

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 020007-EI

In the Matter of
ENVIRONMENTAL COST
RECOVERY CLAUSE.

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VOLUME 2
PAGES 124 through 254



PROCEEDINGS: HEARING

BEFORE: CHAIRMAN LILA A. JABER
COMMISSIONER J. TERRY DEASON
COMMISSIONER BRAULIO L. BAEZ
COMMISSIONER MICHAEL A. PALECKI
COMMISSIONER RUDOLPH "RUDY" BRADLEY

DATE: Wednesday, November 20, 2002

TIME: Commenced at 9:30 a.m.
Concluded at 4:20 p.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
Chief, Office of Hearing Reporter Services
FPSC Division of Commission Clerk and
Administrative Services
(850) 413-6732

(APPEARANCES: As heretofore noted.)

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION

13071 DEC-28

FPSC-COMMISSION CLERK

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P R O C E E D I N G S

1
2 (Transcript continues in sequence from
3 Volume 1.)
4 Thereupon,

R A N D Y L A B A U V E

5
6 was called as a witness on behalf of Florida Power and Light,
7 and having first been sworn, was examined as follows:

D I R E C T E X A M I N A T I O N

B Y M R . B U T L E R :

8
9
10 Q Mr. LaBauve, would you please state your name and
11 address for the record?

12 A My name is Randy LaBauve. My business address is 700
13 Universe Boulevard, Juno Beach, Florida 33408.

14 Q By whom are you employed and in what capacity?

15 A I am employed by Florida Power and Light Company and
16 I am the Vice-president of Environmental Services.

17 Q Do you have before you the following prefiled direct
18 testimony, estimated actual true-up January 2002 through
19 December 2002, dated August 9, 2002, consisting of nine pages
20 and an attached exhibit designated RRL-1; and projections
21 January 2003 through December 2003, dated September 9, 2002,
22 consisting of 14 pages an attached exhibits designated RRL-2
23 and RRL-3?

24 A I do not think I have those.

25 Q I'm sorry, we will get you a copy of them. Are you

1 familiar with those testimonies?

2 A Yes, I am.

3 Q Were they prepared under your direction, supervision,
4 or control?

5 A Yes.

6 Q Do you have any corrections to make to the testimony
7 or the exhibits attached?

8 A No, I do not.

9 MR. BUTLER: I would ask the Mr. LaBauve's prefiled
10 direct testimony be inserted into the record as though read.

11 CHAIRMAN JABER: The prefiled direct testimony of
12 Randall R. LaBauve shall be inserted into the record as though
13 read.

14 MR. BUTLER: May I ask that you assign Exhibit Number
15 9 as a composite exhibit to RRL-1, RRL-2, and RRL-3?

16 CHAIRMAN JABER: RRL-1 through RRL-3 will be
17 identified as Composite Exhibit 9.

18 (Composite Exhibit 9 marked for identification.)

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

FLORIDA POWER & LIGHT COMPANY

TESTIMONY OF RANDALL R. LABAUVE

DOCKET NO. 020007-EI

August 9, 2002

Q. Please state your name and address.

A. My name is Randall R. LaBauve and my business address is 700 Universe Boulevard, Juno Beach, Florida 33408.

Q. By whom are you employed and in what capacity?

A. I am employed by Florida Power & Light Company (FPL) as Vice President of Environmental Services.

Q. Have you previously testified in predecessors to this docket?

A. Yes, I have.

Q. Please describe your educational and professional background and experience.

A. I received a Bachelor of Arts degree in Psychology from Louisiana State University in 1983 and a Juris Doctor degree from Louisiana State University in 1986. I joined FPL in 1995 as an Environmental Lawyer and in 1996 assumed the responsibility of Director of Environmental Services.

1 In July of 2002, I assumed the responsibility of Vice President of
2 Environmental Services. Prior to joining FPL I was the Director of
3 Environmental Affairs for Entergy Services, Incorporated located in Little
4 Rock, Arkansas and prior to that practiced law with Milling, Benson,
5 Woodward, Hilliard, Pierson and Miller in New Orleans, Louisiana.

6

7 I am responsible for directing the overall corporate environmental
8 planning, programs, licensing, and permitting activities to ensure the basic
9 objective of obtaining and maintaining the federal, state, regional and
10 local government approvals necessary to site, construct and operate
11 FPL's power plants, transmission lines, and fuel facilities and maintain
12 compliance with environmental laws.

13

14 **Q. Have you prepared, or caused to be prepared under your direction,**
15 **supervision or control, an exhibit in this proceeding?**

16 A. Yes, I have. The exhibit consists of Document RRL-1 - - U. S. Department
17 of Transportation Regulation 49 CFR Part 195.

18

19 **Q. What is the purpose of your testimony in this proceeding?**

20 A. The purpose of my testimony is to present for Commission review and
21 approval FPL's proposal to recover through the ECRC the costs
22 associated with a new environmental activity, the Pipeline Integrity
23 Management Program Project, as required by U.S. Department of
24 Transportation Regulation 49 CFR Part 195. This regulation requires

1 operators with 500 or fewer miles of regulated pipelines to establish a
2 program for managing the integrity of pipelines that could affect high
3 consequence areas if a leak or rupture occurs. The objective of this
4 requirement is to improve the integrity of pipeline systems in the U.S. in
5 order to protect public safety, human health, and the environment.

6

7 **Q. Please describe the law or regulation requiring this activity.**

8 A. On January 16, 2002, 49 CFR Part 195 was amended to include a Final
9 Rule on Implementing Integrity Management. This Final Rule took effect
10 on February 15, 2002. Per this regulation, all hazardous liquid pipelines
11 and carbon dioxide pipelines with 500 or fewer miles of regulated
12 pipelines that could affect high consequence areas must develop and
13 implement a pipeline integrity management program. High consequence
14 areas include populated areas defined by the U.S. Census Bureau as
15 urbanized areas or places, unusually sensitive environmental areas, and
16 commercially navigable waterways.

17

18 Additionally, the regulation requires continual assessment and evaluation
19 of pipeline integrity through inspection or testing, data integration and
20 analysis, and follow-up remedial, preventative, and mitigative actions.

21

22 **Q. How does this new law or regulation affect FPL?**

23 A. FPL currently owns four hazardous liquid pipelines: the Martin 18 inch
24 pipeline, the Martin 30 inch pipeline, the Manatee 16 inch pipeline, and

1 the Dania Spur 8 inch Pipeline, that are subject to this new rule and must
2 comply with the new requirements.

3

4 **Q. Please describe the Pipeline Integrity Management Program Project.**

5 A. FPL is required to develop a written pipeline integrity management
6 program for its hazardous liquid pipelines. This program must include the
7 following elements: (1) a process for identifying which pipeline segments
8 could affect a high consequence area; (2) a baseline assessment plan;
9 (3) an information analysis that integrates all available information about
10 the integrity of the entire pipeline and the consequences of a failure; (4)
11 the criteria for determining remedial actions to address integrity issues
12 raised by the assessments and information analysis; (5) a continual
13 process of assessment and evaluation of pipeline integrity; (6) the
14 identification of preventive and mitigative measures to protect the high
15 consequence area; (7) the methods to measure the program's
16 effectiveness; (8) a process for review of assessment results and
17 information analysis by a person qualified to evaluate the results and
18 information; and, (9) record keeping.

19

20 **Q. What is a baseline assessment plan?**

21 A. A baseline assessment plan must include the inline inspection tool or
22 hydrostatic pressure test method which is selected to assess the integrity
23 of the pipeline, a schedule for completing the integrity assessment, an
24 explanation of the assessment methods selected, and an explanation of

1 risk factors considered in establishing the assessment schedule.

2

3 **Q. What is an information analysis?**

4 A. Periodic risk analyses must be performed on the integrity of each pipeline
5 segment where all available information about the integrity of the entire
6 pipeline and the consequences of a failure must be included. This
7 includes information critical to determining the potential for, and the
8 prevention of damage to the pipeline segment caused by third party
9 damage (i.e. excavation), threats to the pipeline from corrosion, defects,
10 operator error, natural causes, consequences of a failure to the
11 environment and the public, information on how a failure would affect an
12 high consequence area, and pertinent data gathered from other
13 inspections, tests, surveillance, and patrols.

14

15 **Q. What preventative and mitigating measures must be taken to protect**
16 **the high consequence area?**

17 A. Measures must be taken to prevent and mitigate the consequences of a
18 pipeline failure that could affect a high consequence area. A risk analysis
19 of the pipeline segment must be conducted to identify additional actions
20 to enhance public safety and environmental protection. These actions
21 include, but are not limited to, implementing damage prevention best
22 practices, better monitoring of cathodic protection where corrosion is a
23 concern, establishing shorter inspection intervals, installing Emergency
24 Flow Restricting Devices on the pipeline segment, modifying the systems

1 that monitor pressure and detect leaks, providing additional training to
2 personnel on response procedures, conducting drills with local
3 emergency responders, and adopting other management controls.

4

5 In identifying the need for additional preventative and mitigating measures,
6 a means of leak detection is also required. An evaluation must be
7 performed to address the likelihood of a pipeline release occurring and
8 how a release could affect the high consequence area.

9

10 **Q. What processes are required to maintain a pipeline's integrity?**

11 A. Development and implementation of the plan including all of the required
12 components are required to maintain a pipeline's integrity. After
13 completing the baseline integrity assessment, the pipeline must be
14 continually assessed at specified intervals and periodically evaluated for
15 the integrity of each pipeline segment that could affect a high
16 consequence area. Pipeline integrity must be assessed at intervals not
17 to exceed five years, depending on the risk the pipeline poses to the high
18 consequence area.

19

20 **Q. What are the compliance dates for this project?**

21 A. Each pipeline or pipeline segment that could affect a high consequence
22 area must be identified by November 18, 2002.

23

24 A written integrity management program that addresses the risks on each

1 segment of pipeline must be developed by February 18, 2003.

2

3 Fifty percent of the pipeline must be assessed on an expedited basis,
4 beginning with the highest risk pipe. This expedited assessment must be
5 completed to later than August 16, 2005.

6

7 Complete baseline assessments must be performed no later than
8 February 17, 2009.

9

10 **Q. Has FPL estimated the cost of the proposed Project?**

11 A. Yes. FPL estimates total project costs for its four hazardous liquid
12 pipelines at Martin (18" and 30"), Manatee and Dania Spur for 2002
13 through 2004 to be approximately \$1,560,000. Costs for 2005 through
14 2009 will be based on the assessments and data gathered in 2002
15 through 2004. On-going program development and implementation is
16 estimated to cost approximately \$150,000 of O&M per year, and baseline
17 and on-going (every five years) assessments will cost approximately
18 \$100,000 of O&M per assessment. Total estimated O&M costs for 2003
19 through 2004 are \$400,000. Preventative measures to increase pipeline
20 integrity in the form of leak detection will require capital expenditures.
21 The initial capital projects that have been identified are metering for the
22 Martin 30" pipeline and metering and SCADA (system control and data
23 acquisition) for the Dania Spur pipeline. The associated costs are
24 approximately \$1,060,000 for 2003 through 2004.

1 **Q. Has FPL estimated how much will be spent on the Pipeline Integrity**
2 **Management Program Project in 2002?**

3 A. Yes. FPL's O&M cost estimate is \$100,000 for 2002. This estimate is for
4 the development of the written Pipeline Integrity Management Plan and
5 the identification of the high consequence areas.

6

7 **Q. Were there any costs for this project in the MFR's that FPL filed in**
8 **Docket No. 001148-EI?**

9 A. No.

10

11 **Q. How will FPL ensure that the costs incurred are prudent and**
12 **reasonable?**

13 A. A Request for Proposal (RFP) with detailed specifications will be issued
14 for program development and will be awarded to the lowest bidder. In-
15 house resources and current contracted resources will be utilized where
16 practical and cost effective. Capital improvement bids will also be
17 awarded through RFPs based on cost effectiveness.

18

19 **Q. What alternatives did FPL consider?**

20 A. There are no alternatives to developing the above program, due to the
21 prescriptive nature of the regulation. Hydrocarbon monitoring was
22 considered as an alternative to metering but is significantly more
23 expensive, and installation requires pipeline excavation which disrupts
24 operations.

1 **Q.** **Does this conclude your testimony?**

2 **A.** Yes, it does.

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **FLORIDA POWER & LIGHT COMPANY**

3 **TESTIMONY OF RANDALL R. LABAUVE**

4 **DOCKET NO. 020007-EI**

5 **September 9, 2002**

6

7 **Q. Please state your name and address.**

8 A. My name is Randall R. LaBauve and my business address is 700
9 Universe Boulevard, Juno Beach, Florida 33408.

10

11 **Q. By whom are you employed and in what capacity?**

12 A. I am employed by Florida Power & Light Company (FPL) as Vice
13 President of Environmental Services.

14

15 **Q. Have you previously testified in this docket?**

16 A. Yes, I have.

17

18 **Q. Have you prepared, or caused to be prepared under your
19 direction, supervision or control, an exhibit in this proceeding?**

20 A. Yes, I have. It consists of the following documents:

21

22 Document RRL-2, Conceptual Application of Reburning in a
23 Utility Boiler.

24 Document RRL-3, Environmental Protection Agency 40 CFR
25 Part 112.

1 **Q. What is the purpose of your testimony in this proceeding?**

2 A. The purpose of my testimony is to present for the Commission's
3 review and approval, two new environmental projects – the Manatee
4 Reburn NOx Control Technology Project and the Spill Prevention,
5 Control, and Countermeasures (SPCC) Project. Additionally, I will
6 address a change to the Pipeline Integrity Management Program
7 Project. This project was filed with the Commission on August 9,
8 2002.

9
10 **MANATEE REBURN NOx CONTROL TECHNOLOGY PROJECT**

11
12 **Q. Please briefly describe the scope of the Manatee Reburn NOx
13 Control Technology Project.**

14 A. The Manatee Reburn NOx Control Technology Project will be the
15 subject of an agreement between FPL and the Florida Department of
16 Environmental Protection (FDEP) to install reburn technology at the
17 Manatee Plant Units 1 and 2 for the exclusive purpose of ensuring
18 compliance with ozone ambient air quality standards in the Tampa Bay
19 Airshed, as provided for by Section 366.8255, Florida Statutes, as
20 amended in 2002. FPL has discussed the project with the FDEP staff
21 and FPL and the FDEP are working to formalize this in a written
22 agreement as contemplated by Section 366.8255(1)(d) 7, Florida
23 Statutes. FPL expects to receive the finalized agreement near the end
24 of September 2002, and will provide the Commission with a copy of
25 the agreement when it is signed.

1 **Q. What is the statutory basis for FPL's request in this docket?**

2 A. A new paragraph 7 was added to the definition of "environmental
3 compliance costs" in Subsection 366.8255(1)(d), Florida Statutes by
4 the 2002 Legislature (Chapter 2002-276, Laws of Florida). Governor
5 Bush signed the legislation into law on May 23, 2002. For purposes of
6 environmental cost recovery under Section 366.8255, such
7 "environmental compliance costs" are now defined to include "costs or
8 expenses prudently incurred by an electric utility pursuant to an
9 agreement entered into on or after the effective date of this act and
10 prior to October 1, 2002, between the electric utility and the Florida
11 Department of Environmental Protection or the United States
12 Environmental Protection Agency for the exclusive purpose of
13 ensuring compliance with ozone ambient air quality standards by an
14 electrical generating facility owned by the electric utility."

15

16 **Q. Please explain how the Manatee Reburn NOx Control Technology
17 Project relates to ozone ambient air quality standards.**

18 A. The U.S. EPA has promulgated a new ambient air quality standard for
19 ozone that establishes a permissible limit on the level of ozone during
20 any 8-hour period. Manatee County is located in the vicinity of the
21 Tampa Bay Airshed, which has experienced recent episodes of
22 elevated ozone levels higher than the U.S. EPA's new ambient air
23 quality standard for ozone on at least 15 separate days in the past four
24 years. Despite expected reductions in NOx emissions in the Tampa
25 Bay Airshed, compliance with the ambient air quality standards for

1 ozone will be uncertain in the future because of continued commercial,
2 industrial, population, traffic, and electrical demand growth in the
3 region, coupled with meteorological conditions beyond the control of
4 regulatory authorities or regulated industry.

5
6 Manatee Units 1 and 2 emit nitrogen oxides (NOx), a precursor to
7 regional ozone formation, into the atmosphere of Manatee County and
8 surrounding areas, including the Tampa Bay Airshed. The Manatee
9 Plant, together with other regional power plants, commercial and
10 industrial activities, and transportation, are the main sources of NOx
11 affecting regional ozone formation in the Tampa Bay Airshed.

12
13 Installation of reburn technology in FPL's Manatee Units 1 and 2, by
14 reducing NOx emissions, will help to ensure that the Tampa Bay
15 Airshed will comply with the ozone ambient air quality standards
16 established by the U.S. EPA and by the FDEP.

17

18 **Q. Please describe FPL's Manatee Plant Units 1 & 2.**

19 A. Units 1 and 2 are each 800 megawatt class fossil fuel-fired steam
20 electric generating units located at FPL's Manatee Plant in Manatee
21 County, Florida. The units have been in service since 1976 and 1977,
22 firing residual fuel oil with a maximum sulfur content of one percent.
23 FPL has recently decided to add natural gas as an additional permitted
24 fuel for Units 1 and 2. The FDEP issued an air construction permit
25 authorizing the addition of gas for these Units earlier this month.

1 **Q. Please describe reburn technology.**

2 A. This project involves installation of reburn technology in Manatee
3 Units 1 and 2. Reburn is an advanced NOx control technology that
4 has been developed for, and applied successfully in, commercial
5 applications to utility and large industrial boilers. The process relies
6 upon a reburn-like flue gas incineration technique that dates back to
7 the late 1960s. Developments of this technique for applications to
8 large coal fired power plants in the United States dating back to the
9 early to mid 1980s.

10

11 Reburn is an in-furnace NOx control technology that employs fuel
12 staging in a configuration where a portion of the fuel is injected
13 downstream of the main combustion zone to create a second
14 combustion zone, called the reburning zone. The reburning zone is
15 operated under conditions where NOx from the main combustion
16 zone is converted to elemental nitrogen (which makes up 79% of the
17 atmosphere). The basic front wall-fired boiler reburning process is
18 shown conceptually in Exhibit A, Document RRL-2, and divides the
19 furnace into three zones.

20

21 In the 1996-97 time period, FPL invested a considerable effort
22 evaluating the Manatee Units for the application of reburn
23 technology. FPL has recently reviewed the reburn system designs
24 previously proposed for the Manatee units, and concluded that a
25 design for either oil or gas reburn would require very similar

1 characteristics. Reburn fuel injectors will be located at the elevation
2 of the present top row of burners, with reburn injectors on the boiler
3 front and rear walls. For the present application, the injectors will
4 have a dual fuel (oil and gas) capability. In order to provide
5 adequate residence time for the reburn process, the reburn overfire
6 air (OFA) ports will be located between the boiler wing walls and
7 angled slightly to provide better mixing with the boiler flow. Because
8 of the complexity of the boiler flow field and the port location, it was
9 determined that OFA booster fans would be required to assist the air-
10 fuel mixing and complete the burnout process. Installation of reburn
11 technology for Manatee Units 1 and 2 offers the potential to reduce
12 NOx emissions through a "pollution prevention" approach that does
13 not require the use of reagents, catalysts, or "add-on" pollution
14 reduction or removal equipment.

15

16 **Q. Has FPL estimated the cost of the proposed Project?**

17 **A.** Yes. The use of reburn technology for Manatee Units 1 and 2 will
18 require FPL to incur costs and expenses to install, operate and
19 maintain that technology. FPL's capital cost estimate for the Manatee
20 Reburn NOx Control Technology Project is \$32.0 million for both units,
21 to be incurred in 2003 through 2005. FPL projects to incur \$5.0 million
22 in 2003, \$21.0 million in 2004, and \$6.0 million in 2005. FPL has
23 estimated this cost based on: a) prorating/scaling a leading vendor's
24 budgetary estimate; b) prorating/scaling a recent firm-price proposal
25 for oil & coal fired units for various plant sizes & applications; and c)

1 escalated 1997 firm-price for the Manatee reburn conversion. O&M
2 costs are estimated to be \$250,000 in 2004, with an on-going O&M
3 cost of \$500,000 per year thereafter.

4

5 **Q. Has FPL estimated how much will be spent on the Project in**
6 **2003?**

7 **A.** FPL's capital cost estimate for 2003 is \$5 million, which is for
8 engineering related costs. The projected in-service date for Manatee
9 Unit 1 is April 2004, and for Manatee Unit 2 is October 2004, therefore,
10 no capital costs are included for recovery in 2003. FPL has not
11 projected to incur any O&M costs in 2003.

12

13 **Q. How will FPL ensure that the costs incurred are prudent and**
14 **reasonable?**

15 **A.** FPL performed a cost/benefit analysis of proven technologies and
16 determined that the reburn process is the most cost-effective
17 alternative to achieve significant reductions in NOx emissions from
18 Manatee Units 1 and 2. FPL is currently preparing a formal request for
19 proposal, which includes pricing options for turnkey and
20 engineering/material to ensure the selection of the best offer.

21

22 **Q. What alternatives did FPL consider?**

23 **A.** FPL considered the following NOx control technologies for the
24 Manatee Units;

	<u>Technology</u>	<u>Status</u>
1		
2	Overfire Air (OFA)	Not effective in current configuration
3		
4	Reburning	Best option
5		
6	Selective Non-Catalytic	Not feasible – high operating cost
7	Reduction (SNCR)	
8		
9	Selective Catalytic	Not Feasible-excessive capital & O&M costs
10	Reduction (SCR)	

11

12 **SPILL PREVENTION, CONTROL, AND COUNTERMEASURES PROJECT**

13 **– SPCC**

14

15 **Q. Please describe the law or regulation requiring this Project.**

16 **A.** The regulation is promulgated under the authority of the Clean Water
 17 Act and is published in Title 40 Code of Federal Regulation Part 112;
 18 Oil Pollution Prevention and Response; Non-Transportation-Related
 19 Onshore and Offshore Facilities; Final Rule (see Exhibit A, Document
 20 RRL-3). The rule is more commonly known as the Spill Prevention
 21 Control and Countermeasures (SPCC) Plan regulation or SPCC Rule.
 22 The final rule was published in the Federal Register (67 Fed. Reg.
 23 47042) on July 17, 2002. The effective date of the regulation is August
 24 16, 2002.

25

1 **Q. How does this new law or regulation affect FPL?**

2 A. FPL facilities that meet the general applicability standards as specified
3 in the revised SPCC rule must comply with the rule's substantive oil
4 spill prevention requirements. These FPL facilities include power
5 plants, fuel oil terminal facilities, substations, recycling & distribution
6 centers, and some service centers and office buildings. The rule
7 clarifies for the first time that, facilities that also use oil in equipment
8 such as transformers, turbine lube oil systems, and hydraulic oil
9 systems are also subject to the rule and as such must also prepare
10 and implement SPCC Plans.

11

12 **Q. Please provide a summary of the SPCC requirements that apply**
13 **to FPL's SPCC regulated facilities.**

14 A. Oil-filled electrical equipment such as transformers, and electrical
15 cable systems that could discharge to navigable waters must have
16 appropriate containment and/or diversionary structures to prevent
17 such a discharge. Bulk storage containers including piping must be
18 provided with sufficiently impervious secondary containment (i.e.,
19 containment in which any discharge will not escape the containment
20 system before cleanup occurs). Bulk storage containers include any
21 container 55-gallons & greater.

22

23 Containment must be designed for the entire capacity of the largest
24 single tank/container and have sufficient freeboard to contain
25 precipitation. Expected impacts include diesel fuel storage tanks,

1 turbine lube oil storage tanks and systems without sufficiently
2 impervious containment, and regulated piping outside of secondary
3 containment.

4

5 Tank truck unloading areas must be provided with a method of
6 secondary containment that contains the largest compartment of a
7 tank truck. The revised rule also requires that an interlock warning light
8 or physical barrier system, warning signs, wheel chocks, or vehicle
9 break interlock system in loading/unloading areas be provided to
10 prevent vehicles from departing before complete disconnection of
11 flexible or fixed oil transfer lines.

12

13 SPCC plan modifications will be required for existing facility SPCC
14 Plans to address new requirements (e.g., a new PE certification to
15 address applicability of industry standards, facility diagram indicating
16 the location and contents of oil storage containers/tanks, piping &
17 transfer stations, etc.).

18

19 Integrity testing of storage tanks must be conducted on a regular
20 schedule or when materials repairs are conducted.

21

22 Storage tanks must be provided with one or more devices to alert
23 operators of the level in the tanks (e.g., high level alarms with gauges,
24 high-level pump cutoff device, etc).

25

1 All buried piping installed after August 16, 2002, must have protective
2 wrappings and coating and be provided with cathodic protection.
3 Facilities must establish a warning system (e.g., warning signs) to
4 warn all vehicles entering the facility to be sure that no vehicle will
5 endanger aboveground piping or other oil transfer operations.

6
7 The facilities' drainage systems must be designed from undiked areas
8 with a potential for a discharge (e.g., piping located outside
9 containment walls) to flow to ponds, lagoons, or catchment basins
10 designed to return oil to the facility. If not engineered in this fashion,
11 the final discharge of all ditches in the facility must be equipped with a
12 diversion system to retain oil in the event of an uncontrolled discharge.

13
14 **Q. Has FPL estimated the cost of the proposed Project?**

15 **A.** FPL's capital cost estimate for the SPCC Project is \$19.4 million to be
16 incurred in 2003 through 2005. Estimated O&M costs are \$211,000 to
17 be incurred in 2002 through 2003.

18

19 **Q. Has FPL estimated how much will be spent on the Project in**
20 **2002?**

21 **A.** In the October – December 2002 timeframe, FPL has estimated to
22 incur \$36,000 of O&M costs associated with pre-engineering work for
23 drainage in the containment areas.

24

1 **Q. Has FPL estimated how much will be spent on the Project in**
2 **2003?**

3 **A.** FPL has estimated \$2.0 million of capital costs and \$175,000 of O&M
4 costs to be spent in 2003.

5

6 **PIPELINE INTEGRITY MANAGEMENT PROGRAM (PIM) PROJECT**

7

8 **Q. Please briefly describe the PIM project.**

9 **A.** On August 9, 2002, FPL filed its Estimated/Actual True-up for the
10 period January 2002 through December 2002 which included FPL's
11 request for recovery of the PIM Project through the ECR.

12

13 Per the U.S. Department of Transportation Regulation 49 CFR Part
14 195, operators with 500 or fewer mile of regulated pipelines are
15 required to establish a program for managing the integrity of pipelines
16 that could affect high consequence areas if a leak occurs. The
17 objective of this requirement is to improve the integrity of pipeline
18 systems in the U.S. in order to protect public safety, human health,
19 and the environment.

20

21 FPL currently owns four hazardous liquid pipelines: the Martin 18 inch
22 pipeline, the Martin 30 inch pipeline, the Manatee 16 inch pipeline, and
23 the Dania Spur 8 inch pipeline. These four pipelines were included in
24 the PIM Project filed on August 9, 2002.

25

1 **Q. Please describe the change to the PIM Project which FPL is**
2 **proposing.**

3 A. The Dania Spur Pipeline has been removed from the PIM Project.
4 The Dania Spur Pipeline was determined to be non-jurisdictional by
5 the U.S. Department of Transportation Office of Pipeline Safety (OPS),
6 based on the following conditions that are exempt under 49 CFR Part
7 195.1: The Dania Spur pipeline is operated as a low stress pipeline
8 which serves manufacturing facilities such as power generation, is less
9 that 1 mile in length, and does not cross an offshore area of a
10 waterway currently used for commercial operation.

11
12 This determination is documented in a letter from the USDOT OPS
13 dated January 10, 2001. If any of the specified conditions change,
14 FPL would be immediately subject to the provisions of 49 CFR Part
15 195. OPS strongly recommended that FPL operate the pipeline as if it
16 was regulated, and FPL has made a corporate commitment to do so.

17

18 **Q. Has FPL revised the cost estimates of the PIM Project?**

19 A. Yes. The estimated costs of the PIM Project have been revised due to
20 the removal of the Dania Spur pipeline from the Project. Total project
21 costs are now estimated to be \$1,140,000 through 2004. Capital costs
22 associated with metering equipment, piping changes and drainage
23 structures for the Martin 30" pipeline are now estimated to be
24 \$810,000 for 2003. O&M costs for 2003 are now estimated to be
25 \$200,000 and O&M costs for 2004 are now estimated to be \$50,000.

1 In 2002, FPL now projects O&M costs for the development of the
2 written PIM plan and the identification of the high consequence areas
3 to be \$80,000.

4

5 **Q. Does this conclude your testimony?**

6 **A. Yes, it does.**

1 BY MR. BUTLER:

2 Q Mr. LaBauve, would you please summarize your
3 testimony?

4 A Yes. My testimony today is offered in support of
5 three new compliance issues that FPL has to address, the
6 pipeline integrity management rule, the new spill prevention
7 control and countermeasure rule, and the Manatee reburn NOx
8 technology control project.

9 First, on the pipeline integrity management rule.
10 This is a rule that was promulgated on January 15th of this
11 year and requires those operators of pipelines which transport
12 hazardous liquids that could affect a high consequence area as
13 defined by the regulations to develop a program to ensure the
14 integrity of that pipeline. The objective of this rule is to
15 protect the local environment as well as the public safety.

16 FPL owns three pipelines which are subject to this
17 rule; the Martin 30-inch pipeline, the Martin 18-inch pipeline,
18 and the Manatee 16-inch pipeline, all of which transport Number
19 6 fuel oil. These pipelines intersect or are adjacent to high
20 consequence areas which are defined by the Act and include
21 ecologically sensitive areas which include wetlands, endangered
22 species and endangered plants.

23 MS. STERN: Staff objects to this.

24 CHAIRMAN JABER: And what would be the nature of your
25 objection?

1 MS. STERN: This isn't in his testimony.

2 CHAIRMAN JABER: So outside the scope.

3 Mr. Butler, your response.

4 MR. BUTLER: I think that it is certainly material
5 that is the direct subject of his testimony. But if you would
6 like, he can just shorten his summary and move directly to
7 cross examination.

8 Mr. LaBauve, why don't you just summarize very
9 quickly --

10 CHAIRMAN JABER: Wait a minute. Hang on.

11 MR. BUTLER: I'm sorry. Go ahead.

12 CHAIRMAN JABER: Mr. Butler, I need you to show me
13 exactly where in his testimony it is.

14 MR. BUTLER: I'm not sure exactly what you are
15 referring to that, you know, what is in it, but if you look at
16 Pages 5 -- 6 in particular of his estimated actual true-up
17 testimony, there is a substantial discussion of the nature of
18 the threats that this program is responding to, the high
19 consequence areas and the need to take the steps that he was
20 describing with respect to high consequence areas. I'm not
21 quite sure what the objection to what he is testifying to is.

22 CHAIRMAN JABER: The objection was that what he was
23 summarizing is outside the scope of the direct testimony. And
24 I am going to sustain the objection unless you show me exactly
25 where in the testimony he is referring.

1 MR. BUTLER: Well, that would be my answer to your
2 question, that he was talking about the subject of the program
3 involving the identification of high consequence areas and then
4 taking steps with respect to high consequence areas, which is
5 what this is talking about. So I don't have an answer beyond
6 that to your question.

7 CHAIRMAN JABER: I am going to sustain the objection.
8 But, Mr. LaBauve, what I need you to do is make sure your
9 summary is directly a summary from your testimony. It needs to
10 stay within the scope of your testimony. Go ahead.

11 THE WITNESS: Yes, Madam Chair. It is FPL's position
12 that the rule requires by November 18th that we do an
13 assessment of whether these pipelines intersect or are adjacent
14 to high consequence areas. That process has been completed by
15 November 18th, and we have concluded that we will be subject to
16 this rule and we will have to develop a program which will
17 include baseline assessments for these pipelines, necessary
18 remedial requirements, a continual process to assess the
19 integrity of these pipelines. We need to have measures in
20 place to protect high consequence areas including leak
21 detection. We will have to measure the program's effectiveness
22 and we will also have to do a certain amount of recordkeeping.

23 The second project that is the subject of my
24 testimony today is the new spill prevention control and
25 countermeasure rule which was published in July of this year.

1 FPL for years has been having to comply with SBCC requirements
2 at many of its facilities. What this particular rule does is
3 it expands and adds new incremental requirements that
4 additional facilities that FPL owns must comply with as well as
5 existing facilities. We will be required to develop SBCC plans
6 and we will also have to develop new containment and
7 diversionary structures for many of our equipment. We will
8 also have to do a certain amount of work for our bulk storage
9 tank containers as well as our tank truck unloading areas.

10 The last project which is the subject of my testimony
11 today is the Manatee reburn project. EPA is required to set
12 ambient ozone standards which particular counties and regions
13 of the country have to comply with across the country. There
14 has been some concern across the country that local areas
15 either cannot or will not be able to meet these local ozone
16 standards. In the 2002 Legislature an amendment was passed to
17 the environmental cost-recovery statute to provide for
18 cost-recovery for expenses incurred by an electric utility
19 entered into pursuant to an agreement with the Department of
20 Environmental Protection when that agreement has been entered
21 to for the exclusive purpose of ensuring compliance with the
22 local ozone standards.

23 For some years there has been some concern that the
24 Tampa area has not been able to meet compliance with ozone
25 standards and that it may not be able to meet compliance with

1 those standards in the future. As a result, this could have
2 some implications for our Manatee Power Plant which is in that
3 local area. Absent further reduction efforts of NOx emissions,
4 there could be an impact on ozone formation in that area.

5 As a result, in July of this year FPL entered into
6 negotiations with the Department of Environmental Protection to
7 discuss the possibility of doing a reburn project at the
8 Manatee Power Plant pursuant to this statute. That agreement
9 was completed in September of this year, agreeing that FPL
10 would install reburn technology at the plant in an effort to
11 ensure that the local area maintains compliance with the ozone
12 standards. We feel that this is a prudent measure to avoid
13 nonattainment of the area and further more expensive controls
14 at a later date.

15 That concludes my summary.

16 CHAIRMAN JABER: Thank you, Mr. LaBauve.

17 MR. BUTLER: I would tender Mr. LaBauve for
18 cross-examination.

19 CHAIRMAN JABER: Thank you. Any questions on this
20 side? Mr. Vandiver.

21 CROSS EXAMINATION

22 BY MR. VANDIVER:

23 Q Good morning, Mr. LaBauve.

24 A Good morning.

25 Q At Page 3 of your testimony you discuss the Manatee

1 reburn project, is that correct?

2 A That is correct.

3 Q There you state that Manatee County is located in the
4 vicinity of the Tampa Bay air shed, is that correct?

5 A That is correct.

6 Q And you state that you were making reductions to the
7 Manatee County plant that is in the vicinity of the air shed.
8 Can you explain to me how that works? In other words, the
9 Manatee plants are not located in the air shed, but they are in
10 the vicinity of the air shed. How does that work with the EPA?

11 A Historically the definition of air shed, which is a
12 loosely defined term, has changed over time. There was a point
13 in time when there was a belief in the scientific community
14 that ozone formation was a very localized event that might
15 occur in one particular county or two particular counties.

16 As a result, in previous formations of regulations
17 they have focused strictly on the Hillsborough and Pinellas
18 County areas as being the areas of concern. Since then the
19 area of concern has expanded to the entire west central Florida
20 interstate air quality control region which includes Citrus,
21 Hardee, Hernando, Hillsborough, Levy, Manatee, Pasco, Pinellas,
22 Polk, and Sumter.

23 And it is a recognition that ozone is a regional
24 issue. And with Manatee Power Plant being within that region
25 it is a significant source of NOx emissions affecting the whole

1 localized area and that whole air shed.

2 Q And I believe you testified that you believe this
3 technology is the cheapest technology. Is this technology
4 cheaper than some of the other options you looked at?

5 A We do believe that this is the most cost-effective
6 technology for this particular power plant.

7 MR. VANDIVER: That is all the questions I have.
8 Thank you.

9 CHAIRMAN JABER: Ms. Kaufman? Staff?

10 MS. STERN: Okay.

11 CROSS EXAMINATION

12 BY MS. STERN:

13 Q Good morning, Mr. LaBauve. We have a few questions
14 for you about the pipeline integrity management program. And
15 we will be referring to your August 9th testimony, so if you
16 would like to have that handy I think it would be helpful.
17 Okay?

18 A Yes.

19 Q The pipeline integrity management program is required
20 by a recent amendment to a rule of the U.S. Department of
21 Transportation, correct?

22 A Correct.

23 Q And the Department of Transportation regulates the
24 transport of hazardous substances in pipelines, correct?

25 A That is correct; hazardous liquids.

1 Q Hazardous liquids. In your testimony isn't it
2 correct that you state that the purpose of the rule is to
3 protect public safety, human health, and the environment?

4 A That is correct.

5 Q Okay. The rule makes reference to certain
6 geographical areas called high consequence areas, correct?

7 A That is correct.

8 Q And generally speaking, isn't it correct that high
9 consequence areas include environmentally sensitive areas,
10 commercially navigable waterways, and populated areas?

11 A That is correct.

12 Q Okay. You mentioned that FPL has three pipelines
13 that are subject to this rule, the Martin 18-inch, the Martin
14 30-inch, and the Manatee. Could you give us the approximate
15 length of each of those pipelines? It is in one of our
16 stipulated exhibits, Stipulated Exhibit Number 4.

17 CHAIRMAN JABER: You need to be more specific.

18 MS. STERN: It is the response to Interrogatory
19 Number 4. There is a table. It's on Page 7.

20 THE WITNESS: The Martin 18-inch pipeline, its length
21 is 35 miles; the Martin 30-inch pipeline is three miles; and
22 the Manatee 16-inch pipeline is 14 miles.

23 BY MS. STERN:

24 Q So there is roughly between 50 and 55 miles of
25 pipeline subject to this rule, correct?

1 A Correct.

2 Q Thank you. Now, would you turn to your August 9th
3 testimony, Page 4, and take a look at Lines 5 and 6.

4 A Okay.

5 Q You say there that FPL is required to develop a
6 written pipeline integrity management program, is that correct?

7 A That's correct.

8 Q So is it correct that the project that FPL is
9 referring to as the pipeline integrity management program
10 project requires that a report be written?

11 A The rule requires that a program be developed.

12 Q Okay. And the pipeline integrity management program
13 project, to accomplish that project will FPL be writing a
14 report?

15 A We will be developing a program that will include all
16 of the elements as required by the rule, which include the nine
17 elements listed in the answer to that particular interrogatory
18 that you are referring to.

19 Q Okay. Now, on your testimony on Page 4, okay, you
20 list nine items, nine tasks that FPL includes in the pipeline
21 integrity management program project, correct?

22 A Correct.

23 Q Okay. Are you asking, is FPL asking to recover costs
24 for anything other than those nine tasks?

25 A We are asking for recovery of developing a program

1 that includes completion of all of those tasks required by the
2 program, which includes a certain amount of program preparation
3 but also a certain amount of activities that have to go on in
4 regard to the pipeline, like certain capital changes that have
5 to be made to them.

6 Q Okay. I understand your answer to mean that FPL
7 through its petition to recover costs for this project is
8 asking for approval to recover costs that might be incurred to
9 do something other than these nine tasks.

10 A No, it would be in fulfillment of these tasks. In
11 other words, Number 5 requires a continual process of
12 assessment and evaluation of pipeline integrity. That is more
13 than just merely developing a report. We have to verify that
14 each segment has adequate leak protection on that segment. And
15 those that do not, leak detection has to be added to that
16 segment.

17 Q Okay. So FPL is not just asking for the
18 cost-recovery to put together a management plan, it is asking
19 for cost-recovery to implement that plan, as well, is that
20 correct?

21 A That is correct.

22 Q Okay. Thank you. Now, to put together the plan and
23 to implement the plan -- well, let me back up. Does the Rule
24 49 CFR 195.452 require FPL to do anything more than put
25 together the plan and implement the plan?

1 A No.

2 Q Okay. The costs that FPL is asking to recover at
3 this point, though, is it correct that they stem primarily
4 toward developing the plan, not toward implementing the plan?

5 MR. BUTLER: I'm sorry, Ms. Stern, just for
6 clarification, are you referring to the costs that are sought
7 for 2002 and 2003?

8 MS. STERN: Yes, I am.

9 THE WITNESS: I can describe for you the three
10 significant cost areas that we have for this program. The
11 first of which is costs associated with developing the plan and
12 maintaining that plan, and that will result in O&M costs in the
13 year 2002 going forward. There is a regular O&M expense as a
14 result of this.

15 The second area, most significant area of costs has
16 to do with the baseline assessment, and that is a process
17 whereby you have to go to each pipeline segment and essentially
18 use a device that goes through that pipeline. It is actually
19 called a pig, and it is sent through the pipeline to determine
20 the integrity of the pipeline walls. And that is a process
21 that has to be done initially, but also has to be updated every
22 five years.

23 The third most significant cost has to do with leak
24 detection, and that is looking at each pipeline segment and
25 assuring that it has the proper detection devices to evaluate

1 whether leaks are occurring in that pipeline segment.

2 BY MS. STERN:

3 Q Okay, I understand. So what FPL -- if FPL's petition
4 is approved with respect to this project -- well, FPL asked in
5 its petition to recover costs for all activities FPL must do to
6 comply fully with the DOT rule?

7 A That is correct.

8 Q Okay, thank you. I would like to go through the nine
9 tasks you listed. Well, not through all them, though through
10 most of them, and get some clarification on what the scope of
11 each of those tasks is. I would like to start with the Task
12 Number 2. That is on Page 4 of your August 9th testimony. It
13 starts at Line 8 at the baseline assessment plan.

14 Now, your baseline assessment plan includes -- could
15 you explain what the baseline assessment plan includes?

16 A The baseline assessment plan is the evaluation
17 process that I described in my previous answer which entails
18 the initial evaluation of determining the integrity of the
19 pipeline by using a device that goes through the pipeline to
20 determine the integrity of the pipeline's walls, and that gives
21 you a baseline from which your program starts.

22 Q And you have to do that like in perpetuity?

23 A You have to do it initially in the program, I think
24 the first compliance date is 2005, and then it has to be
25 updated. Pursuant to Item Number 5 on that interrogatory

1 answer it has to be updated every five years.

2 Q Okay. And it has to be updated every five years
3 forever?

4 A According to the regulation as long as you continue
5 to use that pipeline to move hazardous liquids.

6 Q Okay, thank you. Now, if you would look at Task 3
7 that starts on Line 9 of your testimony there on Page 4. Would
8 you please give an overview of the work required to accomplish
9 that task?

10 A Task Number 3 requires an information analysis that
11 integrates all available information about the integrity of the
12 entire pipeline and the consequences of a failure. And
13 essentially what is required there is a complete risk
14 assessment and evaluation of the pipeline, what its baseline
15 shows, where it goes through, what the impacts could be of a
16 spill, what the results and remedial actions could be in the
17 event that a spill does occur, and all of the information that
18 is all wrapped up into a report about this particular pipeline
19 segment.

20 Q Okay. On Page 5 of your testimony, Line 4, you
21 mention that a periodic risk analysis has to be conducted.
22 What is involved in doing a risk analysis and how often will
23 FPL have to do them?

24 A If you read the rest of that answer it describes that
25 it has to determine the prevention of damage to the pipeline,

1 it has to determine the risk of what type of environmental
2 species or wetlands areas that could be affected by a spill
3 event. You have to determine whether there is any potential
4 for corrosion, defects, operator error. You have to determine
5 what the consequences of a failure may be.

6 Q I understand that. I guess what I was trying to get
7 at is to do this risk analysis does that involve actual data
8 collection or is it a synthesis of data that is already
9 available?

10 A Well, in the initial determination you have to go out
11 and gather data that is going to go into your initial risk
12 analysis. As you update that, situations could change along
13 the path of your pipeline which you will have to reassess how
14 those changes occur.

15 Q What type of data do you have to collect?

16 A You have to collect data about the surrounding area
17 that it is going through. You have to collect data about the
18 pipeline itself. You have to collect data about species. You
19 have to collect data about developments in the area, water
20 bodies that it goes over, navigable bodies that are nearby.

21 Q Okay. And how often will you have to redo this risk
22 analysis?

23 A Number 5, task five on the previous question
24 identifies a continual process of assessment evaluation of the
25 pipeline integrity has to take place, and that is a process

1 that occurs every five years.

2 Q Okay. So that is tied to the baseline assessment?

3 A Correct.

4 Q And that occurs every five years for as long as FPL
5 operates the pipeline?

6 A Correct.

7 Q And does FPL anticipate stopping operation of the
8 pipeline in the foreseeable future?

9 A Not to my knowledge.

10 Q Okay. You indicate -- I am also looking at Page 5
11 now where you describe the information analysis. Could you
12 tell me how a pipeline segment is defined, what exactly is a
13 pipeline segment?

14 A The way that we have defined a pipeline segment is
15 between what we call block valves, because that is the point of
16 control that we have to control an individual segment on our
17 pipelines. And so you have points along the -- let's say the
18 35-mile path that it would go from one block valve to the other
19 where the segment could actually be cut off in the event that
20 you were to determine that there was a leak, you could actually
21 segregate that segment.

22 Q Uh-huh. Now, my understanding from reading your
23 testimony on Page 5 is that you have to do a risk analysis of
24 the entire pipeline in order to then go back and complete a
25 risk analysis segment-by-segment, is that correct?

1 A Each segment has to be individually determined how it
2 impacts a local high consequence area. And so you gather all
3 the initial data, and the data is being gathered by segment.

4 Q I see. If a segment wasn't anywhere near a high
5 consequence area, would you have to do a risk analysis on it?

6 A Not if it did not either intersect a high consequence
7 area or by the definition of the regulation was adjacent to and
8 thereby impacting a high consequence area. If a pipeline
9 segment was to determine, let's say, to go somewhere near a
10 water body, but let's say it was downstream of that water body
11 and had no chance of having an oil flow, an oil leak make its
12 way to the water body, then it would probably be excluded from
13 having to have a program.

14 Q So, FPL can't really -- what happens if the habitat
15 changes, do you have to keep track of whether the habitat
16 changes, you know, as time goes on?

17 A Every five years you have to do a new continuous
18 assessment.

19 Q Do you have to go out and remap the pipelines to see
20 where the high consequence areas are, if they have changed, if
21 population centers have grown up where there were none, that
22 type of thing?

23 A That is my understanding. These mapping tools and
24 techniques are constantly being updated and you would have to
25 use the most current data.

1 Q Okay, thank you. Now, on Page 5, Lines 12 and 13, in
2 your discussion of the information analysis you refer to
3 pertinent data gathered from other inspections, tests,
4 surveillance and patrols. Is this data already available that
5 FPL is currently collecting?

6 A Not in regard to high consequence areas, no.

7 Q Well, you need this pertinent data, correct?

8 A Yes.

9 Q And it already exists, correct?

10 A There is data available on the pipeline.

11 Q Okay. I'm just wondering, you refer to pertinent
12 data gathered from inspections, tests, surveillance and
13 patrols.

14 A We don't have people that are out in the field
15 determining whether a local wetland is either changing form or
16 being affected by a pipeline. In anything having to do with a
17 high consequence area there is no current data on that. There
18 is data on the pipelines and how much oil flows through it.
19 There is regular inspection reports as people verify that no
20 leaks are occurring on that pipeline.

21 Q And is this being already recovered through base
22 rates?

23 A To the extent that it is included in the previous
24 MFRs, yes, it would be.

25 Q Okay.

1 A But the work of this particular rule is all new
2 requirements. These are all new incremental requirements being
3 required of the company to implement this particular program.

4 Q I would like to get a little more explanation of Task
5 4 that is described. It is on Page 4 of your August 9
6 testimony, it starts at Line 10, the criteria for determining
7 remedial actions to address integrity issues raised by the
8 assessments and information analysis. Is this just sitting
9 down and setting up some criteria? Is this all brain work so
10 to speak?

11 A I think on that particular item, the initial work on
12 it would be an evaluation process, and it would be gathered
13 from the information that would come from the baseline
14 assessment. And all the other information that you would
15 gather where you would determine whether a particular
16 segment -- let's say after you run the pig through the pipeline
17 and you would determine that the wall thickness had become
18 insufficiently thin such that you could have a leak, then that
19 would be part of your process to develop whatever remedial
20 actions you need to take to fix that particular pipeline.

21 Q Is this something that FPL has to do just once to
22 comply with the U.S. DOT rule?

23 A Well, in the initial assessment we will have to come
24 up with the criteria and evaluate whether any remedial
25 requirements are required of these particular pipeline

1 segments. We are at aware at this point in time that there are
2 any remedial requirements. But once we make that determination
3 and the initial adjustments are made, in the essence of the
4 rule what it wants you to do is to constantly look at this
5 pipeline. It is the objective of the rule to make sure that we
6 are constantly looking to make sure that it is not leaking. So
7 we will have to look at this each time we go through our
8 process.

9 Q Every five years?

10 A Yes.

11 Q For as long as FPL operates the pipeline?

12 A Yes.

13 Q What if remedial actions are needed, is that
14 something that FPL has included in its petition for this
15 project, cost-recovery of those things? If we approve the
16 petition, does FPL think that the cost of implementing remedial
17 actions is also covered by that petition?

18 A Well, we haven't determined at this point whether
19 there would be any remedial actions required. If indeed there
20 were remedial actions required, we would have to do an
21 evaluation of what those requirements are and determine whether
22 they are appropriate environmental cost-recovery costs in
23 compliance with the statute that are not included in base
24 rates. And if so, there is the potential that it could be an
25 item that we would file for.

1 Q Okay. So, yes or no, does FPL's petition include
2 costs for implementing remedial actions?

3 A At this time we haven't identified any remedial
4 actions.

5 Q Does the petition include the costs for implementing
6 remedial actions?

7 MR. BUTLER: I'm sorry, I have to object to this
8 questioning because we petitioned for this in connection with
9 the petition for cost-recovery here. Are you asking whether
10 the 2002 and 2003 costs include costs for remedial measures,
11 that is what he is trying to answer.

12 CHAIRMAN JABER: Mr. Butler, why don't you address
13 your objection to me and tell me exactly what your objection
14 is.

15 MR. BUTLER: My objection is that there is an absence
16 of predicate for the question.

17 CHAIRMAN JABER: Okay. Ms. Stern.

18 MS. STERN: Well, I can lay a predicate.

19 CHAIRMAN JABER: Let's do that. Rephrase your
20 question and lay the proper foundation and we will go forward
21 from there.

22 MS. STERN: Okay.

23 BY MS. STERN:

24 Q FPL had to -- do you agree that FPL filed a petition
25 when it submitted your August 9th testimony to request approval

1 for the pipeline integrity management project?

2 A Yes.

3 Q Did that approval include recovering costs for
4 remedial actions to the pipeline?

5 A In my view that petition would entail any cost
6 involved with complying with this new environmental compliance
7 requirement.

8 Q Any cost --

9 A At this particular time the costs that we have
10 identified are the costs of developing the program and the
11 costs that we can foresee that are needed to comply with the
12 regulations requirements. There are nine different sections of
13 this program that have to be developed and fully evaluated that
14 could lead to other compliance requirements that we don't know
15 at this time. And we have not put those costs in, but we have
16 sought to recover and have approved full recovery for any
17 compliance efforts we have with the regulation.

18 CHAIRMAN JABER: Mr. LaBauve, let me try to make sure
19 I understand what your response is so that we can move this
20 along perhaps. There will be recurring costs and there are
21 nonrecurring costs. If I understand your petition correctly
22 and what you think you have included in your petition you have
23 identified the nonrecurring costs and the reoccurring costs
24 that you are aware of. Depending on the implementation of the
25 program and what you find in your baseline assessment and in

1 your ongoing assessment, there may be additional costs, is that
2 correct?

3 THE WITNESS: Yes, Madam Chairman.

4 CHAIRMAN JABER: And is it fair to say that it would
5 be your position to the degree there are costs associated with
6 any remedial actions that you would -- it is your position that
7 you would petition for cost-recovery in fuel rate proceedings
8 and cost-recovery proceedings going on next year, year after,
9 depending on what it is you find and when you find it?

10 THE WITNESS: Yes, Madam Chairman.

11 CHAIRMAN JABER: Ms. Stern, do you have additional
12 questions?

13 MS. STERN: Yes, I would like to follow up on that.

14 COMMISSIONER PALECKI: May I ask --

15 CHAIRMAN JABER: Commissioner Palecki.

16 COMMISSIONER PALECKI: Just so I'm clear, you are
17 asking that we philosophically agree that these costs are
18 recoverable. That does not mean that the remedial costs that
19 may or may not come up are being requested for recovery in this
20 period? In other words, you will, again, submit a request next
21 year, the year after, whenever these remedial costs come up for
22 recovery?

23 THE WITNESS: That is correct, Commissioner Palecki.

24 COMMISSIONER PALECKI: So you are asking us for a
25 philosophical decision as to whether we agree that these types

1 are costs are appropriately recovered?

2 THE WITNESS: Yes.

3 COMMISSIONER PALECKI: Thank you.

4 MS. STERN: Just one follow-up question.

5 BY MS. STERN:

6 Q You are asking for a philosophical decision that all
7 costs FPL incurs in complying with 49 CFR 195.452 are
8 recoverable?

9 A You are requesting that I speculate on what those
10 future costs could be.

11 Q No, I'm not asking about the costs. I'm asking
12 become how far the approval extends. Are you asking for
13 approval of all the compliance costs that may ever come up with
14 the statute, the conceptual approval?

15 A We are asking for conceptual approval. But to give
16 you an example, if next year we were to determine one of these
17 tasks were to require certain manpower efforts on behalf of our
18 company, and let's say that meant putting two or three people
19 doing a particular job, we would not come in and ask for
20 recovery of that because workforce is already included in base
21 rates. So we wouldn't come in and ask for that, even though it
22 is a compliance obligation, it is already included in base
23 rates to absorb that.

24 But to the extent the future program includes new
25 compliance requirements that we have to meet that is not in

1 base rates, each annual filing would include those costs that
2 we have now discovered and would come before Staff and the
3 Commission for approval.

4 Q Okay, thank you.

5 CHAIRMAN JABER: Ms. Stern, let me interrupt you one
6 more time.

7 Now in that approval of the philosophical approach,
8 that is not to say FPL's position would be that in addressing
9 the remedial actions this Commission couldn't look at the
10 prudence of the action that you took or the individual costs
11 that you had to incur, right? You are not suggesting that any
12 sort of prudence review would not occur?

13 THE WITNESS: Absolutely not, Madam Chairman. You
14 always have the review of prudence of our costs.

15 CHAIRMAN JABER: Thank you. And then with respect to
16 how you seek recovery for those costs, sitting here today you
17 are not sure if you would seek recovery through the clause
18 proceedings or through a rate base review proceeding, correct?

19 THE WITNESS: That is correct.

20 CHAIRMAN JABER: You kind of have to wait and see
21 what the remedial action is, right?

22 THE WITNESS: That is correct.

23 CHAIRMAN JABER: Ms. Stern.

24 BY MS. STERN:

25 Q I have some questions about Task 5 of the program

1 that starts -- it is listed on Page 4 of your August 9th
2 testimony. It starts at Line 12, a continual process of
3 assessment and evaluation of pipeline integrity. How is that
4 different than the continual baseline assessment and the
5 continual risk analysis?

6 A That is one in the same. The baseline assessment is
7 your very first assessment. It is to draw your baseline. And
8 then from that as you continue to implement your program you
9 have a continual program where you update that baseline.

10 Q Okay. So this is the every five years?

11 A Correct.

12 Q Okay. All right. Task 6, the identification of
13 preventative and mitigative measures to protect the high
14 consequence areas. Could you explain how you identify those
15 kind of measures before you know necessarily what is going to
16 happen?

17 A What you would do in this particular situation is
18 after we -- can I refer to the report that we received?

19 Q No.

20 CHAIRMAN JABER: Well, thank you, Ms. Stern.

21 (Laughter.)

22 MS. STERN: It is not in evidence.

23 CHAIRMAN JABER: Our staff is so good they know what
24 I'm going to say. No, you may not until we address that
25 exhibit. And I know that is awkward in terms of how you gauge

1 your answers, but if you can do that I would appreciate it.

2 THE WITNESS: Thank you, Madam Chairman.

3 MR. BUTLER: Madam Chairman, if Mr. LaBauve is
4 familiar with the report without referring to it, he certainly
5 can refer to information out of it, though, can he not?

6 CHAIRMAN JABER: Well, here is my problem with that,
7 Mr. Butler. People have not had an opportunity to
8 cross-examine on the report. I have not forgotten about the
9 report. Let me just tell you what I intend to do is take a
10 break at 11:30. And the Commissioners are not going to come
11 back until one o'clock. And from 11:30 to one o'clock I want
12 all of you and Staff to be open-minded on how that report comes
13 in.

14 Because my philosophy is err on the side of having
15 the information in, but not at the expense, Mr. Butler, of due
16 process for all the parties. So your task if you -- what is
17 it, your mission if you choose to accept it is to be creative
18 in how this report becomes an exhibit without removing anyone's
19 due process opportunities.

20 MR. BUTLER: What I was trying to get at, Madam
21 Chairman, is that Mr. LaBauve is being cross-examined as to
22 what he knows, what he has as a basis for his testimony. Now,
23 part of what he has as his basis for having, you know, sworn to
24 it here today is the full body of knowledge that he understands
25 behind it and that certainly includes the results of what

1 consultants provided him as background.

2 It seems a little artificial to say that because it
3 isn't an exhibit in the proceeding yet, if Mr. LaBauve is
4 familiar with it, somebody is asking him why do you know this
5 is the case, he can't refer to it.

6 CHAIRMAN JABER: Ms. Stern, I think the point is well
7 taken with respect to he has independent knowledge of this
8 document. Now you may want to think about how you ask your
9 questions. So why don't I let you rephrase your question and
10 let's see if we can push this along.

11 MS. STERN: Okay.

12 BY MS. STERN:

13 Q Would you describe what FPL does to identify
14 preventative and mitigating measures? What you envision FPL
15 doing when you filed your testimony?

16 A Hypothetically, if I were to receive a report that
17 described high consequence areas that the pipeline segment
18 could impact, in other words, it was uphill from a navigable
19 waterway and it had the potential that if it leaked it could
20 leak into that navigable waterway, what the evaluation may lead
21 to is that there may need to be some containment or
22 diversionary structure to keep a leak that would come out of
23 that pipeline segment from flowing downhill into a navigable
24 waterway.

25 As we look at each high consequence area that is

1 identified, and whether it be the impact on an endangered
2 species, a wetland area, a navigable waterway, a drinking
3 water, we have to determine where the pipeline is in relation
4 to that, what the potential impacts could be, and what the
5 measures could to be mitigate and minimize the impact on those
6 sensitive ecosystems.

7 Q And this is something you have to decide up front and
8 put in a plan, is that what you are saying, or is this just
9 something you do if there is an accident?

10 A No, this is something that is being required as part
11 of this plan, part of this program.

12 Q Okay. Just briefly, Items 7 and 8, the methods to
13 measure the program's effectiveness and a process for review
14 and assessment -- for review of assessment results and
15 information analysis by a person qualified to evaluate the
16 results and information. Could you explain -- those seem very
17 similar to me, could you explain what the difference is between
18 those?

19 A I think the first item would be the various tools
20 that we might use either through technology, computer graphics,
21 whatever it may be to evaluate how effective the measurement
22 and baseline techniques are working. What an accurate picture
23 it gives us of the pipeline segment. Whether we indeed are
24 protecting the high consequence areas that we are potentially
25 impacting.

1 The second one I think involves an independent review
2 by a person that would come in at some point that would review
3 all of the different information that we have gathered and
4 provide a review of the whole program. So I think the two
5 items are very similar.

6 Q So is it correct that -- I was under the impression
7 that there was like a limited time frame within which these
8 nine tasks would be completed. But, in fact, it is really
9 something that is ongoing continually, is that correct?

10 A It is ongoing continually. That is what the program
11 is all about is to continue on a constant basis to try to
12 maintain the integrity of the pipelines to prevent leaks.

13 Q Okay. I have one more question for you. It is about
14 what appears to be a discrepancy between your testimony and one
15 of Korey Dubin's exhibits on this project. And I need you to
16 refer to your September 9th testimony, and the exhibit that I
17 am going to ask you to refer to is KMD-5. Your September 9th
18 testimony, Page 13. It is about -- it is a capital expense
19 question.

20 MR. BUTLER: I'm sorry, what page again?

21 MS. STERN: Page 13. I'm looking at Lines 21 through
22 24.

23 THE WITNESS: And which exhibit did you want me to
24 refer to?

25 BY MS. STERN:

1 Q KMD-5 that was filed with the second amended
2 testimony on November 15th. It is Schedule 42-5P. It is Page
3 25 of 27 of that schedule. The page number at the bottom is
4 59.

5 A Okay.

6 Q Okay. Now, in your testimony you indicate that the
7 capital costs for the project for 2003 are \$810,000, correct?

8 A That is correct.

9 Q And if you look at Korey Dubin's Exhibit KMD-5, I am
10 looking at the last part, project projections. Estimated
11 project fiscal expenditures for the period January 2003 through
12 December 2003 are expected to be \$66,014 of capital.

13 A I see that, as well.

14 Q Okay. So, can you -- and perhaps this question is
15 better directed toward Ms. Dubin, but can you explain why this
16 discrepancy?

17 A No, I cannot.

18 Q Do you think Ms. Dubin will be able to?

19 A I think she would.

20 Q Okay, thank you.

21 MS. STERN: Thank you very much. That is all the
22 questions we have.

23 CHAIRMAN JABER: Mr. Butler and Commissioners, what I
24 would like to do now is stop with this witness and start with
25 Ms. Dubin. And let me tell you why, Mr. Butler. I am

1 purposefully holding on to your redirect and not excusing this
2 witness at this time until you all collectively discuss the
3 document that you wanted identified as an exhibit.

4 MR. BUTLER: That's fine.

5 CHAIRMAN JABER: So we are going to keep this witness
6 available for answering any questions. And if that means
7 allowing the parties to question on the document, then I would
8 like to leave that as an available tool. Okay. Staff, I would
9 encourage you to take a look at the document and think about it
10 further and get with the company and understand what it is.

11 MS. STERN: Okay.

12 CHAIRMAN JABER: Thank you, Mr. LaBauve. We will be
13 seeing you shortly.

14 MR. BUTLER: Are we going to move on then to Ms.
15 Dubin at this point?

16 CHAIRMAN JABER: Yes. And obviously, Public Counsel,
17 I didn't mean to not include you in that discussion. I would
18 hope that you and Ms. Kaufman have an opportunity to take a
19 look at that document and think about how to address it.
20 Thereupon,

21 KOREL DUBIN
22 was called as a witness on behalf of Florida Power and Light,
23 and having first been duly sworn, was examined and testified as
24 follows:

25 DIRECT EXAMINATION

1 BY MR. BUTLER:

2 Q Are you ready?

3 A Yes, I am.

4 Q Would you please state your name and address?

5 A My name is Korel M. Dubin. My business address is
6 9250 West Flagler Street, Miami, Florida 33174.

7 Q By whom are you employed and in what capacity?

8 A I am employed by Florida Power and Light Company as
9 Manager of Regulatory Issues.

10 MR. BUTLER: Chairman Jaber, indulge what is going to
11 be a little bit of a long list of testimonies here, but I need
12 to do this to get them all on the record.

13 BY MR. BUTLER:

14 Q Do you have before you the following prefiled direct
15 testimony titled, "Final True-up, January 2001 through December
16 2001," dated April 1, 2002, consisting of eight pages and an
17 attached exhibit designated KMD-1; "Estimated Actual True-up,
18 January 2002 through December 2002," dated August 9, 2002,
19 consisting of nine pages and an attached designated KMD-2;
20 "Projections, January 2003 through December 2003," dated
21 September 9, 2002, consisting of four pages and an attached
22 designated KMD-3; "Projections, January 2003 through December
23 2003 supplemental," dated November 4, 2002, consisting of four
24 pages and an attached exhibit designated KMD-4; and, finally,
25 "Projections, January 2003 through December 2003, An Estimated

1 Actual True-up January 2002 through December 2002,
2 Supplemental," dated November 14, 2002, consisting of five
3 pages and two attached exhibits designated as KMD-5 and KMD-6?

4 A Yes.

5 Q Were all these testimonies and exhibits prepared
6 under your direction, supervision, or control?

7 A Yes, they were.

8 Q Do you have any corrections to make to the testimony
9 or exhibits?

10 A No, I do not.

11 MR. BUTLER: I would ask that Ms. Dubin's prefiled
12 direct testimony be inserted into the record as though read.

13 CHAIRMAN JABER: All of Ms. Dubin's testimony shall
14 be inserted into the record as though read.

15 MR. BUTLER: Chairman Jaber, Exhibit 6 -- I'm sorry,
16 Exhibit KMD-6 and KMD-5 to Ms. Dubin's November 14 supplemental
17 testimony are revised versions of what are identified in the
18 prehearing order as KMD-2 and KMD-3 respectively. They deal
19 with the schedules supporting the 2002 estimated actual true-up
20 and the 2003 projections. KMD-1 deals with the 2001 final
21 true-up and has not been revised.

22 For the sake of simplicity what I would propose is
23 that you assign the next exhibit number, which I believe is 10,
24 to KMD-1, KMD-5, and KMD-6 as a composite exhibit, and that we
25 simply do not assign exhibit numbers or admit into the record

1 KMD-2, 3, and 4 because they have basically been superseded.

2 CHAIRMAN JABER: Okay. I think that is an excellent
3 idea. KMD-1, KMD-5, and KMD-6 will be identified as Composite
4 Exhibit 10.

5 MR. BUTLER: Thank you.

6 (Composite Exhibit 10 marked for identification.)

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1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**
2 **FLORIDA POWER & LIGHT COMPANY**
3 **TESTIMONY OF KOREL M. DUBIN**
4 **DOCKET NO. 020007-EI**
5 **August 9, 2002**

6
7

8 **Q. Please state your name and address.**

9 A. My name is Korel M. Dubin and my business address is 9250 West
10 Flagler Street, Miami, Florida, 33174.

11

12 **Q. By whom are you employed and in what capacity?**

13 A. I am employed by Florida Power & Light Company (FPL) as Manager of
14 Regulatory Issues in the Regulatory Affairs Department.

15

16 **Q. Have you previously testified in this docket?**

17 A. Yes, I have.

18

19 **Q. What is the purpose of your testimony in this proceeding?**

20 A. The purpose of my testimony is to present for Commission review and
21 approval the Environmental Estimated/Actual True-up Costs associated
22 with FPL Environmental Compliance activities for the period April 15,
23 2002 through December 31, 2002.

1 **Q. Have you prepared or caused to be prepared under your direction,**
2 **supervision or control an exhibit in this proceeding?**

3 A. Yes, I have. The exhibit consists of eight documents, PSC Forms 42-1E
4 through 42-8E, included in Appendix I. Form 42-1E provides a summary
5 of the Estimated/Actual True-up amount for the period April 15, 2002
6 through December 31, 2002. Forms 42-2E and 42-3E reflect the
7 calculation of the Estimated/Actual True-up amount for the period. Forms
8 42-4E and 42-6E reflect the Estimated/Actual O&M and Capital cost
9 variances as compared to original projections for the period. Forms 42-
10 5E and 42-7E reflect jurisdictional recoverable O&M and Capital project
11 costs for the Estimated/Actual period. Form 42-8E (pages 1 through 23)
12 reflects return on capital investments, depreciation, and taxes by project.

13
14 **Q. What is the basis for the Estimated/Actual True-up amount that FPL**
15 **is requesting for April 15, 2002 through December 31, 2002?**

16 A. In Order No. PSC-01-2463-FOF-EI, the Commission approved the
17 following stipulation concerning implementation of the provision in FPL's
18 1999 Stipulation and Settlement Agreement concerning recovery of
19 Environmental Compliance Costs:

20 FPL should be required to follow the provisions of the
21 stipulation in Order No. PSC-99-0519-AS-EI, which state:
22 "For 2002, FPL will not be allowed to recover any costs
23 through the environmental cost recovery docket. FPL may,
24 however, petition to recover in 2003 prudent environmental

1 costs incurred after the expiration of the three-year term of
2 this Stipulation and Settlement in 2002." FPL is authorized
3 to recover these prudently incurred environmental costs in
4 2003. Interest, however, will not accrue on these
5 expenses.

6

7 **Q. What is the Estimated/Actual True-up amount that FPL is requesting**
8 **for April 15, 2002 through December 31, 2002?**

9 A. The Estimated/Actual True-up amount for the period April 15, 2002
10 through December 31, 2002 is an underrecovery of \$7,799,426. Per
11 Order No. PSC-01-2463-FOF-EI, this estimated/actual true-up
12 underrecovery of \$7,799,426 does not include interest. This
13 underrecovery is shown on Form 42-1E, Line 4.

14

15 **Q. Please explain the calculation of the ECRC Estimated/Actual True-up**
16 **amount you are requesting this Commission to approve.**

17 A. Forms 42-2E and 42-3E show the calculation of the ECRC
18 Estimated/Actual True-up amount. The calculation for the
19 Estimated/Actual True-up amount for the period April 15, 2002 through
20 December 31, 2002 is an underrecovery of \$7,799,426 (Appendix I, Page
21 4, line 5 plus line 6).

1 **Q. Are all costs listed in Forms 42-1E through 42-8E attributable to**
2 **Environmental Compliance projects previously approved by the**
3 **Commission?**

4 A. Yes, with the exception of the St. Lucie Turtle Net Project filed on June 18,
5 2002, and the Pipeline Integrity Management Program Project presented
6 in the testimony of R. LaBauve.

7

8 On June 18, 2002, FPL filed a Petition for Approval of Environmental Cost
9 Recovery of the St. Lucie Turtle Net Project for the period April 15, 2002
10 through December 31, 2002. On July 3, 2002, The Commission assigned
11 Docket No. 020648-EI to the Petition. The Staff Recommendation on this
12 Docket is due August 22, 2002, and this issue will be addressed at the
13 Agenda Conference on September 3, 2002. Consistent with the Petition,
14 FPL has included projected O&M costs of \$15,000 and Capital costs of
15 \$17,975 for the period April 15, 2002 through December 2002 for this
16 project.

17

18 Additionally, FPL is requesting approval through the Environmental Cost
19 Recovery Clause of the Pipeline Integrity Management Program Project.
20 This new project is addressed in the direct testimony of FPL witness
21 Randall LaBauve, which is being prefiled contemporaneously with this
22 testimony. Based on the cost estimate contained in Mr. LaBauve's
23 testimony, FPL has included projected O&M costs of \$100,000 for the
24 period April 15, 2002 through December 2002 for this project.

1 **Q. How do the Estimated/Actual project expenditures for January 15,**
2 **2002 through December 31, 2002 period compare with original**
3 **projections?**

4 **A.** Form 42-4E (Appendix I, Page 7) shows that total O&M project costs were
5 \$351,477 or 9.1% lower than projected and Form 42-6E (Appendix I,
6 Page 10) shows that total capital investment project costs were \$89,164
7 or 2.0% lower than projected. Below are variance explanations for those
8 O&M Projects and Capital Investment Projects with significant variances.
9 Individual project variances are provided on Forms 42-4E and 42-6E.
10 Return on Capital Investment, Depreciation and Taxes for each project for
11 the Estimated/Actual period are provided as Form 42-8E, pages 1 through
12 23 (Appendix I, Pages 13 through 35).

13
14 **1. Air Operating Permit Fees (Project No. 1) - O & M**

15 Project expenditures are estimated to be \$15,852 or 0.8% higher than
16 previously projected. This variance is primarily due to fluctuations in
17 permit fees for 2002, which are based on tons of pollutants discharged
18 from the fossil fuel fired power plants during the previous year. These
19 emissions are proportionate to the amount of time and the type of fuel
20 used at each plant. These variables fluctuate daily, based on weather
21 conditions and fuel type.

22

23 **2. Continuous Emission Monitoring Systems (Project No. 3a) -**
24 **O & M**

1 Project expenditures are estimated to be \$46,593 or 11.4% lower than
2 previously projected. This variance is primarily due to a delay in the
3 payment of the CEMS software support service contract. The original
4 software vendor, KVB-Entertec, has been acquired by GE Energy Service
5 and therefore the scheduled payment was not made to KVB-Entertec.
6 FPL is in the final stages of negotiations with GE Energy Services to
7 determine the terms and conditions of the software support contract.

8

9 **3. Maintenance of Stationary Above Ground Fuel Storage Tanks**
10 **(Project No. 5a) - O&M**

11 Project expenditures are estimated to be \$20,640 or 42.8% higher than
12 previously projected. The majority of the storage tank work was
13 performed at the beginning of the year versus the latter part of the year,
14 as originally projected.

15

16 **4. RCRA Corrective Action (Project No. 13) - O&M**

17 Project expenditures are estimated to be \$25,000 or 71.4% lower than
18 previously projected. This variance is primarily due to a decrease in
19 projected costs associated with the preparation of a facility for an
20 expected assessment by the EPA, which did not occur. These
21 expenditures are contingent upon receiving notification from EPA of its
22 intent to move forward with the process.

23

24 **5. NPDES Permit Fees (Project No. 14) - O&M**

1 Project expenditures are estimated to be \$13,500 or 45.0% higher than
2 previously projected. This variance is primarily due to incurring costs for
3 a permit renewal for Cape Canaveral Plant in 2002 rather than 2003 as
4 originally projected. Additionally, payments were made for sodium
5 exemptions at Cape Canaveral Plant, Fort Myers Plant, and Port
6 Everglades Plant that were not included in the original projections.

7

8 **6. Disposal of Noncontainerized Liquid Waste (Project No. 17a)**
9 **- O&M**

10 Project expenditures are estimated to be \$33,268 or 12.7% lower than
11 previously projected. This variance is primarily due to the deferral of the
12 ash-processing project for Riviera Plant to 2003 due to conflicts in
13 scheduling the ash press. This equipment separates ash from the water
14 and is integral to the job. The ash press will not be available for use at
15 the Riviera Plant until late December 2002.

16

17 **7. Substation Pollutant Discharge Prevention & Removal -**
18 **Distribution (Project No. 19a) - O&M**

19 Project expenditures are estimated to be \$321,104 or 26.4% lower than
20 previously projected. This variance is primarily due to extremely heavy
21 rains from the end of May to mid July, which prevented the completion of
22 work related to the Distribution portion of the project. Deferrals of work in
23 the Transmission portion of the project for operational reasons (see
24 variance explanation for Project 19b below) prevented the shifting of

1 unused funding and resources to that portion of the project.

2

3 **8. Substation Pollutant Discharge Prevention & Removal -**
4 **Transmission (Project No. 19b) - O&M**

5 Project expenditures are estimated to be \$88,240 or 13.5% lower than
6 previously projected. Work on this project was deferred for operational
7 reasons.

8

9 To perform the planned project work, the equipment must be de-
10 energized (clearances obtained) and taken out of service, thereby
11 shutting down part of the electrical grid. Outside events can impact the
12 ability to remove (de-energize) this equipment from the system.

13

14 **9. Continuous Emission Monitoring Systems (Project No. 3b) -**
15 **Capital**

16 The variance of \$50,494 or 4.0% lower than projected is due to the
17 retirements resulting from the Ft. Myers and Sanford repowering projects
18 that were not included in the original projections. By reducing net plant,
19 these retirements caused both the annual depreciation and return on
20 investment to be lower than projected.

21

22 **10. Maintenance of Stationary Above Ground Fuel Storage Tanks**
23 **(Project No. 5b) - Capital**

24 The variance of \$22,867 or 1.7% lower than projected is due to the

1 retirements resulting from the Ft. Myers and Sanford repowering projects
2 that were not included in the original projections. By reducing net plant,
3 these retirements caused both the annual depreciation and return on
4 investment to be lower than projected.

5

6 **11. SO2 Allowances - Negative Return on Investment - Capital**

7 The variance of \$35,621, or 46.4% higher than projected is due to higher
8 than anticipated gains from the DOE sales of emission allowances in
9 2002.

10

11 **Q. Does this conclude your testimony?**

12 **A.** Yes, it does.

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**
2 **FLORIDA POWER & LIGHT COMPANY**
3 **TESTIMONY OF KOREL M. DUBIN**
4 **DOCKET NO. 020007-EI**
5 **SEPTEMBER 9, 2002**

6

7

8 **Q. Please state your name and address.**

9 A. My name is Korel M. Dubin and my business address is 9250 West
10 Flagler Street, Miami, Florida, 33174.

11

12 **Q. By whom are you employed and in what capacity?**

13 A. I am employed by Florida Power & Light Company (FPL) as Manager of
14 Regulatory Issues in the Regulatory Affairs Department.

15

16 **Q. Have you previously testified in this docket?**

17 A. Yes, I have.

18

19 **Q. What is the purpose of your testimony in this proceeding?**

20 A. The purpose of my testimony is to present for Commission review the
21 proposed Environmental Cost Recovery Clause (ECRC) projections for
22 the January 2003 through December 2003 period.

23

24 **Q. Is this filing by FPL in compliance with Order No. PSC-93-1580-FOF-**

1 **EI, issued in Docket No. 930661-EI?**

2 A. Yes, it is. The costs being submitted for the projected period are
3 consistent with that order.

4

5 **Q. Have you prepared or caused to be prepared under your direction,
6 supervision or control an exhibit in this proceeding?**

7 A. Yes, I have. It consists of seven documents, PSC Forms 42-1P through
8 42-7P provided in Appendix I. Form 42-1P summarizes the costs being
9 presented at this time. Form 42-2P reflects the total jurisdictional costs
10 for O&M activities. Form 42-3P reflects the total jurisdictional costs for
11 capital investment projects. Form 42-4P consists of the calculation of
12 depreciation expense and return on capital investment for each project.
13 Form 42-5P gives the description and progress of environmental
14 compliance activities and projects for the projected period. Form 42-6P
15 reflects the calculation of the energy and demand allocation percentages
16 by rate class. Form 42-7P reflects the calculation of the ECRC factors.

17

18 **Q. Please describe Form 42-1P.**

19 A. Form 42-1P provides a summary of Environmental costs being presented
20 for the period January 2003 through December 2003. Total
21 environmental costs, adjusted for revenue taxes, amount to \$19,149,944
22 (Appendix I, Page 2, Line 5a) and include \$11,049,501 of environmental
23 project costs (Appendix I, Page 2, Line 1c) increased by the estimated/
24 actual underrecovery of \$7,799,426 for the January 2002 - December

1 2002 period as filed on August 9, 2002 (Appendix I, Page 2, Line 4).

2

3 **Q. Please describe Forms 42-2P and 42-3P.**

4 A. Form 42-2P presents the O&M project costs for the projected period along
5 with the calculation of total jurisdictional costs for these projects, classified
6 by energy and demand. Form 42-3P presents the capital investment
7 project costs for the projected period along with the calculation of total
8 jurisdictional costs for these projects, classified by energy and demand.

9

10 Forms 42-2P and 42-3P present the method of classifying costs
11 consistent with Order No. PSC-94-0393-FOF-EI.

12

13 **Q. Please describe Form 42-4P.**

14 A. Form 42-4P (Appendix I, Pages 7 through 34) presents the calculation of
15 depreciation expense and return on capital investment for each project for
16 the projected period.

17

18 **Q. Please describe Form 42-5P.**

19 A. Form 42-5P (Appendix I, Pages 35 through 61) provides the description
20 and progress of environmental compliance activities and projects included
21 in the projected period.

22

23 **Q. Please describe Form 42-6P.**

24 A. Form 42-6P calculates the allocation factors for demand and energy at

1 generation. The demand allocation factors are calculated by determining
2 the percentage each rate class contributes to the monthly system peaks.
3 The energy allocators are calculated by determining the percentage each
4 rate contributes to total kWh sales, as adjusted for losses, for each rate
5 class.

6

7 **Q. Please describe Form 42-7P.**

8 A. Form 42-7P presents the calculation of the proposed ECRC factors by
9 rate class.

10

11 **Q. Are all costs listed in Forms 42-1P through 42-7P attributable to**
12 **Environmental Compliance projects previously approved by the**
13 **Commission?**

14 A. Yes, with the exception of the Pipeline Integrity Management Program
15 Project which was filed with the Commission on August 9, 2002, the St.
16 Lucie Turtle Net project which was filed with the Commission on June 18,
17 2002, and two new environmental projects, the Manatee Reburn NOx
18 Control Technology Project, and the Spill Prevention, Control, and
19 Countermeasures Project, which are presented in the testimony of R. R.
20 LaBauve.

21

22 **Q. Does this conclude your testimony?**

23 A. Yes, it does.

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**
2 **FLORIDA POWER & LIGHT COMPANY**
3 **TESTIMONY OF KOREL M. DUBIN**
4 **DOCKET NO. 020007-EI**
5 **APRIL 1, 2002**

6
7

8 **Q. Please state your name and address.**

9 A. My name is Korel M. Dubin and my business address is 9250 West
10 Flagler Street, Miami, Florida, 33174.

11

12 **Q. By whom are you employed and in what capacity?**

13 A. I am employed by Florida Power & Light Company (FPL) as the Manager
14 of Regulatory Issues in the Regulatory Affairs Department.

15

16 **Q. Have you previously testified in this docket?**

17 A. Yes, I have.

18

19 **Q. What is the purpose of your testimony?**

20 A. The purpose of my testimony is to present for Commission review and
21 approval the Environmental Compliance True-Up Costs associated with
22 FPL Environmental Compliance activities for the period January 2001
23 through December 2001.

24

1 **Q. Have you prepared or caused to be prepared under your direction,**
2 **supervision or control an exhibit in this proceeding?**

3 A. Yes, I have. It consists of eight forms. Form 42-1A reflects the final true-
4 up for the period January 2001 through December 2001. Form 42-2A
5 consists of the final true-up calculation for the period. Form 42-3A
6 consists of the calculation of the Interest Provision for the period. Form
7 42-4A reflects the calculation of variances between actual and
8 estimated/actual costs for O&M Activities. Form 42-5A presents a
9 summary of actual monthly costs for the period for O&M Activities. Form
10 42-6A reflects the calculation of variances between actual and
11 estimated/actual costs for Capital Investment Projects. Form 42-7A
12 presents a summary of actual monthly costs for the period for Capital
13 Investment Projects. Form 42-8A consists of the calculation of
14 depreciation expense and return on capital investment.

15

16 **Q. What is the source of the data which you will present by way of**
17 **testimony or exhibits in this proceeding?**

18 A. Unless otherwise indicated, the actuals data are taken from the books and
19 records of FPL. The books and records are kept in the regular course of
20 our business in accordance with generally accepted accounting principles
21 and practices, and provisions of the Uniform System of Accounts as
22 prescribed by this Commission.

23

24

- 1 **Q. What is the final true-up amount which FPL is requesting for the**
2 **twelve-month period January 2001 through December 2001?**
- 3 A. FPL is requesting an amount of \$0 for the twelve-month period ending
4 December 31, 2001. This amount is shown on Form 42-1A, Line 5. The
5 Stipulation and Settlement Agreement approved in Order No. PSC-99-
6 0519-AS-EI issued on March 17, 1999 states "For 2001, FPL will be
7 allowed to recover its otherwise eligible and prudent environmental costs,
8 including true-up amounts, up to \$6.4 million." Therefore, the ECRC
9 revenues of \$6,387,700 (Form 42-2A, Page 2 of 2, Line 1) minus the
10 recoverable environmental costs of \$6,400,000 (Form 42-2A, Page 2 of
11 2, Line 4d) result in an underrecovery of \$12,300 (Form 42-2A, Page 2 of
12 2, Line 5). This \$12,300 underrecovery plus interest of \$12,300 (Form 42-
13 2A, Line 6) results in the final true-up amount of \$0 for the period January
14 2001 through December 2001.
- 15
- 16 **Q. What is the basis for the net true-up amount adjusted for previous**
17 **estimates for the January 2001 through December 2001 period?**
- 18 A. FPL has calculated an underrecovery of \$140,141 as the adjusted net
19 true-up amount for the twelve-month period. This amount is shown on
20 Form 42-1A, Line 9. This amount is calculated by taking the \$0 final true-
21 up amount (Form 42-1A, Line 5) for January 2001 through December
22 2001 less the estimated/actual overrecovery of \$140,141 (Form 42-1A,
23 Line 8) for the same period. This net underrecovery of \$140,141 for the
24 period January through December 2001 was recorded in a non-

1 recoverable clause account and is not and will not be included for
2 recovery through the Environmental Cost Recovery Clause.

3

4 **Q. Is this true-up calculation consistent with the true-up methodology**
5 **used for the other cost recovery clauses?**

6 A. Yes, it is. The calculation of the true-up amount follows the procedures
7 established by the Commission as set forth on Commission Schedule A-2
8 "Calculation of the True-Up and Interest Provisions" for the Fuel Cost
9 Recovery Clause.

10

11 **Q. Are all costs listed in Forms 42-4A through 42-8A attributable to**
12 **Environmental Compliance projects approved by the Commission?**

13 A. Yes, they are.

14

15 **Q. How did actual expenditures for January 2001 through December**
16 **2001 compare with FPL's estimated/actual projections as presented**
17 **in previous testimony and exhibits?**

18 A. Form 42-4A shows that total O&M project costs were \$939,123 or 13.6%
19 lower than projected and Form 42-6A shows that total capital investment
20 project costs were \$107,767 or 1.7% higher than projected. Following are
21 variance explanations for those O &M Projects and Capital Investment
22 Projects with significant variances. Individual project variances are
23 provided on Forms 42-4A and 42-6A. Return on Capital Investment,
24 Depreciation and Taxes for each project for the estimated/actual period

1 January 2001 through December 2001 are provided as Form 42-8A.

2

3 **1. Continuous Emission Monitoring Systems (CEMS) - O & M**

4 Project expenditures were \$85,160 less than anticipated or a 17.7%
5 variance. The installation of new opacity monitors at facilities increased
6 the reliability of the system and decreased the maintenance costs for the
7 year. Additionally, part of the variance was due to the timing of a payment
8 for \$26,250 for software development.

9

10 **2. Maintenance of Stationary Above Ground Fuel Storage Tanks**
11 **- O&M**

12 Project expenditures were \$760,230 less than anticipated or a 49.6%
13 variance. The inspection of Riviera Plant fuel oil tanks C and D was less
14 costly than expected, and in addition, there were no follow-up repairs
15 required as a result of the inspection. At the Port Everglades Plant, due
16 to schedule constraints, the roofs in tanks 800 and 802 were fiberglass
17 patched instead of being replaced as originally anticipated.

18

19 **3. Oil Spill Cleanup/Response Equipment - O&M**

20 Project expenditures were \$12,150 less than projected or an 8.1%
21 variance. The variance was due to the timing of payments in December.

22

23 **4. Resource Conservation and Recovery Act (RCRA) Corrective**
24 **Action - O&M**

1 Project expenditures were \$64,983 less than projected or a 100.0%
2 variance. No RCRA related activities were conducted at any of the sites
3 in 2001 due to the Florida Department of Environmental Protection's
4 (FDEP) pending decision on the plant visitation schedule.

5

6 **5. Disposal of Noncontainerized Liquid Waste - O&M**

7 Project expenditures were \$44,543 less than projected or a 14.7%
8 variance. The variance was due to deferral of ash dewatering at Port
9 Everglades and Fort Myers because of schedule constraints.

10

11 **6. Substation Pollutant Discharge Prevention & Removal -**
12 **Distribution - O&M**

13 Project expenditures were \$333,661 less than projected or a 14.7%
14 variance. This variance was due to the limited ability to work on the
15 distribution phase of the project as a result of the unavailability of
16 equipment clearances. To perform the planned project work, the
17 equipment must be de-energized (clearances obtained) and taken out of
18 service, thereby shutting down part of the electrical grid. Outside events
19 can impact the ability to remove this equipment from the system.

20

21 To maximize contractor utilization, resources were shifted from the
22 Distribution phase of the project to the Transmission phase of the project,
23 which generated fewer expenses for the Distribution phase of the project.

24

1 **7. Substation Pollutant Discharge Prevention & Removal -**
2 **Transmission - O&M**

3 Project expenditures were \$361,487 more than projected, which
4 represents a 32.1% variance. To maximize contractor utilization,
5 resources were shifted from the Distribution phase of the project to the
6 Transmission phase of the project, which generated greater expenses for
7 the Transmission phase of the project. Due to the shift in resources, FPL
8 was able to encapsulate an additional 272 transmission breakers.

9

10 **8. Low Nox Burner Technology - Capital**

11 Project expenditures were \$235,433 higher than anticipated or an 11.2%
12 variance. Errors in June and October depreciation carried through year-
13 end in the calculation of depreciation and return included in the
14 estimated/actual filing. These errors were corrected in August 2001.

15

16 **9. Continuous Emission Monitoring System (CEMS) - Capital**

17 Project expenditures were \$37,587 higher than anticipated or a 2.1%
18 variance. This variance is primarily due to the timing of payments for
19 Scada microprocessor computer hardware.

20

21 **10. Maintenance of Stationary Above Ground Fuel Storage Tanks**
22 **- Capital**

23 Project expenditures were \$165,253 lower than anticipated or an 8.6%
24 variance. This variance is primarily due to a \$465,000 retirement in

1 November 2001. The retirement was for a tank liner, which was installed
2 in December 1993, failed shortly thereafter, was replaced, and a new liner
3 went into service in May 1994. The original retirement was recorded in
4 June 1994. Inadvertently, both tank liners were depreciated through
5 November 2001, at which time the retirement was properly included in the
6 calculation of depreciation. A \$163,461 reduction was recorded to
7 depreciation in November 2001.

8

9 **Q. Does this conclude your testimony?**

10 **A. Yes, it does.**

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
FLORIDA POWER & LIGHT COMPANY
SUPPLEMENTAL TESTIMONY OF KOREL M. DUBIN
DOCKET NO. 020007-EI
NOVEMBER 4, 2002

Q. Please state your name and address.

A. My name is Korel M. Dubin and my business address is 9250 West Flagler Street, Miami, Florida, 33174.

Q. By whom are you employed and in what capacity?

A. I am employed by Florida Power & Light Company (FPL) as Manager of Regulatory Issues in the Regulatory Affairs Department.

Q. Have you previously testified in this docket?

A. Yes, I have.

Q. What is the purpose of your supplemental testimony in this proceeding?

A. The purpose of my supplemental testimony is to present for Commission review and approval the revised Environmental Cost Recovery Clause (ECRC) projections for the January 2003 through December 2003 period. The environmental factor has been revised to reflect: 1) a revised sales

1 forecast that reflects the most current economic assumptions, 2) two
2 additional months of actual data (August and September 2002), and 3) a
3 reduction in the estimated cost of the Pipeline Integrity Management (PIM)
4 Project.

5

6 **Q. Have you prepared or caused to be prepared under your direction,**
7 **supervision or control an exhibit in this proceeding?**

8 A. Yes, I have. It consists of various schedules included in Appendix I.

9

10 **Q. Please explain why FPL is proposing to revise the ECRC factors.**

11 A. As discussed in my supplemental testimony in Docket No. 020001-EI,
12 changes that have occurred since the projections were prepared for the
13 September 20, 2002 Fuel and Purchased Power Cost Recovery Clause
14 filing have resulted in an increase of 6.47% in the total fuel costs to be
15 recovered, which is significant. Consistent with Order No. 13694 in
16 Docket No. 840001-EI, dated September 20, 1984, FPL has decided to
17 file revised fuel cost recovery (FCR) and capacity cost recovery (CCR)
18 factors in that docket so that the Commission will "at the time of hearing,
19 have the benefit of the most accurate and current information available to
20 [FPL]." Because FPL is proposing to revise the FCR and CCR factors to
21 reflect updated information, it is appropriate for the sake of consistency
22 and completeness to make corresponding updates to the ECRC factors
23 as well.

24

1 **Q. Please describe the revisions made to the ECRC.**

2 A. FPL has included two additional months of actual data (August and
3 September 2002) in the calculation of estimated/actual true-up amount,
4 and the October through December 2002 projections have been revised
5 to reflect the revised sales forecasts. Additionally, FPL is revising the
6 estimated/actual true-up amount to reflect a reduction of \$20,000 to the
7 O&M cost estimates for the Pipeline Integrity Management (PIM) Project
8 in December 2002. This \$20,000 reduction is due to the removal of the
9 Dania Spur pipeline from the PIM Project as described on pages 13 and
10 14 in the testimony of R.R. LaBauve filed with the Commission in this
11 docket on September 9, 2002.

12

13 These revisions result in a decrease in the estimated/actual true up
14 underrecovery from \$7,799,426 to \$7,616,965. The revised
15 estimated/actual true up calculation is provided on Form 42-2E, pages 1
16 and 2 of 2, found on pages 6 and 7 of Appendix I.

17

18 With this revised underrecovery, the total ECRC costs to be recovered
19 during 2003 originally projected to be \$19,149,944 have been decreased
20 to \$18,964,569. Additionally, projected retail sales for 2003 were revised
21 upward from 95,753,425 MW to 97,034,630 MW or 1% higher than
22 originally filed on September 9, 2002. Dividing the lower projected ECRC
23 costs by the higher projected sales results in a decrease in the ECRC
24 factors compared to those filed on September 20, 2002. Form 42-7P on

1 page 5 of Appendix I presents the calculation of the revised ECRC factors
2 by rate class.

3

4 **Q. What effective date is the Company requesting for the new ECRC**
5 **factors?**

6 A. FPL is not proposing any change to the effective date. As with the original
7 filing, the Company is requesting that the revised ECRC factors become
8 effective with customer bills for January 2003 through December 2003.
9 This will provide for 12 months of billing on the FCR and CCR factors for
10 all our customers.

11

12 **Q. Does this conclude your supplemental testimony?**

13 A. Yes, it does.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
FLORIDA POWER & LIGHT COMPANY
SUPPLEMENTAL TESTIMONY OF KOREL M. DUBIN
DOCKET NO. 020007-EI
NOVEMBER 14, 2002

Q. Please state your name and address.

A. My name is Korel M. Dubin and my business address is 9250 West Flagler Street, Miami, Florida, 33174.

Q. By whom are you employed and in what capacity?

A. I am employed by Florida Power & Light Company (FPL) as Manager of Regulatory Issues in the Regulatory Affairs Department.

Q. Have you previously testified in this docket?

A. Yes, I have.

Q. What is the purpose of your supplemental testimony in this proceeding?

A. The purpose of my supplemental testimony is to present for Commission review and approval revisions to the Environmental Cost Recovery Clause (ECRC) projections for the January 2003 through December 2003 period that were filed on November 4, 2002, to reflect depreciation-related

1 accounting adjustments.

2

3 **Q. Have you prepared or caused to be prepared under your direction,**
4 **supervision or control an exhibit in this proceeding?**

5 A. Yes, I have. It consists of PSC Forms 42-1P through 42-7P included in
6 Appendix I and Forms 42-1E through 42-8E included in Appendix II.

7

8 **Q. Please explain the reasons for the adjustments that FPL is**
9 **proposing.**

10 A. FPL has identified adjustments that should be made to its calculation of
11 depreciation on certain of the capital costs that are recovered for ECRC
12 projects. The most significant of these adjustments relate to the
13 retirement of equipment at the Ft. Myers and Sanford plants as a result of
14 the repowering projects at those plants.

15

16 A large amount of equipment originally installed under ECRC Project No.
17 5b (Maintenance of Above Ground Storage Tanks) was retired because of
18 the repowering. The entry to reflect this retirement was made in the
19 Environmental Clause in March 2002. The entry to record the retirement
20 was a debit to the depreciation reserve and a credit to plant in service.
21 The debit to the depreciation reserve was greater than the accumulated
22 depreciation credit balance causing the depreciation reserve balance to
23 be negative for March and for the remaining months of 2002 and 2003.
24 FPL determined that the negative depreciation reserve balance should be

1 transferred to base rates because of the capital recovery schedules
2 allowed in its last depreciation filing. Therefore, FPL is making an
3 adjustment to move the negative depreciation reserve balance, which
4 represents the unrecovered cost of the equipment retired because of the
5 repowering projects, from the ECRC Clause to base rates. As a result of
6 this adjustment, FPL is reversing the accumulated return on investment
7 related to the negative depreciation reserve balance.

8
9 While there is not a negative depreciation reserve balance for Project 3b
10 (Continuous Emissions Monitoring) because the debit to the depreciation
11 reserve was not greater than the accumulated depreciation credit balance
12 for that project, a similar issue exists with respect to the treatment of the
13 unrecovered cost of the equipment retired because of the repowering
14 projects. FPL is making similar adjustments for Project 3b so that the
15 reduction of the depreciation reserve for that project will be moved from
16 the ECRC Clause to base rates and the accumulated return on
17 investment related to the negative depreciation reserve balance is
18 reversed.

19
20 FPL also is making adjustments on ECRC Project No. 8b (Oil Spill
21 Cleanup/Response Equipment) to correct the amortization formulas for
22 5-year and 7-year property, on Project No. 17 (Non-Containerized Liquid
23 Wastes) to correct a timing error on recording the effect of a change in
24 amortization, and on Project 21 (St. Lucie Turtle Net) to create a

1 depreciation offset for retirements of base-rate property associated with
2 this project.

3

4 **Q. Please describe the revisions made to the ECRC schedules.**

5 A. FPL has revised the depreciation amounts and return on investment for
6 the 2002 and 2003 periods to reflect these adjustments. These revisions
7 result in a decrease in the 2002 estimated/actual true-up underrecovery
8 that was filed on November 4, 2002, from \$7,616,965 to \$7,271,601. The
9 revised estimated/actual true up calculation is provided on Form 42-2E,
10 pages 1 and 2 of 2, found on pages 3 and 4 of Appendix II.

11

12 The revisions also result in a decrease in the projected 2003 capital-
13 related expenses from \$6,416,554 to \$5,942,241. The impact of these
14 revisions on the 2002 estimated/actual true-up amount and the 2003
15 projections results in a reduction of \$832,767 in the total amount to be
16 recovered in the January 2003 - December 2003 period.

17

18 **Q. What is the effect of these adjustments on the 2003 ECRC factors?**

19 A. The adjustments will reduce the residential ECRC factor from .020 ¢ per
20 kWh to .019 ¢ per kWh. Revised factors for all rate classes are included
21 on Form 42-7P, found on page 63 of Appendix I.

22

23 **Q. Is FPL requesting a different effective date for the new ECRC**
24 **factors?**

1 A. No. As with the original filing, the Company is requesting that the revised
2 ECRC factors become effective with customer bills for January 2003
3 through December 2003. This will provide for 12 months of billing on the
4 ECRC factors for all our customers.

5

6 **Q. Does this conclude your supplemental testimony?**

7 A. Yes, it does.

1 BY MR. BUTLER:

2 Q Ms. Dubin, would you please summarize your testimony?

3 A Yes, thank you. The purpose of my testimony is to
4 provide the calculations of the environmental cost-recovery
5 factors for the period January 2003 through December 2003. FPL
6 originally filed factors for 2003 that included an
7 environmental charge for residential 1000 kWh bill of 21 cents.
8 After FPL filed its original proposed factors in September of
9 2002, we filed supplemental testimony on November 4th to
10 include additional actual data for the months of July, August,
11 and September, and also to revise the sales forecast due to
12 more current economic assumptions.

13 This supplemental filing resulted in a reduction to
14 FPL's proposed 2003 factors. For example, FPL's proposed
15 environmental charge for a residential 1000 kWh bill decreased
16 by one cent from 21 cents to 20 cents. Additionally, FPL filed
17 a second supplemental testimony reducing its recoverable costs
18 by \$837,000 to reflect depreciation-related accounting
19 adjustments. The most significant of these adjustments relates
20 to the retirement of equipment at the Fort Myers and Sanford
21 plants as a result of the repowering project at these plants.

22 The second supplemental filing resulted in another
23 reduction in FPL's proposed 2003 environmental factors. Again,
24 the bill -- excuse me, the residential charge decreased by one
25 cent to 19 cents for 2003. That concludes my summary.

1 MR. BUTLER: I tender Ms. Dubin for
2 cross-examination.

3 CHAIRMAN JABER: Ms. Dubin. You did say Ms. Dubin,
4 didn't you?

5 MR. BUTLER: I meant to.

6 CHAIRMAN JABER: Okay. Mr. Vandiver.

7 MR. VANDIVER: No questions.

8 CHAIRMAN JABER: Ms. Kaufman.

9 MS. KAUFMAN: I have no questions. Thank you.

10 CHAIRMAN JABER: Staff.

11 MS. STERN: Yes.

12 CROSS EXAMINATION

13 BY MS. STERN:

14 Q Ms. Dubin, the question I have for you is the last
15 question I had for Mr. LaBauve. If you would refer to your
16 Exhibit KMD-5, the Schedule 42-5P, Page 25 of 27 of that
17 schedule.

18 A Uh-huh. I think, Ms. Stern, if I recall the question
19 was the difference between the 810,000 and the 66,000?

20 Q Yes.

21 A The 810,000 is the capital for the project overall
22 through 2004. The 66,000 is the return depreciation that is in
23 2003.

24 COMMISSIONER PALECKI: If I could jump in here. So
25 you could assure us that the 66,000 that we see in your exhibit

1 is the amount that is reflected in the petition for the
2 recovery for 2003?

3 THE WITNESS: Yes, Commissioner.

4 COMMISSIONER PALECKI: And the amount of 810,000 that
5 we see in Mr. LaBauve's testimony will not be found in that
6 petition?

7 THE WITNESS: The 810,000 is strictly the projected
8 costs through 2004, the entire project.

9 COMMISSIONER PALECKI: So those are projected costs
10 that we will see in future years for recovery?

11 THE WITNESS: Yes.

12 MS. STERN: Thank you.

13 Okay. Thank you. We have no other questions.

14 CHAIRMAN JABER: Commissioners, do you have any
15 questions of this witness, any other ones? Redirect.

16 MR. BUTLER: No.

17 CHAIRMAN JABER: Thank you. Thank you, Ms. Dubin.

18 THE WITNESS: Thank you.

19 CHAIRMAN JABER: And, let's see. Mr. Butler.

20 MR. BUTLER: May I move the admission of Exhibit 10?

21 CHAIRMAN JABER: Yes. Without objection, Exhibit 10
22 is admitted into the record.

23 (Exhibit 10 admitted into the record.)

24 CHAIRMAN JABER: We are going to go ahead and break.
25 Commissioners are not coming back until 1:00. I hope that you

1 all are able to resolve the pipeline integrity management
2 document, Ms. Stern. We will come back with the completion of
3 Mr. LaBauve's testimony, and then we will go to the next
4 proceeding. Thank you.

5 MR. BUTLER: Thank you.

6 (Lunch recess.)

7 CHAIRMAN JABER: Let's get back on the record and you
8 describe for us what you have done, what you and -- I'm
9 assuming you have run all of this by Mr. Butler and there has
10 been some agreement that has been reached?

11 MS. STERN: Yes.

12 CHAIRMAN JABER: Okay. Let's go ahead and describe
13 it.

14 MS. STERN: So we are back on the record now?

15 CHAIRMAN JABER: Yes.

16 MS. STERN: Yes, we have agreed to stipulate it as an
17 exhibit for the Commission's approval, with a stipulated
18 statement that goes along with it that will be part of the
19 exhibit that explains the circumstances under which Staff
20 received it, and just makes clear that in the event any factors
21 are approved that include this project, that they will be
22 subject to true-up based on further review of the report in the
23 future.

24 CHAIRMAN JABER: Okay. Now, included in this
25 stipulation would be the admission of the report?

1 MS. STERN: Yes. The first sentence says that the
2 parties stipulate that the document, the report, shall become
3 an exhibit in the hearing record of Docket Number 020007.

4 CHAIRMAN JABER: And there is agreement in this
5 regard about -- I mean, in this regard with all of the parties?

6 MS. STERN: Not all the parties wanted to
7 participate.

8 CHAIRMAN JABER: But they take no position with
9 regard to the stipulation.

10 MS. STERN: That is my understanding.

11 CHAIRMAN JABER: Mr. Vandiver, is that correct?

12 MR. VANDIVER: No objection.

13 CHAIRMAN JABER: Great. Then go ahead and read the
14 statement into the record. And after that we will identify
15 your two remaining interrogatories and the report in a
16 composite exhibit.

17 MS. STERN: Actually the interrogatories don't need
18 to go in, it is just the report and the statement.

19 CHAIRMAN JABER: Great.

20 MS. STERN: Okay. The Staff of the Public Service
21 Commission and Florida Power and Light stipulate that the
22 document titled pipeline integrity management report HCA and
23 pipeline segment identification protocols referred to as the
24 PIM report dated November 18th, 2002 shall become an exhibit in
25 the hearing record of Docket Number 020007-EI. Both parties

1 agree that it is important to understand the circumstances
2 under which this stipulation developed. The document was
3 e-mailed to staff on November 19th, 2002.

4 Much of the data underlying the report is on a
5 compact disk which was not provided to staff. Staff has not
6 had the opportunity to conduct discovery on the document or to
7 conduct cross-examination on the document. The document is
8 expected to be moved into evidence before FPL conducts its
9 redirect examination of its witnesses. Both parties
10 acknowledge that any party to the environmental cost-recovery
11 clause hearings may conduct discovery on this document at
12 anytime in the future.

13 In the event that the Commission approves factors
14 which include costs associated with the pipeline integrity
15 management project as described in the testimony of Witnesses
16 Dubin and LaBauve in this docket, FPL understands that such
17 costs will be subject to true-up based on future review of the
18 PIM report.

19 CHAIRMAN JABER: Commissioners, how about I get a
20 motion to accept this stipulation?

21 COMMISSIONER PALECKI: So move.

22 COMMISSIONER DEASON: Second.

23 CHAIRMAN JABER: There has been a motion and a second
24 to accept the stipulation offered by FPL and Staff regarding
25 the pipeline integrity management report. All those in favor

1 say aye.

2 (Unanimous affirmative vote.)

3 CHAIRMAN JABER: The stipulation has been accepted.

4 And with that the pipeline integrity management report shall be
5 identified as Hearing Exhibit 11.

6 (Exhibit 11 marked for identification.)

7 CHAIRMAN JABER: Now, where we last left it, Mr.
8 Butler, you were going to do redirect for Mr. LaBauve?

9 MR. BUTLER: That's right. I just have a very short
10 redirect for him.

11 REDIRECT EXAMINATION

12 BY MR. BUTLER:

13 Q Mr. LaBauve, would you please turn to Page 5 in your
14 August 9 estimated actual true-up testimony? Do you have that?

15 A Yes, I do.

16 Q On Page 5, Lines 11 through 13, there is a discussion
17 of -- actually Lines 12 and 13, a discussion of using pertinent
18 data gathered from other inspections, tests, surveillance, and
19 patrols. Do you see that?

20 A Yes, I do.

21 Q I believe I understand from your testimony earlier in
22 response to questions from Ms. Stern that some of this
23 information could be gathered by virtue of activities that FPL
24 currently conducts, correct?

25 A That is correct.

1 Q If the costs for those activities are reflected in
2 FPL's existing MFRs, would FPL be seeking recovery for those
3 costs here?

4 A No.

5 MR. BUTLER: That is all the redirect that I have.
6 Thank you.

7 CHAIRMAN JABER: Commissioners, I neglected to ask
8 you all if you had any questions. Thank you, Mr. LaBauve.
9 And, Mr. Butler, I've got Exhibits 9 and 11 for you.

10 MR. BUTLER: That's right. I would move the
11 admission of Exhibits 9 and 11.

12 CHAIRMAN JABER: Without objection, Exhibits 9 and 11
13 are admitted into the record.

14 (Exhibits 9 and 11 admitted into the record.)

15 MR. BUTLER: Okay. Staff, that brings us to the
16 resolution of Issues 9C, 9E, 9G, 12A through D, and the fallout
17 issues 4 and 7.

18 MS. STERN: Before we do that, could I just ask for a
19 clarification. When we marked the exhibit with the stipulated
20 report, I'm not sure that the exhibit includes the statement
21 that was read into the record. I was wondering if you could
22 clarify that the exhibit that was marked as Exhibit 10 -- I'm
23 sorry, Exhibit 11 includes the stipulated statement and the
24 report?

25 CHAIRMAN JABER: Actually, I had the Commission

1 accept the stipulation, so I don't believe we need that
2 identified as an exhibit, because we have just accepted it. We
3 made a ruling on the stipulation, so I think that gets you
4 where you want to go.

5 MS. STERN: Okay.

6 CHAIRMAN JABER: Do you have a recommendation on
7 Issue 9C?

8 MS. STERN: Yes, we have alternate recommendations on
9 Issue 9C.

10 CHAIRMAN JABER: Okay. So we should refer to our
11 prehearing order. Commissioners, 9C is on Page 11 of the
12 prehearing order.

13 MS. STERN: As the project proposed by FPL, FPL
14 proposes to recover all costs that they incur for this project
15 whether they are due to environmental areas, or populated
16 areas, or commercially navigable waterways. That would include
17 the cost of remediation if there is a pipeline that breaks. As
18 proposed in FPL's testimony if a pipeline breaks in a populated
19 area and they have to remediate that, the costs would be passed
20 through the environmental cost-recovery clause if their
21 petition is approved.

22 In light of that, Staff has a primary and alternate
23 recommendation. The primary recommendation is that we grant --
24 is that the Commission grant a conceptual approval
25 acknowledging that costs incurred to protect these sensitive

1 environmental areas are appropriate to pass through the clause,
2 but that that is the extent of the conceptual approval and that
3 the actual calculation of numbers, that type of thing would
4 have to be decided on a different day at a different time.

5 What Staff envisions or proposes is that FPL could
6 file a petition when it has information that will allow Staff
7 to figure out how to separate out costs due to environmental --
8 due to protection of environmental areas versus population
9 areas and commercially navigable waterways. When Staff has
10 information to separate those costs, we can go ahead and at
11 that time issue a PAA order saying this is our approach to
12 separating out the costs in this docket and we can set factors
13 to recover the costs at that time or we can just wait to set
14 factors in this hearing next year.

15 Now, based on the report that was just stipulated in,
16 it is clear that the pipeline segments can be divided into
17 areas that affect environmental areas versus populated areas or
18 commercially navigable waterways and the information in that
19 report supports Staff's opinion that the costs can be separated
20 out.

21 You heard in the testimony that this project will go
22 on in perpetuity and the costs could become expensive,
23 especially if costs for remediation -- you know, there is no
24 telling how much that could run into if there is an accident.
25 So the Staff's recommendation is to conceptually approve that

1 environmental costs incurred by the project can be passed
2 through the clause, but an actual determination of any numbers
3 be put off to a later date.

4 Staff's alternate recommendation is to deny the
5 project without prejudice. And in that case, FPL could submit
6 a petition when there is more information. It could be very
7 soon. And as with our primary recommendation, we would handle
8 it as a PAA, figure out what costs, how to apportion costs, and
9 we could set factors at that time or just set factors in this
10 hearing next year.

11 CHAIRMAN JABER: Before we take up the
12 recommendations, let me ask you for some clarification. Isn't
13 there one more alternative regarding accepting the request now
14 with the environmental costs that have been included? I mean,
15 there is an amount that we heard Ms. Dubin testify to, correct?

16 MS. STERN: They have been unable to break out all
17 the environmental costs.

18 MR. BREMAN: We need to be careful with the word
19 environmental costs. Staff is defining environmental costs
20 with respect to the PIM project as those costs --

21 CHAIRMAN JABER: Mr. Breman, for some reason I can't
22 hear you very well.

23 MR. BREMAN: Is this better?

24 CHAIRMAN JABER: Just a little bit.

25 MR. BREMAN: I don't like my earphones (sic). Staff

1 is defining environmental costs for purposes of this issue, the
2 PIM project, as all costs incurred in areas of environmentally
3 sensitive endangered areas like that. Ecological areas that
4 are highly sensitive. That is the term that staff defines as
5 environmental costs for purposes of the PIM project on this
6 issue. What FPL has filed is all costs to comply with the
7 rule. Those are two different things. So FPL is defining
8 environmental compliance costs as all costs regardless of where
9 they are incurred pursuant to meeting the requirements of the
10 rule.

11 CHAIRMAN JABER: Commissioners, you have heard the
12 discussion. I would note that we are at the bench decision
13 stage, so we are now in the post-hearing stage, and staff has
14 offered a primary and alternative and we are heard the
15 testimony. What is your pleasure?

16 COMMISSIONER DEASON: I have a question for staff.

17 CHAIRMAN JABER: Go right ahead, Commissioner.

18 COMMISSIONER DEASON: Why is it that efforts to
19 prevent the possible spillage of potentially toxic material out
20 of a pipeline whether it occur in a metropolitan area or in a
21 pristine environmental area, why is it that one is considered
22 environmental and the other is not? I mean, there is an
23 environment, there is a metropolitan environment. Why is it
24 that you are making the distinction?

25 MS. STERN: Well, two reasons. First, the Department

1 of Transportation regulates the transport of hazardous liquids
2 in pipelines. They are not an environmental regulatory agency.
3 In fact, usually they are concerned with safety. If this were
4 strictly an environmental regulation, it would be -- it would
5 have been adopted by the United States Environmental Protection
6 Agency or some other agency like Interior, the Department of
7 the Interior that strictly regulates environmental areas.

8 In the notice of proposed rulemaking that accompanies
9 the rule that is attached to Mr. LaBauve's August 9th
10 testimony, and in Mr. LaBauve's testimony itself, you know,
11 there is a statement that the purposes of the rule is to
12 protect public safety -- or public health, safety, and the
13 environment. So the environment is called out separately. And
14 with respect to -- there is some very strong language in the
15 notice of proposed rulemaking that says the purpose of
16 protecting navigable waterways is economic, and I can read that
17 to you if you would like.

18 COMMISSIONER DEASON: No, that is not necessary. So
19 you are making a distinction, the areas -- inhabited areas is
20 safety, navigable water areas is for economic reasons, and it
21 is only in the environmentally sensitive areas that there is an
22 environmental reason, is that correct?

23 MS. STERN: Yes.

24 MR. BUTLER: Chairman Jaber.

25 CHAIRMAN JABER: No, Mr. Butler, we are at the

1 post-hearing bench decision stage.

2 Commissioner Palecki, you have got a question?

3 COMMISSIONER PALECKI: Yes. With regard to the
4 statute that we are working under, could you provide me with
5 the language -- I know that it is restricted to environmental
6 expenditures, and it is very strict that this Commission is
7 required to allow those costs under the clause, but I need to
8 know what that language is before I make a decision on an issue
9 that is based upon the definition of an environmental area or a
10 traffic regulation. And if you could provide that to me I
11 would appreciate it.

12 MS. STERN: Would you like me to read you parts?

13 COMMISSIONER PALECKI: Read the parts of the statute
14 that you are relying on for your primary recommendation.

15 MS. STERN: Well, I'm looking in the definition
16 section of the environmental cost-recovery clause statute right
17 now, and I will read you these parts and then I have a comment
18 if that is okay. Environmental laws or regulations includes
19 all federal, state, or local statutes, administrative
20 regulations, orders, ordinances, resolutions, or other
21 requirements that apply to electric utilities and are designed
22 to protect the environment.

23 Environmental compliance costs include all costs or
24 expenses incurred by an electric utility in complying with
25 environmental laws or regulations, including but not limited

1 to -- and then it gives just a list, you know, fuel procurement
2 costs, purchased power costs, that type of thing. And what I
3 would like to add to that is that there is really no definition
4 of what environmental costs, or what is meant by the term
5 environment in the statute. You know, does it mean the inside
6 of a building? That is an environment. Or does it mean a
7 parking lot or does it mean a wetland? It doesn't say.

8 But if you go back to the legislative intent of this
9 statute, the legislative intent contains a discussion that
10 really what the legislators were talking about was pollution
11 control, you know, emissions controls from power plants and
12 that is intended to protect, I mean, the larger, large scale
13 environment.

14 COMMISSIONER PALECKI: Well, I know that in part the
15 pipeline integrity management was passed after there were some
16 severe accidents where there were some deaths, so I know that
17 at least to some extent there was a safety aspect to the
18 legislation. Sometimes it is very hard to separate safety from
19 environmental. I mean, if you have a liquid fuel that is
20 pouring all over the ground it creates a safety problem and an
21 environmental problem. How do you propose to separate the two?

22 MS. STERN: Well, what FPL has to do is provide --
23 segment-by-segment show where the segments of each pipeline
24 will adversely effect an usually sensitive environmental area,
25 a populated area, or a commercially navigable waterway. And by

1 looking at that information we can see, you know, how much of a
2 given pipeline, you know, crosses through environmental areas
3 versus populated areas and we will use that type of geographic
4 information as a starting point for separating out costs. Does
5 that answer your question?

6 COMMISSIONER PALECKI: Yes, it does. And just to
7 throw this up for discussion to my fellow Commissioners, I
8 almost feel a little more comfortable with briefs from the
9 parties and a written recommendation. This is pretty technical
10 and not a real clear question. I don't feel that comfortable
11 with a bench vote.

12 CHAIRMAN JABER: We do need to talk about that. I
13 have to tell you I am sort of on the other end, but that is not
14 to say that, you know, my approach is the way we go at the end
15 of the day. I am comfortable with approving what we have got
16 as filed, because I don't think that statute should be read as
17 narrowly as staff has presented it. I don't think this is the
18 type of situation that warrants such a narrow reading, but --

19 (Sound system technical difficulties. Pause.)

20 I don't think this is a situation that warrants a
21 very narrow reading, but my caution would be if we do end up
22 approving not only the concept but the costs that have been
23 included in this particular petition, my caution would be
24 related to the costs incurred from the remedial action. I
25 would like the company and Staff to continue to monitor where

1 future costs should be sought for recovery, because I don't
2 think future remedial action costs necessarily are appropriate
3 for the clause.

4 I thought Mr. LaBauve made a very excellent point in
5 his testimony with regard to there are some costs that are
6 going to be subsumed in base rates just because your employees
7 are already doing some of that, and it is just an extension of
8 what they are already doing and an extension of your current
9 O&M expenses. But saying all of that, Commissioners, if you
10 need a written recommendation, that is something different.
11 Any other comments in that regard?

12 COMMISSIONER DEASON: Well, let me say that I took
13 comfort in the testimony, and that was on the direct and
14 redirect about the commitment for FPL not to recover costs
15 which are already included within their base rates, that we are
16 talking about incremental costs only. I think that is the
17 very -- that is the nature of the environmental clause
18 legislation is to try to capture incremental costs of an
19 environmental nature.

20 I'm having a little bit of difficulty trying to
21 understand. I understand the distinction that staff is making,
22 I'm not so sure that I agree that mitigation efforts only in
23 environmentally sensitive areas meets the statutory definition.
24 I agree with you, Madam Chairman, that that may be an overly
25 restrictive interpretation of the definitions contained in

1 there. I believe it is going to put some obligation obviously
2 upon FPL, but on our staff, also, to continue to monitor to
3 make sure that we are only talking about incremental costs.

4 For example, if there -- and I don't know if this
5 meets what you were talking about, remedial, but if there was
6 some breach in the pipeline and it was necessary to repair it,
7 it seems to me there is probably somewhere hidden within -- not
8 hidden, but there as part of overall costs of O&M costs, there
9 is probably a certain component in base rates for repair of
10 pipeline damage or pipeline breaches. And so I think a repair
11 would not -- unless I'm missing something, would not meet that
12 definition.

13 CHAIRMAN JABER: I agree with you. And I think also
14 the relocation of aspects of the pipeline because of those
15 changed circumstances that the company is supposed to
16 reevaluate every five years, right? That fits right into what
17 you're saying.

18 COMMISSIONER PALECKI: And I would have questions
19 about accident clean up after an incident. Is that
20 remediation, is that something we would be approving in concept
21 here? I would want to approve those costs on a case-by-case
22 basis where I can find out who was at fault in the incident,
23 was part of the damage that occurred because of failure to
24 comply with the pipeline integrity management plan. There are
25 a lot of questions that I would want to ask before I would even

1 think about conceptually approving those kinds of costs.

2 COMMISSIONER DEASON: If I could point out one other
3 thing quickly. I certainly don't want to put my place in the
4 shoes of an environmental regulator, but I would think it would
5 probably stand to reason that if Transportation didn't have
6 these mitigation requirements for navigable waterways and for
7 inhabited areas, that most likely DEP would probably step in
8 and require it.

9 It just so happens that we have some kind of
10 overlapping jurisdiction, and perhaps one agency is depending
11 upon another agency to make sure that the health, safety, and
12 environmental protection, as Commissioner Palecki was
13 indicating, sometimes those things overlap to some degree.

14 COMMISSIONER BAEZ: Yes. If you are around
15 government long enough you are going to figure that those
16 instances are going to happen, so I am uncomfortable drawing a
17 line based on the name of the agency. And I'm trying to put it
18 in simple terms. I do have a question as to how much oversight
19 would remain with the Commission to be able to consider the
20 circumstances under which a claim is being made. And I guess I
21 don't know if Staff can answer that question, alluding back to
22 a case-by-case basis or what kind of -- what do we retain in
23 approving?

24 MS. STERN: My understanding of what FPL is asking
25 for approval is everything they need to do to comply with that

1 DOT rule. That would include any kind of remediation if there
2 was a spill or anything like that. And so we would have that
3 approval. And what we will be able to do is when they came in
4 to recover the costs, we would only be able to review those
5 costs to see if they were prudent. I think that at that point
6 we wouldn't go back -- if their petition is approved as I
7 understand it as presented today, we can't -- it would not be
8 right to go back and say, sorry, you can't recover prudently
9 incurred remediation costs that you need to comply with this
10 statute.

11 COMMISSIONER BAEZ: And I may be missing --

12 CHAIRMAN JABER: Ms. Stern, that is not what I heard,
13 and we need to nail that down. And I stand to be corrected,
14 but what I heard Mr. LaBauve say is we are seeking for now
15 costs associated with developing the plan and maintaining the
16 plan and implementation of the plan. And in response to a
17 question I asked him, he recognized that costs associated with
18 remedial action would have to withstand a prudency review.
19 And, of course, after a determination where they would seek
20 that cost-recovery, whether it be in the clause proceedings or
21 in base rate proceedings. And they don't know what the
22 remedial action costs will be, so how can we be approving that?

23 MS. STERN: Well, what I thought they meant by
24 prudency review is they come and they say there was a cost,
25 maybe it was in a populated area, it costs, you know, however

1 many hundreds of thousands of dollars to clean it up. We look
2 at those costs and say are these prudent, were these prudently
3 incurred? You know, could you have avoided the busted pipeline
4 or could you have spent less money? And once we figure out
5 whether or not the costs -- if we figure out the costs are
6 prudently incurred then, you know, we can do recovery. But
7 it's not case-by-case with respect to a step earlier where if
8 it is a spill in a populated area, if it is needed to comply
9 with the rule then it is recoverable under their petition.

10 CHAIRMAN JABER: Commissioner Baez.

11 COMMISSIONER BAEZ: Having said that, say in that
12 scenario where does the whole concept or the assertion that the
13 company witness made as to only seeking incremental costs, this
14 is, in fact, an incremental -- a mechanism for addressing the
15 incremental costs, how does that all get folded in, because I'm
16 having a little bit of trouble. To me that suggests that there
17 is some kind of -- some kind of assessment made as to how much
18 more -- how much more it costs to comply with the regulation as
19 compared to something else, and that what we are dealing with
20 is that differential for clause recovery. Is that not the way
21 it works?

22 MR. BREMAN: That is the ongoing continual problem
23 with all costs recovered through this clause, trying to figure
24 out what incremental is. It is a persistent discovery process.

25 COMMISSIONER BAEZ: So we are not actually creating a

1 new debate here.

2 MR. BREMAN: Every new project you allow creates the
3 problem and adds to it.

4 COMMISSIONER BAEZ: I'm not talking about the number
5 of problems, I'm talking about the actual debate. I mean, you
6 do engage --

7 MR. BREMAN: In discovery.

8 COMMISSIONER BAEZ: -- in back and forth on what is
9 incremental?

10 MR. BREMAN: Yes, sir. We have this tension. If
11 your vote is to approve what FPL has petitioned for, I think
12 you might want to consider Staff's concerns and say that the
13 extent of what you are going to approve is only the proactive
14 things to comply with the rule and not render a decision on any
15 future spill or mitigation activities, because we don't know
16 when, and if, and what the scope of those events are today. So
17 it would be premature to make a decision as to whether they are
18 even part of this decision today. If you are going to approve
19 anything on PIM, I would suggest you add that caution to your
20 decision.

21 COMMISSIONER PALECKI: If we go ahead and approve a
22 number --

23 CHAIRMAN JABER: I'm sorry, Commissioner Palecki, let
24 Commissioner Bradley ask his question and then you.

25 COMMISSIONER BRADLEY: Yes. And this is more of a

1 statement, because I have been listening to the debate as well
2 as the discussion, and I'm just -- I think what I'm hearing
3 from the other Commissioners struggling with this whole issue
4 of environment. And I'm just wondering what the other
5 Commissioners think about this concept. I see this Commission
6 as the regulatory agency as having the responsibility of
7 dealing with health, safety, and the environment, which means
8 that we have the responsibility as a regulatory agency to deal
9 with everything that possibly could come about as a result of
10 gas being transported on the pipeline, through a pipeline. And
11 I'm having a very difficult time dealing with the definition
12 that Staff has put forth in terms of environmental.

13 People are more important than -- well, I mean,
14 people are just as important as water. Water is just as
15 important as people. Plants and humans need each other to
16 co-exist. So I think that we have a responsibility to look at
17 policy that coordinates all the responsibilities and to not
18 allow this to be broken out and passed on to one agency. And I
19 think that we should take that responsibility on and let
20 someone challenge it and find a way to make sure that the
21 public -- to deal with the health issue, the safety issue, as
22 well as the environmental issue. And if someone wants to
23 challenge that, then so be it. But I see that as a
24 responsibility that we should take on as a regulatory body.

25 The next issue is how do we get there in terms of the

1 nuts and the bolts. And I think that is what I hear being
2 discussed. And the law, I think the statute is just there to
3 serve as a guideline. And if we supersede the statute then let
4 someone appeal it is my take on it.

5 CHAIRMAN JABER: Commissioner Palecki.

6 COMMISSIONER PALECKI: Yes. If we go ahead and
7 approve a number today, one of the things I think I heard you
8 say, Ms. Stern, was that the pipeline integrity management
9 document, Exhibit 11, was the document that showed you that
10 things could be separated out between environmental and
11 transportation, nonenvironmental issues. Being that we went
12 ahead and approved the stipulation today wherein it is
13 understood that any costs would be subject to true-up based
14 upon review of the PIM report and the discovery you intend to
15 do on that report, wouldn't it be something that you could come
16 back to us on if you saw based upon this report items that were
17 clearly not environmental, that were specifically either
18 transportation items, navigable waterway items, that you could
19 come back and ask for a true-up based upon those findings?

20 MS. STERN: I think we could come back and ask for a
21 true-up, but I think there would have to be some understanding
22 of what is defined as environmental like at this time before we
23 go forward.

24 CHAIRMAN JABER: Why isn't it as simple as we know
25 there is a cost associated with developing the plan, we know

1 that there is a cost in the basic implementation of the plan,
2 and except because all we have right now is the \$810,000, I
3 believe that was the amount that Ms. Dubin testified to, right?

4 MR. BREMAN: In capital.

5 CHAIRMAN JABER: Why can't we accept that that is the
6 cost that we have right now and that will be accepted and any
7 costs associated with remedial action as the company becomes
8 aware of it, it is the responsibility of the company to seek
9 recovery of those costs as appropriate, and those costs will go
10 through the appropriate scrutiny at the time the costs are
11 known or should be known. Why isn't it that simple?

12 MS. STERN: Well, I think that is a possible
13 approach. But in my mind the scope of what the plan is is
14 still somewhat unclear even after the cross-examination. There
15 were nine items listed, some of those are ongoing year after
16 year. If I understood the testimony correctly, there is some
17 remediation activity that is included in those nine items and
18 I'm not clear on whether it is just planning activity or if it,
19 in fact, includes actual remediation.

20 CHAIRMAN JABER: I think it's both. I think what is
21 recurring, what is a known factor today is that every five
22 years they have got to do that baseline assessment to know,
23 that gives them a foundation for the next five years to go back
24 and compare to. You have got to have -- the only analogy I can
25 think of is not appropriate for public safety, but you know

1 sometimes you have to go get an X-ray, that gives you a
2 baseline so that the doctor when he takes your X-ray again in
3 another year knows where the changes have been. That's what a
4 baseline assessment plan is going to give them.

5 There is a foundation picture that is going to be
6 taken, and in the next five years it is going to be taken
7 again. The fact that that has to be done every five years is
8 recurring, it is a cost that will happen every five years.
9 That is a known factor. What is not known is what you have got
10 to fix along the way. And what I'm suggesting is the 810,000
11 covers the costs to develop this plan, the costs to put the
12 proper steps in place, the costs associated with developing the
13 baseline assessment, and then anything in between the company
14 needs to come back and say here is what we found, here is how
15 much it is going to cost. And that is when we get the
16 opportunity to say but did you incur those costs prudently, and
17 here is where you did and here is where you didn't.

18 MR. BREMAN: I don't have a problem in concept with
19 implementing whatever decision you make. I would caution you
20 that the 810,000 appears to include fixing certain valves and
21 stuff. Like I said, our discovery is ongoing and this is part
22 of my answer to the other Commissioner's question regarding is
23 incremental a new issue.

24 CHAIRMAN JABER: I understand. I think as one
25 Commissioner I am willing to take that risk because it is all

1 we have right now.

2 MR. BREMAN: Right. So understand that the 810,000
3 may not be the right amount.

4 CHAIRMAN JABER: Okay.

5 COMMISSIONER PALECKI: And I also understand that you
6 are concerned that this is just the tip of the iceberg, that
7 these costs are going to be much, much greater in future years.
8 I have a concern that what we are talking about is three
9 pipelines that are designed to deliver an alternate fuel to
10 these power plants, at least that is my understanding, and that
11 the primary fuel is natural gas.

12 Can there be some sort of language in the order that
13 we expect Florida Power and Light and every utility that has
14 liquid petroleum pipelines to do an analysis to determine if
15 these costs get too great whether the alternative of removing
16 the pipelines for tank storage on-site or other alternate fuel
17 options might be less expensive than complying with the
18 environmental requirements.

19 I know that these liquid petroleum pipelines are
20 being scrutinized so heavily all over the country because of
21 several accidents that occurred a few years ago. And because
22 of the great danger involved in transporting liquids over a
23 pipeline, flammable liquids, that I would just want to make
24 sure that both the company and our Staff continues to look at
25 these costs to make sure that if we see them snowballing and

1 getting out of hand, that some action can be taken to go some
2 other route to provide alternate fuels to these plants.

3 MR. BREMAN: We can certainly do that, Commissioner.
4 I just want to know if you are soliciting petitions for the
5 environmental cost-recovery clause or whether the proper forum
6 is perhaps the ten-year site plan review or some other
7 methodology.

8 COMMISSIONER PALECKI: I'm not really concerned about
9 the forum, I just want to make sure that we look at other
10 options if these costs do become prohibitive and burdensome on
11 the ratepayers.

12 COMMISSIONER DEASON: I think that the company has an
13 ongoing obligation as being a well-run, well-managed utility
14 providing service in a least-cost manner. They have an ongoing
15 obligation to review these matters. So I don't have a problem
16 indicating that in the order. I'm not so sure that we are
17 directing Staff to do anything particularly different or
18 opening an investigation or whatever. I think it is just a
19 reminder that as costs change there is an obligation for
20 management to continually assess costs and make decisions which
21 provide the best service at the least cost, and I think that is
22 what the Commissioner is saying.

23 COMMISSIONER PALECKI: I wish I could have said it
24 that well. Yes.

25 CHAIRMAN JABER: Do we have a motion, Commissioners?

1 COMMISSIONER BRADLEY: Okay. I will listen to the
2 motion first.

3 CHAIRMAN JABER: Motion?

4 COMMISSIONER DEASON: Madam Chairman, I like your
5 motion. I don't know if I can repeat it, but let me try to
6 take a crack at it.

7 CHAIRMAN JABER: What was my motion? You go ahead
8 and remind me.

9 COMMISSIONER DEASON: Let me see if I can take a
10 crack at it.

11 COMMISSIONER BRADLEY: I can give you a motion, Madam
12 Chair, to deal with the health, the safety, and the environment
13 as a total entity and to allow the Commission to have oversight
14 over the cost to the public; that is, we still maintain our
15 ability to review any costs that are incurred, but we have an
16 obligation to, in my opinion, to really redefine for our
17 purposes what environment -- the word environment really means.
18 And as the regulatory agency, we have the responsibility of not
19 only looking out for water and plants but also for human
20 beings, so we want to look out for all three entities. Is that
21 what I heard you say, Madam Chair?

22 CHAIRMAN JABER: Yes, absolutely. In concept that is
23 exactly what you heard, and I would just add that in doing that
24 it would be to deny Staff's recommendation and accept the
25 petition filed by the company seeking costs of 810,000 and

1 putting the burden on the utility to bring back to the
2 Commission costs associated with any remedial actions that are
3 warranted.

4 And I think, Commissioner Deason, did you have
5 anything to add to that?

6 COMMISSIONER DEASON: I think that 810,000, is that
7 the capital costs portion?

8 MR. BREMAN: That is only the capital cost portion.

9 CHAIRMAN JABER: What is the total amount?

10 MR. BREMAN: The O&M portion is in 2002, 80,000, I
11 believe. I'm trying to recall, and then there is some other
12 ongoing expenses. They are in the Exhibits KMD-5 and 6. I can
13 give you the numbers if you need the numbers.

14 COMMISSIONER PALECKI: I thought I heard Witness
15 Dubin testify that the number 810,000 was going into the year
16 2004, and that there was only like an \$82,000 capital cost. I
17 thought that is what I heard in the cross-examination.

18 CHAIRMAN JABER: Let's give Staff an opportunity to
19 look up that number, because I don't want to see a motion for
20 reconsideration because we have had the wrong number. So what
21 is that number? And then, Commissioner Deason, we are going to
22 let you solidify the motion.

23 COMMISSIONER DEASON: Very well.

24 MR. BREMAN: KMD-5, Form 42-2P, Page 2 of 2, Line 22.
25 It shows the O&M expense for 2003 of \$200,000.

1 COMMISSIONER BRADLEY: Which page is that on?

2 MR. BREMAN: It is Page 4 of her KMD-5 exhibit, if I
3 have the exhibit numbers memorized correctly.

4 COMMISSIONER DEASON: And this is represented to be
5 the incremental O&M cost of the PIM project, correct, for 2003?

6 MR. BREMAN: That is correct.

7 COMMISSIONER DEASON: \$200,000?

8 MR. BREMAN: 200,000.

9 COMMISSIONER DEASON: Now, how are the capital costs
10 handled, are we allowing a recovery of the carrying costs of
11 the capital costs, or are we allowing a lump sum recovery of
12 that? How is that requested?

13 MR. BREMAN: We do ongoing recovery of the carrying
14 costs of capital investment. The capital investment is
15 810,000, the carrying charges for 2003 and depreciation is
16 estimated at \$66,014.

17 COMMISSIONER DEASON: \$66,014?

18 MR. BREMAN: Right.

19 COMMISSIONER DEASON: That is the depreciation and
20 the carrying costs for that capital investment?

21 MR. BREMAN: Right. And that is on the same exhibit,
22 Form 42-3P, Page 2 of 2, or Page of KMD-5, Line 22.

23 COMMISSIONER PALECKI: 42-3P. I have two pages in
24 that exhibit.

25 MR. BREMAN: That is correct, it is Page 2 of 2.

1 COMMISSIONER PALECKI: Which line?

2 MR. BREMAN: 22.

3 COMMISSIONER DEASON: And this is represented as the
4 incremental costs associated with the PIM project, the P-I-M
5 project?

6 MR. BREMAN: Yes, sir.

7 COMMISSIONER DEASON: And I know that Staff has some
8 concerns about that and will be conducting further discovery
9 and review.

10 MR. BREMAN: Yes, sir.

11 COMMISSIONER DEASON: Madam Chair, if there are no
12 other questions, I can try to solidify your comments as well as
13 Commissioner Bradley's and we can --

14 MR. BREMAN: There are numbers for 2002 if you care
15 to hear them, but --

16 COMMISSIONER DEASON: I'm sorry, there are numbers
17 for what?

18 MR. BREMAN: There are O&M numbers for 2002, but no
19 capital numbers for 2002, if you care to hear them.

20 COMMISSIONER DEASON: Now, how are we going to
21 account for the 2002 numbers? These numbers are going to be
22 carried over for recovery in the 2003 period?

23 MR. BREMAN: That is correct.

24 COMMISSIONER DEASON: Okay. What are those numbers?

25 MR. BREMAN: 800,000. 80,000, excuse me. I keep

1 adding -- I don't work for the company. 80,000.

2 COMMISSIONER DEASON: And this is the incremental O&M
3 incurred in 2002 which recovery is sought in 2003.

4 MR. BREMAN: That is correct. It's in KMD-6, Form
5 42-5E, or Page 9 of KMD-6 if you want to look at it that way.

6 COMMISSIONER DEASON: Now, are there any other costs
7 that have been requested for recovery other than the 80,000
8 incremental O&M in 2002, the 200,000 incremental O&M in 2003,
9 and the carrying cost of capital expenditures in 2003 of
10 \$66,014?

11 MR. BREMAN: Not that we are aware of.

12 COMMISSIONER DEASON: Okay. Madam Chairman, I would
13 make a motion that we approve for cost-recovery the incremental
14 cost of the PIM project which is designed to comply with the
15 U.S. Department of Transportation's regulations in 49 CFR Part
16 195. And that based upon the information and evidence we have
17 in front of us at this time that that would be \$80,000 of
18 incremental O&M incurred in 2002, \$200,000 of incremental O&M
19 in 2003, and the carrying costs on capital expenditures which
20 would amount to \$66,014, that we allow those amounts for
21 recovery, that we direct Staff to continue their efforts to
22 conduct discovery and to ascertain whether all of these costs
23 are incremental or whether there should be some exceptions
24 brought to our attention.

25 CHAIRMAN JABER: Is there a second?

1 COMMISSIONER BRADLEY: Second.

2 CHAIRMAN JABER: There has been a motion and a
3 second, Commissioners. You have heard the motion. All those
4 in favor say aye.

5 (Unanimous affirmative vote.)

6 CHAIRMAN JABER: Opposed, nay? Okay. The motion
7 carries unanimously. That addresses 9C.

8 Staff, that takes us to 9E, Page 11 of the prehearing
9 order.

10 Thank you, Commissioner Deason.

11 MR. BREMAN: Commissioners, I have the pleasure to
12 announce that Staff agrees with FPL.

13 CHAIRMAN JABER: On 9E?

14 MR. BREMAN: On 9E.

15 CHAIRMAN JABER: Okay. Commissioners, can I have a
16 motion on 9E?

17 COMMISSIONER BAEZ: Move it.

18 COMMISSIONER DEASON: I move Staff.

19 COMMISSIONER BRADLEY: Second.

20 CHAIRMAN JABER: There has been a motion and a second
21 to approve Staff's recommendation to accept FPL's position on
22 Issue 9E. All those in favor say aye.

23 (Unanimous affirmative vote.)

24 CHAIRMAN JABER: 9E is approved. 9G, Page 12.

25 MR. BREMAN: Staff also agrees with FPL on this

1 issue. I would note, Commissioners, that on the prior issue
2 and this issue FIPUG did not do any cross, they had opening
3 statements, they are opposed to allowing this through base
4 rates. If you want me to have a discussion on that, I will be
5 glad to provide you with one, but I don't know that any is
6 needed.

7 CHAIRMAN JABER: Commissioners, what is your pleasure
8 on 9G? Staff's recommendation is that FPL's position be
9 accepted.

10 COMMISSIONER DEASON: I move Staff.

11 COMMISSIONER BRADLEY: Second.

12 CHAIRMAN JABER: There has been a motion and a second
13 to approve Staff on Issue 9G. All those in favor say aye.

14 (Unanimous affirmative vote.)

15 CHAIRMAN JABER: That addresses 9G.

16 We are on Issue 12A. Staff.

17 MR. BREMAN: Commissioners, 12A and 12C for FPC
18 should probably be decided together at the same time. Staff
19 and FPC are in agreement. The only reason why this issue was
20 not in the stipulated list is because FIPUG took the position
21 it did essentially asking the Commission to revisit its
22 interpretation of the ECRC statute.

23 CHAIRMAN JABER: Commissioners, Staff's suggestion is
24 that we take up 12A and 12C. Their recommendation is that we
25 accept Florida Power Corporation's position on both of those

1 issues.

2 COMMISSIONER DEASON: I move Staff on 12A and C.

3 COMMISSIONER BRADLEY: Second.

4 CHAIRMAN JABER: There has been a motion and a second
5 to accept Staff's recommendation on 12A and 12C. All those in
6 favor indicate by saying aye.

7 (Unanimous affirmative vote.)

8 CHAIRMAN JABER: That resolves 12A and 12C. Staff,
9 12B.

10 MR. BREMAN: 12B. Staff and FPC agree on the
11 methodology to do the determination of allocating costs. The
12 only reason this issue is not stipulated is because OPC
13 objected to inclusion of the costs.

14 COMMISSIONER DEASON: I move Staff on 12B.

15 MR. BREMAN: FIPUG, I'm sorry.

16 COMMISSIONER BRADLEY: Second.

17 CHAIRMAN JABER: There has been a motion and a second
18 to accept Staff's recommendation on Issue 12B. All those in
19 favor say aye.

20 (Unanimous affirmative vote.)

21 CHAIRMAN JABER: Issue 12B is resolved. 12D.

22 MR. BREMAN: A similar statement, Commissioners. The
23 only reason this issue is not stipulated is because of FIPUG
24 taking opposition to inclusion of these costs in the clause.

25 CHAIRMAN JABER: And on this issue the company is

1 actually agreeing with your position, right, which is that the
2 costs should be allocated to the rate classes on a
3 class-by-class basis?

4 MR. BREMAN: Noncoincident, yes, ma'am.

5 CHAIRMAN JABER: Commissioners, the recommendation is
6 to accept Staff's rec on 12D.

7 COMMISSIONER DEASON: I move Staff's recommendation
8 on 12D.

9 COMMISSIONER BRADLEY: Second.

10 CHAIRMAN JABER: All those in favor say aye.

11 (Unanimous affirmative vote.)

12 CHAIRMAN JABER: That resolves 12D. And that leaves
13 Staff Issues 4 and 7 as fallout issues?

14 MR. BREMAN: That is correct. Issue 2, 3, 4, and 7
15 essentially are fallout issues. And seeing how the Commission
16 has not made any adjustments to the company-specific issues,
17 the numbers that the company has filed are supportable and
18 reflect your vote on all stipulated issues and all
19 company-specific issues. If you want to go issue-by-issue we
20 can or we can just --

21 CHAIRMAN JABER: Commissioners, can I have a motion
22 that addresses the rest of Issues 2 and 3 and 4 and 7?

23 COMMISSIONER DEASON: I move that we approve those
24 issues as fallouts consistent with Staff's discussion that the
25 numbers as filed are consistent with our vote.

1 COMMISSIONER BRADLEY: Second.

2 CHAIRMAN JABER: There has been a motion and a second
3 on Issue 2, 3, 4, and 7. All those in favor say aye.

4 (Unanimous affirmative vote.)

5 CHAIRMAN JABER: Those issues are approved. Staff,
6 what else on this docket? Have we covered all of the issues?

7 MS. STERN: Yes, we have covered all of the issues.

8 CHAIRMAN JABER: Good job. Thank you very much.
9 Thanks to the parties. I appreciate you all working out the
10 stipulated language for the exhibit. That was good work.

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1 STATE OF FLORIDA)
2 : CERTIFICATE OF REPORTER
3 COUNTY OF LEON)

4
5 I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter
6 Services, FPSC Division of Commission Clerk and Administrative
7 Services, do hereby certify that the foregoing proceeding was
8 heard at the time and place herein stated.

9 IT IS FURTHER CERTIFIED that I stenographically
10 reported the said proceedings; that the same has been
11 transcribed under my direct supervision; and that this
12 transcript constitutes a true transcription of my notes of said
13 proceedings.

14 I FURTHER CERTIFY that I am not a relative, employee,
15 attorney or counsel of any of the parties, nor am I a relative
16 or employee of any of the parties' attorney or counsel
17 connected with the action, nor am I financially interested in
18 the action.

19 DATED THIS 26TH DAY OF NOVEMBER, 2002.

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JANE FAUROT, RPR
Chief, Office of Hearing Reporter Services
FPSC Division of Commission Clerk and
Administrative Services
(850) 413-6732

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