>> NOW TO THE SECOND CASE
ON THE DOCKET TODAY.
CITIZENS OF THE STATE OF
FLORIDA VERSUS JULIE IMMANUELLE
BROWN.
>> MAY IT PLEASE THE COURT.
MY NAME IS CHARLES REHWINKLE
AND WE SUPPORT FLORIDA POWER &
LIGHT IN THIS MATTER.
FLORIDA POWER & LIGHT BROKE THE
LAW BY COLLUDING FPL, ITS
CUSTOMERS TO PAY, TO CLEAN UP
THE DAMAGE IT CAUSED.
THE PSC AIRED IN ITS
CONSTRUCTION OF THE GOVERNING
STATUTE IN AN ORDER THAT WOULD
ALLOW CUSTOMERS TO CLEAN UP THE
DAMAGE CAUSED BY THE
VIOLATIONS.
THIS IS A CLEAR ERROR UNDER THE
PLAIN MEANING AND PLAIN
LANGUAGE OF THE STATUTE AND
REQUIRES REVERSAL.
SO FAR FPL HAS DUMPED NEARLY 7
BILLION POUNDS OF SALT INTO
STATE WATERS BENEATH THE
EASTERN EDGE OF THE HISTORIC
EVERGLADES.
THAT VIOLATED NOT ONLY FPL'S
PERMIT BUT THE APPLICABLE ROLE
AND STATUTE GOVERNING WATER
QUALITY IN THAT AREA.
PAGE 8 OF OUR BRIEF CONTAINS
FPL'S OWN EVIDENCE TO
MISTREATING THE SCOPE OF THE
DAMAGE THEY CAUSED TO THE
AQUIFER.
THE COMMISSION ALLOWED THE USE
OF OTHERWISE EFFECTIVE,
SPECIALIZED STATUTE, RATEMAKING
CLAUSE IN AN UNLAWFUL MANNER TO
PROTECT THE COMPANY FROM
ABSORBING ANY OF THE COSTS TO
TRY TO UNDO THE HARM THEY CAUSE
WITH ALL THAT SALT POLLUTION.
WE ASK YOU TO CONSTRUCT THE
COMMISSION, THE PLAIN LANGUAGE
OF THE LAW REQUIRES WHEN
UTILITY HARMS THE ENVIRONMENT
AND ATTEMPTS TO REVERSE THAT

HARM THE ENVIRONMENTAL COST RECOVERY CLAUSE BARS CUSTOMER RECOVERY BECAUSE THOSE PORTIONS OF CONSENT DOCUMENTS REQUIRING CLEANUP OF THE ACCUMULATION OF 45 YEARS OF SALT DAMAGE DOES NOT MEET THE SPECIFIC STATUTORY DEFINITION OF A REGULATION DESIGNED TO PROTECT THE ENVIRONMENT.
WE SUBMIT THAT SUCH A RESULT WOULD CREATE A PERVERSE INCENTIVE TO MAKE LITTLE OR NO EFFORT TO COMPLY WITH EXISTING POLLUTION REGULATIONS.
BECAUSE AS IT STANDS, IF A UTILITY GETS CAUGHT POLLUTING, ADMITS TO BREAKING THE LAW AND CAUSING THE POLLUTION AND CUTS A DEAL WITH ENVIRONMENTAL REGULATOR, REQUIRING IT TO ITS OWN VOLITION REDUCING THE JEOPARDY.
>> A HYPOTHETICAL, HAS NOTHING TO DO WITH WHAT WE ARE DOING TODAY.
IF THERE'S A BRIEFCASE WITH A TICKING TIME BOMB OUTSIDE A BUILDING AND I ORDER A GOVERNMENT AGENCY OR PRIVATE ENTITY REGULATED BY GOVERNMENT AGENCY TO CLEAN UP A TICKING TIME BOMB OR MOVE IT, IN ADDITION TO CLEANING UP THAT MESS, PROTECTING PEOPLE INSIDE THE BUILDING?
>> IF THE BOMB HASN'T EXPLODED, YOU WOULD NOT PROTECT THE BOMB FROM OCCURRING AND PROTECT THE PEOPLE.
IF IT ALREADY EXPLODED AND WAS OUT THERE BECAUSE OF UNLAWFUL ACTIVITY, THE PROTECTION COULDN'T OCCUR.
YOU CAN'T RESTORE THE LIFE OR DAMAGE THAT ALREADY OCCURRED.
>> IS IT THE CITIZENS POSITION 3 MILES OF SALT IN WORD FROM THE COAST IS NOT A TICKING TIME BOMB?

IS NOT A TICKING TIME BOMB FOR
THE REMAINING PORTION OF THE
AQUIFER THAT HAS NOT BEEN CELL
UNAIDED?
>> THAT'S AN EXCELLENT QUESTION
AND I ANSWER IT THIS WAY.
BOTH CONSENT AGREEMENTS, IN THE
DEP AGREEMENT, THEY SHARPLY
DISTINGUISH BETWEEN TWO TYPES
OF ACTIVITIES, ONE TO PREVENT
ADDITIONAL HARM AND WANT TO
CLEAN UP EXISTING HARM AND WE
ACKNOWLEDGE OUR CLIENT'S
OBLIGATION TO CUSTOMERS IS TO
PAY TO PREVENT ANY HARM.
IF YOU LOOK AT THE PICTURE WE
INCLUDED IN PAGE 8, THERE'S A
RED MASS THAT LOOK LIKE A
RABBIT IF YOU WANT TO LOOK AT
IT.
EVERYTHING TO THE WEST OF THAT
IN THE GREEN, THAT IS SOMETHING
THAT IS NOT HARMED.
WE HAVE TO KEEP THAT FROM BEING
HARMED.
>> IF NOTHING IS DONE FOR
REMEDIATION, I WILL USE THE
TERMINOLOGY THAT IS USED, DOES
THAT GREEN BLOG OR READ BLOG
AFFECT THE GREEN BLOG?
>> MAYBE, MAYBE NOT.
THE ABATEMENT PROVISION WHICH
SAYS DILUTE THE SALT IN THE
COOLING CAN NOW SYSTEM IS
INTENDED TO HALT THE PROGRESS
AND THAT IS THE CONTAINMENT
FUNCTION WE HAVE TO PAY FOR.
>> DOESN'T THAT ONLY WORK IF
YOU TAKE OUT WHAT IS ALREADY
THERE.
IF YOU LEAVE IN 3 MILES WORTH
OF SALT, DOES THAT MIGRATE INTO
THE AQUIFER?
>> IF WE STOP THE PROCESS OF
PUSHING SALT OUT, THIS PUMP,
THE HYPER SALINE WATER COMES
OUT OF THE CAN NOW SYSTEM, THE
RABBIT IS NOT GOING TO GROW IN
SIZE OF THEIR WON'T BE
ADDITIONAL HARM AND WE AGREE TO

PAY --
>> IF THE BOND DOESN'T GO OFF?
TO USE MY TERRIBLE ANALOGY.
>> THE REQUIREMENT IN THIS
REQUIRES THE BOMB TO BE REMOVED
AND THE REMOVAL AND CLEANUP IS
WHAT ISN'T PROTECTING THAT
PART, YOU CAN RESTORE THAT.
IF YOU TAKE THE MEASURES THAT
ARE REQUIRED BUT STOP THE
PROCESS FROM MOVING, THAT
PROTECTION OCCURS AND WE HAVE
TO PAY FOR THAT.
>> ANY RECORD TO SUGGEST IF
THERE'S NO REMEDIATION OF THE
3-MILE INTRUSION OF SALT THE
REST OF IT WOULD BE UNAFFECTED
AS LONG AS THERE IS A PLAN TO
PUT FURTHER SALT INTO THE
GROUND?
WAS THERE EVIDENCE IF THE
BRIEFCASE IS THERE WITH THE
BOMB IN IT, FURTHER INTRUSION
DOWN THE LINE IN THE AQUIFER
WOULD HAPPEN?
>> I DON'T BELIEVE THERE IS
EVIDENCE TO THAT.
THE EVIDENCE IS THE OTHER WAY.
THE FRESHENING ACTUALLY
FACILITATES THE CLEANUP.
TO THE EXTENT YOU ARE
FRESHENING AND PUTTING LESS
SALT IN, IT FACILITATES
REMEDIATION SO THERE IS OVERLAP
BUT NO EVIDENCE THAT SAYS THE
CLEANUP IS SOMETHING THAT
FACILITATES THE PROGRESS OF
PLUME, THE PLUME IS CAUSED BY
WHAT IS GOING ON IN THE CANAL
SYSTEM AND AS IT RELATES TO THE
HYDROLOGY OF THE AQUIFER.
>> IF THERE IS NO CLEANUP, IS
THE CONTINUING HARM?
>> IF THERE IS NO CLEANUP, YES
THERE IS.
PARAGRAPH 37 OF THE CONSENT
AGREEMENT, THE DEP IS HOLDING
AN ADVANCE AND PURSUE PENALTIES
FOR THE HARM THAT IS CAUSED,
REQUIRED TO FULFILL THE

OBLIGATIONS AND DO THE CLEANUP
SUBJECT TO FURTHER PENALTIES OR
SUBJECT TO PENALTIES.
THEY ARE REQUIRED TO DO IT AND
-- THE HARM WOULD CONTINUE.
>> WHAT DO YOU SAY TO SOMEONE
WHO SUGGESTS YOUR UNDERSTANDING
OF THE TERM PROTECT IS TOO
NARROW BUT THERE'S A COMMONLY
UNDERSTOOD MEANING OF THE TERM
TO TAKE CARE OF, TO PROTECT
SOMETHING YOU TAKE CARE OF IT
AND WE TALK ABOUT ENVIRONMENTAL
LAWS AND REGULATIONS AND THE
ASPECTS OF THOSE LAWS THAT
REQUIRE CORRECTIVE ACTION TO BE
TAKEN ARE NOT MEASURES TO
PROTECT THE ENVIRONMENT, FLIES
IN THE FACE OF THE WAY WE WOULD
COMMONLY UNDERSTAND THAT.
IT SEEMS TO BE SOMEWHAT
DETACHED FROM REALITY.
WHAT WOULD YOU SAY TO THAT?
>> I WOULD SAY TO THAT, THE
ENVIRONMENT IS MULTIFACETED IN
THIS CASE IN THE ENVIRONMENT,
THE ENVIRONMENT AS HARMS CAN'T
BE PROTECTED.
THEY CAN ATTEMPT TO REPAIR IT
AND IT IS VERY CLEAR.
>> HOW IS THAT NOT PROTECTING
IT IF YOU MEDIATED REPAIR IT?
HOW IS THAT PROTECTING THE
ENVIRONMENT?
IS YOUR POSITION IN ESSENCE
ONCE YOU DAMAGE THE ENVIRONMENT
YOU CAN NO LONGER PROTECT IT BY
REMEDIATING IT?
>> YOU CAN'T PROTECT IT UNTIL
YOU CLEAN IT UP.
MISTER SOUL TESTIFIES TO THAT
WHEN ADDRESSING A QUESTION TO
MISTER PULLMAN IN THE HEARING.
HE IS SAYING ONCE -- AFTER
CLEANUP OCCURS, CONTAINMENT CAN
HAPPEN AND THAT IS AFTER 10
YEARS BUT IN THOSE 10 YEARS,
ONLY TRYING TO BENEFIT OR
IMPROVE THE ENVIRONMENT, THAT
THE LEGISLATURE SET OUT.

YOU HAVE TO LOOK AT THE CONTEXT
WHEN THE 1993 LAW WAS PASSED,
THE CLEAN AIR ACT AMENDMENTS,
WE NEED TO PUT LESS POLLUTION
OUT INTO THE ENVIRONMENT AND
PUT SCRUBBERS AND OTHER
MECHANISMS ON THE UTILITIES AND
PROTECT THE ENVIRONMENT THAT
WAY.
THE WORD PROTECT MEANS TO
PREVENT THE HARM IN THE FIRST
PLACE.
THAT IS THE CONTEXT THAT THE
LAW WAS ADAPTED.
>> YOUR ADMISSION IS THERE IS
CONTINUING HARM.
CONTINUING HARM, WHY IS IT THEN
PROTECTING THE ENVIRONMENT?
>> THE CONTINUING HARM IS THE
AQUIFER THAT IS BEING DAMAGED
BY THE PROGRESS.
OF TALKING ABOUT THE STATIC
MASS OF SALT THAT IS THERE,
MOVING FROM G3 TO G2 IS
UNUSABLE FOR ANY PURPOSE.
>> IT IS NOT CONTAINABLE BY
ITSELF.
NO CONTINUING HARM OR EXPOSURE
OF HARM THAT NEEDS PROTECTION
WHERE THE DAMAGE HAS BEEN DONE,
IS NOT GOING TO DO ANY MORE
DAMAGE AND JUST NEEDS TO BE
CLEANED UP AND NO MORE
PROTECTION TO BE DONE.
THAT IS NOT THE CASE IT SEEMS
TO ME.
>> I MISUNDERSTOOD YOUR INITIAL
QUESTION BUT WHERE THE RED MASK
SAYS IT NEEDS TO BE RETRACTED,
THAT DAMAGE IS EXTENT AND NOT
CHANGING, WHAT IS CHANGING AS
IT KEEPS MOVING.
ONE SEPARATE MECHANISM THAT
PROTECTS THE UNHARMED
ENVIRONMENT BY SAYING YOU'RE
GOING TO PUT LESS SALTY WATER
IN THAT AQUIFER AND STOP THE
PROGRESSION.
THERE IS A CLEAR DELINEATION IN
BOTH DOCUMENTS BETWEEN CLEANING

UP EXISTING HARM AND PREVENTING
FUTURE HARM.
>> IS IN THE TESTIMONY THAT YOU
REFERRED TO THAT IF YOU PULL IT
BACK FROM LONG ENOUGH IT WAS 10
YEARS, IT ACTUALLY THE PLUME
WOULD RETRACT?
ISN'T THAT THE TESTIMONY?
>> THE EFFORT IS TO PULL IT
BACK AND THEY HAVE TO GET IT
BACK TO THE L 31 THE BOUNDARY
WITHIN TEN YEARS AND AFTER 5
YEARS --
>> IT IS NOT PROPERLY HARMED,
YOU HAD A DISCUSSION WITH
JUSTICE PAULSON.
THE PLAN WHETHER IT WORKS OR
NOT IS A DIFFERENT STORY.
THE PLAN IS TO GET THE WATER
BEYOND THE BOUNDARY TO WHERE IT
WAS BEFORE HAND.
>> THAT IS THE INTENT.
THERE IS, EVEN THE COMPANY'S
HYDROLYSIS AGREE, THE AQUIFER
THAT IS DEFINED DOWN TO 100
FEET, THEY CAN'T GET IT ALL
BACK SO THERE'S QUITE A BIT OF
AN CERTAINTY WHETHER THEY CAN
REPAIR ALL THE HARM.
WHAT THEY DID IS TRIED TO
REDEFINE THE AQUIFER AS
SOMETHING THAT DIDN'T INCLUDE
WHAT THEY CAN'T GET BACK BUT I
THINK IT IS EXHIBIT 74,
INTERROGATORY 23, THEY SHOW THE
AQUIFER GOES TO 102 FEET AND
THAT 102 FEET, THE TESTIMONY IS
UNCONTROVERTED.
THEY CAN'T GET THAT SALT BACK.
THEY CAN'T GET ALL OF THE HARM
REPAIRED.
THAT IS THE INTENT.
UNTIL THEY GET IT BACK THEY
CANNOT SAY THEY HAVE RESTORED
THE AQUIFER TO THE STATE THAT
WAS REQUIRED IN 1973 ONWARD,
THAT THEY NOT PUT SALT IN THERE
TO THE WEST OF THE COOLING
CANAL SYSTEM TO THE EXTENT THAT
IT WOULDN'T BE THERE BUT FOR

THE EXISTENCE OF THE COOLING
CANAL SYSTEM.
THAT IS THE STATE THEY HAVE TO
RESTORE IT TO.
>> LET ME ASK YOU A FOLLOW-UP
TO MY EARLIER LINE OF
QUESTIONS.
ARE YOU FAMILIAR WITH SUPER FUN
ACT?
>> SOMEWHAT.
>> YOU KNOW GENERALLY WHAT IT
IS.
BASED ON YOUR ARGUMENT ABOUT
THE MEANING OF PROTECTION AND
PROTECT, WOULD IT BE YOUR
POSITION THE SUPER FUN ACT IS
NOT AN ENVIRONMENTAL PROTECTION
MEASURE?
>> THE SUPERFUND ACT IN SOME
INSTANCES MAY GENERALLY BE
ENVIRONMENTAL PROTECTION.
>> BASICALLY WHAT IT IS ABOUT
IS CLEANING UP POLLUTANT SITES.
>> IT IS AND IT IS RESTORING
THE SITE.
I WOULD NOT ASSERT THAT IN
EVERY EVENT A REQUIREMENT UNDER
SUPERFUND WOULD BE ELIGIBLE FOR
COST RECOVERY UNDER THE
ENVIRONMENT FOR COST RECOVERY
CAUSE.
IT IS NOT THE ONLY WAY TO
RECOVER THESE COSTS.
THEY STILL HAVE THE ABILITY TO
GO AND SEEK RECOVERY IN A BASE
RATE CASE.
REMEMBER THE A CRC WAS
SPECIFICALLY DEFINED BY THE
LEGISLATURE TO BE A NON-RATE
BASED RECOVERY MECHANISM THAT
WOULD AVOID THE NEED TO HAVE
RATE CASES A RETIREMENT
ENVIRONMENT A REGULATION CAME
DOWN.
>> COULD WE CIRCLE BACK TO THE
POLICY ARGUMENT YOU STARTED
YOUR ARGUMENT WITH?
YOU WERE TALKING ABOUT THE
PERVERSE INCENTIVES THAT WOULD
FOLLOW FROM THE OTHER SIDE'S

POSITION.
YOUR RESPONSE TO THAT IS IT IS ONLY PRUDENTLY INCURRED COSTS THAT COULD BE RECOVERED.
COULD YOU ADDRESS THAT ARGUMENT?
>> THE STANDARD OF THE ENVIRONMENTAL COST RECOVERY STATUTE IS ONLY THE COST YOU INCUR IN THE FUTURE TO MEET OBLIGATIONS UNDER THE RULE.
IT HAS NOTHING TO DO WITH WHAT HAPPENED THE LAST 45 YEARS.
THIS IS SPECIFICALLY DID YOU SPEND THE RIGHT AMOUNT OF MONEY?
>> I DON'T KNOW WHY YOU SAY THAT.
IF THE MISFEASANCE AND MALFEASANCE, YOU DAMAGE THE ENVIRONMENT I DON'T KNOW WHY THAT WOULDN'T BE IMPRUDENTLY INCURRED CLEANUP COSTS AND YOU SEEM TO BE SUGGESTING OTHERWISE.
>> THE COMMISSION'S ORDERS TALK ABOUT THE COSTS YOU ARE SPENDING IN COMPLIANCE, NOT THE REASONS YOU GOT THERE.
THAT IS THE WAY THE STATUTE READS.
IT IS THE COSTS YOU INCUR TO MEET YOUR NEW OBLIGATION.
THAT IS THE ONLY STANDARD.
>> YOU MAY CONTINUE.
>> I WOULD LIKE TO RESERVE THE REMAINDER OF MY 3 MINUTES, THANK YOU.
>> I AM MATTHEW CONIGLIARO AND I REPRESENT THE FLORIDA PUBLIC SERVICE COMMISSION.
I WILL SHARE MY TIME WITH STUART'S FINGER.
YOU HIT THE NAIL ON THE HEAD IN REGARD TO THE ISSUE HERE.
IT IS APPROVED DETERMINATION, THE COMMISSION MADE THAT PRUDENCE DETERMINATION, THEY REVIEWED ALL THE INFORMATION PC HAS RAISED ABOUT WHETHER THE

UTILITY, THEY BROKE ANY LAWS IN
REGARD TO THE OPERATION OF THE
COOLING CANALS AND THE
COMMISSION FOUND NO, THEY DID
NOT.
AND THEY ACT PRUDENTLY IN
WORKING WITH ENVIRONMENTAL
AGENCIES IN RESPONSE TO THE
CONSENT ORDERS AND DOING WHAT
THEY WERE TOLD TO DO BY THE
ENVIRONMENTAL AGENCIES.
THEIR COSTS ARE APPROPRIATELY
RECOVERED UNDER THE STATUTE.
>> IF YOU HAD FOUND THE CLEANUP
COSTS WERE NECESSITATED BY
MISFEASANCE OR MALFEASANCE ON
THE PART OF ELECTRIC UTILITY IT
WOULD HAVE BEEN IMPRUDENT AND
YOU WOULD NOT HAVE ALLOWED THE
RECOVERY.
>> CORRECT.
WE CONSIDERED ALL THAT
INFORMATION AND A REVIEW SHOWED
THERE WAS NO POINT DURING THE
OPERATION OF THE PLANT THAT
THEY DEVIATED FROM THEIR PERMIT
UNTIL THE NOTICE OF VIOLATIONS
OCCURRED AND AS SOON AS THEY
DID, THE NOTICE OF VIOLATIONS,
THEY RESPONDED TO THE
ENVIRONMENTAL AGENCIES TO COME
UP WITH A PLAN TO FIX THE
PROBLEM AND THEREFORE, BASED ON
OUR REVIEW OF THIS INFORMATION
WE DETERMINED THEY SHOULD BE A
LOT OF COST RECOVERY AND THERE
WAS COSTING THE DIDN'T ALLOW
COST RECOVERY FOR, HAD TO DEAL
WITH $1.5 MILLION THEY PUT INTO
AN ESCROW ACCOUNT THAT WAS
SUPPOSED TO BENEFIT THE STATE
OF FLORIDA IN GENERAL, NOT
SPECIFIC TO FPL CUSTOMERS AND
THE COMMISSION DIDN'T ALLOW
COST RECOVERY FOR THAT AMOUNT
FINDING IT WASN'T PRUDENT.
WE DID REVIEW ALL THE
INFORMATION AND FOUND THAT IT
WAS PRUDENT AND THEY SHOULD
HAVE COST RECOVERY UNDER THE

STATUTE.
IN REGARD TO WHETHER OR NOT
THEY BROKE THE LAW AND THAT
SHOULD BE A BASIS WHETHER THEY
SHOULD AUTOMATICALLY BE FOUND
NOT TO BE PRUDENT THERE IS A
CASE CALLED FLORIDA PROGRESS
THAT SAYS THE COMMISSION THAT
WAS A SUPREME COURT CASE THAT
SAID THE VIOLATION ITSELF IS
NOT ENOUGH TO SAY A COMPANY
ACTED IMPRUDENTLY AND WE HAVE
TO DO OUR OWN INDEPENDENT
PRUDENCE EVALUATION TO
DETERMINE WHETHER COMPANIES
ACTED PRUDENTLY AND THAT IS
WHAT WE DID IN THIS CASE.
IT'S NOT THE SAME STATUTE BUT --
AND, AS YOU, WAS SHOWN IS THAT
OPC'S DEFINITION IS A VERY
NARROW READING OF THE STATUTE.
EVEN THE RECORD ITSELF SHOWED
THAT IT WOULD BE DIFFICULT, IF
NOT IMPOSSIBLE FOR THE
COMMISSION AS NOT BEING A
REGULATORY AGENCY, TO
DISTINGUISH BETWEEN REMEDIATION
AND CONTAINMENT MEASURES WHAT
SHOULD ALLOW COST RECOVERY FOR
IN THAT RECORD.
BECAUSE IT IS NOT ALWAYS CLEAR.
SOMETIMES OUR REMEDIATION
MEASURE IS FOR CONTAINMENT.
US NOT BEING ENVIRONMENTAL
AGENCY WE WOULD BE IN THE
POSITION OF TRYING TO FIGURE OUT
WELL, IF IT HAS REMEDIATION AND
CONTAINMENT, SHOULD WE ALLOW
COST RECOVERY FOR IT OR NOT.
IT WOULD MAKE IT VERY DIFFICULT
FOR THE COMMISSION TO IMPLEMENT
THE STATUTE.
THE LEGISLATURE MADE THE POLICY
DECISION TO ALLOW COST RECOVERY
UNDER THE STATUTE.
AND TOLD US TO MAKE SURE THAT
THE COSTS WERE PRUDENT, AND
THAT'S WHAT WE DID IN THIS
REGARD.
UNLESS THERE IS ANY OTHER

QUESTIONS, I'LL, TURN IT OVER TO MR. SINGER.
>> MR. CHIEF JUSTICE, MAY IT PLEASE THE COURT, I'M STUART SINGER HERE ON BEHALF OF FLORIDA POWER AND LIGHT COMPANY.
I WOULD LIKE TO BEGIN BY NOTING THAT THIS DISTINCTION WHICH THE APPELLANTS ARGUMENT REST ON BETWEEN EFFORTS DIRECTED TO PREVENTING ENVIRONMENTAL HARM AND THOSE THAT ABATE AND REPAIR HARM IS NOT FOUND IN THE STATUTE FOR ENVIRONMENTAL COST RECOVERY.
AND THEY STRUGGLE TO TRY TO DRAW A DISTINCTION FRANKLY I CAN'T SEE, AND WE BELIEVE YOU CAN'T SEE BETWEEN THE LANGUAGE DESIGNED TO PROTECT THE ENVIRONMENT AND ENVIRONMENTAL PROTECTION.
THE STATUTORY AUTHORIZATION WE ARE HERE ON IS BROAD.
IT TALKS ABOUT ENVIRONMENTAL COST RECOVERY IN TERMS OF, QUOTE, ALL COSTS OR EXPENSES INCURRED IN COMPLYING WITH ENVIRONMENT LAWS OR REGULATIONS.
IT DOESN'T SAY ENVIRONMENTAL LAWS OR REGULATIONS TO THE EXTENT ONLY THAT IT PREVENTS FUTURE HARM.
THOSE IN TURN ALL STATE AND LOCAL STATUTES, ADMINISTRATIVE ORDERS, I WOULD SUGGEST ORDERS BY THEIR NATURE DEAL WITH THINGS THAT HAVE OCCURRED OR OTHER REQUIREMENTS DESIGNED TO PROTECT THE ENVIRONMENT.
ALL STATUTES REGULATIONS AND ORDERS, AGAIN EXPANSIVE LANGUAGE.
WHAT THE STATUTE DOES NOT SAY IS WHAT THE APPELLANT PUTS IN ITS REPLY BRIEF, THIS IS LIMITED SIMPLY TO NEW, UNANTICIPATED REGULATIONS BETWEEN RATE CASES.
THAT IS NOT WHAT THE STATUTE SAYS.

>> COUNSEL, I'M CONCERNED ABOUT THE EVIDENCE.
>> YES.
>> SO ASSUME THAT I AGREE WITH THE CITIZENS READING OF THE STATUTE.
WHAT EVIDENCE WAS THERE IN THE RECORD THAT THE REMEDIATION PLAN, THE CLEANUP, HOWEVER YOU WANT TO CALL IT, WOULD IN FACT PROTECT THE REMAINING PORTIONS OF THE AQUIFER?
>> THERE IS EVIDENCE IN THE RECORD WHICH SUPPORTED THE PRUDENCY.
LOOK WHAT WAS DONE.
THERE ARE CONSENT ACTIONS TO CREATE A RECOVERY WELL SYSTEM, AQUIFER WELL SYSTEM TO PROVIDE 14 MILLION GALLONS A DAY OF LOW SALINITY WATER AND EXTENSIVE MONITORING.
THOSE ACTIONS ACCORDING TO THE AVAILABLE DATA, THIS IS IN THE RECORD, HAVE ALREADY REDUCED SALINITY, WITH 890,000-TONS OF SALT BEING REMOVED.
WITH EVIDENCE SHOWING THAT THE WESTWARD MIGRATION OF THIS SALINITY WILL BE STOPPED WITHIN THREE YEARS.
THAT RETRACTION WOULD START IN FIVE YEARS, WITH A RETURN OF THE SALINITY PLUME WITHIN A DECADE BACK TO THE BOUNDARIES OF THE TURKEY POINT FACILITY.
SO THERE IS AMPLE COMPETENT EVIDENCE IN THE RECORD SUPPORTING THAT THIS WAS, AND THESE MEASURES WERE OF COURSE DONE TOGETHER WITH THE REGULATORS.
THIS ISN'T JUST FPL SAYING THESE ARE THINGS WE'RE GOING TO DO.
THIS WAS WORKED OUT WITH THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT, WITH THE DEPARTMENT OF ENVIRONMENTAL PROTECTION AND DURHAM AND THESE WERE AGREED MEASURES AND THESE AGREED

MEASURES WERE SUPPORTED BY
COMPETENT, SUFFICIENT EVIDENCE
IN THE RECORD THAT THE
COMMISSION ACCEPTED THIS WILL
WORK AND THERE IS EVIDENCE IT IS
WORKING.
WITH RESPECT TO EVIDENCE WE
THINK THAT THE DECISION HERE
THAT THESE WERE MEASURES
ENTITLED TO COST RECOVERY IS
CLEARLY SUPPORTABLE.
AND I WOULD NOTE THAT IN AN
AGREEMENT WITH THE QUESTION THAT
THE COURT ASKED IT IS THAT TEST
OF PRUDENCY WHICH PREVENTS THE
PARADE OF HORRIBLES THAT THE
APPELLANT IS CONCERNED ABOUT.
WE AGREE WHAT THE COMMISSION
STATED IF.
THE UTILITY IS ACTING IN A
WRONGFUL MANNER, MISFEASANCE OR
MALFEASANCE, THEN THAT AFFECTS
THE ABILITY OF A PRUDENCY
DETERMINATION TO ALLOW COST
RECOVERY.
BUT THAT'S NOT WHAT THIS RECORD
SHOWS.
THERE IS NO EVIDENCE OF THAT.
NONE OF THE AGENCIES HAVE FOUND
ANY MISFEASANCE OR MALFEASANCE,
NOR HAS THE COMMISSION.
THE EVIDENCE IS NOT THERE TO
SUPPORT SUCH A FINDING.
I WOULD LIKE TO GO BACK TO THE
STATUTE TO MAKE ONE ADDITIONAL
POINT THAT I THINK IS
SIGNIFICANT.
THAT HERE FOLLOWING THE DOCTRINE
OF IMPRIMATUR.
I COST CONTROL RECOVERY IN
CONNECTION WITH THE POLLUTION
CONTROL ACT IN FLORIDA.
THAT IS THE EXACTLY THE ACT
WHICH THE FRAMEWORK THESE
MEASURES ARE BEING TAKEN.
THE ENVIRONMENTAL COST RECOVERY
ACT TALKS ABOUT ACTIONS IN
SECTION 403.021, FOR PREVENTION,
ABATEMENT AND CONTROL OF
POLLUTION AS THE PURPOSE OF THE

ACT.
THESE ARE RIGHT UP FRONT AND ARE REPEATED MANY TIMES.
IN A VERY NARROW SECTION WITH RESPECT TO CERTAIN MEASURES THERE IS A SEPARATE DEFINITION IN 403.0318 THAT TALKS POLLUTION PREVENTION WHICH ARE DEFINED AS STEPS TAKEN BY A POTENTIAL GENERATOR TO ELIMINATE POLLUTION BEFORE IT IS DISCHARGED INTO THE ENVIRONMENT.
SO THAT MEANS THE LEGISLATURE KNEW WHEN IT WANTED TO WRITE NARROWLY ABOUT SOLELY PREVENTATIVE STEPS HOW TO DO SO, AND WHEN IT WANTED TO WRITE BROADLY ABOUT ENVIRONMENTAL PROTECTION THAT IT INCLUDES MEASURES TO PREVENT, ABATE AND CONTROL POLLUTION AND IT MAKES SENSE TO INTERPRET THE ENVIRONMENTAL COST RECOVERY STATUTE, TOGETHER WITH THE IMPAIRRY MATERIA WITH THE REGULATIONS AND ORDERS UNDER WHICH COST RECOVERY WILL BE SOUGHT.
NOW--
>> IS IT YOUR POSITION THAT THE STATUTE WOULD APPLIED EVEN IN THE CIRCUMSTANCE IN WHICH ENVIRONMENTAL EVENT OCCURRED THAT WAS TOTALLY CONTAINED AND THERE WAS NO ISSUE AS THEY ARGUE ABOUT CONTINUING ARM OR LIKELIHOOD OF HARMING THE ENVIRONMENT IN SOME WAY?
JUST THE ACT OF CLEANING UP A PROBLEM CREATED TO THE ENVIRONMENT BY ITSELF THAT'S CONTAINED WOULD BE PROTECTION EVENT UNDER THE STATUTE.
>>> YES, IT WOULD.
WE THINK THAT.
WE THINK THAT ENVIRONMENTAL PROTECTION INCLUDES PREVENTION, IT INCLUDES ABATEMENT, IT INCLUDES CONTROL AND REMEDIATION.

YOU CAN'T SEPARATE THESE.
>> THEIR ARGUMENT, SEEMS LIKE THE LEGISLATURE COULD TAKE THAT POSITION THAT A CONTAINED EVENT LIKE THAT SHOULD MAYBE REASONABLY BE BORNE BY THE COMPANY, ITS INSURERS, THE SHAREHOLDERS, SOMEONE OTHER THAN THE FOLKS PAYING THEIR ELECTRIC BILL?
>> I WOULD AGREE YOUR HONOR, IT WOULD BE POSSIBLE FOR THE LEGISLATURE TO DRAFT THE STATUTE IN THAT WAY.
THEY HAVE NOT DONE SO HERE WITH THE ENVIRONMENTAL COST RECOVERY STATUTE.
IT SPEAKS PROUDLY ABOUT MEASURES DESIGNED TO PROTECT THE ENVIRONMENT.
AND ALL THE EXAMPLES WHICH WERE DISCUSSED WITH APPELLANT'S COUNSEL I THINK SHOWS YOU CAN'T DRAW THIS LINE BETWEEN PREVENTION AND CONTROL AND ABATEMENT.
THAT CLEANUP ACTUALLY HELPS PREVENT CONTINUING HARM.
THAT RETRACTING THE PLUME IS THE SAME AS REMOVING THE BOMB THAT'S TICKING BUT HAS NOT YET EXPLODED AND CREATED GREATER EFFECTS.
AND THAT THE SUPERFUND ACT SERVES TO PROTECT THE ENVIRONMENT BY CLEANING UP SITES THAT ARE CONTAMINATED AND IT WOULD BE VERY STRANGE TO CONSIDER ANY OF THOSE MEASURES NOT TO BE MEASURES DESIGNED TO PROTECT THE ENVIRONMENT AND IN FACT COUNSEL ADMITS IN HIS ARGUMENT, I THINK HIS EXACT LANGUAGE WAS, THERE IS SOME FORM OF OVERLAP.
GIVEN THAT THERE IS A FORM OF OVERLAP WE DON'T SEE WHERE SOME DISTINCTION CAN BE MADE AS A MATTER OF LAW THAT THE STATUTE DOESN'T EXTEND TO MEASURES THAT CREATE PREVENTION.

>> MR. SINGER, I SHOULD HAVE ASKED THE COMMISSION, BUT I DIDN'T, DO YOU HAVE ANY THOUGHTS ABOUT THE TRADITIONAL DEFERENCE THIS COURT HAS GIVEN TO THE PUBLIC SERVICE COMMISSION'S INTERPRETATION OF LAWS WITHIN ITS REGULATORY JURISDICTION IS AFFECTED BY THE CONSTITUTIONAL AMENDMENT THAT SAYS THAT COURTS OF THIS STATE SHALL NOT GIVE DIFFERENCE TO AGENCIES IN MATTERS OF STATUTORY INTERPRETATION?
>> YES, JUSTICE LAWSON.
WE THINK THAT DOES AFFECT THE INTERPRETATION OF THE STATUTE PART OF THE CASE.
THAT THERE THE STANDARD IS NOW DENOVO REVIEW AND THAT TYPE OF DEFERENCE TO THE INTERPRETATION OF THE STATUTE OR RULE IS NO LONGER APPROPRIATE IN LIGHT OF THE CONSTITUTIONAL AMENDMENT, HOWEVER WE THINK TWO THINGS, ONE, THAT THE COURT STILL CAN CONSIDER THE PERSUASIVENESS OF REASONING BY WHICH BY WHICH THE COMMISSION CONSIDERED A PARTICULAR STATUTE FOR PURPOSES OF ITS INTERPRETATION AND SECOND WE THINK THAT DEFERENCE IS STILL FULLY ENACT WITH RESPECT TO THE PRUDENCY DETERMINATION AND THAT IS NOT IN ANY WAY AFFECTED BY THE DECISION HERE.
UNLESS THE COURT HAS FURTHER QUESTIONS, WE SUBMIT ON THE PAPERS.
THANK YOU.
>> THANK YOU.
>> THANK YOU.
I WANT TO ADDRESS THE ISSUE OF OVERLAP.
THE ONLY OVERLAP I WAS TALKING ABOUT REALLY GOES THE OTHER WAY WHICH IS THAT SOME OF THE CONTAINMENT THAT WE'RE GOING TO PAY FOR ACTUALLY FACILITATES

REMEDIATION AND PROBABLY MAKES
IT A LITTLE CHEAPER TO DO.
BUT THAT'S, THAT'S KIND OF
BESIDE THE POINT.
THE LEGISLATURE HAD, AS FPL AND
THE COMMISSION PROVEN IN PARIS
THEY KNEW WHAT ENVIRONMENTAL
PROTECTION MET.
IN 1910 IN ST. PAUL, MINNESOTA,
THEY PUBLISHED BLACK'S LAW
DICTIONARY THEY KNEW WHAT
ENVIRONMENTAL PROTECTION.
THEY COULD HAVE PUT THE PRAISE
ENVIRONMENTAL PROTECTION IN
THERE.
THEY COULD HAVE SAID INTENDED TO
BENEFIT THE ENVIRONMENT OR
IMPROVE THE ENVIRONMENT BUT THEY
DIDN'T TO THAT.
THE STRICT LANGUAGE OF THIS
STATUTE IS WAS PUT THERE BY THE
LEGISLATURE AND WHAT THE
APPELLEES ARE SUGGESTING YOU
OUGHT TO REINVENT THAT AND THEN
GO AND INTERPRET IT IN A WAY
THAT SUITS THEIR NARRATIVE AND
WE THINK THAT'S WRONG.
THE PLAIN LANGUAGE, YOUR HONOR,
IN THIS CASE, CONTROLS AND WE
WOULD SUBMIT TO YOU, IF YOU TAKE
THIS BROADER INTERPRETATION,
THIS EXPANSIVE INTERPRETATION,
YOU WRITE THE SPECIFIC WORDS OUT
OF THE STATUTE.
YOU TAKE THAT CLAUSE, THAT
PROVISION, THAT THE COMMISSION,
THAT THE LEGISLATURE PUT IN
THERE, AND YOU MAKE IT
MEANINGLESS.
JUST ENVIRONMENTAL LAW IS
GENERALLY.
>> WOULD YOU AGREE THAT PROTECT
THE ENVIRONMENT COULD MEAN
PROTECT AGAINST FUTURE HARM
WHICH IS YOUR ARGUMENT?
>> YES.
>> WOULD YOU AGREE IT COULD
PROTECT THE ENVIRONMENT COULD
MEAN PROTECT THE AGAINST
CONTINUING HARM?

>> YES.
BUT THE CONTINUING HARM HERE IS
THE MIGRATION.
YOU CAN'T-- THE SALT SITTING
THERE MAKES THAT PART OF THE--
>> COULD YOU THINK IT MEANS
PROTECT AGAINST ALL HARM?
>> YOUR HONOR, I THINK THAT IT,
THE WORD PROTECTS HAVE A VERY
SPECIFIC MEANING T PREVENTS THE
HARM IN THE FIRST PLACE AND I
THINK--
>> SO YOU DO THINK IT CAN ONLY
MEAN PROTECT AGAINST FUTURE
HARM?
>> YES, YOUR HONOR, THAT IS OUR
POSITION.
>> OKAY.
>> YEP.
WE ASK YOU TO REVERSE AND REMAND
THIS CASE AND WE, WITH
INSTRUCTIONS FOR THE COMMISSION
TO FOLLOW THE STATUTE AS WRITTEN
BY THE LEGISLATURE.
WE ALSO ASK YOU TO PAY SPECIAL
ATTENTION TO THAT 2009 ORDER
WHICH WE BELIEVE COULD NOT HAVE
LEGALLY OR REASONABLY MADE
PRUDENCE DETERMINATION ABOUT
COSTS THAT WOULD BE INCURRED
SOME EIGHT YEARS LATER.
THERE IS NO, THE PROBLEMS THAT
THAT WOULD INCUR WOULD BE INDEED
DETRIMENTAL TO UTILITY
RATE-MAKING.
I APPRECIATE YOUR QUESTIONS.
THANK YOU FOR YOUR TIME.
AND WE ASK YOU TO REVERSE THE
CASE.
THANK YOU.
>> THANK YOU.
>> THANK YOU.
>> WE THANK YOU ALL FOR YOUR
ARGUMENTS.
THE COURT WILL NOW STAND IN
RECESS FOR ABOUT TEN MINUTES.