKE THE FUEL POLICY THAT THE COMMISSION HAS, AND THEY HAVE A RULE-MAKING EXEMPTION TO DO THIS.

THEY'RE NOT REQUIRED TO GO TO RULE MAKING.

>> RIGHT.

>> ARE YOU ANALOGIZING THIS COST TO THE COSTS THAT WE TALKED

ABOUT IN THE WOODFORD CASE?

>> IN THE WOODFORD CASE?

>> YES.

>> IT IS ACTUALLY SIMILAR, YES, YOUR HONOR, BECAUSE IT IS MORE THAN THAT, IN THE WOODFORD CASE AT LEAST THE INVESTMENT WAS SPREAD OVER TIME TO PAY FOR GAS THAT THEY WERE ACTUALLY GETTING. IN THIS CASE THIS IS A CAPITAL INVESTMENT OF HARD FACILITIES, POLES, LINES, TRANSFORMERS, THAT TRANSMIT ELECTRICITY THAT ARE HARD ASSETS AND THEY ARE JUST THE KINDS OF THINGS ALWAYS IN BASE RATES, ARE NOT VOLATILE. THEY'RE PREDICTABLE.

THEY ARE PLANNED OVER A LONG PERIOD OF TIME.

SO THIS A STEP REMOVED IN OUR OPINION FROM WOODFORD WHICH AT LEAST WAS BUYING GAS BUT IT WAS AN INVESTMENT IN GAS RESERVES THAT EARNED A PROFIT FOR THE SHAREHOLDERS.

>> BUT IN FAIRNESS, I MEAN THE REASON FOR DOING THIS SO YOU COULD HAVE GREATER COMPETITIVE MARKET TO PROVIDE POWER TO THE CUSTOMERS AT LESSER COSTS ISN'T IT?

>> THAT'S THE--

>> SO IT IS NOT TOTALLY SEPARATED.

>> THE TRANSMISSION PROJECT IS INTENDED SOMETIME IN THE FUTURE TO FACILITATE A COMPETITIVE PROCUREMENT OF THESE COSTS.

>> RIGHT.

>> BUT, THE VERY NATURE OF THESE ASSETS ARE THAT THEY RESIDE IN BASE RATES.

THEY'RE NOT VOLATILE.

THEY WILL HELP, HOPEFULLY, BUT ONLY WHEN THEY'RE PUT IN, BUT, THE DEAL THAT WE MADE WAS THAT WHEN YOU PUT THESE HARD ASSETS, YOUR INVESTMENT IN CAPITAL COSTS IN, THEY BELONG IN BASE RATES AND THEY DON'T COME INTO FUEL.

THE, PARAGRAPH 6 WE'RE TALKING ABOUT, IT PERMITS THEM TO ASK IN THE FIRST SENTENCE BUT ABSOLUTELY SPECIFY THE COMMISSION SHALL NOT ALLOW RECOVERY OF THESE ASSETS, AND SPECIFICALLY MENTIONED TRANSMISSION.

SO, YES, IT MAY BE A GOOD DEAL BUT IT CAN BE, AND SHOULD BE RECOVERED IN BASE RATES AND THE RECORD DOES NOT REFLECT THAT THE UTILITY WOULD NOT PUT THE PROJECT IN, IF THEY COULDN'T GET IT IN FUEL.

THEY WOULD PREFER TO DO IT.

WE SAY YOU'RE SKIRTING THE DEAL THAT YOU MADE.

SO THAT IN ESSENCE, YOUR HONOR, I APPRECIATE THE QUESTIONS ABOUT THE FUEL CLAUSE.

THEY ABSOLUTELY ARE THE REASON WHY THAT PROVISION IS IN THERE. AND THEY ARE THE REASON WHY THE COMMISSION RECOGNIZED WHEN THEY DELIBERATED THAT THEY WERE HAMSTRUNG BY DOING THIS.

OUR CONCERN IS THAT WE MADE THIS AGREEMENT.

BASE RATES WERE RAISE.

AND INK WAS BARELY DRY ON THE AGREEMENT AND UTILITY TRIES TO PUT IN SPECIFICALLY WHAT WAS PROHIBITED INTO THE FUEL CLAUSE. THE COMMISSION STAFF RECOGNIZED IT WAS A CUT AND DRY CASE.

THE DELIBERATIONS AT THE AGENDA WERE THE SAME THING.

THEY VOTED WITHOUT ANY DISCUSSION ABOUT WHY TO DENY IT. A BLACK HOLE WAS CREATED.

OUT COMES THIS ORDER THAT DOES NOT EXPLAIN WHY THIS SETTLEMENT PROVISION, THE BASE RATE FREEZE PROVISION, WAS IGNORED IN ITS ENTIRETY.

AND WE THINK, IT IS CLEAR-CUT.

>> COULD I ASK YOU A QUESTION ABOUT SOME OF THE LANGUAGE IN THE BASE RATE FREEZE,

ANTI-CIRCUMVENTION PROVISION?

>> YES, SIR.

>> IF I GOT THAT RIGHT.

IT'S, THE PHRASE, MAGNITUDE OF COST.

>> YES.

>> THERE IS REFERENCE THERE TO NOT ALLOWING TO RECOVER COSTS RECOVERY CLAUSES INCREASES IN THE MAGNITUDE OF COST.

IS THERE DIFFERENCE BETWEEN SAYING MAGNITUDE OF COST AND JUST SAYING COST?

>> YES, YOUR HONOR.

THE--

>> I'M PUZZLED BY IT.

>> IT IS SOMEWHAT CRYPTIC, BUT WHEN YOU LOOK AT DEFINITION OF MAGNITUDE, IT IS NUMBER OR EXTENT OF.

WHAT THAT MEANS, AND THE RECORD IS ABSOLUTELY CRYSTAL CLEAR ON THIS, IS THAT THE UTILITY HAS TRANSMISSION ASSETS ALREADY ON THEIR BOOKS.

THEY'RE BEING RECOVERED FROM IN THE PAST.

THESE COSTS, THE NEW LINE THAT IS PROJECTED TO GO IN THE FUTURE, MAYBE THIS YEAR, MAYBE NEXT YEAR, WHENEVER GET IT DONE. THOSE ARE NEW COSTS IN INCREASE IN WHAT'S ALREADY THERE.

SO IT IS INCREASE IN THE MAGNITUDE OF WHAT IS ALREADY ON THE BOOKS.

AND THOSE COSTS, BY DEFINITION--

>> AS OPPOSED TO SIMPLY A NEW COST?

>> YES, THAT WOULD BE ANOTHER WAY OF SAYING IT BUT--

>> SEEMS TO ME LIKE A NEW COST, AGAIN THIS ASK ARCANE STUFF, BUT SEEMS LIKE A NEW COST IS DIFFERENT THAN AN INCREASE IN THE MAGNITUDE OF COST WHICH IS POINTING TO A COST THAT'S ALREADY THERE.

YOU'RE INCREASING THE COST AS

OPPOSED TO SOMETHING THAT IS A NEW COST, IS THAT A FARFETCHED WAY OF LOOKING AT THAT? BECAUSE, THE USE OF THE TERM, MAGNITUDE OF COST, ITSELF IS, SEEMS TO POINT TO SOMETHING BEYOND JUST SIMPLY SAYING A NEW COST?

>> IT IS, IN THE SENSE THAT THERE IS AN ASSUMPTION THAT ALL OF THESE COSTS, IT IS ALREADY, THE PROVISION REFERS TO TYPES OR CATEGORIES OF COSTS TRADITIONALLY RECOVERED IN BASE RATES.

ALL THESE UTILITIES HAVE ON THEIR BOOKS TRANSMISSION, DISTRIBUTION, SOME HAVE GENERATION ASSETS. THEY HAVE ALL KINDS OF ASSETS. WE'RE TALKING ABOUT WHEN THESE NEW COSTS OR INCREASES IN WHAT'S ALREADY BOOKED ARE BROUGHT ON, THEY DON'T GET SHIFTED IN INTO FUEL.

THAT IS THE REASON I BELIEVE THE MAGNITUDE OF COST ASK IN THIS AGREEMENT AND IN OTHER AGREEMENTS OF SIMILAR NATURE. IT DOES MEAN THAT THESE ARE NOT COSTS THAT WOULD EVER ASSUME ARE IN RATE BASE.

THEY ARE NEW AND WILL BE GOING INTO RATES AT SOME POINT IN THE FUTURE.

THE REASON FOR THIS LANGUAGE, THEY'RE INTENDED TO BE ABSORBED INTO THE EARNINGS RANGE, THE UTILITIES ALLOWED TO HAVE--

>> QUESTION IN THE MEANTIME.

>> YES, SIR.

BETWEEN RATE CASES THEY HAVE TO LIVE WITHIN THEIR MEANS.

THAT IS WHAT THE DEAL IS.

LIVING IN YOUR MEANS DOESN'T MEAN TAKING IT OUT THE BACKDOOR DOESN'T MEAN FUEL COSTS.

>> LET ME ASK YOU ABOUT THE SETTLEMENT AGREEMENT.

I KNOW IT IS YOUR ARGUMENT THAT

THIS PARTICULAR CAPITAL
IMPROVEMENT WAS IS IN THE
SETTLEMENT AGREEMENT?

>> YES, SIR.

>> ARE THERE CAPITAL AGREEMENTS
APPROVED WITHIN THE SETTLEMENT
AGREEMENT ATTACHED THERE?

>> YES.

>> AND THOSE ARE APPROVED AS
ADJUSTMENTS IN THE FUEL COST?

>> NO, YOUR HONOR.

>> ATTACHMENT A REFERRED TO IN
THE SETTLEMENT AGREEMENT AND
REFERRED TO A MONSTER AGREEMENT.
IT IS A RECOGNITION THAT THE
UTILITY WOULD PUT IN THESE
CAPITAL ADDITIONS ALL WOULD BE
IN BASE RATES.

NONE WOULD GO INTO FUEL AT ALL.

>> OKAY.

NO CONTENTION THEY WOULD GO INTO
FUEL.

THESE ARE DEMONSTRATIVE LIST OF
PRODUCTS THAT BOTH PARTIES WOULD
BE OVER THE BASE RATE.

>> SO THE SETTLEMENT AGREEMENT
DOES NOT SPEAK TO THE
CHARACTERIZATION OF THESE
CAPITAL IMPROVEMENTS AT ISSUE AS
FUEL ADJUSTMENTS CLAUSE ISSUES
AT ALL?

>> IT DOES NOT.

IN OUR VIEW IT EXPRESSLY
PROHIBITS THEM FROM GOING INTO
FUEL.

>> HOW DOES IT EXPRESSLY
PROHIBIT THEM?

>> BECAUSE ALL OF THOSE PROJECTS
WOULD BE TRADITIONALLY AND
HISTORICALLY RECOVERED IN BASE
RATES.

SO, THE FIRST SENTENCE AGAIN IS
PERMISSIVE.

ALLOWS--

>> IT IS JUST, SETTLEMENT
AGREEMENT IS JUST SILENT AS TO
THE CHARACTERIZATION AS BETWEEN
BASE OR FUEL ADJUSTMENT, IS THAT
CORRECT?

>> WITH RESPECT TO THOSE

ATTACHMENT A PROJECTS?

>> YES.

OR THIS ONE.

IT DOESN'T ADDRESS THE CHARACTER OF THEM, HOW THEY ARE TO BE RECOVERED?

>> WE THINK THAT PROVISION SAYS THAT THEY CAN NOT BE RECOVERED IN FUEL, BECAUSE THEY ARE TRANSMISSION.

UTILITIES INVESTMENT IN TRANSMISSION ASSETS OF THE TYPE THAT ARE ALREADY INCLUDED IN BASE RATES.

SO SINCE TRANSMISSION ASSETS AND ARE UNEQUIVOCALLY INCLUDED IN BASE RATES, THESE ARE NEW TRANSMISSION ASSETS, THEY CAN NOT, COMMISSION IS NOT ALLOWED UNDER THIS PROVISION TO ALLOW THEM TO BE RECOVERED IN BASE RATES IN TERMS OF FUEL.

>> YOU MAY HAVE ANSWERED THIS. I WANT TO BE CLEAR.

YOUR ARGUMENT IS THEY DIDN'T EVEN CONSIDER A SETTLEMENT AGREEMENT WHEN THEY APPROVED THESE COSTS IS, CORRECT?

>> OUR ARGUMENT THAT THE ORDER THEY ISSUED DOES NOT CONSIDER THE IMPACT OF THE SETTLEMENT AGREEMENT ON THE TRANSMISSION ASSETS.

>> SO IF WE DECIDE THEY SHOULD HAVE, THERE IS TWO POSSIBILITIES.

WE COULD DECIDE, IT IS UNAMBIGUOUS, OR, AND CONSTRUE IT OR WE COULD REMAND IT TO THE PSC FOR THEM TO HEAR THESE ARGUMENTS AND MAKE A DECISION ON-- SETTLEMENT AGREEMENT?

>> YOU COULD.

>> THOSE ARE TWO OPTIONS?

>> THAT'S WHAT THE STATUTE PROVIDES.

WE WOULD URGE YOU TO DECIDE IT FOR YOURSELF BECAUSE YOU CAN READ THE LANGUAGE AND LOOK AT THE FACTS.

THE COMMISSION ABDICATED THEIR
ROLE, THEY PUNTED TO YOU IN OUR
VIEW UNDER SECTION 120.68.

SO WE BELIEVE--

>> BUT, ARE YOU SUGGESTING THAT
THEY COULD NOT HAVE REACHED THIS
RESULT IF THEY HAD EMPLOYED THE
PROPER REASONING AND HAD, AND
HAD PUT FORWARD A PROPER
JUSTIFICATION?

>> YES, YOUR HONOR.

ABSOLUTELY.

THE FACTS OF THIS RECORD AN
AVALANCHE THIS IS TRANSMISSION
ASSET.

IT IS UTILITY'S OWN AND
TRANSMISSION ASSETS HAVE ALWAYS
BEEN RECOVERED IN BASE RATES.

THERE IS NO ALTERNATIVE.

THEY PITCHED TO YOU, YOU COULD
LOOK AT CHECKS THEY WRITE TO
GULF POWER OR JEA FOR POWER THEY
PURCHASED THAT HAS INCREMENT OF
THOSE UTILITIES TRANSMISSION
COSTS IN THEM BUT THOSE ARE
EXPENSES.

THEY'RE NOT THEIR INVESTMENT.

IT HAS TO BE CAPITAL COST.

THERE IS NO EVIDENCE THAT
FLORIDA PUBLIC UTILITIES HAS
EVER RECOVERED THEIR OWN
TRANSMISSION INVESTMENTS
ANYWHERE THAN BASE RATES AND
THAT IS THE BLACK LETTER READING
OF THIS PROVISION WHICH IS THE
REASON WHY I ANSWERED JUSTICE
POLSTON'S QUESTION WHICH IS, IT
DOES DICTATE THAT YOU CAN'T TAKE
THESE BASE RATE COSTS AND PUT
THEM UP INTO FUEL.

I'M WELL INTO MY TIME SO.

>> IS THERE ANY WAIVER OF THE
ABDICATION OF THE SETTLEMENT
AGREEMENT?

>> NO, YOUR HONOR.

IF THE COMMISSION ALLUDES TO AN
EARNINGS OUT, IF YOU WILL.

THAT DID NOT HAPPEN.

THERE IS NO FINDING THAT THE
COMPANY TRIGGERED THAT OUT BY

FILING A PETITION.
RECORD IS DESTROYED ON THAT.
THERE WAS NO FINDING IN THERE.
IT IS MERELY SUGGEST THEY RAISED
AFTER THE FACT AND THERE IS NO
OUT AND THE COMPANY NEVER
ALLEGED THEY DID.
THEY ACCEPTED THAT THE BASE RATE
PROVISION APPLIES.
AND THE COMMISSION DID TOO.
THANK YOU.

>> MAY IT PLEASE THE COURT.
ROSEANNE GERVASI REPRESENTING
THE PUBLIC SERVICE COMMISSION
AND WITH ME IS KEN BELL
REPRESENTING FLORIDA PUBLIC
UTILITIES COMPANY.
WE'LL SPLIT OUR TIME, 12 AND
EIGHT.

THIS APPEAL WAS BROUGHT UNDER A
VERY NARROW PROVISION UNDER
SECTION 120.68, SPECIFICALLY
7-E.

WHICH WOULD REQUIRE THE
COMMISSION TO EXPLAIN ANY
DEVIATION FROM ANY PRIOR
COMMISSION POLICY.

OPC'S ARGUMENT IS INCORRECT FOR
THREE REASONS OF THE FIRST BEING
THAT THERE IS NO POLICY
CONTAINED IN THE DOCUMENTS THAT
OPC SAYS THE COMMISSION FAILED
TO EXPLAIN.

THE 2014 SETTLEMENT AGREEMENT
WAS ENTERED INTO BETWEEN THE TWO
PARTIES, OPC, AND FLORIDA
PUBLIC.

THE COMMISSION WAS NOT A
SIGNATORY TO THAT AGREEMENT AND
THE COMMISSION MADE NO
PRONOUNCEMENT OF POLICY WITHIN
THAT AGREEMENT.

>> IT DID NOT HAVE TO APPROVE
THE SETTLEMENT?

>> THE COMMISSION DID APPROVE
THE SETTLEMENT AGREEMENT, YOUR
HONOR--

>> DOES IT NOT APPROVE THE BASE
RATES CONTAINED IN THAT
SETTLEMENT.

>> YES, SIR, IT DID.
IF THE COMMISSION--
>> SEEMS DISINGENUOUS TO SUGGEST
THAT THE PUBLIC SERVICE
COMMISSION HAS NOTHING TO DO
WITH THE SETTLEMENT WHEN IT
COULD NOT BE EFFECTUATED WITHOUT
THEIR APPROVAL?
>> NO, SIR, THAT IS NOT WHAT I
INTEND TO CONVEY TO THIS COURT.
THE SETTLEMENT AGREEMENT ITSELF,
THE LANGUAGE OF THE SETTLEMENT
AGREEMENT ITSELF WAS NOT
LANGUAGE THAT THE COMMISSION
MADE ANY, THAT THE COMMISSION
WAS INVOLVED IN DRAFTING.
>> WELL, LET'S BE REAL HERE.
WE'RE TALKING ABOUT A FUEL
ADJUSTMENT PROVISION THAT IS
STANDARD.
IT HAS BEEN DESCRIBED BACK TO
1951 AS PART OF THE POLICY OF
THE PUBLIC SERVICE COMMISSION,
AM I CORRECT?
>> YES, SIR.
>> AND IT'S BEEN DESCRIBED OVER
TIME THAT IT IS USED TO ALLOW
COMPANIES TO NOT BE PENALIZED
BECAUSE OF FLUCTUATIONS IN FUEL
COSTS BUT IT IS NOT TO BE USED
FOR TRANSMISSION, AS A MATTER OF
POLICY.
>> YOUR HONOR, STARTING AS FAR
BACK AS 1985, IN ORDER NUMBER
14546, THE COMMISSION, THAT IS
THE FIRST ORDER THAT THE
COMMISSION EXPLAINED WHAT THEIR
POLICY WAS GOING TO BE WITH
RESPECT WHICH TYPE OF COSTS CAN
FLOW THROUGH THE FUEL CLAUSE--
>> I FOUND SOME GOING BACK TO
'74 AND TO 51.
THAT HAS BEEN LONGER THAN '85?
>> YES, SIR, BUT POLICY OF
ALLOWING CERTAIN CAPITAL COSTS
TO FLOW THROUGH THE FUEL CLAUSE
WAS PRONOUNCED IN 1985.
>> OKAY.
>> ORDER 14 A 46.
>> I STAND CORRECTED.

>> ENTITLED FUEL AND PURCHASE
POWER COST RECOVERY CLAUSE.
THE FUEL COSTS INCLUDES PURCHASE
POWER AS WELL AS VOLATILE FUEL
COSTS.

IT IS IMPORTANT TO REMEMBER THAT
FLORIDA PUBLIC UTILITIES, AND
THIS IS IN THE RECORD IS THE
ONLY UTILITY IN THE STATE THAT
HAS TO PURCHASE ALL OF ITS POWER
FROM OTHER GENERATING UTILITIES
BECAUSE IT DOESN'T HAVE ANY
GENERATION.

SO ALL OF ITS, ALL OF ITS FUEL
COSTS ARE EMBEDDED WITHIN ITS
PURCHASE POWER COSTS AND SO THIS
COMPANY HAS TRADITIONALLY AND
HISTORICALLY RECOVERED ALL OF
ITS PURCHASE POWER COSTS THROUGH
THE FUEL CLAUSE.

NOW OPC--

>> THAT IS FOR THE COST OF
PURCHASING FROM OTHERS, NOT THE
TRANSMISSION LINES OR CAPITAL
ASSETS THOUGH?

>> THEIR CAPITAL ASSETS ARE, THE
RECORD SHOWS THAT THEIR CAPITAL
ASSETS AND TRANSMISSION ARE
CURRENTLY BEING RECOVERED IN
BASE RATES.

>> BASE RATES, RIGHT.

>> BUT THE SETTLEMENT AGREEMENT,
WHICH BY THE WAY WAS NOT EVEN
PUT BEFORE THE COMMISSION AT THE
HEARING.

THAT IS MY SECOND REASON FOR WHY
OPC IS INCORRECT.

THERE WAS NO TESTIMONY
WHATSOEVER THAT OPC PUT ON TO
SHOW THE COMMISSION TO TRY TO
PERSUADE THE COMMISSION AS TO
WHY THIS PROJECT OR THE COST
INVOLVED IN THIS PROJECT SHOULD
NOT BE RECOVERED THROUGH THE
FUEL CLAUSE.

>> I THOUGHT THAT WAS THEIR
ENTIRE ARGUMENT THIS CLAUSE--

>> THEIR ENTIRE ARGUMENT ON
APPEAL, YOUR HONOR.

IT WAS THEIR POSITION, THEY TOOK

THE POSITION BEFORE THE HEARING
THAT THESE COSTS SHOULD NOT BE
APPROVED IN THE FUEL CLAUSE
BECAUSE THEY WOULD VIOLATE THE
SETTLEMENT AGREEMENT.

BUT THEY DON'T TELL US--

>> RIGHT.

>> THEY DIDN'T TELL US WHY.
THEY DIDN'T TELL US WHAT
PROVISION OF THE SETTLEMENT
AGREEMENT.

THEY DIDN'T PUT ON ANY EVIDENCE
BELOW.

DID NOT PUT ON ANY--

>> YOU'RE MAKING AN ARGUMENT
LIKE KNOB KNEW WHAT THEY WERE
GOING INTO THE ROOM TO TALK
ABOUT.

EVERYBODY FILED ALL THE
INFORMATION BEFORE THEY WALKED
INTO THE ROOM, RIGHT?

>> THE COMPANY DID, YOUR HONOR.
OPC DID NOT.

OPC DID NOT PUT ON ANY EVIDENCE
AT ALL.

>> THEY DIDN'T FILE ANY
MATERIALS?

>> THAT'S CORRECT.
THEY FILED A PREHEARING
STATEMENT SAYING--

>> DOESN'T THAT OUTLINE WHAT THE
POSITIONS ARE?

>> IT OUTLINED WHAT THE POSITION
IS BUT THEY DIDN'T DEVELOP THEIR
POSITION BUT PUTTING ON ANY
EVIDENCE IN THE RECORD WHATEVER.
THE COMPANY PUT ON EVIDENCE TO
SHOW, TO SUPPORT WHY THE
RECOVERY OF THESE COSTS WOULD BE
APPROPRIATELY RECOVERED THROUGH
THE FUEL CLAUSE, EVEN THOUGH
THEY ARE CAPITAL COSTS.

>> THIS THAT MEMO THAT OPC FILED
DID THEY MAKE ANY REFERENCE TO
THE BASE RATE FREEZE
CIRCUMVENTION PROVISION?

>> THE PREHEARING STATEMENT--

>> HE IS NODDING HIS HEAD.

>> THE PREHEARING STATEMENT
SIMPLY SAID THE COST SHOULD

NOT-- THEIR PREHEARING STATEMENT SAID THE COST SHOULD NOT BE APPROVED BECAUSE THEY WOULD VIOLATE THE FUEL CLAUSE. THEIR OPPORTUNITY TO CONVINCING THE COMMISSION AS TO WHY THAT'S TRUE WAS DURING THE HEARING. THEY DIDN'T PUT ON ANY EVIDENCE AT ALL.

AND THEN IN THEIR POST-HEARING STATEMENT THEY ARGUED WHICH PROVISION THEY THOUGHT WOULD BE VIOLATED.

THAT IS THE FIRST TIME THE COMMISSION EVEN KNEW WHAT PROVISION OF THE SETTLEMENT AGREEMENT OPC TOOK EXCEPTION TO.

>> WHY WASN'T IT OUTLINED IN THE ACTUAL MEMO THAT WAS GIVEN TO THEM BY THEIR OWN STAFF?

DO THEY TALK ABOUT IT--

>> STAFF MEMO DID, YES, YOUR HONOR.

THE STAFF--

>> IT SEEMS TO ME THAT COMMISSION WAS CERTAINLY ON NOTICE THAT THAT SETTLEMENT AGREEMENT WAS A PART OF WHAT THE OPC WAS ARGUING?

>> THEY WERE ON NOTICE.

ONLY BECAUSE OPC ARGUED IT IN THEIR POST-HEARING BRIEF AFTER THE HEARING.

BUT THERE IS NO EVIDENCE THAT WAS PRESENTED DURING THE HEARING ON THAT.

THE STAFF INTERPRETED THE SETTLEMENT AGREEMENT AND AGREED WITH OPC UPON READING OPC'S POST-HEARING BRIEF BEFORE THE COMMISSION.

>> DO YOU AGREE WITH IT NOW?

>> NO, YOUR HONOR.

>> WHY?

>> BECAUSE THE EVIDENCE OF RECORD SHOWS UNDISPUTEDLY THESE COSTS FALL WITHIN THE COMMISSION'S POLICY ALLOWING CERTAIN COSTS TO FLOW THROUGH THE FUEL CLAUSE WHEN THEY ARE

FUEL RELATED.

AND WHEN THEY ARE DESIGNED TO--

>> FUEL RELATED?

>>-- FOR THE RATE-PAYERS.

AND THAT IS WHAT THE RECORD SHOWS.

>> BUT YOU KNOW, THAT SEEMS A VERY BROAD POLICY TO ME BECAUSE IF-- ANY KIND OF CAPITAL IMPROVEMENT, CAPITAL OUTLAY WOULD BE FUEL RELATED.

I MEAN YOU WOULDN'T ACTUALLY MAKE THAT KIND OF INVESTMENT IF IT'S NOT TO FACILITATE THE, GETTING THE FUEL OR WHATEVER IT IS TO THE CUSTOMERS.

SO ISN'T THAT A PRETTY BROAD STATEMENT?

>> YOUR HONOR, THAT ACTUALLY IS NOT BECAUSE THERE ARE LOTS OF CAPITAL COSTS NOT FUEL RELATED AND IN FACT THE FINAL ORDER--

>> LIKE WHAT?

>> RELIABILITY COSTS FOR EXAMPLE.

ALL OF THOSE PROJECTS--

>> ANY KIND OF CAPITAL OUTLAY THAT WOULD HELP FACILITATE GETTING THE FUEL TO WHATEVER IS THE FINAL PLACE IT NEEDS TO BE, WOULD THEN, THAT'S A CAPITAL OUTLAY BUT THEN YOU WOULD SAY, IT COULD ALL BE APART OF THE FUEL COSTS AS OPPOSED TO THE TRADITIONAL BASE RATE?

>> ONLY IF IT WILL RESULT IN FUEL SAVINGS FOR THE RATE-PAYERS, WHICH THE COMMISSION FOUND THAT THE UNDER DISPUTED RECORD EVIDENCE SHOWS IN THIS CASE.

THAT THIS, THESE COSTS WERE PUT INTO THE FUEL CLAUSE FOR RECOVERY BECAUSE OF THE FACT THAT IT WILL RESULT IN FUEL SAVINGS FOR THE RATE-PAYERS.

>> HOW DOES THAT ACTUALLY WORK? BECAUSE YOU KNOW, I WAS LOOKING AT ALL OF THIS, EVERY SO OFTEN, AS THAT SAVINGS TO THE CONSUMER,

OR WHATEVER THAT PHRASE IS,
POWDERED THROUGHOUT THESE
THINGS.

WHAT HAPPENS, AT THE END AFTER
THIS IS ALL DONE, DO THEY GO IN
AND SAY, OH, BY THE WAY WE CAN
LOWER THESE PEOPLE'S UTILITY
RATES?

WHAT DO YOU SAY WHEN YOU SAY A
COST SAVINGS TO THE CONSUMER?

>> THESE PARTICULAR COSTS ARE
RELATE TO A PROJECT, A NEW
PROJECT THAT WILL ALLOW FPC TO
NEGOTIATE FUTURE OPTIONS WITH
OTHER WHOLESAL PROVIDERS.

>> SO HOW DOES THAT END UP WITH
SAVINGS FOR THE CONSUMER?

>> BECAUSE THE CONSUMERS ARE THE
ONES THAT HAVE TO PAY PURCHASE
POWER COSTS.

THEY PAY DOLLAR FOR DOLLAR,
THOSE PURCHASE POWER COSTS THAT
FPC PAYS TO THE WHOLESAL
PROVIDERS.

>> SO, THEORETICALLY, ONCE THIS
IS ALL DONE, INSTEAD OF ME
PAYING \$15 A MONTH, I MIGHT END
UP PAYING 13?

>> YES.

THEORETICALLY, YES, MA'AM.

>> BUT ISN'T THIS A FOR-PROFIT
CORPORATION?

>> YES, SIR.

>> THEY'RE THERE TO MAKE A
PROFIT.

>> YES, SIR, THEY ARE.

>> SO ALL TO BENEFIT THE
CONSUMER WOULD RECEIVE THEY
WOULD NOT INCREASE THE COST?

>> THAT IS A DIFFERENT COMPONENT
OF THE RATES THAT THE COMMISSION
DOES ALLOW THE UTILITY AN
OPPORTUNITY TO EARN A FAIR RATE
OF RETURN ON THEIR INVESTMENT.
AND SO, THAT'S ALSO, THAT IS
INCLUDED IN RATES.

BUT THE COST OF POWER, COST OF
PURCHASING POWER AND COST OF
FUEL, THAT COST GOES UP AND DOWN
DEPENDING ON THE VOLATILITY OF

THE COST OF THE FUEL.
REGARDLESS OF YOU KNOW, THE
ABILITY OF THE COMPANY TO EARN A
FAIR RATE OF RETURN.

AND, YOU KNOW, THE OPC HAS
RAISED THIS ISSUE OF SETTLEMENT
AGREEMENT, REALLY FOR THE FIRST
TIME ON APPEAL.

THE SETTLEMENT AGREEMENT WAS NOT
PUT BEFORE THE COMMISSION AT THE
HEARING.

THEY RAISED IT AS A LEGAL
ARGUMENT IN THEIR BRIEF BUT THEY
DID NOT SUPPORT IT.

WITH ANY EVIDENCE.

>> DID NOT A COMMISSIONER TALK
ABOUT THIS IN DELIBERATIONS?

>> YES, THEY DID.

>> HOW DID HE--

>> THE COMMISSION REMEMBERED
THERE WAS A SETTLEMENT AGREEMENT
IN 2004 AND THERE WAS CONCERN
THAT IT MIGHT HAVE VIOLATED IT
BUT THERE WAS NO EVIDENCE TO
SHOW WHETHER IT DID OR IT
DIDN'T.

IF YOU LOOK, I WILL DEFER TO
MR. BELL ON THE LANGUAGE OF THE
SETTLEMENT AGREEMENT.

I SEE MY TIME IS ENDING.

BUT IF YOU LOOK IF YOU LOOK AT
SENTENCE TWO OF PARAGRAPH 6 THAT
OPC SAYS IS OF ISSUE, CATEGORIES
OF MAGNITUDE OF COSTS BUT NOT
LIMITED TOO, FOR EXAMPLE, THE
INVESTMENT IN MAINTENANCE OF
TRANSMISSION THAT HAVE
TRADITIONALLY AND HISTORICALLY
BEEN RECOVERED THROUGH FPC'S
BASE RATES.

THERE IS NO EVIDENCE IN THE
RECORD THAT FPC TRADITIONALLY
AND HISTORICALLY RECOVERED COSTS
THROUGH THE BASE RATES.

THERE IS EVIDENCE IN THE RECORD
TO SHOW THEY'RE CURRENTLY
RECOVERING THOSE COSTS IN BASE
RATES BUT WE DON'T KNOW AND THE
COMMISSION'S DECISION MUST BE
BASED ON--

>> YOU'RE SAYING NOW WE'LL HAVE A DISPUTE WHETHER CAPITAL EXPENDITURES ARE PART OF BASE RATES, IS THAT WHAT YOU'RE TELLING US?

>> NO, SIR.

THOSE PARTICULAR CAPITAL EXPENDITURES IS WHAT IS AT ISSUE HERE.

AND THE LANGUAGE OF THAT AGREEMENT TALKS ABOUT THE TRADITIONAL, ASSETS HISTORICALLY AND TRADITIONALLY RECOVERED. WHICH DON'T KNOW WHETHER THEIR TRANSMISSION ASSETS AND SOME OF THEM MAY BE, WE DON'T KNOW. THE RECORD DOESN'T SHOW.

I CAN ONLY TELL YOU THEY'RE CURRENTLY BEING RECOVERED IN BASE RATES.

I SEE MY TIME IS EXPIRED.

THANK YOU FOR YOUR TIME.

>> MAY IT PLEASE THE COURT.

I'M KEN BELL.

LET ME TRY TO MAKE A CLARIFICATION HERE IF I CAN. THE ISSUE THAT WAS TRIED BEFORE THE COMMISSION WAS WHETHER OR NOT ALLOWING THIS WAS CONSISTENT WITH AGENCY POLICY.

THAT ISSUE IS NOT BEFORE THE COURT.

THE COMMISSION MADE A DECISION IT WAS CONSISTENT WITH OFFICIALLY STATED AGENCY POLICY AND PRIOR PRACTICES.

IT IS LISTED IN PARAGRAPH 11, 19 PRIOR DECISIONS ON THAT PART.

IF YOU LOOK AT THAT ORDER FROM 1985, IT REFERS TO PURCHASE POWER COSTS RECOVERY AND IT ACTUALLY DIRECTS PEOPLE IN MY CLIENT'S POSITIONS, IT DIRECTS THEM TO TAKE ADVANTAGE OF SHORT-TERM OPPORTUNITIES, NOT REASONABLY ANTICIPATED OR PROJECTED FOR BASE RATE RECOVERY BY COMING IN THE FUEL CLAUSE AND POWER CLAUSE RECOVERY PROCEEDING AND ASKING FOR THAT, SO THAT

CUSTOMERS CAN BE BENEFITED.
THAT IS EXACTLY WHAT HAPPENED IN
THIS CASE.

AND--

>> WHAT PARAGRAPH DO YOU SAY
THAT IS?

>> MA'AM?

>> WHAT PARAGRAPH DID YOU SAY
THAT WAS IN?

>> IN ORDER 14546, WHICH IS A
1985 ORDER THAT WAS MENTIONED
EARLIER.

IT SPECIFICALLY SAYS--

>> THAT IS NOT IN THE 2014
PROVISION?

>> NO.

BUT THAT IS-- WHAT YOU HAVE--
THE MIX HERE IS THE STATUTE THAT
THEY HAVE BROUGHT THIS UNDER
REQUIRES TWO THINGS.

IT REQUIRES THAT THE, THIS COURT
MUST CONFINE ITS CONSIDERATION
TO WHAT'S TRANSMITTED IN THE
RECORD BEFORE IT.

AND, THAT YOU HAVE TO DETERMINE
THAT THE AGENCY'S EXERCISING
DISCRETION WAS INCONSISTENTLY
WITH OFFICIALLY-STATED AGENCY
POLICY FOR PRIOR AGENCY
PRACTICE.

NOT A FINAL AGENCY ACTION.

WHAT THE 2014 SETTLEMENT
AGREEMENT WAS A FINAL AGENCY
ACTION.

SO WE CAN NOT CONFLATE A
OFFICIAL POLICY OR PRACTICE OF
THE COMMISSION WITH A FINAL
AGENCY ACTION.

AND WHAT HAPPENED HERE AND WITH
THE DISADVANTAGE TO MY CLIENT
WAS, YOU TAKE ALL OF THE
TESTIMONY AND YOU SUBMIT IT TO
THE COMMISSION AND THEN YOU DO
THE PREHEARING STATEMENT AND
THEN ON ISSUE 4-A YOU TAKE YOUR
POSITIONS AND OPC'S POSITIONS
WERE THREE.

ONE IT IS NOT CONSISTENT WITH
THE AGENCY FUEL COST POLICY,
WHICH IS NOT ON APPEAL HERE.

TWO, THAT IT VIOLATED THE STIPULATION, AND THREE THAT IT WASN'T PROPERLY IN ITS TIMING BECAUSE IT WOULD HAVE BEEN A LITTLE BIT LATER.

BUT, THEN YOU HAVE A SHORTER HEARING WHERE THEY CONSIDER ALL OF THAT PRIOR TESTIMONY AND CONSIDER OTHER TESTIMONY AND IN NONE OF THAT, IN THIS MIXED QUESTION OF LAW AND FACT YOU ASKED SOME QUESTIONS AND OTHERS OF YOU ASKED QUESTIONS HOW DO WE REINTERPRET THIS?

IT WAS THEIR OBLIGATION TO COME TO THE COMMISSION AND SAY THIS VIOLATES OUR SETTLEMENT, AND THIS IS WHY, A, B, C, D, E, BECAUSE WE COULD MAKE THE ARGUMENT, WHICH IS UNDISPUTED A NEW OPPORTUNITY, A SHORT-TERM OPPORTUNITY THAT WASN'T CONSIDERED AT TIME OF SETTLEMENT AGREEMENT, THAT WOULD BE A GREAT OPPORTUNITY BECAUSE WE HAVE THIS UPCOMING CONTRACT WE'RE GOING TO HAVE TO DO FOR PURCHASE POWER AND WE NEED THIS ALTERNATIVE TO GET BETTER RATES FOR OURSELVES AND TO OUR CUSTOMERS.

THEY NEVER DID THAT.

SO THEY NEVER GAVE US THIS COMPANY, THE OPPORTUNITY TO ARGUE TO THE COMMISSION WHY THIS IS A SHORT-TERM OPPORTUNITY, IT IS GOOD, AND IN GOOD FAITH AND IS NOT COVERED BY THE SETTLEMENT AGREEMENT OR IS NO AN INCREASE IN MAGNITUDE OF COSTS BECAUSE THIS TRANSMISSION WASN'T EVEN CONSIDERED.

THIS INTERCONNECTION WAS EVEN A CONSIDERED ITEM AT THE TIME.

SO IT IS NOT A INCREASE IN THE MAGNITUDE OF COSTS THAT WE SETTLED AND AGREED TO WITH THEM AND IT IS SOMETHING TRADITIONALLY AND HISTORICALLY ALLOWED.

THE MARTIN LATERAL ORDER, WE

MENTIONED IT IN OUR BRIEF, WAS A CASE EXACTLY LIKE THIS.

AFTER RATE CASE THROUGH A FUEL CLAUSE, FLORIDA POWER AND LIGHT NEEDED ANOTHER GAS LINE TO PROVIDE ENERGY TO A PLANT AND IT WAS ALLOWED.

IT IS CONSISTENT WITH THE STATE POLICY AND CONSISTENT WITH THE PRIOR PRACTICE.

SO YOU CAN NOT CONFLATE A FINAL AGENCY ACTION IN ADOPTING A SETTLEMENT AGREEMENT, FOR EXAMPLE, THAT ORDER 14546, IT WAS STIPULATION BETWEEN THE PARTIES BUT CRITICALLY IN THE AGENCY ADOPTING THAT SAID, WE ARE ADOPTING THIS AS OUR POLICY. YOU DON'T SEE THIS IN THE 2014 ORDER.

SO THAT ORDER WAS NEVER PRESENTED TO THE AGENCY IN THIS PROCEEDING, WAS NEVER ARGUED, NO TESTIMONY WAS EVER PRESENTED SO REALLY WHAT THEY'RE DOING IS CONFLATING A QUESTION ABOUT THE ENFORCEABILITY OF A SETTLEMENT AGREEMENT WITH AGENCY POLICY AND PRIOR AGENCY PRACTICE, WHICH WAS THE SEPARATE ISSUE OF WHETHER ALLOWING THIS WAS CONSISTENT WITH, WHAT YOUR ARGUMENT, JUSTICE LEWIS, WAS, WELL, ISN'T THIS NORMALLY A BASE RATE.

YEAH, NORMALLY IT IS, BUT IF IT'S A NEW OPPORTUNITY, WE CAN HAVE TO ACT ON MORE QUICKLY, IT'S THE FUNCTION OF THE COMMISSION TO SET RATES AND SERVICE THEM IN THE BEST INTERESTS OF THE CONSUMERS.

WHAT THE AGENCY DID AND YOU NEED TO REFER TO AS ITS DISCRETION, IF SAID THIS A GOOD OPPORTUNITY THIS IS GOOD FOR THE COMPANY, THIS IS GOOD FOR CONSUMERS THIS, IS IN EVERYBODY'S BEST INTERESTS AND WASN'T CONSIDERED AND IT IS APPROPRIATE UNDER OUR MARTIN LATERAL ORDER, 19 PRIOR CASES

WE'VE CITED AND OUR POLICY.
AND--

>> IS YOUR COMPANY PLACED IN A
SOMEWHAT DIFFERENT POSTURE
BECAUSE YOU DO NOT PURCHASE THE
FUEL AND GENERATE THE POWER, IS
THAT, WHEN YOU PURCHASE THE
POWER, IT IS ESSENTIALLY
EQUIVALENT TO PURCHASING THE
FUEL BY ANOTHER COMPANY?

>> RIGHT.

>> AND THAT, THIS BY PUTTING IN
NOT ONLY TRANSMISSION LINES,
LOOKING AT THIS THING, WILL BE
SUBSTATIONS, THE WHOLE SHEBANG
IS GOING TO BE INSTALLED BUT FOR
THE PURPOSE FOR THE COMPETITIVE
BIDDING I THINK EVIDENCE IS
THERE ON THAT FOR THE NEXT
CONTRACT GO ROUND.

>> THAT IS THE NEXT THING.
THE NEXT CONTRACT IS COMING UP
IN ORDER TO GET THIS OTHER
ACCESS.

WE HAVE ONE POWER PLUG.

WE NEED ANOTHER ONE.

SO THAT WE CAN NEGOTIATE.

RIGHT NOW WE PAY TRANSMISSION
COST, 10 OR 20%--

>> I DON'T THINK THEY CHALLENGED
THE-- THAT ASPECT OF IT.

IT MAKES SENSE, WHAT'S GOING ON
AND QUESTION IS WHETHER YOU CAN
USE THAT CLAUSE.

>> RIGHT.

THE WAY I THINK, IN CONTEXT THAT
MIGHT RESONATE MORE WITH YOU,
THEIR ARGUMENT IS SORT OF LIKE
AFFIRMATIVE DEFENSE.

THAT THEY PLED BUT NEVER PROVED.

AND IT WAS THEIR OBLIGATION IF
THEY FELT THAT IN ADDITION TO
THIS BEING VIOLATIVE OF THE
AGENCY POLICY, ON FUEL CLAUSES,
AND POWER PURCHASE AGREEMENT,
AND DIDN'T WIN THAT ONE AND
AFFIRMATIVE DEFENSE WAS IT
VIOLATES OUR--

>> I DON'T THINK THERE IS
FACTUAL DISPUTE.

TO ME IT IS A QUESTION WHETHER LEGALLY PROHIBIT THIS IS FROM HAPPENING.

WHAT IS THE FACTUAL-- THERE IS REALLY NO FACTUAL DISPUTE. EVERYBODY KNOWS WHAT'S BEING DONE.

>> THEY DISPUTE THAT TRADITIONALLY AND HISTORICALLY THESE TYPE OF COSTS HAVE BEEN ALLOWED.

THAT IS WHAT THE AGREEMENT SAYS.

>> I MEAN WE HAVE, WE HAVE THE LISTING OF THE WHERE IT NORMALLY IS AND ONES HAVE BEEN EXCEPTIONS.

>> THEY ADDRESSED THAT BUT I'M TALKING ABOUT AS FAR AS THE SETTLEMENT AGREEMENT.

THE SETTLEMENT AGREEMENT, NOTHING IN THE AGREEMENT PRECLUDES A TYPE OF WHICH TRADITIONALLY, RECOVER OF THE COSTS TRADITIONALLY, HISTORICALLY WOULD HAVE BEEN HAVE BEEN OR PRESENTLY RECOVERED THROUGH COST RECOVERY CLAUSES AND THE COMMISSION FOUND THIS IS TRADITIONALLY, HISTORICALLY BEEN DONE THIS WAY ON INCREMENTAL COSTS THIS IS CLEARLY UNANTICIPATED INCREMENTAL COST WAS UNANTICIPATED AT TIME WE ENTERED INTO OUR SETTLEMENT AGREEMENT.

THERE IS NO DISPUTE ABOUT THAT FACT.

SO, THEY DON'T EVEN MENTION THAT FIRST SENTENCE IN THEIR BRIEF AND IT IS TELLING BECAUSE IF YOU READ IT AS THEY WANT TO, MAKES THE FIRST SENTENCE JUST TOTALLY IRRELEVANT.

AND SO, MY TIME IS UP.

SO I APPRECIATE IT.

THANK YOU.

>> YOUR HONORS, PAGE 41 OF THE COMMISSION'S BRIEF IN THE LAST PARAGRAPH READS, FIRST SENTENCE, THE INTERCONNECTION PROJECT IS A

CAPITAL PROJECT, TRANSMISSION AND COSTS INTERCONNECTION COSTS OF WHICH ARE GENERALLY OF A TYPE THAT IS TRADITIONALLY AND HISTORICALLY RECOVERED IN BASE RATES.

THERE IS A 2013 FUEL ORDER, A 2014 FUEL ORDER, BOTH SAY THAT THESE TRANSMISSIONS COSTS ARE IN THEIR BASE RATES.

THE RECORD--

>> NOT FOR THIS EXACT, NOT FOR THIS PARTICULAR LINE THAT IS GOING IN.

IT IS FOR EXISTING TRANSMISSION LINES.

>> YES.

COUNSEL FOR THE COMMISSION REPRESENTED TO YOU I THOUGHT THERE IS NO BASIS FOR IN THE RECORD FOR SAYING THAT THESE TRANSMISSION COSTS ARE TRADITIONALLY AND HISTORICALLY RECOVERED IN BASE RATES.

THAT IS WATER OVER THE DAM.

THERE IS NO DISPUTE, THERE IS TESTIMONY THAT THIS IS WHERE THEY RECOVER THEIR TRANSMISSION ASSETS.

IT IS A PRETTY BLUNT LETTER THAT THIS FIRST SENTENCE ALLOWS IT TO ASK, DOESN'T SAY THE COMMISSION HAS TO GET IT BUT THE SECOND SENTENCE IS PROHIBITION ON THE COMMISSION TO NOT ALLOW IT.

UNDER THE LAW THEY ARE THE ONLY ONES THAT CAN ALLOW RECOVERY OF THESE COSTS.

THE 20 HOURS THEY CITE TO YOU, NOT A ONE OF THEM SHOWS THAT ANY UTILITY IN FLORIDA INCLUDING IF PUC, AND IT IS NOT OUR BURDEN.

>> NOT RECOVERING THROUGH FUEL COSTS.

THE SECOND SENTENCE OF PARAGRAPH 6 IS EXACTLY LIKE THE FUEL POLICY.

BASE RATES ARE FUEL.

>> IT IS SORT OF IRONIC.

BUT RELYING ON HIS IT ADEQUATELY

PLED.

>> WILL THE ISSUE BE PERMITTED, THEY SIGNED THIS DEAL, THE SECOND SENTENCE SO THEY ARE NOT ALLOWED TO RECOVER.

>> NEVER CAME TO THEIR ATTENTION.

>> IF YOU LOOK AT THEIR BRIEF, FOOTNOTE 12 OR 13, THEY ADMIT THAT THEY KNEW WE HAD THIS OBJECTION EVEN BEFORE THE PREHEARING STATEMENTS WERE FILED.

IT IS NOT ACCURATE THAT THEY WERE NOT ON KNOWLEDGE.

THEY ALSO IF YOU READ, THERE'S A SENTENCE WE PUT IN THEIR STATEMENT WHERE THEY KNEW THESE COSTS WERE INITIATIVE AND IT IS THE NEXT SENTENCE IN THE PARAGRAPH, NO REASON THEY WOULDN'T HAVE KNOWN THAT.

>> IT IS THE REASON FOR THIS HEARING, THE REASON, IT WAS WAIVED OR CORRECT FOR THEM TO RESOLVE.

WHAT OTHER ISSUES ARE THERE?

>> THAT WAS AN EXPENSE ISSUE.

>> THAT IS THE LEGAL COST AND SO ON.

THAT IS NOT AN ISSUE HERE.

>> THEY RECOVERED THAT, THE CASE IS CRYSTAL-CLEAR ON THAT.

THE FACTS OR THE ESSENTIAL ELEMENTS TRIGGERING THIS IS ALL WE HAD TO DO, WE ARGUED IN THE BRIEF BECAUSE IT IS PURELY A LEGAL MATTER AND THAT IS WHERE YOU ARGUE LEGAL ISSUES.

WE CITED IT, THEY DON'T ALLOW TESTIMONY ON LEGAL ISSUES.

>> IN RECESS FOR WE 10 MINUTES.