

>> WE WILL TAKE UP CONSOLIDATED CASE NUMBERS 21, 17, 61, 2212, FLORIDIANS AGAINST INCREASED RATES.

>> GOOD MORNING AND MAY IT PLEASE THE COURT.

MY NAME IS BRADLEY MARSHALL, WE REPRESENT FLORIDA RISING, THE LEGAL LATIN AMERICAN CITIZENS OF FLORIDA, AND THE ENVIRONMENTAL CONFEDERATION OF SOUTHWEST FLORIDA.

ALSO WITH ME IS ROBERT WRIGHT ON BEHALF OF FLORIDIANS AGAINST INCREASED RATES, LACK OF STATUTORY AUTHORITY OF RESERVE SURPLUS AND AUTOMATIC TAX ADJUSTMENT.

I LIKE TO RESERVE THREE MINUTES FOR REBUTTAL.

THIS IS AN APPEAL OF A DECISION BY THE FLOOR A PUBLIC SERVICE COMMISSION APPROVING A SETTLEMENT FOR BASE RATE INCREASE.

THIS DECISION IS DUE TO BE REVERSED.

THE DECISION IS INADEQUATE AND ONLY MAKES SIX FINDINGS OF FACT NONE OF WHICH RELATE TO MAJOR ISSUES PRESENTED TO THE COMMISSION, EXPLAIN WHY THE SETTLEMENT IS IN THE PUBLIC INTEREST OR EXPLAIN WHY A \$5 MILLION RATE INCREASE IS NEEDED. SECOND, MORE THAN DOUBLING, CREATES UNDUE PREFERENCE FOR PARTICIPANTS IN VIOLATION OF FLORIDA LAW, BY GIVING THEM CREDIT FROM THE BODY OF RATEPAYERS, OR RECEIVING NOTHING IN RETURN.

JUST LIKE THE ENERGY CONNECTION PROGRAM FIRM.

AS TO THE ADEQUACY OF THE ORDER, THE COMMISSION MUST DISCUSS MAJOR ELEMENT OF THE SETTLEMENT, EXPLAIN WHY IT'S IN THE PUBLIC INTEREST.

>> IS THAT YOUR POSITION THAT THE STANDARD FOR REVIEW AND THE CONTENT OF APPROVAL OF THE SETTLEMENT AGREEMENT IS AND

OUGHT TO BE DIFFERENT THAN A
REGULAR RATEMAKING ORDER.

>> OFTEN THESE CASES HAVE 200
ISSUES AND THE COMMISSION MAKE
SPECIFIC FINDINGS WITH SPECIFIC
PRUDENCE, THIS IS PART OF THE
RATE HIKES.

WHAT WE ARE SAYING IS IN THE
SETTLEMENT CONTEXT WE RECENTLY
CLARIFIED THE COMMISSION STILL
MUST DISCUSS THE MAJOR ISSUE OF
FINDINGS OF FACT AS TO MAJOR
ISSUES REPRESENTED BY OVERVIEW.

>> FROM YOUR PERSPECTIVE,
NARROWING HAS HAPPENED.
IT BEARS LESS, WE MIGHT SAY,
PERHAPS NOT ON A PARTICULAR
DECISION BUT LESS WATERFRONT TO
COVER.

IS THAT A FAIR ASSESSMENT?

>> THAT IS A FAIR ASSESSMENT OF
OUR POSITION BUT WE MUST COVER
SOME OF THE WATERFRONT WHICH
THEY DID NOT DO HERE.

DIDN'T TOUCH ON ANY OF THE MAJOR
ISSUES THAT WERE PRESENTED,
DIDN'T TOUCH ON THE RATE BASE,
DIDN'T TOUCH ON THE COST OF
SERVICE AT LOCATION, DIDN'T
TOUCH ON THE RESERVE SURPLUS AND
AMORTIZATION MECHANISM AND
DIDN'T TOUCH ON RETURN ON EQUITY
FOR SPF.

>> COULD YOU BE MORE SPECIFIC
ABOUT THAT?

I AGREE WITH YOU THAT IF YOU ARE
JUST KIND OF PUTTING ASIDE PAST
PRACTICES FOR WHAT HISTORICALLY
WAS TOLERATED AND WHAT THE PSC
HAS DONE, DOESN'T SEEM LIKE YOU
CAN JUSTIFY, IF THE POINT OF
THIS EXERCISE IS AN EXPLANATION
FOR DECISIONS POINTING OUT WE
CREDITED THIS PERSON AND THINK
THE OVERALL BALANCE IS WAY BELOW
ANY KIND OF ACCEPTABLE STANDARD.
HOWEVER, TAKING A STEP BACK FROM
IT, IF WE WERE GOING TO TRY TO
UNDERSTAND HOW WE IDENTIFY WHAT
NEEDS TO BE EXPLAINED OR WHO
GETS TO DECIDE AND WHAT IS
CONTESTED BY NONSETTLING
PARTIES, OR SOMETHING OF THIS
MAGNITUDE, HOW WOULD THE PARTIES

KNOW HOW MUCH IS COVERED AND
WHAT WAS ENOUGH?

>> WHAT HAPPENED AT THE
SETTLEMENT HEARING, WHAT WAS
CONTEST ON CROSS-EXAMINATION,
THE ISSUES PARTIES WERE
PRESENTING ON POSTHEARING
BRIEFING, ARGUING BACK AND FORTH
ON?

THOSE ARE THE ISSUES, MAJOR
ISSUES, THE PARTY SPENT THE MOST
TIME ON CONTESTING, AND SPENT
THE MOST TIME DEFENDING.

SO WHEN THIS COURT REVIEWED THE
DECISION.

AND IF THERE ARE NO FINDINGS OF
FACT THAT GO TOWARDS THAT, THAT
MAKES REVIEW ESSENTIALLY
IMPOSSIBLE.

>> IS YOUR ARGUMENT BASED ON
FINDINGS OF FACT.

AND IMPROPER ON THE MATTER OF
LAW.

VARIOUS ARGUMENTS BASED, NOT
JUST THE PRUDENCE OF WHETHER OR
NOT THESE FACTORS WERE
APPROPRIATE AS DETERMINED BY THE
PSC.

AND IT VIOLATES FLORIDA LAW
JUST ON SPACE.

THE SETTLEMENT EXPANDED.

WHAT THEN IS THE PSC TO DO.

THEY VIEW THE SETTLEMENT AS A
WHOLE, WE SHOULD NOT LOOK AT
THESE INDIVIDUALLY WHAT IS YOUR
RESPONSE TO THIS?

>> IF THEY VIOLATE THE LAW, THE
SETTLEMENT CAN'T CONTRACT THEIR
WAY FROM LEGAL REQUIREMENTS.

THEY CAN'T CREATE UNDUE
PREFERENCE IN RATES.

IF THERE'S UNDUE PREFERENCE IN
RATES, THE COMMISSION DIDN'T
HAVE AUTHORITY TO APPROVE THE
SETTLEMENT, EVEN IF IT IS A
SMALL COMPONENT OF A SETTLEMENT.

>> 100 MILLION, FOR EXAMPLE.

THIS WHOLE THING, IT MAY BE A
SMALL AMOUNT, OR TO LOOK AT THAT
AND LOOKING AT THAT AS A WHOLE
AND THIS SETTLEMENT AS A WHOLE
AND SHARED IN THE PUBLIC
INTEREST.

SOMETHING WE CAN AND SHOULD

LEGALLY DO.

>> A VIOLATION OF FLORIDA LAW,
AND REMAND THE COMMISSION FOR
FURTHER PROCEEDINGS?

>> REGULAR CONTRACT, WHAT
FLORIDA LAW IS AND HOW WE HAVE
THE CONTRACT OR STATUTES FOR
THAT MATTER.

THIS IS A SETTLEMENT, CONTRACT
LAW COME INTO PLAY.

WITH SEVERABILITY REQUIREMENTS,
AND SLICE A PIECE OFF, COULD BE
SAVED, SAVE THE WHOLE CONTRACT
IF POSSIBLE.

HOW DOES ANY OF THAT?

DOES THAT APPLY AT ALL OR FOR
THIS TYPE OF LAW?

OR ARE WE JUST ONE SMALL PIECE
OF IT IS UNLAWFUL, OR IS IT
TAINTED AND WE HAVE TO SEND IT
BACK?

>> CONTRACT PRINCIPLES COULD
APPLY IF IT WAS STRUCTURED THAT
WAY, THE SETTLEMENT HAS
PROVISION THAT SAYS IF ONE PART
FALLS THE WHOLE THING FALLS.
THAT IS IN THE SETTLEMENT.

>> THERE IS A NON-SEVERABILITY
CLAUSE.

>> IF THERE'S A SEVERABILITY
CLAUSE, IT'S DIFFERENT WHICH IS
NON-SEVERABILITY CLAUSE.

THE QUESTION ABOUT \$100 MILLION,
BRINGS IT FROM FOR BILLION
DOLLAR PROJECT, \$11 BILLION
PROJECT, AND BILLIONS WITH
FLORIDA LAW.

I SAVE THE REMAINDER OF MY TIME
FOR REBUTTAL.

>> GOOD MORNING.

I AM ROBERT WRIGHT REPRESENTING
FLORIDIANS AGAINST INCREASED
RATES AND WOULD LIKE TO RESERVE
THREE MINUTES OF TIME FOR
REBUTTAL.

ALTHOUGH THE APPEAL IS BASED ON
DIFFERENT GROUNDS THAN THOSE
UPON WHICH FLORIDA RISING AND
ITS CO-PARTIES HAVE APPEALED,
FLORIDA RISING UP AGREES WITH
THOSE ARGUMENTS.

APPROVING THE PSC'S APPROVAL OF
THE SETTLEMENT, THE PSC NOT ONLY
EXCEEDED ITS STATUTORY

AUTHORITY, SPECIFICALLY APPROVED PROVISIONS AND VIOLATES PROVISIONS OF CHAPTER 366, PSC STATUTES LACK ANY STATUTORY PROVISIONS OR AUTHORITY FOR SURPLUS AMORTIZATION MECHANISM WHICH I REFER TO AS RSM OR THE AUTOMATIC TAX ADJUSTMENT PROVISION WHICH I WILL REFER TO AS A.

BOTH VIOLATED EXPRESS PROVISIONS OF THE STATUTES.

I WILL FOCUS MY ARGUMENT ON THESE TWO POINTS, AND IF I HAVE TIME I WILL APPROACH THE CENTRAL REQUIREMENTS OF LAW ARGUMENT. FAIR ASKS THE COURT TO REVERSE PSC'S ORDER ON THE TWO STATUTORY POINTS.

PSC LIKES AUTHORITY AND EXPRESS PROVISIONS LIKE FLORIDA LAW.

>> WHAT CHAPTER IN 366 DOES IT STAND FOR.

>> SECTION 366 SPECIFICALLY PROVIDES FOR RATEMAKING PURPOSES THE COMMISSION WAS FIRST TO DETERMINE THE INVESTMENT OF THE UTILITY THAT IS IMPRUDENT AND USED AND USEFUL FOR PUBLIC SERVICE TO SUBTRACT A CRUDE DEPRECIATIONS.

IT IS MADE FOR RATEMAKING PURPOSES, LESS ACCRUED DEPRECIATION.

>> HOW IS THAT WHAT THIS IS ABOUT?

DOES THAT GIVE EFFECT TO THE REALITY, AND OPERATIONAL EFFICIENCY AND OTHER CONSIDERATIONS.

IS THAT WHAT HAPPENED?

THE KIND OF ADJUSTMENT THE STATUTE PRESUMES THAT WILL BE APPROVED?

>> RESPECTFULLY, THE STATUTE SAYS LESS APPROVED DEPRECIATION, DEPRECIATION RESERVED SURPLUS IS THE AMOUNT OF DEPRECIATION THAT CUSTOMERS HAVE PAID FOR THROUGH THEIR RATES OVER TIME THAT IS GREATER THEN DEPRECIATION EXPERIENCED BY UTILITIES ASSETS.

>> WHAT DO WE DO IF THEY OVERPAID?

IF IT TURNS OUT THIS PLAN THAT WAS TO BE FULLY DEPRECIATED IN FIVE YEARS TURNS OUT IT CAN RUN FOR 7?

WHAT DO WE DO, AS THE POWER COMPANY IS OUT OF LUCK WHEN IT COMES TO THEY HAVE TO ABSORB THAT COST OR THAT ADDITIONAL LOST DEPRECIATION EFFECT?

>> NOT AT ALL.

THEY OVERPAID DEPRECIATION AND ACCOUNTING AS DEFINED IN PSC'S RULES, WHICH IS TO BE SUBTRACTED TO THE STATUTE TO THE UTILITIES AND OTHER INVESTMENTS.

WE SEE A TOTAL AMOUNT OF RATE BASE TO WHICH UTILITY IS ENTITLED TO RETURN.

PSC ADDRESSED ADDRESS THIS SPECIFICALLY WHERE IT SAYS THAT THIS HAPPENS, THE POINT IS WE HAVE TO RETURN THE SURPLUS TO CUSTOMERS PREFERABLY AS QUICKLY AS POSSIBLE.

UTILITIES ARE NOT OUT OF LUCK AT ALL.

THEY RECOVER THE FULL AMOUNT OF THEIR INVESTMENT OVER TIME.

>> I WANT TO CLARIFY SOMETHING IN YOUR INITIAL BRIEF TO MAKE SURE I UNDERSTAND IT CORRECTLY. YOU ARE NOT SAYING THERE HAS BEEN A RETIREMENT OF CERTAIN ASSETS THAT CONTINUE TO BE DEPRECIATED, INSTEAD OF TAKING A LOSS ON RETIREMENT AND RECOGNIZING THAT TIME.

>> WE ARE NOT SAYING THAT AT ALL.

THE CUSTOMERS HAVE PAID A LOT OF MONEY, BILLIONS OF DOLLARS IN DEPRECIATION EXPENSE PAYMENTS EMBEDDED IN THEIR RATES OVER TIME COMING UP TO THE POINT IN THIS CASE, PAID MORE THAN THE DEPRECIATION THAT HAS BEEN EXPERIENCED BY UTILITIES ASSETS. THOSE ASSETS HAVE LONGER REMAINING LIVES LEADING TO THE DEPRECIATION SURPLUS.

CUSTOMERS ARE ENTITLED TO THE STATUTE AND PSC'S PRIOR ORDERS AND TOOLS AS WELL.

THEY ARE ENTITLED TO HAVE THAT

DEDUCTED FROM RATE CASE IN DETERMINING UTILITIES RATES.

>> THANK YOU.

>> A GENERAL STATUTORY QUESTION. IT GOES A LITTLE BIT TO THE CORPORATE INCOME TAX ADJUSTMENT SITUATION, BUT 366.076 ALLOWS THE PSC TO MAKING A MENTAL RATE CHANGES.

WHAT DO YOU THINK THE TERM INCREMENTAL IS DOING?

>> I BELIEVE THE INTENT OF 366 IS TO OFFER SUBSEQUENT ADJUSTMENTS WHERE THEY ARE KNOWN IN THE RECORD OF THE RATE CASE AT THE PSC AND FURTHER, THAT THEY STILL, REGARDLESS, MUST COMPLY WITH PROVISIONS OF 366062 AND 36607 THAT PSC IS TO CHANGE RATES OF PRODUCT DETERMINATION, FOR RATES THAT ARE THOUGHT TO BE CHANGED, OR UNJUST, UNREASONABLE, INSUFFICIENT, EXCESSIVE, DISCRIMINATORY OR PREFERENTIAL.

>> THE WORD INCREMENTAL MEANS SOMETHING ELSE FROM THE TIME IT WAS DECIDED.

>> INCREMENTAL BY ITSELF IS SOMETHING THAT WOULD BE IN ADDITION TO WHAT WAS APPROVED IN THE INITIAL BASE RATE CASE.

IF THE UTILITY, IN 2024, IT WOULD INCUR X COSTS, AND INCREMENT OF INCREASE IN RATES AND THE COMMISSION COULD MAKE THAT DETERMINATION.

IT IS SOMETHING ELSE, WHATEVER IT IS, YOU GET TO RECOVER.

>> YOU ARE WELCOME TO KEEP GOING BUT YOU ARE IN REBUTTAL.

>> PARDON?

>> YOU'RE WELCOME TO CONTINUE BUT YOU ARE INTO YOUR REBUTTAL TIME.

>> IF THERE ARE NO FURTHER QUESTIONS I LOOK FORWARD TO ADDRESSING YOU ON REBUTTAL.

>> THANK YOU, YOUR HONORS.

>> MAY IT PLEASE THE COURT.

ON BEHALF OF THE PUBLIC SERVICE COMMISSION THE COMMISSION'S FINAL ORDER SHOULD BE AFFIRMED AS THE COMMISSION HAS THE

AUTHORITY UNDER CHAPTER 366 TO APPROVE THE RATEMAKING MECHANISMS IN THE SETTLEMENT AGREEMENT, FINAL ORDER ADEQUATELY EXPLAINS THE DECISION SUPPORTED BY SUBSTANTIAL EVIDENCE.

THE COMMISSION AS AN ARM OF THE LEGISLATURE, THE AUTHORITY TO DETERMINE FIXED RATES, AND BREAKS REGULATORY RATE MECHANISMS WHICH ARE ACCOUNTING METHODS FOR THE RATEMAKING PROCESS.

ACKNOWLEDGED BY THIS COURT, A STATUTORY GRANT OF POWER CARRIED WITH IT BY IMPLICATION, AND THE COMMISSION CARRIED OUT ITS DELEGATED POWER TO DETERMINE REASONABLE RATES AND JUSTIFIABLY FOUND IT HAD JURISDICTION TO APPROVE THE MECHANISM FOR JUSTICE NEGOTIATED BY THE SETTLEMENT.

>> CAN I ASK A QUESTION ABOUT THAT?

DID THE INITIAL PETITION INCLUDE ALL OF THESE SUBCOMPONENTS? I UNDERSTAND THERE WERE CHANGES BUT DID THE INITIAL PETITION HAVE THE BASE RATE PART AND OTHER MECHANISMS THAT MADE IT A COHERENT WHOLE?

>> THERE WERE SOME ASPECTS FOR THE SETTLEMENT AGREEMENT IN THE INITIAL PETITION.

>> IF THERE HAD BEEN NO SETTLEMENT AGREEMENT, THE COMMISSION WOULD HAVE EVALUATED EACH OF THE COMPONENTS FOR ITS LAWFULNESS AND OVERALL RATES TO SEE IF THEY WERE JUST AND FAIR AND REASONABLE?

>> IT IS A FULL-BLOWN RATE CASE.

>> I DON'T UNDERSTAND WHY THE EXISTENCE OF A PARTIAL SETTLEMENT, SOME SUBSET OF THE PARTIES, WHY WOULD THAT CHANGE THE FUNDAMENTAL NATURE OF WHAT THE COMMISSION HAS TO DO?

>> 120 PERMIT ANY PROCEEDING TO BE RESOLVED BY A SETTLEMENT. THE COMMISSION IS BOUND BY THAT, PRESENTED THEIR SETTLEMENT FOR

APPROVAL.

>> DOESN'T SEEM LIKE THIS REALLY FITS.

THE 120 FRAMEWORK, 125-69, UNLESS WAIVED BY ALL PARTIES, ONE HUNDRED 20-FIFTY SEVEN APPLIES.

WHEN YOU GO TO 120-57, ALL THE THINGS ABOUT HEARING, YOU CAN HAVE AN INFORMAL DISPOSITION, NOT HAVING THE HEARING IF THERE'S A STIPULATION SO IN THIS CASE, WE HAVE A HEARING AND DON'T REALLY HAVE A SETTLEMENT THAT RESOLVES ALL THE PARTIES. THE MORE SPECIFIC STATEMENT SAYS UNLESS ALL PARTIES AGREE, YOU HAVE TO FOLLOW THE STANDARD BUT REGARDLESS OF WHETHER YOU TREAT THIS AS A SETTLEMENT OR NON-SETTLEMENT IT SEEMS THE COMMISSION SHOULD HAVE A ABILITY TO LOOK AT SOMETHING PRESENTED AS A WHOLE.

I KNOW ONE OF THE ARGUMENTS IS THE RATE MECHANISMS ALLOW IT TO BE A FOUR YEAR PROPOSAL. THAT WAS TRUE AT THE OUTSET, I DON'T UNDERSTAND WHY HAVING SOME OF THE PARTIES ON BOARD, HAVING AN AMENDED -- WHY DOES IT CHANGE THE LEGAL RESPONSIBILITY THE PSC WOULD HAVE IN TERMS OF LOOKING AT SPECIFIC COMPONENTS AND MAKE UP WHATEVER THE PACKAGE IS?

>> WHEN PRESENTED WITH THE SETTLEMENT, IT WASN'T UNANIMOUS. THE COMMISSION HOLDS A FORMAL HEARING ON THAT APPROVAL.

SHOULD WE VOTE UP OR DOWN TO APPROVE OR DISAPPROVE THE SETTLEMENT, THE PARTIES ARE PERMITTED TO PARTICIPATE, APPELLATE HAVE EXPERT WITNESSES, THEY CROSS-EXAMINE, SUBMIT THEIR EXHIBITS, MAKE POSTHEARING BRIEFS, THEIR ARGUMENTS, THE COMMISSION WEIGHS ALL OF THAT TO DETERMINE WHETHER IT IS IN PUBLIC INTEREST TO APPROVE THE SETTLEMENT.

THE RATE CASE, THEY HAVE TO GO THROUGH EVERY ASPECT AND PROVIDE DETAILED ANALYSIS.

FOR SETTLEMENT, THEY LOOK AT IT AS A WHOLE TO APPROVE. IF THERE IS NOT SUBSTANTIAL EVIDENCE TO SUPPORT THE ULTIMATE FINDING --

>> HOW DO YOU DO THAT?

SOUNDS LIKE THERE WAS A SUBSET OF ISSUES, MAJOR DISPUTES ON THE FACTUAL BASIS, THE LEGAL BASIS ETC.

.
SHOULDN'T THE COMMISSION HAVE TO GIVE THE PUBLIC, IN TERMS OF JUDICIAL REVIEW, GIVE SOMETHING THAT ADDRESSES, IN SOME KIND OF DETAIL, WHAT THESE DISPUTES ARE? THE SOLAR TOGETHER IS MENTIONED IN THE COMPONENTS OF THE SETTLEMENT, BUT WHAT JUSTIFIES THE DECISION IS NOT MENTIONED AT ALL.

THIS WHOLE DEBATE OVER WHETHER THE PARTICIPANTS ARE PAYING THE COST, I KNOW THE PSC STAFF ANALYSIS FIRST CAME BEFORE THE PSC, STAFF SAID THAT IT WAS UNDULY PREFERENTIAL.

I UNDERSTAND THE PSC CAN DISAPPROVE BUT THERE'S NO EXPLANATION WHATSOEVER FOR THE PSC'S THINKING ON HOW IT GOT TO APPROVING THIS.

FROM A JUDICIAL REVIEW PERSPECTIVE AND A MATTER OF THE PSC COMPLYING WITH ITS OBLIGATIONS, HOW CAN THE ORDER NOT ADDRESS THE MAJOR ISSUES IN DISPUTE IN A WAY THAT ALLOWS US TO HAVE A WINDOW INTO WHAT THE RATIONAL PROCESS WAS, IN THE PUBLIC INTEREST.

>> IN THE SETTLEMENT AGREEMENT, AND PROVIDED THE ANALYSIS IN THE FINAL ORDER.

>> YOU CAN SEE THAT.

>> THE SIGNATORIES TO THE SETTLEMENT AGREEMENT NEGOTIATED THIS DOCUMENT.

THERE'S A GIVE AND TAKE IN THAT PROCESS.

>> THE STATUTE AND CASE LAW MAKE CLEAR THE PSC HAS THE RESPONSIBILITY TO SET THE RATES. YOU HAVE TO REVIEW THIS.

SOME SUBSET OF THE PARTIES
WORKED OUT A REVISED PETITION.
THAT WOULD BE RELEVANT TO MY
UNDERSTANDING WHETHER IT WAS IN
PUBLIC INTEREST.

IF A LARGE SEGMENT OF CUSTOMER
BASE, THAT DOESN'T CHANGE.
IT IS IN THE PUBLIC INTEREST.
YOU HAVE THE SAME OBLIGATIONS IN
THE ABSENCE OF A SETTLEMENT.

>> THE OFFICE OF PUBLIC COUNSEL,
AND IT IS PART OF THE PUBLIC
INTEREST.

A MAJORITY OF THE PARTIES SIGNED
UP ON THE SETTLEMENT.

>> LOOKING AT PUBLIC INTEREST,
PART OF THE LEGALITY OF THESE
COMPONENTS, IS IT A SEPARATE
DETERMINATION?

>> THAT IS ALWAYS A FACTOR.
THE APPELLANTS PUT ON THEIR
TESTIMONY, WHY THEY FEEL IT IS
VIOLATION OF STATUTE.

>> SEEMS LIKE YOU ARE EVALUATING
THE SETTLEMENT AS A WHOLE, NOT
EACH COMPONENT, PRUDENCE TO ME
SEEMS LIKE IS THIS A GOOD IDEA
OR NOT OVER ALL?

AND WHETHER IT IS IN PUBLIC
INTEREST OVERALL OR NOT, SEEMS
LIKE A DIFFERENT QUESTION AS TO
EACH OF THESE COMPONENTS ARE
LEGAL OR NOT, AND IF ONE OF THEM
IS ILLEGAL OR THERE IS SOME PART
OF A SETTLEMENT THAT IS NOT
LEGAL, SEEMS LIKELY PSC HAS A
RESPONSIBILITY AND CERTAINLY
AUTHORITY TO LOOK AT THAT
INDIVIDUALLY AND SAY THAT PART
IS NOT LEGAL, SHOULD NOT BE
INCLUDED OR BOUND BY LOOKING AT
THE AGREEMENT AS A WHOLE INSTEAD
OF INDIVIDUALLY.

WOULD YOU AGREE WITH THAT?

>> THE PUBLIC SERVICE
COMMISSION, THEY HAVE INCIDENTS
WHERE THERE WAS A SETTLEMENT
AGREEMENT THAT THEY TOOK, THEY
WERE CONCERNED WITH.
THEY ADVISED THE PARTIES AND
ALLOWED THEM TO CAUCUS AND THEN
BRING IT BACK TO THE COMMISSION
AND ALTERNATELY APPROVED.

>> IS THAT YOUR REVIEW YOU AGREE

THAT SHOULD BE OUR REVIEW, LOOK AT THESE INDIVIDUALLY, WE SHOULD BE ABLE TO REACH THAT SETTLEMENT UPON IT, BOUND BY LOOKING AT IT AS A WHOLE.

>> IF THIS FIND THERE IS AN ASPECT OF CONTRAVENTION OF A STATUTE, THE COMMISSION CANNOT APPROVE THAT.

>> THE WHOLE THING GOES BACK. IS THAT THE RESULT?

>> IF THE COURT TO REMAND TO THE COMMISSION, THE COMMISSION WOULD TAKE THE CASE UP AND UP TO FPL TO DETERMINE --

>> HYPOTHETICALLY, WHAT THE REMEDY IS, IF THERE WAS A SETTLEMENT, SOME COMPONENT FOUND BY THE COURT TO BE UNLAWFUL, THE REMEDY THEN IS TO SEND IT BACK TO THE PSC.

>> I WOULD AGREE WITH THAT. AS INDICATED, IT IS AN ALL OR NOTHING SETTLEMENT.

IF THERE WAS A CARVE OUT BY THIS COURT, IT WOULD BE UP TO FPL TO TRY TO NEGOTIATE OR HAVE SOMETHING ELSE.

>> HAVE YOU SEEN ANY THAT WERE-->> I HAVE NOT.

>> THIS IS MORE TYPICAL WHERE IT'S ALL OR NOT.

>> AGAIN, I CAN'T SPEAK TO THE ALL OF THE SETTLEMENT AGREEMENTS, I HAVEN'T REVIEWED EVERY SETTLEMENT AGREEMENT.

>> ALREADY, THANK YOU.

>> DO YOU HAVE A POSITION ON WHETHER OUR COURT HAS THE AUTHORITY TO SEND IT BACK FOR AN ORDER THAT ACTUALLY EXPLAINS THE RATIONALE AS OPPOSED TO WE OBVIOUSLY HAVE THE AUTHORITY TO REJECT OR APPROVE.

DO YOU DISPUTE THAT THE COURT HAS THE AUTHORITY TO REMAND FOR AN ORDER THAT'S ACTUALLY MORE SUFFICIENT?

>> WELL, I BELIEVE 120 DOES AUTHORIZE THE COURT TO READ IN A CASE BACK TO THE AGENCY. BUT IN THIS CASE, THIS COURT HAS FOUND THAT PERMISSION HAS THE EXCLUSIVE RESPONSIBILITY TO

DETERMINE WHAT'S IN THE PUBLIC INTEREST AS IT RELATES TO THE SETTLEMENT AGREEMENT.

AGAIN, I WOULD SUBMIT THAT WHAT APPELLANTS ARE ASKING IS FOR THE COURT TO REWEIGH, TO REVIEW WHAT THE COMMISSION LOOKED AT AND DETERMINE THAT, IN OUR JUDGMENT, WE WOULD HAVE RULED OTHERWISE.

>> RIGHT.

NO, AND I UNDERSTAND THAT YOU DON'T THINK THAT WOULD BE AN APPROPRIATE THING.

BUT AS FAR AS JUST THE COURT'S LEGAL AUTHORITY TO REQUIRE CONCERN TO SEND IT BACK FOR AN ORDER THAT ACTUALLY GOES THROUGH AND ADDRESSES THESE ISSUES AND STUFF, YOU DON'T, YOUR POSITION ISN'T THAT WE DON'T HAVE THE AUTHORITY TO DO THAT.

>> I THINK MY POSITION IS THE COURT NEEDS TO DETERMINE WHETHER THERE IS COMPETENT, SUBSTANTIAL EVIDENCE TO SUPPORT THE COMMISSION'S FINDINGS.

IF THERE'S NOT, THEN I THINK THAT THERE WOULD BE BASIS TO OVERRULE THE FINAL ORDER.

>> AND SO IS THE COURT -- SO IS YOUR POSITION THAT THE PSC COULD JUST KIND OF SAY, YOU KNOW, THIS IS IN THE PUBLIC INTEREST BECAUSE, YOU KNOW, THE RATES ARE GENERALLY, YOU KNOW, LOW COMPARED TO THE REST OF THE COUNTRY, AND OPC SIGNS OFF ON IT AND, YOU KNOW, THE RATE AMOUNT, THE INCREASE AMOUNTS WERE LOWERED FROM WHAT THE INITIAL PROPOSAL WAS, AND THEN ARE WE SUPPOSED TO ESSENTIALLY TAKE THAT SORT OF CONCLUSORY STATEMENT THAT THAT'S IN THE PUBLIC INTEREST, AND THEN WE'RE SUPPOSED TO KIND OF COMB THROUGH THE RECORD AND JUST DECIDE, WELL, IF THE PSC BELIEVED THIS AND IF THEY WEIGHED IN THE, YOU KNOW, AS BEING MORE IMPORTANT THAN THAT, THEN A RATIONAL PSC COULD HAVE DECIDED THAT THAT'S WHY IT'S IN THE PUBLIC INTEREST? I MEAN, THAT DOESN'T SEEM TO ME

LIKE WHAT THE ADMINISTRATIVE
PROCESS IS SUPPOSED TO BE LIKE.

>> I THINK IN THIS CASE THE
COMMISSION DID MAKE VERY
SPECIFIC FINDINGS AS TO JUSTIFY
ITS DETERMINATION, FACT FINDING
THAT IT'S IN THE PUBLIC
INTEREST.

AS YOU INDICATED, REDUCE THE
BASE RATE \$428 MILLION THROUGH
THE SETTLEMENT PROCESS --

>> WITHOUT ANY KIND OF FINDING
THAT THE INITIAL REQUEST WAS
REASONABLE.

I MEAN, WHO CARES IF IT REDUCES
IT IF THE INITIAL REQUEST WAS
WAY OUT OF LINE, RIGHT?

>> WELL, THE PARTIES CERTAINLY
HAVE THE ABILITY TO PUT ON ANY
TESTIMONY TO MAKE THAT POINT.

>> BUT THE FACT THAT THE
REDUCTION IN AND OF ITSELF IS
MEANINGLESS.

SO I DON'T MEAN TO ARGUE WITH
YOU.

YOU HAVE 30 MINUTES -- 30
SECONDS, I'M SORRY, TO CLOSE.

>> I'M SORRY.

THANK YOU, YOUR HONOR.

AND IN CLOSING, THE COMMISSION
IS NOT REQUIRED BY STAFF OR CASE
LAW TO ADDRESS EACH DISPUTED
FACT.

THE COMMISSION RESPECTFULLY
REQUESTS THIS COURT AFFIRM THE
ORDER.

IF THERE ARE NO FURTHER
QUESTIONS, THANK YOU.

>> CHIEF JUSTICE AND MAY IT
PLEASE THE COURT, I'M DANIEL
NORBY.

UNLESS THE COURT WOULD PREFER
OTHERWISE, I'D LIKE TO FOCUS ON
TWO PRINCIPAL AREAS; FIRST, THE
COMMISSION'S LEGAL AUTHORITY TO
APPROVE CERTAIN ASPECTS OF THE
SETTLEMENT CHALLENGED BY THE
APPELLANTS AND, SECOND, WHETHER
COMPETENT, SUBSTANTIAL EVIDENCE
IN THIS LARGE RECORD SUPPORTS
THE COMMISSION'S FINDING THAT
THE SETTLEMENT AGREEMENT TAKEN
AS A WHOLE ESTABLISHES RATES
THAT ARE FAIR, JUST AND

REASONABLE AND THAT THE AGREEMENT IS IN THE PUBLIC INTEREST.

>> FIRST, JUST A MATTER OF AGREEMENT.

THE ORDER ITSELF APPEARS AT PAGE 5245 OF THE RECORD, AND IT SEEMS TO ME THAT ALL THE FINDINGS THAT WE'RE DEBATING HERE APPEAR BETWEEN 5264 AND 5265.

THAT IS TWO PAGES OF THE RECORD. AM I RIGHT, OR ARE THERE OTHER FINDINGS I SHOULD BE LOOKING AT?

>> THE RECORD FROM 5252 TO 5265 ADDRESSES THE MAJOR ISSUES, THE QUESTIONS OF LEGAL AUTHORITY. AND THEN TOWARD THE END OF THAT MAKES FINDINGS AS SPECIFICALLY AS TO FAIR, JUST AND REASONABLE --

>> ALL OF OUR JUDICIAL REVIEW HERE, ALL OF IT HANGS ON THOSE TWO PAGES.

I MEAN, ARE WE IN AGREEMENT THAT THE FINDINGS PRESENTED TO US FOR JUDICIAL REVIEW ARE IN THOSE TWO PAGES?

>> I'D AGREE WITH THAT.

>> OKAY.

>> THE FINDINGS ARE ON THOSE PAGES.

NOW, THIS COURT'S REVIEW, OF COURSE, IS FOR COMPETENT, SUBSTANTIAL EVIDENCE IN THE RECORD, NOT FINDINGS IN THE ORDER.

>> BUT TO THE CHIEF'S QUESTION A MINUTE AGO, DOES THAT MEAN THAT OUR JUDICIAL REVIEW INVOLVES TAKING THESE TWO PAGES OF THE RECORD AND THEN GOING THROUGH IT AND DOING OUR OWN TICKING AND TYING, IF YOU WILL, SUPPLYING OUR OWN REASONING TO SUPPORT THESE FINDINGS?

OR IS IT NOT THE PSC'S JOB TO DO THAT WORK FOR US?

>> SO IN THE CONTEXT, JUSTICE, IN THE CONTEXT OF A SETTLEMENT AGREEMENT, THE COURT'S PRECEDENT HAS SAID THAT THE PSC MUST DO A FEW THINGS.

IT MUST IDENTIFY THE MAJOR ISSUES, AND IT MUST PROVIDE AN

ANSWER AS TO WHY IT IS IN THE PUBLIC INTEREST AND FAIR, JUST AND REASONABLE.

NOW, THE COURT IS NOT ON ITS OWN, I WOULD SUGGEST, IN IDENTIFYING PORTIONS OF THE RECORD SUPPORTING THE FINDINGS. WE'VE OUTLINED, OF COURSE IN OUR BRIEFS AND IN THE COMMISSION'S BRIEFS, SPECIFIC POINTS INSPECT RECORD SUPPORTING THOSE FINDINGS.

IF YOU WOULD LIKE MORE THAN THAT, THE POSTHEARING BRIEF FILED BY FLORIDA POWER & LIGHT IN THE RECORD, IT'S 7971 OF THE RECORD, IDENTIFIES SPECIFIC WITNESSES AND SPECIFIC EXHIBITS SUPPORTING ASPECTS OF THE SETTLEMENT AGREEMENT HERE. JUDGES, TRIAL JUDGES AND JURIES ALL OVER THE STATE MAKE FINDINGS THAT CERTAIN CONDUCT WAS REASONABLE OR NOT, AND A REVIEW IN COURT WHEN EVALUATING THAT FINDING THAT SOMETHING WAS REASONABLE LOOKS AT THE RECORD EVIDENCE AND VALUE AS EXACTLY WHAT YOU AND THE CHIEF SUGGESTED, WHETHER A REASONABLE JURY -- IN THIS CASE WHETHER A REASONABLE COMMISSION -- COULD HAVE REACHED THE CONCLUSION IT DID BASED ON THE RECORD EVIDENCE THAT WAS PRESENTED TO IT. AND IN THIS CASE, THE ORDER IS SUPPORTED BY A SUBSTANTIAL AMOUNT OF RECORD IN THIS RECORD EVIDENCE IN THIS VERY LARGE RECORD.

60 WITNESSES, 635 EXHIBITS, MORE THAN 80,000 PAGES.

AND WE'VE IDENTIFIED IN THAT RECORD SPECIFIC PORTIONS, SPECIFIC EXHIBITS AND WITNESS TESTIMONY GOING TO EACH OF THOSE FINDINGS IN THE FINAL ORDER ITSELF.

THIS COURT WITH A DISSENT IN THE SIERRA CLUB DECISION JUST FOUR YEARS AGO ADDRESSED WHAT I TAKE TO BE ONE OF THE ISSUES THAT CONCERNS THE COURT TODAY, THE SUFFICIENCY OF THE ORDER HERE.

AND THE COURT AFFIRMED A FINAL ORDER THAT DID NOT ADDRESS THE ISSUE THAT THE APPELLANT IN THAT CASE BELIEVED WAS A MAJOR ISSUE. AND THE FINAL ORDER THAT WAS AFFIRMED BY THIS COURT WAS A 3-4 PAGE ORDER OF THE PUBLIC SERVICE COMMISSION AS COMPARED TO A 21-PAGE ORDER OF THE PUBLIC SERVICE COMMISSION IN THIS CASE. IT'S A MUCH MORE ROBUST ORDER THAN THE ORDER THAT WAS AFFIRMED IN THE SIERRA CLUB CASE.

NOW, IN THIS CASE THERE WERE 140 DISCREET ISSUES IDENTIFIED IN THE PSC STAFF'S PREHEARING STATEMENT BEGINNING AT PAGE 46,191 OF THE RECORD, AND THE LIST OF ISSUES IN THE PREHEARING ORDER STARTING AT 43,139 OF THE RECORD IDENTIFIES ALL OF THOSE ISSUES AND THE PARTIES' POSITIONS ON MORE THAN 130 DIFFERENT ISSUES THAT WOULD HAVE BEEN DECIDED ISSUE BY ISSUE WITH SPECIFIC FINDINGS IF THIS HAD BEEN A FULLY ADJUDICATED HEARING.

THIS COURT IN SIERRA CLUB SAID IT'S UNNECESSARY IN THE CONTEXT OF A SETTLEMENT AGREEMENT TO MAKE SPECIFIC FACTUAL FINDINGS AS IT WOULD BE NECESSARY IN A FULLY ADJUDICATED HEARING.

>> COUNSEL, I'M SORRY TO INTERRUPT YOU, AND I AGREE THAT OUR COURT HAS BEEN COMPLICIT IN THE SITUATION THAT WE FIND OURSELVES IN NOW.

BUT CAN YOU KIND OF AS A MATTER OF STARTING WITH THE STATUTE AND FIRST PRINCIPLES EXPLAIN HOW, HOW THAT MAY -- WHY WE HAVE EVEN CONCEPTUALIZED THIS AS A TRUE SETTLEMENT?

I MEAN, REALLY IF THERE REALLY WERE A SETTLEMENT AGREEMENT, I DON'T EVEN KNOW IF BY ALL PARTIES, I.E., ANYONE WHO WOULD HAVE STANDING AND CHALLENGE, WE WOULDN'T EVEN HAVE TO BE HERE. SO CAN YOU EXPLAIN FROM SORT OF GOING BACK TO THE STUDS HOW THIS FITS WITHIN THE STATUTORY

FRAMEWORK AND HOW IT MAKES SENSE?

>> SURE.

WELL, AND PART OF THE ANSWER TO THAT, I THINK, IS THAT WHAT THE PSC DOES IS SOMEWHAT DIFFERENT IN KIND THAN WHAT A LOT OF OTHER ADMINISTRATIVE AGENCIES OPERATING UNDER CHAPTER 120.

THE PSC IS A CREATURE OF THE LEGISLATURE.

RATE MAKING IS A LEGISLATIVE FUNCTION.

SO WHAT THE PSC DOES AS A LEGISLATIVE FUNCTION IS IT ENGAGES IN THE SORT OF DECISIONS THAT ARE GENERALLY AFFORDED A LOT OF PREFERENCE BY THIS COURT. IT HAS TO AFFIX FAIR, JUST AND REASONABLE RATES.

UNDER 120.574, ANY AGENCY MAY BE STIPULATED BY SETTLEMENT.

IN THAT CONTEXT, THE AGENCIES ARE NOT REQUIRED TO MAKE THE SPECIFIC FINDINGS THAT THEY WOULD BE REQUIRED TO MAKE UNDER 120.569 --

>> YOU DON'T THINK IN THE READING IT IN CONTEXT THAT THAT ASSUMES THAT ALL THE PARTIES ARE ONBOARD?

I MEAN, ISN'T THAT THE DEFINITION OF A SETTLEMENT?

I MEAN, DO YOU -- I MEAN, THERE'S NOTHING IN THERE THAT, I MEAN, IT'S KIND OF A COUNTERINTUITIVE AND COUNTER SORT OF WAY THINGS USUALLY OPERATE TO SAY YOU CAN TREAT SOMETHING AS A SETTLEMENT THAT NOT EVERYBODY IN THE CASE IS ONBOARD WITH.

AND I UNDERSTAND THE COURT HAS GONE ALONG WITH THAT, BUT ARE YOU TELLING ME THAT TEXTUALLY THAT'S THE WAY 120.574 IS SUPPOSED TO BE INTERPRETED?

>> I CERTAINLY AGREE THAT THE COURT HAS APPROVED THAT IN CITIZENS ONE AND BACK IN OTHER PLACES.

MAYBE PART OF THAT IS STANDARDS FOR INTERVENTION IN ADMINISTRATIVE PROCEEDINGS ARE

CONSIDERABLY LOWER THAN THEY WOULD BE IN ARTICLE V COURT, THIS COURT AND THE FIRST DISTRICT COURT OF APPEAL HAVE BOTH HELD TO THAT PRINCIPLE. THERE'S A LOWER BARRIER TO ENTRY FOR A PARTY TO GET IN FRONT OF AN ADMINISTRATIVE BODY AND PROVIDE THEIR RATIONALE FOR WHY IT SHOULD BE ONE THING AS OPPOSED TO ANOTHER. THERE'S NOT ANYTHING SPECIFICALLY IN 120.574 THAT ADDRESSES THE --

[INAUDIBLE]

ON THE PUBLIC INTEREST FACTORS WHICH THE COMMISSION DOES OUTLINE IN ITS ORDER, FINAL ORDER AT PAGE, PAGES 20-21, ALL OF THE PUBLIC INTEREST FACTORS THAT THIS COURT IN SIERRA CLUB AND IN THE CITIZENS ONE CASE BACK IN 2014 HAVE IDENTIFIED AS APPEARING IN THE COMMISSION'S PAST PRACTICE AS SOMETHING IN THE PUBLIC INTEREST ARE, IN FACT, FOUND HERE.

AND THE COMMISSION MAKES SPECIFIC FINDINGS AS TO EACH OF THEM.

THE OVERALL REASONABLENESS OF RESULTING RATES, RATE STABILITY AND PREDICTABILITY, THE INVESTMENT IN RENEWABLE ENERGY, THE RESULTING FINANCIAL STRENGTH OF THE PUBLIC UTILITY, THE ABILITY TO MAKE THE CAPITAL INVESTMENTS.

EACH OF THOSE IS A SPECIFIC FINDING BY THE COMMISSION IN ITS ORDER AND THROUGH OUR BRIEFING AND THROUGH OUR POSTHEARING BRIEFING BELOW WE'VE IDENTIFIED SPECIFIC RECORD EVIDENCE SUPPORTING EACH OF THOSE PUBLIC INTEREST FINDINGS.

I DID WANT TO ADDRESS A QUESTION THAT JUSTICE POLSTON ASKED ON THE QUESTION OF LEGAL AUTHORITY TO APPROVE VARIOUS ASPECTS OF THE SETTLEMENT.

I WOULD AGREE THAT IF, THAT THE COMMISSION HAS NO AUTHORITY TO APPROVE SOMETHING THAT IS

CONTRARY TO STATUTE.

SO THE COMMISSION'S HOLISTIC REVIEW OF THE SETTLEMENT AS A WHOLE GOES TO THE NONLEGAL AUTHORITY ASPECTS OF THE SETTLEMENT.

SO WHEN IT'S REVIEWING THOSE OTHER ASPECTS, IT DOES NOT MAKE -- THE COMMISSION AND THIS COURT DO NOT MAKE A FINDING AS TO INDIVIDUAL PROGRAMS WHETHER THEY'RE PRUDENT, WHETHER THEY'RE A GOOD IDEA.

WHAT IT DOES IS IT LOOKS AT THEM COLLECTIVELY IN RECOGNITION THAT THE SETTLEMENT AGREEMENT INHERENTLY REPRESENTS COMPROMISE AND A GIVE AND TAKE AMONG THE DIFFERENT PARTIES.

SO IT LOOKS AT IT HOLISTICALLY.

ON THE QUESTION OF LEGAL AUTHORITY, I WOULD AGREE THAT LEGAL AUTHORITY IS SOMETHING THAT THIS COURT REVIEWS DE NOVO, AND THE COMMISSION HERE HAD SIGNIFICANT LEGAL AUTHORITY SUPPORTING EVERY ONE OF THE MECHANISMS APPROVED IN THIS SETTLEMENT AGREEMENT.

I'LL START WITH THE RSAM.

THAT WAS SOMETHING THAT HAD SOME QUESTIONS EARLIER.

THE COMMISSION'S AUTHORITY TO APPROVE THE RESERVE SURPLUS AMORTIZATION MECHANISM IS PART OF ITS GENERAL RATEMAKING AUTHORITY UNDER 366.06.

THE PHRASE THAT MY FRIENDS ON THE OTHER SIDE LESS ACCRUED DEPRECIATION IN THE STATUTE THAT THEY POINT TO IS SIMPLY DISCUSSING AN ENTIRELY DIFFERENT TOPIC THAN A THEORETICAL DEPRECIATION SURPLUS OR A THEORETICAL DEPRECIATION DEFICIT.

WHAT THAT MEANS, WHAT LESS ACCRUED DEPRECIATION MEANS THERE IS THAT ONCE DEPRECIATION HAS BEEN ACCRUED AND YOU COME IN AT A LATER POINT, IT CAN'T BE COLLECTED AGAIN.

I'D COMMEND THE COURT TO THE EXPLANATION AND THE COLLOQUY

BETWEEN COMMISSIONER GRAHAM AND
FPL WITNESS ROBERT BARRETT AT
THE SEPTEMBER 20TH HEARING WHICH
IS IN VOLUME -- RECORD 33,985
FOR AN EXPLANATION OF HOW IT
WORKS.

BUT ESSENTIALLY TO MAKE IT IN
SIMPLE TERMS, A \$100 ASSET THAT
HAS A PROJECTED USEFUL LIFE OF
10 YEARS DEPRECIATES AT \$10 PER
YEAR ON A LINEAR BASIS OVER THE
COURSE OF THOSE 10 YEARS.

SO 5 YEARS IN, THAT ASSET HAS A
\$50 VALUE.

SO LESS ACCRUED DEPRECIATION
MEANS IT'S VALUED AT 50 AS AN
ACCOUNTING MATTER.

IF, TO THE POINT JUSTICE CUIEL
MADE, IF WE FIND OUT 5 YEARS IN
THIS IS ACTUALLY AN ASSET THAT
WOULD HAVE A PROJECTED USEFUL
LIFE OF 20 YEARS, THAT MEANS
THERE'S A DEPRECIATION SURPLUS
BETWEEN WHAT'S BEEN COLLECTED
ALREADY AND WHAT WOULD HAVE BEEN
COLLECTED HAD WE KNOWN AT AN
EARLIER TIME OF WHAT THAT USEFUL
LIFE WOULD BE.

>> IS IT FAIR TO DESCRIBE IN
THE, THE RSAM ACCOUNTING FEATURE
AS THIS IS THE CHANGE IN
DEPRECIATION BASED UPON REVISED
USEFUL LIFE ESTIMATES OF ASSETS?
AND SO THAT IT DOESN'T CHANGE
THE ACTUAL COST AS TO BE
DEPRECIATED OVER TIME, IT'S A
TIMING DIFFERENCE.

AND IT'S A TIMING DIFFERENCE
THAT IS ACCORDING TO CERTAIN
PARAMETERS THAT SURROUND IT?
IS THAT A FAIR DESCRIPTION?

>> I'D AGREE THAT IT'S A TIMING
DIFFERENCE.

AND THE QUESTION THEN, THE
QUESTION THAT HAS TO BE DECIDED
ANYTIME THERE IS A DEPRECIATION
SURPLUS OR DEFICIT IS WHAT YOU
DO ABOUT IT.

THE STATUTE IS SILENT ABOUT
SPECIFICALLY HOW THAT SHOULD BE
ADDRESSED.

ONE OPTION IS THAT DEPRECIATION
SURPLUS COULD BE RETURNED TO
CUSTOMERS OVER THE REMAINING

LIFE OF THE UNDERLYING ASSET.
THIS COURT, IN CITIZENS ONE,
ADDRESSED SPECIFICALLY THE RSAM
AND APPROVED IT AGAINST WHAT
WOULD RESULT IN UNFAIR RATES
BECAUSE IT RETURNS -- THIS IS A
QUOTE -- RETURNS THE EXCESS
AMOUNTS COLLECTED IN PRIOR YEARS
TO CUSTOMERS OVER A SHORTER
PERIOD OF TIME THAN IF THE
EXCESS DEPRECIATION RESERVE WERE
RETURNED TO CUSTOMERS OVER THE
REMAINING LIVES OF THE
UNDERLYING ASSETS.
END QUOTE.

SO WHAT THE RSAM ALLOWS FLORIDA
POWER & LIGHT TO DO OVER THE
COURSE OF THIS MULTIYEAR
SETTLEMENT IS RETURN THIS
DEPRECIATION SURPLUS IN THE FORM
OF AVOIDED GENERAL BASE RATE
INCREASES IN YEARS THREE AND
YEAR FOUR.

SO RATHER THAN HAVING BASE RATE
INCREASES, THE SURPLUS ACCOUNTS
FOR THAT ASPECT OF IT.

AND IT'S SOMETHING THAT'S
BEEN -- THIS ACCOUNTING
MECHANISM IS SOMETHING THAT'S
BEEN USED SUCCESSFULLY BY
FLORIDA POWER & LIGHT IN ITS
2010, 2012 AND 2016 RATE
SETTLEMENT AGREEMENTS HERE.
SO IT'S NOTHING NEW, AND THERE'S
NOTHING CONTRARY TO THE STATUTE.
THE STATUTE IS SILENT ON HOW A
DEPRECIATION SURPLUS IS TO BE
ADDRESSED.

TO A QUESTION FROM JUSTICE
GROSSHANS EARLIER ABOUT THE
ADJUSTED INCOME TAX ADJUSTMENT,
AND THIS GOES TO MULTIPLE
MECHANISMS HERE, THE STORM COST
RECOVERY MECHANISM, 366.0762,
PROVIDES THE STATUTORY AUTHORITY
FOR THOSE.

THE COMMISSION MAY ADOPT RULES
FOR THE DETERMINATION OF RATES
IN A FULL REVENUE REQUIREMENT
PROCEEDING WHICH PROVIDE FOR
INCREMENTAL ADJUSTMENTS IN RATES
FOR SUBSEQUENT PERIODS.

THE RULE THAT THE COMMISSION HAS
ADOPTED TO IMPLEMENT THAT, WHICH

WE'VE CITED IN OUR BRIEFS, ALSO PROVIDES THAT AUTHORITY. SO IN THE CASE OF ALL OF THOSE MECHANISMS, THE COMMISSION IS OUTLINING THROUGH THIS ORDER APPROVING A SETTLEMENT A SPECIFIC SET OF CONDITIONS, HOW THOSE THINGS ARE TO BE TREATED IF THEY OCCUR IN THE FUTURE. AND IN ALL OF THEM, FOLLOWED UP BY A TRUE-UP TYPE OF PROCEEDING AT WHICH PARTIES WILL HAVE AN OPPORTUNITY TO EXAMINE THE NUMBERS TO VERIFY THAT THEY WERE, IN FACT, CONSISTENT WITH THE AGREEMENT.

>> CHIEF, MAY I ASK A QUESTION? THANK YOU.

YOU'RE OUT OF TIME, BUT I DID WANT TO ASK, I MEAN, THE ISSUE LIKE, FOR INSTANCE, WITH THE CORPORATE TAX, I MEAN, THAT'S IN, WOULD YOU AGREE, INDEFINITE, UNDETERMINED FUTURE RATE CHANGE, THAT WAS APPROVED IN THE SETTLEMENT, WHICH DIFFERS FROM SOME OF THE OTHERS.

CORRECT?

>> THE SPECIFIC MAGNITUDE OF IT WAS NOT KNOWN AT THE TIME OF THE SETTLEMENT.

THE SPECIFIC MANNER IN WHICH IT WOULD BE TREATED IS OUTLINED --

>> AND KIND OF GOING TO THE CHIEF'S QUESTION, YOU SEE WHERE OUR ISSUE IS.

BECAUSE WE HAVE A STATUTE THAT SAYS YOU CAN APPROVE INCREMENTAL RATE CHANGE WHICH, TO ME, MEANS FIXED, SMALL.

THERE'S A LOT OF DEFINITIONS, BUT IT MEANS SOMETHING.

MAYBE NOT INDEFINITE OR UNCERTAIN.

AND THEN WE HAVE AN ORDER FROM THE COMMISSION THAT GIVES US NO EXPLANATION, NO DESCRIPTION, NO FINDINGS, NOTHING ABOUT HOW THAT'S WITHIN THE STATUTORY AUTHORITY TO APPROVE, SOMETHING THAT'S COMPLETELY MAYBE OPPOSED TO THIS STATUTORY LANGUAGE AND HAS BEEN CHALLENGED.

AND I THINK THAT'S KIND OF WHERE

WE'RE, WE'RE FACING THIS ISSUE
IS WE HAVE SOMETHING VERY
SPECIFIC THAT MIGHT BE AN ISSUE,
AND WE HAVE NOTHING TO LOOK AT.
YOU KNOW, WHAT WAS THE RATIONAL
BASIS THAT THIS WAS APPROVED
UNDER THE STATUTE.

AND I THINK THAT'S KIND OF WHERE
WE'RE ALL COMING FROM AT THIS
POINT.

>> I APPRECIATE THE QUESTION.

AND, CHIEF, I DO SEE I'M OUT OF
TIME, BUT IF I COULD ANSWER.

ON THAT QUESTION I THINK THAT
REALLY IS A LEGAL QUESTION, AND
I HOPE THAT WE'VE ADEQUATELY
ADDRESSED THAT TO THE COURT'S
SATISFACTION IN OUR BRIEFS AND
IN THE COMMISSION'S BRIEF ABOUT
WHY 366.076 DOES, IN FACT,

PROVIDE SUFFICIENT AUTHORITY TO
APPROVE THIS SORT OF MECHANISM
AS THE COMMISSION HAS DONE IN
SEVERAL PRIOR RATE SETTLEMENTS.

>> AND HOW ABOUT SOLAR TOGETHER?

IN THAT SITUATION THERE'S A, YOU
KNOW, THE POSITION ON THE OTHER
SIDE IS THAT IT'S UNDULY
PREFERENTIAL.

THERE'S NO ANALYSIS IN THE ORDER
WHATSOEVER.

IT SEEMS LIKE IT'S AT LEAST A
LEGITIMATE ISSUE.

I MEAN, THE PSC'S OWN STAFF
AGREED WITH THAT WHEN THEY FIRST
LOOKED AT IT.

SO IN LIGHT OF THE COMPLETE
ABSENCE OF ANY KIND OF
DISCUSSION OF IT, WHAT IS THE
COURT SUPPOSED TO DO WITH THAT?

>> SO LET ME ADDRESS SOLAR

TOGETHER THIS WAY: UNDER THE
SIERRA CLUB DECISION, NOT EVERY
ISSUE NEEDS TO BE DISCUSSED.

AND AT THE TIME, AT THE TIME
SOLAR TOGETHER WAS BEING PUT
FORWARD AS PART OF THIS
SETTLEMENT AGREEMENT, IT WAS AN
IMPORTANT CHANGE.

BUT IT WAS A CHANGE IN MAGNITUDE
RATHER THAN A CHANGE IN KIND
FROM THE WAY THAT THE
PRE-EXISTING SOLAR TOGETHER
PROGRAM WAS STRUCTURED.

AND IT WAS THE CHANGES THAT WERE MADE IN THE SOLAR TOGETHER EXPANSION ACTUALLY MADE THE PROGRAM OVERALL LESS PREFERENTIAL IN THEIR DETERMINATION THAN THE PRE-EXISTING PROGRAM.

THERE WAS AN EXPANSION IN LOW INCOME CAPACITY, EXPANSION IN RESIDENTIAL AND SMALL BUSINESS CAPACITY.

SO WHAT THE COMMISSION WAS CONSIDERING SOLAR TOGETHER IN THE CONTEXT OF THIS EXPANSION PROPOSED HERE WAS NOT THE UNDERLYING AUTHORITY TO APPROVE THE PROGRAM, BECAUSE THAT HAD BEEN DONE IN A PRIOR ORDER IN 2020 THAT WAS NOT CHALLENGED. THE COMMISSION WAS CONSIDERING SIMPLY WHETHER THIS EXPANSION WAS FAIR, JUST AND REASONABLE IN THE PUBLIC INTEREST.

IN THAT CONTEXT, THE ABSENCE OF SPECIFIC FINDINGS OF IT MAKE IT MORE SIMILAR TO THE PROJECT PROGRAM IN SIERRA CLUB THAN SOMETHING ELSE, ESPECIALLY IN THE CONTEXT OF A MULTI-ISSUE SETTLEMENT SUCH AS THIS ONE RATHER THAN A SINGLE-ISSUE SETTLEMENT.

>> OKAY.

YOU CAN HAVE 30 SECONDS TO FINISH UP.

>> THANK YOU.

THANK YOU TO THE COURT FOR YOUR TIME.

THE SETTLEMENT HERE WILL ALLOW FLORIDA POWER & LIGHT TO CONTINUE DELIVERING HIGH QUALITY AND RELIABLE ELECTRIC SERVICE TO ITS CUSTOMERS, STABLE AND PREDICTABLE RATES WELL BELOW THE NATIONAL AVERAGE IN TERMS THAT WERE CAREFULLY NEGOTIATED TO ACHIEVE THAT RESULT AGAINST THE BACKDROP OF PRIOR COMMISSION PRECEDENT AND AGAINST THE BACKDROP OF THIS COURT'S PRECEDENT.

AND THEY WERE SUPPORTED BY NEARLY ALL OF THE INTERVENERS BELOW FROM A VARIETY OF

DIFFERENT CUSTOMER CLASSES.
THE COMMISSION PROPERLY
CONCLUDED THAT THE SETTLEMENT
WAS IN THE PUBLIC INTEREST AND
THAT IT RESULTS IN FAIR, JUST
AND REASONABLE RATES.
THOSE FINDINGS ARE SUPPORTED BY
COMPETENT, SUBSTANTIAL EVIDENCE
IN THIS RECORD, AND THIS COURT
SHOULD AFFIRM.

THANK YOU.

>> THANK YOU.

WITH ALL DUE RESPECT, IT WASN'T
JUST A CHANGE IN MAGNITUDE FOR
SOLAR TOGETHER.

WHAT HAPPENED IS IT ACTUALLY
MADE THE PROGRAM MORE
PREFERENTIAL.

THERE WAS AN INCREASE IN CREDITS
TO EXISTING PARTICIPANTS AND
SUCH THAT WITH THE EXPANSION THE
NET TRANSFERS THAT PARTICIPANTS
ARE EXPECTING TO BE PAID, IT
WENT FROM \$678 MILLION OVER THE
LIFE OF THE PROGRAM TO OVER \$2
BILLION.

ALSO AS A RESULT OF THE
EXPANSION AND THE INCREASE IN
CREDITS TO PARTICIPANTS,
STARTING IN THIS YEAR, 2023,
WHEN THE INCREASE IN CREDS WENT
INTO FULL EFFECT AND THE
EXPANSION STARTED, PARTICIPANTS
NEVER CONTRIBUTE TO THE, TO THE
PROGRAM IN A WAY THAT'S HELPFUL
TO THE GENERAL BODY OF RATE
PAYERS.

PARTICIPANTS ALWAYS COST THE
GENERAL BODY OF RATE PAYERS
MONEY WHEN YOU FACTOR IN THE
ADMINISTRATIVE COSTS TO
ADMINISTER THE PROGRAM FOR
PARTICIPANTS.

STARTING IN 2023, THIS YEAR, THE
FACT THAT THERE ARE PARTICIPANTS
IN THE PROGRAM IS GOING TO COST
THE GENERAL BODY OF RATE PAYERS
\$3.2 MILLION WHEN YOU INCLUDE
ADMINISTRATIVE COSTS, AND IT
ONLY ESCALATES FROM THERE.

>> WERE THOSE COSTS CONSIDERED
BY THE PSC?

>> I MEAN, WE CERTAINLY MADE THE
ARGUMENT, YOUR HONOR.

BUT AS --

>> YOU CAN'T MAKE THE ARGUMENT.

>> YES, WE MADE THE ARGUMENT.

>> THAT'S IN THE RECORD.

>> YES, IT'S IN THE RECORD THAT
WE INCLUDE THOSE COSTS.

THE TRANSFER OF WEALTH, THAT'S
IN THE RECORD.

WE MADE THE ARGUMENT.

THERE ARE THOSE TWO PAGES OF
FINDINGS OF FACT, AND NONE OF
THOSE FINDINGS OF FACT JUSTIFY
THIS ALMOST \$5 MILLION RATE
INCREASE, ADDRESS THE MAJOR
ISSUES OR EXPLAIN WHY THIS
SETTLEMENT IS IN THE PUBLIC
INTEREST.

AND I SEE THAT I'M OUT OF TIME,
BUT UNLESS THERE ARE ANY OTHER
QUESTIONS?

THANK YOU.

>> THANK YOU AGAIN, YOUR HONORS,
FOR THE OPPORTUNITY TO ADDRESS
YOU.

I'D LIKE TO START BY ADDRESSING
THE APPELLEE'S ARGUMENT THAT THE
PSC'S GENERAL RATEMAKING
AUTHORITY ALLOWS IT TO DO WHAT
IT HAS DONE HERE.

BOTH MR. NORBY AND MR. SUNSHINE
AGREE THAT IF SOMETHING'S
ILLEGAL, IT'S CONTRARY TO THE
STATUTE, THE PSC CAN'T DO IT.
THEY THEN TRY TO ARGUE THAT
UNDER THE PSC'S GENERAL
RATEMAKING AUTHORITY THEY CAN DO
PRETTY MUCH WHAT THEY WANT TO
DO.

THIS VERY ISSUE WAS PRESENTED TO
THIS COURT IN CITIZENS V. GRAHAM
WHICH WE COMMONLY REFER TO AS
THE WOODFORD CASE.

IN THAT CASE THE PSC DENIED A
MOTION TO DISMISS CLAIMING THAT
AUTHORITY TO APPROVE THIS
INVESTMENT WAS WITHIN ITS
GENERAL RATEMAKING AUTHORITY.
WHEN THE APPEAL CAME TO THIS
COURT, THE COURT REVERSED
FOLLOWING THE STANDARD ANALYSIS.
IT HAD TO DETERMINE WHETHER THE
AGENCY, PSC IN THIS CASE, HAS
THE STATUTORY AUTHORITY TO DO
WHAT IT WANTS TO DO.

YOU DETERMINED THAT IT DID THE NOT HAVE THAT STATUTORY AUTHORITY AND ACCORDINGLY REVERSED.

THE SAME IS APPLICABLE TO THE RSAM HERE.

WITH RESPECT TO MR. NORBY'S ARGUMENTS, WITH RESPECT TO THE RSAM, HE AGREED THAT ACCRUED DEPRECIATION CAN'T BE COLLECTED AGAIN.

THE ACCRUED DEPRECIATION, THE SURPLUS, IS PART OF FPL'S RESERVE.

IT'S A SURPLUS IN THAT AMOUNT. THE ONLY WAY THE MONEY GOT THERE WAS BECAUSE CUSTOMERS PAID IT. BY THE RSAM, FPL WILL KEEP IT. THEY WILL USE IT TO MANAGE THEIR EARNINGS.

YOU CAN LOOK IN THE RECORD, THERE'S AMPLE EVIDENCE AS TO WHAT THEY'VE DONE OVER YEARS TO MAINTAIN THEIR EARNINGS AT THE VERY TOP OF THEIR RANGE USING RSAM-LIKE FEATURES IN PRIOR SETTLEMENTS.

AND ONCE IT'S APPLIED TO THEIR EARNINGS, IT IS LOST TO CUSTOMERS FOREVER.

THIS IS, THIS IS CONTRARY TO LAW.

AND WITH RESPECT TO THE DELTONA ARGUMENT, IN DELTONA THE QUESTION WAS WHETHER THE PSC COULD REQUIRE CERTIFICATE OF AGREEMENT AND NECESSITY AS PART OF GENERAL AUTHORITY.

THERE'S NO GENERAL AUTHORITY, THERE'S NO SPECIFIC AUTHORITY AND THERE'S NO NEED FOR THE RSAM, NO NEED FOR THE ATTAP HERE.

MR. NORBY MADE MY POINT REGARDING THE ATTAP WHEN HE SAID WHEN IT COMES BACK TO THE PSC, IF IT DOES, THE PSC WILL REVIEW IT TO DETERMINE WHETHER IT'S CONSISTENT WITH THE AGREEMENT.

THAT IS OUR COMPLAINT.

THEY WILL REVIEW IT AS TO WHETHER IT'S CONSISTENT WITH THE AGREEMENT, NOT AS TO WHETHER IT'S CONSISTENT WITH THE

STATUTORY REQUIREMENTS OF 366.02
AND 366.07.

IN FINAL SUMMARY, YOUR HONOR,
YOUR HONORS, THANK YOU VERY
MUCH.

WE APPRECIATE YOUR CONSIDERATION
OF OUR ARGUMENTS.

WE PRAY THAT YOU WILL REVERSE
THE PSC ON THE TWO STATUTORY
AUTHORITY CLAIMS AND, FURTHER,
THAT YOU WILL ISSUE FINDING PSC
DEPARTED FROM THE ESSENTIAL
REQUIREMENTS OF THE LAW FOR
REMAND CONSISTENT WITH THAT
OPINION.

THANK YOU VERY MUCH.

>> THANK YOU.

WE'RE ADJOURNED FOR TODAY.