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1 BEFORE THE

FLORIDA PUBLIC SERVICE COMMISSION

2

3 In the Matter of DOCKET NO. 060001-EI

4 FUEL AND PURCHASED POWER

COST RECOVERY CLAUSE WITH

5 GENERATING PERFORMANCE INCENTIVE

FACTOR.

6 ---------------------------------

7 PETITION TO RECOVER NATURAL GAS DOCKET NO. 060362-EI

STORAGE PROJECT COSTS THROUGH

8 FUEL COST RECOVERY CLAUSE, BY

FLORIDA POWER & LIGHT COMPANY.

9 ---------------------------------

10 PETITION FOR AUTHORITY TO DOCKET NO. 041291-EI

RECOVER PRUDENTLY INCURRED

11 STORM RESTORATION COSTS RELATED

TO 2004 STORM SEASON THAT

12 EXCEED STORM RESERVE BALANCE, BY

FLORIDA POWER & LIGHT COMPANY.

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16 THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

17 VOLUME 6

Pages 741 through 914

18

19 PROCEEDINGS: HEARING

20 BEFORE: CHAIRMAN LISA POLAK EDGAR

COMMISSIONER J. TERRY DEASON

21 COMMISSIONER ISILIO ARRIAGA

COMMISSIONER MATTHEW M. CARTER, II

22 COMMISSIONER KATRINA J. TEW

23 DATE: Monday, November 7, 2006

24 TIME: Commenced at 9:30 a.m.

Recessed at 5:35 p.m.

25

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1 PLACE: Betty Easley Conference Center

Room 148

2 4075 Esplanade Way

Tallahassee, Florida

3

4 REPORTED BY: MARY ALLEN NEEL, RPR, FPR

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6 PARTICIPATING: (As heretofore noted.)

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1 I N D E X

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2 I N D E X

3 EXHIBITS

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1 (Transcript follows in sequence from

2 Volume 5.)

3 MR. McGLOTHLIN: Mr. Ross is available for

4 cross-examination.

5 MR. BUTLER: Madam Chairman, by agreement, I

6 would like to defer my cross-examination until after

7 Mr. Burnett has completed his.

8 CHAIRMAN EDGAR: So be it. Mr. Burnett.

9 MR. BURNETT: Thank you, Madam Chair.

10 Thereupon,

11 JAMES A. ROSS

12 called as a witness on behalf of the Citizens of the

13 State of Florida, continues his sworn testimony as

14 follows:

15 CROSS-EXAMINATION

16 BY MR. BURNETT:

17 Q. Hello again, Mr. Ross. We've met before at

18 your deposition, but again, I'm John Burnett on behalf

19 of Progress Energy Florida.

20 A. Glad to see you again, Mr. Burnett.

21 Q. Thank you, sir. Mr. Ross, you're testifying

22 here, I think as we've heard, about issues related to

23 generating plants; correct?

24 A. Correct.

25 Q. So with that in mind, I want to begin with

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1 some questions about your experience, Mr. Ross. You

2 worked in a coal plant in Missouri around 1975 for a

3 little less than a year; correct?

4 A. Correct.

5 Q. You've never held a position in the control

6 room of a power plant, have you?

7 A. That is correct.

8 Q. You've never prepared a budget for a specific

9 generating plant, have you?

10 A. Not for specific generating plants, but I was

11 responsible for putting together the fuel budget for the

12 entire Union Electric system.

13 Q. Mr. Ross, you've never held a position where

14 you've made maintenance decisions for a power plant,

15 have you?

16 A. Again, I have not made specific maintenance

17 decisions, but I worked closely with our Betterment

18 Department in evaluating maintenance projects on the

19 Union Electric system.

20 Q. And, Mr. Ross, you've never actually worked in

21 operations dispatch for a generating unit, have you?

22 A. Again, I have never actually been assigned to

23 operations dispatch, but as part of my job with Union

24 Electric, I worked closely with what we called our load

25 dispatch. And actually, the department I was in was

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1 under the head of the load dispatching department.

2 Q. Mr. Ross, you've never been to a Progress

3 Energy Florida generating plant, have you?

4 A. That's correct.

5 Q. And in fact, at the time of your deposition

6 about a week ago, you were unable to name even one of

7 Progress Energy Florida's generating plants; correct?

8 A. It had been a while since I had reviewed the

9 testimony in the case, and that's correct, I didn't

10 identify any.

11 Q. Mr. Ross, I would like to turn to some of the

12 issues you raised in your direct testimony. You would

13 agree with me that over time, there is wear on the

14 physical elements of a generating plant; correct?

15 A. I didn't understand that question.

16 Q. I'll ask it again, sir. You would agree with

17 me that over time, there is wear on the physical

18 elements of generating plants; correct?

19 A. You're talking about the individual pumps,

20 motors, that type of thing?

21 Q. That's correct.

22 A. Yes, I would agree with that.

23 Q. And you would also agree that equipment in a

24 generating plant degrades over time; correct?

25 A. I would agree with that.

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1 Q. Keeping these facts in mind, Mr. Ross, you

2 cannot name a generating unit anywhere that has

3 consistently improved its heat rate, can you?

4 A. You mean over its lifetime? I would agree

5 with that, over the lifetime of a generating unit.

6 Q. And with the exception of maybe one Union

7 Electric plant, you cannot name any generating unit that

8 has consistently increased its unit availability over

9 time; correct?

10 A. That's correct.

11 Q. Similarly, Mr. Ross, you cannot name any

12 generating unit that has ever held its operating heat

13 rate constant over time, can you?

14 A. That is also correct.

15 Q. And except for maybe the Callaway plant on the

16 Union Electric system, you cannot name a generating unit

17 that has held its availability consistent over time, can

18 you?

19 A. That is correct.

20 Q. Yet, Mr. Ross, with all this in mind, a

21 utility would have to do at least some of the things we

22 just talked about to get rewards or avoid penalties

23 under your dead band proposal; correct?

24 A. No, that's incorrect. In fact, the reason

25 that you don't have utilities operating units that are

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1 consistently improving heat rates or consistently

2 improving availabilities is because of the external

3 factors that all operating power plants incur, and those

4 are everything from environmental considerations to

5 pumps or motors that fail on a more frequent basis than

6 they have historically. The reason that I did not use a

7 historical basis for the dead band is because I

8 understand that generating units do have these

9 characteristics.

10 However, when I also looked at the operation

11 of the Florida utilities under the incentive mechanism,

12 I see the same thing that you would normally expect from

13 all the other operating units in the United States.

14 There was no significant improvement in the

15 characteristics of those units under the GPIF than what

16 you would see under a regime that did not have a GPIF.

17 Q. Thank you, Mr. Ross. That's actually an

18 excellent segue into my next line of questioning. I

19 think from what you just said, you would agree with me

20 that generating performance issues involve many complex

21 considerations, wouldn't you?

22 A. That's correct.

23 Q. For example, system load has an impact on the

24 way a utility operates its generating units; correct?

25 A. Well, you'll have to give me a little more

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1 definitive area of where you're going with that

2 question.

3 Q. I will, sir. Hold on one second, please.

4 Actually, it's the same question I asked you

5 in your deposition on page 13. When I asked you that

6 same question, your answer at line 2, "I would agree

7 that load has an impact on the way you dispatch your

8 system." Do you recall giving that answer?

9 A. Yes, I do.

10 Q. Okay. So you would again agree with me that

11 load, system load has an impact on the way a utility

12 operates its generation; correct?

13 A. The way you dispatch the units, load does have

14 an impact.

15 Q. Thank you. Scheduled maintenance is also an

16 important issue that has to be considered for generating

17 plants; correct?

18 A. Yes.

19 Q. Fuel price is also an important factor in

20 operating generating units; correct?

21 A. I don't know that the price has an effect on

22 the operation. The price might determine how often the

23 unit is operated.

24 Q. But you would agree with me that it does have

25 an impact as you just stated?

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1 A. As I stated, that would be an impact that

2 price could have on the operation.

3 Q. Thank you. And total generating portfolio

4 availability is also an important consideration in

5 operating a generating unit; correct?

6 MR. McGLOTHLIN: For my benefit, would you

7 repeat that question?

8 MR. BURNETT: Sure.

9 BY MR. BURNETT:

10 Q. Total generating unit portfolio availability

11 is also an important consideration in operating a

12 generating unit; correct?

13 A. Is that again from my deposition?

14 Q. That is correct, sir.

15 A. Can you give me a cite on that one?

16 Q. Page 14, beginning on lines 15 through 22, I

17 asked you, "Would you agree with me, Mr. Ross, that in

18 making generation operation decisions, generating

19 operational decisions, that you have consider your total

20 generation portfolio as a utility?"

21 You said, "The total available generating

22 units that are available to the operator or the dispatch

23 center are considered, but that consideration would

24 depend on a lot of factors." And then we spent some

25 time talking about those factors. Do you recall that,

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1 sir?

2 A. Yes. I would answer the same to that

3 question.

4 Q. Thank you, sir. And when looking at whether a

5 unit can generate a certain number of megawatts, one has

6 to look at site-specific conditions at a plant to make

7 an accurate determination; correct?

8 A. Correct.

9 Q. So you would agree with me that a lot of

10 thoughtful analysis has to go into maintaining and

11 operating generating units; correct?

12 A. I would agree with that.

13 Q. Well, on the subject of the need for

14 thoughtful analysis, I would like to turn to how you

15 arrived of your dead band proposal in this case,

16 Mr. Ross. In your testimony, you recommend a dead band

17 scale of plus 5 to negative 2.5; correct?

18 A. That's correct.

19 Q. But there's nothing magic about that range;

20 correct, sir?

21 A. I wouldn't say it's magic. It's based upon

22 what under my experience I would consider to be a

23 reasonable range for setting the dead band. In fact, if

24 you look at the utilities' filings in this proceeding,

25 it pretty well confirms what I think is the rational

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1 selection of the point -- or the five-point GPIP score

2 as the minimum amount before you would pay a reward.

3 And by that I mean that if you look at the utilities'

4 targets versus what their maximum achievable performance

5 is in what they filed in this proceeding, the majority

6 of those units that are in those filings have about a

7 one percentage point or one and a half percentage point

8 change that's needed to get to that halfway point, which

9 would be represented by the score of 5.

10 And if you think about that for a minute,

11 you're talking about a unit that's having an equivalent

12 availability of, let's say, 85, and it only has to get

13 to 86 or 86-1/2, and it has achieved my dead band

14 minimum threshold.

15 Anything less than that, I'm concerned that

16 falls into the area of forecast error. Anytime you use

17 history to project what's going to happen in the future,

18 you have a certain forecast error. So if you set the

19 payments for these rewards too low, in essence, just

20 merely by the fact of not being able to accurately

21 forecast what's going to happen in the future in setting

22 your target, the utilities can be paid a premium or a

23 reward for really doing nothing, just absolutely

24 nothing, just the fact that there's error in the

25 forecast.

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1 So that's the basis for my rationale in

2 setting the halfway or midway point on the scale.

3 Q. Thank you for that, Mr. Ross, but back to my

4 questions about how you arrived at that dead band range.

5 That is based --

6 COMMISSIONER DEASON: Madam Chairman, may I --

7 CHAIRMAN EDGAR: Excuse me. Commissioner

8 Deason.

9 COMMISSIONER DEASON: You indicated it as a

10 forecast, and I never understood it in those terms. Is

11 it a target, or is it a forecast of expected

12 performance?

13 THE WITNESS: I would say it is both. It is a

14 target that is established, but it is really a forecast

15 of what the future performance is going to be, because

16 you're looking at history to determine what you think

17 the reasonableness is of that target. So you're

18 projecting what you think in that future period that

19 generating unit is going to operate, and then depending

20 on how it operates around that target, you generate

21 these GPIP points that finally transfer into a reward.

22 COMMISSIONER DEASON: But nowhere in the GPIF

23 analysis is there an actual forecast presented by the

24 operators of these units as to what they anticipate a

25 particular unit to perform in a projected period of

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1 time.

2 THE WITNESS: Well, my understanding is that

3 the target is set up based upon the history. You use

4 history, and then you also use what the utilities

5 believe to be their -- I guess a good way to say it is,

6 for their planned maintenance, it's an idea of what is

7 normalized planned maintenance for that period.

8 So I guess I'm saying that the target, to me,

9 is in the nature of a forecast, and I think maybe you're

10 saying, "Well, it's just a target that's based on

11 history and the other factors." I think maybe we're

12 quibbling a little bit, but I think we're getting to the

13 same point.

14 COMMISSIONER DEASON: Thank you.

15 CHAIRMAN EDGAR: Mr. Burnett.

16 MR. BURNETT: Thank you.

17 BY MR. BURNETT:

18 Q. Mr. Ross, back to how you again arrived at

19 your dead band range. That proposed range is based on

20 nothing but your overall general experience; correct?

21 A. That's true, but it's coupled with, like I

22 said, trying to see whether it's rational by looking at

23 the utility filings in this proceeding.

24 Q. Well, sir, you performed no analysis at all to

25 support that range, did you?

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1 A. There is no analysis to support that other

2 than what I've explained here today.

3 Q. Mr. Ross, you picked -- well, your dead band

4 range of plus 5 to 2.5, negative 2.5 just sort of feels

5 right to you; correct?

6 A. Well, again, it's based on my experience, and

7 what I'm saying is, I think for exemplary performance,

8 meeting the halfway target of what is maximum expected

9 is a reasonable level to set that score.

10 CHAIRMAN EDGAR: Commissioner Carter.

11 COMMISSIONER CARTER: Thank you, Madam

12 Chairman. On your analysis using a number line, there's

13 a zero, and then there are positive numbers on one side

14 and negative numbers on the other side.

15 THE WITNESS: Yes, sir.

16 COMMISSIONER CARTER: Would it make more sense

17 to say for a reward, you go to 5, and for a nonreward,

18 you go to 5? Would that make more sense? I'm trying to

19 get my mind around --

20 THE WITNESS: Well, no. The utilities have

21 taken --

22 COMMISSIONER CARTER: Excuse me. Hang on a

23 second. I'm trying to get my -- so you can understand

24 the nature of my question. And we're talking about

25 fairness, aren't we? I'm trying to -- it seems to me

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1 that plus 5 and minus 2.5, there's no balance there. Do

2 you understand what I'm asking?

3 THE WITNESS: Yes, I understand.

4 COMMISSIONER CARTER: How can you reconcile

5 those two numbers?

6 THE WITNESS: Well, based on my experience,

7 what I think is fair to the ratepayers is that -- the

8 utilities are obligated to perform in a prudent manner,

9 which means they're doing everything they can to provide

10 the most efficient base load generating performance that

11 they can. And I -- based on that, I was saying that in

12 order for them to get a penalty, I would set a cushion,

13 but I wouldn't set it at the same level as the reward,

14 because they had an obligation to perform.

15 But the utilities have kind of characterized

16 that as being punitive, and the intent is not to be

17 punitive. So I would agree that if the concept of more

18 symmetrical, going from a plus 5 to a minus 5 in your

19 mind is reasonable, I would agree with that. I mean, I

20 would concede --

21 COMMISSIONER CARTER: But it's not reasonable

22 in your mind?

23 THE WITNESS: Well, my experience tells me

24 that I would use more of a stick on the low side than

25 setting it at 5. I would set it at 2.5. But I'm saying

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1 it's not unreasonable to set it symmetrically. And I'm

2 not -- what I don't want to do is, I don't want to come

3 across as this is being punitive to the utility. That's

4 not the intent. What it is is to get more equity in the

5 process for the ratepayers.

6 And it's much more important to set a dead

7 band of 5 above and 5 below than it is not to set a dead

8 band at all, so I would agree that a symmetrical dead

9 band would be a reasonable modification to my proposal.

10 CHAIRMAN EDGAR: Thank you. Mr. Burnett.

11 MR. BURNETT: Thank you.

12 BY MR. BURNETT:

13 Q. Mr. Ross, you contend, obviously, from what

14 you just said, that the GPIF as it exists today is

15 incorrect; right?

16 A. I wouldn't say it's incorrect. I just think

17 it's not equitable to the ratepayers for the utilities

18 to be getting rewards when the performance above the

19 target is not exemplary, that the overall performance is

20 not something significantly above the target.

21 Q. Mr. Ross, I asked you that same question in

22 your deposition on page 25, "Do you contend that the

23 Commission was incorrect by adopting GPIF as it exists

24 today?" Your answer, "As it exists today, I think it's

25 incorrect." Do you remember giving me that answer?

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1 A. Could you give me a cite?

2 Q. Yes, sir. Page 25, lines 23 to 24, to page

3 26. Actually, page 25 through line 25. Your answer,

4 "As it exists today, I think it's incorrect," is

5 actually on line 25, page 25.

6 A. Well, I think in the context -- I said, "As it

7 exists today, I think it's incorrect. I don't think

8 it's equitable to the ratepayers." So in that context,

9 I would agree with the statement in the deposition as

10 well as what I just stated.

11 Q. Thank you, sir. And you take the position

12 that anyone who is thinking carefully about GPIF, at

13 least up to 15 years ago, would have a strong argument

14 to change it even back then; right?

15 A. I think anybody with my utility experience,

16 and in the context of a regulatory setting where you

17 have a fully compensatory fuel adjustment clause, that

18 setting the targets as low as -- or setting the

19 triggering point for payments as low as they were set,

20 in my mind, was not the most optimum way to set up the

21 program.

22 Q. Well, Mr. Ross, to your knowledge, this is the

23 first time the Office of Public Counsel has ever

24 challenged GPIF over the past 20 years; correct?

25 A. That's correct.

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1 Q. And the GPIF manual calculations and formulas

2 have stayed the same over the past 20 years, correct?

3 A. Essentially the same as far as I know.

4 Q. And to your knowledge, you're the one and only

5 person who has ever challenged GPIF over the last two

6 decades; correct?

7 A. As far as I know.

8 Q. However, Mr. Ross, you've not done any

9 independent research as to whether GPIF has provided

10 fuel savings to ratepayers historically in Florida, have

11 you?

12 A. I haven't, and the reason that I haven't is

13 that I can't conceive of an analysis that could be

14 performed in that area. And let me explain what I mean.

15 As I said earlier, you have a regulatory setting here

16 where you have a fully compensatory fuel adjustment

17 clause that as long as the utilities operate prudently,

18 they get their full fuel costs passed through.

19 In order for my adjustment or for the

20 elimination of the GPIF to affect the fuel costs that

21 the utility incurs, there has to be some change in the

22 way that the utility operates. And I can't conceive of

23 anything that they could say that they could change and

24 increase the fuel costs and still say they operated

25 their utility in a prudent manner. Whatever change they

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1 would invoke to increase the cost of fuel would on its

2 face be imprudent. So I don't know how you could come

3 up with an analysis that would demonstrate the effect of

4 the dead band.

5 Q. Mr. Ross, then again, it's probably safe for

6 me to assume that with respect to my client, Progress

7 Energy Florida, you similarly have not done any

8 investigation as to whether GPIF has historically

9 provided fuel savings to PEF customers; correct?

10 A. That is correct, for the same reason that I

11 just stated. In order for your client to have not

12 performed up to its optimum would indicate to me that

13 they did something imprudent. They weren't prudently

14 operating their utility if there can be a detrimental

15 impact on fuel because of the GPIF modifications or the

16 lack of a GPIF program.

17 Q. Well, let me sum this issue up, Mr. Ross.

18 CHAIRMAN EDGAR: Mr. Burnett, I'm sorry.

19 Commissioner Deason has a question.

20 MR. BURNETT: Excuse me. Sure.

21 COMMISSIONER DEASON: As I just understand the

22 testimony that you've just given in response to the last

23 couple of questions, I would take it that your ultimate

24 position is that there should be no GPIF at all, because

25 what I hear you saying is that if we only pass through

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1 prudently incurred fuel costs, those must be the

2 absolutely lowest fuel costs, and there's no way that

3 there can be improvement in that performance, and

4 therefore, why have a mechanism which gives an incentive

5 for increased performance if the costs that we only

6 allow are already at that the level. Now, that's what I

7 understood your testimony to say, so if that's --

8 THE WITNESS: You understood me correctly, but

9 I'm not advocating that the GPIF be eliminated. And the

10 reason for that is, I don't have a philosophical problem

11 with rewarding people that perform in an exemplary

12 fashion.

13 And if the targets are set reasonably, and I

14 have no reason to think that they're not, and the

15 utility operates in an exemplary fashion, again, at the

16 5 score, then what you're really doing is, you're

17 rewarding them for doing an outstanding job. It's still

18 their job. They're still doing what they should do.

19 They're still operating as prudently as they can. But

20 you're basically giving them a reward for outstanding

21 performance, and I don't have a problem with that, and I

22 think that's why the GPIF -- it may be a good reason to

23 continue to keep it in effect.

24 COMMISSIONER DEASON: So you see a difference

25 between prudently incurred fuel costs and exemplary

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1 service or exemplary performance such that what normally

2 would be passed through the fuel clause could be less if

3 there's exemplary performance?

4 THE WITNESS: No. What I'm saying is that the

5 way the GPIF is set up, if the utility performs in a

6 prudent and efficient manner, they have certain

7 equivalent availabilities and certain heat rates that

8 fall out of that prudent operation. Under the current

9 GPIF, if those resulting equivalent availabilities and

10 heat rates are just modestly above the targets, they get

11 payment for that. And what I'm saying is that the GPIF

12 would provide I guess a better ratepayer bang for the

13 buck if you had a situation where they only got payment

14 for those improvements if they were significant.

15 And I think where I maybe differ with the

16 utilities is, I really don't think that the GPIF process

17 is what I would consider a true incentive process. When

18 I think of an incentive process, I think of something

19 that changes the behavior of the individual that has

20 access to the incentive.

21 And I think the utilities, if they're

22 prudently operated, and I don't have any reason to

23 believe that these utilities aren't, they're doing

24 everything they can under their obligation to operate in

25 a prudent manner. So I don't know that there's an

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1 incentive to improve anything with the GPIF. But I

2 would say that a reward for demonstrating exemplary

3 performance is something that the Commission may want to

4 do.

5 COMMISSIONER DEASON: So your testimony is

6 that it's your belief that over the last 20 or 25 years,

7 there had been no exemplary performance as result of the

8 GPIF, and there's not been any fuel savings as a result

9 of the program?

10 THE WITNESS: There may have been some

11 exemplary performance, but my testimony is, I can't,

12 from looking at the data that I've seen, see a

13 consistent change in these unit performances that

14 indicates to me that there has been an incentive that

15 has changed behavior above and beyond what you would

16 normally see a utility operate in a prudent manner.

17 COMMISSIONER DEASON: Is the standard one of

18 consistent performance, or better than what would have

19 been achieved had there been no GPIF?

20 THE WITNESS: I'm sorry. I didn't follow

21 that.

22 COMMISSIONER DEASON: You keep mentioning

23 consistent performance. Is that the appropriate

24 standard, or is the standard to attempt to see if there

25 has been -- if the GPIF has achieved its goal? Should

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1 the standard be to try to ascertain the level of fuel

2 costs that would have been incurred absent the GPIF and

3 the amount of fuel costs that are incurred as a result

4 of the GPIF?

5 THE WITNESS: I would say the latter if you

6 could perform the evaluation. But as I stated earlier,

7 I don't know how you would make that determination,

8 because if the utilities have been getting passthrough

9 of these fuel costs, then the determination is that the

10 actions that they've performed are prudent. And for

11 them to have acted otherwise so that there would be this

12 difference in the fuel savings indicates to me that

13 there would be imprudent decisions that could have been

14 made, that could have been made and passed through. I

15 don't know how to evaluate that. I don't think you can

16 evaluate that.

17 COMMISSIONER DEASON: Thank you.

18 MR. BURNETT: Thank you.

19 BY MR. BURNETT:

20 Q. Mr. Ross, to sum this all up, as you sit here

21 today, you can't say with certainty what impact your

22 dead band proposal would have on fuel savings in

23 Florida, can you?

24 A. I think I stated when we had the deposition

25 that you can't say anything with certainty, including

766

1 the outcome of the World Series, although it turned out

2 pretty good for those of us in St. Louis.

3 Q. Mr. Ross, I think this may be my last

4 question. You don't disagree that your dead band

5 proposal would virtually eliminate all rewards under

6 GPIF; correct?

7 A. There's testimony in this case that said if my

8 dead band was adopted, it would virtually eliminate the

9 rewards, and I think it was --

10 Q. And you don't disagree --

11 A. I think it was Florida Power & Light's

12 witness. I don't disagree with that, but I don't have

13 any basis for saying what the future is going to hold.

14 MR. BURNETT: Thank you, sir. No further

15 questions.

16 CHAIRMAN EDGAR: Commissioner Arriaga.

17 COMMISSIONER ARRIAGA: Thank you. Would you

18 please clarify something for me, Mr. Ross. What was the

19 statement you made regarding historical analysis?

20 THE WITNESS: Okay. As I understand the way

21 the GPIF is developed, the targets are developed, you

22 look at three years of history, operating history for

23 each of the units. So there's a historical basis for

24 how you get to the target.

25 COMMISSIONER ARRIAGA: And do you disagree

767

1 with that?

2 THE WITNESS: No. I don't disagree with any

3 of the methodology that's underlying the calculation of

4 the GPIF targets or their minimum/maximum ranges or the

5 way the GPIP points are developed. My position is that

6 the triggering mechanism for the payments of rewards and

7 penalties should be changed.

8 COMMISSIONER ARRIAGA: But if we look at the

9 history of how the GPIF has behaved in the last four or

10 five years, you could make some kind of projection or

11 forecasted inference if you want regarding the utility

12 or not, the effectiveness or not of the GPIF.

13 THE WITNESS: Oh, I think I misunderstood your

14 first question. I was thinking of the individual units

15 within the process, and what you're saying is looking at

16 the performance of the utilities over a period of time.

17 COMMISSIONER ARRIAGA: Right.

18 THE WITNESS: I looked at the period of time.

19 I looked at six years. I looked at 15 years. And what

20 I couldn't find was any discernible improvements

21 consistently among the utilities and among the units.

22 COMMISSIONER ARRIAGA: Would you please turn

23 to JAR-1.

24 THE WITNESS: Certainly.

25 COMMISSIONER ARRIAGA: Schedule 3. There are

768

1 two graphs there that relate to Tampa Electric Company,

2 the EAF and the heat rate. You are familiar, of course,

3 with a mathematical reliability calculation called

4 regression and correlation analysis.

5 THE WITNESS: I'm not with you. You said

6 JAR-2?

7 COMMISSIONER ARRIAGA: JAR-1.

8 THE WITNESS: Oh, 1. I'm sorry.

9 COMMISSIONER ARRIAGA: Schedule 3. There are

10 two graphs that refer to Tampa Electric Company.

11 THE WITNESS: Okay. I have those.

12 MR. BUTLER: You are familiar with a

13 reliability calculation called regression and

14 correlation analysis? Are you aware of that?

15 THE WITNESS: I have the graphs, yes.

16 COMMISSIONER ARRIAGA: Do you recognize

17 regression and correlation analysis as a mathematical

18 calculation?

19 THE WITNESS: I recognize that there are those

20 methods of analysis.

21 COMMISSIONER ARRIAGA: Okay. Do you see the

22 black line that goes down?

23 THE WITNESS: Yes.

24 COMMISSIONER ARRIAGA: I would tend to say

25 that if you apply a regression analysis to that data

769

1 that I heard was all over the place, that line is pretty

2 close to one, the correlation, almost close to one,

3 which means that the historical data adapts to the

4 performance.

5 THE WITNESS: Okay.

6 COMMISSIONER ARRIAGA: So what I'm trying to

7 get at is, applying a correlation analysis to the data

8 that is here, it doesn't seem that it's all over the

9 place. It seems it's pretty close to one, which means

10 that the GPIF factor has been estimated appropriately

11 and that the utilities have performed appropriately to

12 the estimated values.

13 Maybe we're talking a different language.

14 THE WITNESS: I think we are.

15 COMMISSIONER ARRIAGA: I've got an engineering

16 background.

17 THE WITNESS: Let me try this. Let me try

18 this. We're on Schedule 3 with the graph that says

19 "Tampa Electric Company System EAF"?

20 COMMISSIONER ARRIAGA: Uh-huh.

21 THE WITNESS: Okay. The black line is a

22 linear regression of the red line.

23 COMMISSIONER ARRIAGA: Absolutely.

24 THE WITNESS: Okay. And what this shows is

25 that over time, Tampa Electric Company's EAF has

770

1 declined, has gotten worse over time.

2 COMMISSIONER ARRIAGA: What it shows is that

3 the ups and the downs eliminate each other, balance each

4 other out.

5 THE WITNESS: That is true, because this is a

6 linear --

7 COMMISSIONER ARRIAGA: So it is a fair --

8 THE WITNESS: It's a straight line. Yes, It's

9 a straight line --

10 COMMISSIONER ARRIAGA: So GPIF is a fair

11 method of calculating, because it balances out the

12 negatives and balances out the positives, and you get a

13 straight line.

14 THE WITNESS: But the straight line is not

15 representative of GPIF. The straight line is just

16 merely a linear --

17 COMMISSIONER ARRIAGA: It's EAF.

18 THE WITNESS: Right.

19 COMMISSIONER ARRIAGA: I'm just trying to say

20 -- what I'm trying to point out to you, if I may,

21 please, is that the data, the historical data shows that

22 the GPIF factor has behaved appropriately according to

23 Commission desires and Commission rules and Commission

24 objectives. In other words, the data is not -- the

25 historical data is not all over the place, as I see it.

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1 The positives and the negatives balance each other out,

2 and that's why you get that straight line.

3 THE WITNESS: That is correct, but the actual

4 data is all over the place. If you look at the red

5 line --

6 COMMISSIONER ARRIAGA: But you have to look at

7 it historically and average the history. That's why you

8 apply regression analysis.

9 THE WITNESS: Well, but the regression

10 analysis here is not trying to do a comparison of the

11 targets and the actual. If you take a look at the

12 individual targets in the individual years where those

13 actuals are plotted, you'll see that -- let's just take

14 October '89 to September '90. Eighty percent was about

15 what the target was. The utility came in at something

16 around 76. Then in the next year, the target dropped

17 down from 80 down to probably 78, and the utility, it

18 looks like they hit the target. And then in the next

19 year, the target drops -- in October '91, '92, it drops

20 down to somewhere in the range of 76, but the utility in

21 that period hit a higher number, probably about 78. So

22 the targets move, and --

23 COMMISSIONER ARRIAGA: That's exactly what I

24 meant. There are times they don't meet the targets, and

25 there are times they go over the target. They balance

772

1 each other out.

2 THE WITNESS: Well, but they haven't balanced

3 themselves out when you look at the payments that the

4 customers have received. I mean, you may get that

5 picture from this chart, but if you'll turn -- earlier,

6 there's a chart -- I mean, there's a table on just the

7 next page from that chart, Schedule 2, page 4 of 4.

8 That's the Tampa Electric rewards and penalties. And

9 you can see that over time, Tampa was way ahead of the

10 game, and then right at the end, they fell behind. So

11 that's the way the targets and the penalties play

12 through with respect to the payments.

13 COMMISSIONER ARRIAGA: Okay. Thanks.

14 CHAIRMAN EDGAR: Commissioner Carter.

15 COMMISSIONER CARTER: Thank you, Madam

16 Chairman.

17 Mr. Ross, you used the term -- you were

18 defining exemplary performance.

19 THE WITNESS: Yes.

20 COMMISSIONER CARTER: Can you give me some

21 specific examples of what that would be?

22 THE WITNESS: Well, I think anything that's

23 50 percent between the midpoint of what the utility

24 target is and what their maximum performance is is

25 exemplary.

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1 COMMISSIONER CARTER: Something specific,

2 something that I could write down that I'll know what

3 you're talking about instead of -- you know, exemplary

4 is a qualitative term, but specifically what do you mean

5 when you say there has to be exemplary performance?

6 THE WITNESS: Say 50 percent above the target,

7 a minimum of 50 percent above the target level.

8 COMMISSIONER CARTER: Maybe I'm not --

9 THE WITNESS: I'm sorry. I'm not following.

10 COMMISSIONER CARTER: -- asking the right

11 question. What does your term "exemplary performance"

12 mean? Can you define it in specifics? I mean, I was

13 looking at your numbers in terms of the plus 5 and the

14 minus 2-1/2. Then in your response to a question to

15 Commissioner Deason, you said they would have to have

16 exemplary performance. I'm just trying to say, how do

17 you define what exemplary performance is?

18 THE WITNESS: It's judgment, and the judgment

19 that I've applied is that it has to be at least half of

20 the way between the target and the midpoint. And the

21 other aspect of it is, I think it has to be something

22 that is far enough above the target that it doesn't

23 reflect forecast error.

24 COMMISSIONER CARTER: Which would be?

25 THE WITNESS: The normal variations about your

774

1 projection, your target. And I think that would fall in

2 a range of anything less than 1 percent, one percentage

3 point on the EAF. You've got 80 as the target. If it's

4 81, I would think that anything less than the 1 percent

5 would fall into an area of forecast error. I don't

6 think you can project with that precision what the

7 target is going to be.

8 COMMISSIONER CARTER: Thank you, Madam Chair.

9 CHAIRMAN EDGAR: Mr. Burnett, were you

10 finished with your cross?

11 MR. BURNETT: Yes, ma'am.

12 CHAIRMAN EDGAR: Okay. I could use a stretch,

13 so I think it's about that time. We're going to take

14 approximately 10 minutes and come back at about 20

15 after, and we are on break.

16 (Short recess.)

17 CHAIRMAN EDGAR: We will go back on the

18 record. Mr. Butler, I think you're next.

19 MR. BUTLER: Thank you, Madam Chairman.

20 CROSS-EXAMINATION

21 BY MR. BUTLER:

22 Q. Good afternoon, Mr. Ross.

23 A. Good afternoon, Mr. Butler.

24 Q. Some of the questions I was going to ask you

25 Mr. Burnett did, so hopefully that will shorten this

775

1 some. And I'll try to avoid duplication. There may be

2 a couple of places where it overlaps a little bit.

3 Can you name any utility in Florida that would

4 have received a GPIF reward over the past 15 years if

5 your dead band proposal had been in effect during that

6 time period?

7 A. No. I think I testified earlier I haven't the

8 ability to -- or I haven't made that analysis.

9 Q. And likewise, can you name any utility

10 anywhere else in the country whose generating

11 performance would have earned it a reward under

12 Florida's GPIF methodology if the GPIF methodology had

13 incorporated your dead band proposal?

14 A. Are you asking me if any other utility in the

15 country has a GPIF and the dead band would have been

16 applied to that?

17 Q. No. I'm asking you whether in developing your

18 proposal you looked to see if there is any utility in

19 the country whose actual generating performance would

20 have received a reward under Florida's GPIF methodology

21 if that methodology incorporated your dead band

22 proposal.

23 A. There is no way I could have performed that

24 analysis. I wouldn't have the data to do it.

25 Q. Do you have any reason to dispute any of the

776

1 calculations in FPL witness Pam Sonnelitter's August 22,

2 2006 testimony that was filed in response to your direct

3 testimony?

4 A. Are you referring to the charts in the back of

5 her testimony?

6 Q. Yes, to the data, the calculations that

7 underlie the charts and the other data reflected in the

8 back of her testimony.

9 A. No. I don't have any reason to dispute what

10 the graphs show or the underlying data.

11 I would point out that that part of her

12 rebuttal testimony shows that you don't want to go to a

13 historical view of how the utilities have improved on a

14 system-wide basis as a basis for GPIF changes or

15 modifications, and that's because of the technology

16 changes that have occurred on Florida Power & Light's

17 system that influence that chart and those numbers that

18 show an upward movement, when in reality, the changes

19 are due to technology.

20 Q. And how do you know that that's true?

21 A. Because I have looked at the combined cycle

22 units that have been added to Florida Power & Light's

23 system over the past few years, and I looked at Fort

24 Lauderdale, I think it's 4 and 5, Meyer, and -- there's

25 another one. Martin I think is one of the other units.

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1 And those are combined cycle units that have high

2 equivalent availabilities and low heat rates.

3 Q. Have you attempted to perform any analysis of

4 FPL's system performance that would exclude those units?

5 A. No.

6 Q. So you don't know what impact, if any,

7 including those units would have on the data that

8 Ms. Sonnelitter presents, do you?

9 A. I think in her testimony, she indicates that

10 -- as I recall her rebuttal testimony as I sit here,

11 that there would be improvements in the heat rates and

12 in the EAF because of the combined cycle units that are

13 being brought onto the system.

14 Q. But other than reading her testimony, you've

15 not done any analysis; is that correct?

16 A. That's correct.

17 Q. You've pointed out in your testimony that a

18 modest improvement in unit performance can result in a

19 GPIF reward even if there's no long-term performance

20 improvement; correct?

21 A. I have testified to that, yes.

22 Q. Would you agree that the reverse is also true,

23 that a modest decline in unit performance can result in

24 a GPIF penalty even if there has been no long-term

25 performance decline?

778

1 A. Yes.

2 Q. You've pointed out in your testimony that

3 under the GPIF, utility customers must pay for the

4 rewards that the utilities receive; correct?

5 A. That is correct.

6 Q. Would you agree that the GPIF also provides

7 for the fuel costs that utility customers pay to be

8 reduced by the amount of any GPIF penalties that are

9 imposed on utilities?

10 A. I'm not sure exactly how the mechanism works,

11 but it's my understanding that if there is a penalty,

12 there is a reduction in the ratepayers' cost.

13 Q. Now, at your deposition, you characterized the

14 GPIF as being symmetrical in this regard; correct?

15 A. The current GPIF is symmetrical in that there

16 is no dead band about the GPIP points, so for every

17 slight movement up or every slight movement down, there

18 is a reward or a penalty.

19 Q. And would you look at page 59 of your

20 deposition transcript? Would you agree that you

21 characterized the fact that under the GPIF, if there is

22 a reward, customers will have to pay for that reward,

23 and if there's a penalty, they get the benefit of the

24 lower fuel charges that the utility would be able to

25 collect from them, you characterized that as being

779

1 symmetrical; correct?

2 A. Yes, I agree.

3 Q. Okay. Thanks. Are you aware of any instances

4 where prudence reviews have been used to distinguish

5 between utilities performing satisfactorily and

6 performing exemplary with respect to their generating

7 unit performance?

8 A. Would you repeat that, please?

9 Q. Are you aware of any instances where prudence

10 reviews have been used to distinguish between

11 satisfactory and exemplary generating unit performance?

12 A. My knowledge of prudency reviews is that it is

13 either prudent or it's not prudent.

14 Q. You referred to that as kind of a bright line

15 test in your deposition; correct?

16 A. I would agree that it's usually a bright line

17 test.

18 Q. But you're not aware -- you haven't been

19 involved in instances, am I correct, where prudence

20 reviews have been used to distinguish between

21 satisfactory utility performance and excellent or

22 exemplary utility performance?

23 A. That's correct.

24 Q. Would you agree that under your dead band

25 proposal, a utility that achieved a record of steady,

780

1 modest improvements in generating performance over a

2 series of several years would never receive a reward for

3 that performance because of the dead band?

4 A. Correct.

5 Q. But steady, modest performance in -- steady

6 performance improvements by a utility is something that

7 the Office of Public Counsel says that it seeks to

8 encourage; is that correct?

9 A. I believe I heard that in the opening

10 statement.

11 Q. Speaking of the opening statement, I would

12 like to ask you about the high school student that

13 Mr. McGlothlin referred to. Analogizing to the GPIF as

14 he would, the high school student that went from the

15 B-plus average to the D could expect to receive a

16 penalty for having done so, wouldn't he?

17 A. Yes.

18 Q. And the student having slipped to a D level of

19 performance, if he improved to a C-minus, that might not

20 be where you would like him to end up, but that would be

21 better than if he had remained at a D level of

22 performance, wouldn't it?

23 A. That's correct.

24 MR. BUTLER: Thank you, Mr. Ross. That's all

25 the questions that I have.

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1 CHAIRMAN EDGAR: Questions on cross?

2 MR. BEASLEY: I have no questions. What I

3 would have asked has already been covered.

4 CHAIRMAN EDGAR: Okay.

5 MR. BADDERS: No questions in the interest of

6 time.

7 CHAIRMAN EDGAR: Thank you. Questions from

8 any other parties on cross for this witness?

9 Seeing none, are there questions from staff?

10 MS. BENNETT: I have a few left.

11 CROSS-EXAMINATION

12 BY MS. BENNETT:

13 Q. Mr. Ross, in your testimony, you describe some

14 of the availability and heat rate characteristics of the

15 investor-owned utility GPIF units going back to the

16 early 1980s, and you used, in your words, publicly

17 available data. Could you describe what publicly

18 available data you used to make your determination?

19 A. It was data that was provided to me by OPC

20 from orders and from data that the utilities had filed

21 with the Commission.

22 Q. Okay. Thank you.

23 And you are familiar with the Public Service

24 Commission's Order No. 9558; is that correct?

25 A. I have a copy of it in front of me.

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1 Q. Okay. On page 7 of Appendix A is the

2 statement of the purpose, to encourage utilities to

3 improve the productivity of their base load generating

4 units. Is that where you base your supposition that the

5 GPIF is not meeting its goals?

6 A. That is my basis for what the purpose of the

7 GPIF is.

8 Q. Okay. On the next page of Appendix A, on page

9 8, the first full paragraph talks about -- it states in

10 the second sentence -- and I would ask you to read it.

11 It starts with, "Based on this comparison." Can you go

12 ahead and read that for us?

13 A. I'm not sure I'm with you. Is the title on

14 that "Adjustments to Equivalent Availability"?

15 Q. I'm on page 8 of Appendix A of Order No.

16 9558.

17 A. Appendix A.

18 Q. I'm sorry. Page 2 of the appendix, page 8 of

19 the order.

20 A. Okay. Page 2 that at the bottom has a

21 Footnote 1?

22 Q. Correct.

23 A. Okay. I have that.

24 Q. The second full sentence, the second sentence

25 in the first full paragraph that starts with, "Based on

783

1 this comparison."

2 A. "Based on this comparison, a monetary reward

3 is awarded for improvements from the performance

4 targets. A monetary penalty is deducted for degradation

5 from the performance targets."

6 Q. And doesn't this portion of the order clarify

7 that the purpose of the GPIF is to encourage

8 improvements from the targets rather than improvements

9 from the past?

10 A. If I understand your question right, yes. The

11 basis for the improvement is the target.

12 Q. Okay. I want you to turn to page 7 of your

13 testimony.

14 A. I have it.

15 Q. Okay. On page 7 of your testimony, you state

16 that the GPIF methodology allows for adjustments to the

17 equivalent availability factor and heat rate performance

18 indicators where such adjustments are determined to be

19 appropriate by the Commission. Do you know what types

20 of events would cause such adjustments to be

21 appropriate?

22 A. There's a list I think in the order with

23 respect to -- changes in maintenance schedules I think

24 is one, where either a maintenance schedule slides out

25 of a particular performance period, and another one is

784

1 if the maintenance is extended beyond or significantly

2 beyond what is projected. Those are the two that come

3 to mind. But I think it's on a case-by-case basis, as I

4 recall.

5 Q. Okay. And also in your written testimony, you

6 describe in your first answer on page 5 and in the first

7 complete paragraph on page 6 the process of calculating

8 points. On both pages, you say that the actual

9 operating data are compared to targets. Do you mean

10 that it's actually the adjusted actual operating data

11 that are compared to their targets?

12 A. No. I believe there's an adjustment that the

13 staff makes, and that adjustment is what is used to

14 compare.

15 Q. Since the utilities calculate adjusted actual

16 indicators in order to compare actual indicators with

17 their respective targets, aren't these adjusted actual

18 indicators only valid for comparing to these respective

19 targets?

20 A. This is a description that -- I was trying to

21 give an overview. I'm not changing anything that you do

22 with respect to calculating the GPIF points, so how it's

23 done now is exactly the way it would be done under my

24 proposal. So anything that is in this written testimony

25 that would conflict with that is basically my summary or

785

1 trying to do a general overview of how the process

2 works, and not to recommend any changes to the way the

3 system is currently operating.

4 Q. In Schedule 6, page 1, of your testimony, you

5 describe Gulf Power Company's EAFs and heat rates for

6 the years 2001 and 2002.

7 A. Yes, I have that.

8 Q. There's some aggregates of the adjusted actual

9 indicators. Assuming that the adjusted actual

10 indicators are appropriate for describing changes

11 between two periods, are you attributing all of the

12 changes between 2001 and 2002 to declines in

13 performance?

14 A. I think the answer is that I tried to

15 calculate what the changes were between the actual

16 adjusted EAF and heat rate, and to the extent that there

17 was a change, I was attributing that to the changes in

18 those factors, in those two factors.

19 Q. Do your descriptions of annual performance

20 recognize that variations in equivalent availability

21 factors are influenced by variations in planned outage

22 factors?

23 A. The system weighting factors, the way I did

24 the system weighting is, I took the weighting factors

25 that are used for the GPIF and used those to weight. So

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1 whatever the weighting factors were in the GPIF filing,

2 that's what I used to do the weighting.

3 Q. Do your descriptions of annual performance

4 recognize that variations in actual heat rates are

5 influenced by variations in net output factors?

6 A. To the extent that it is in the GPIF

7 calculation, yes, because I was trying to use exactly

8 the same data.

9 Q. If the present program were amended to

10 incorporate the proposed five-point plan, what would

11 prevent a utility from changing the rates that accompany

12 its targets so that the rewards historically based on

13 less than five points would in the future be based on

14 five points or greater?

15 A. I'm sorry. I didn't follow that.

16 Q. I'm not sure I did either. If the present

17 program were amended to incorporate the proposed

18 five-point plan, what would prevent a utility from

19 changing the ranges that accompany its targets so that

20 rewards historically based on less than five points

21 would in the future be based on five points or greater?

22 A. I'm still not sure I understand your question.

23 MS. BENNETT: I'll withdraw the question, and

24 I don't anything further for this witness.

25 CHAIRMAN EDGAR: Commissioners, any additional

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1 questions for this witness? No, no, no.

2 Mr. McGlothlin, redirect?

3 MR. McGLOTHLIN: Briefly, yes.

4 REDIRECT EXAMINATION

5 BY MR. McGLOTHLIN:

6 Q. Mr. Ross, when describing your past experience

7 in response to questions from counsel, you referred to a

8 division within Union Electric called "Betterment."

9 Would you elaborate on what that term denotes and how

10 your experience with that division supports your

11 qualifications for this role?

12 A. Well, the Betterment Department was given the

13 responsibility to try to improve the operation of our

14 generating units. Their responsibilities included

15 coming up with projects that would increase the

16 availabilities and also increase the heat rate

17 performance of the generating units.

18 My interaction with that group was through the

19 fact that I operated the system simulation model that

20 simulated all the operations of the company. And when

21 they would want to look at a particular project, if they

22 needed any economics run to determine what benefits or

23 detriments the particular project might have on the

24 system as a whole, I was engaged and assisted them in

25 that area.

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1 Q. Mr. Burnett asked you a series of questions in

2 which he listed certain factors about the nature of

3 generating equipment, and I made a few notes. They

4 included the fact that equipment wears over time, that

5 system load may have an impact on particular

6 performance, scheduled maintenance, and fuel price,

7 among others. Do you recall that series of questions?

8 A. Yes.

9 Q. Would those factors be taken into account and

10 be reflected in the way that the targets are set under

11 the current GPIF?

12 A. I believe so, yes.

13 Q. Are you proposing to make any changes to the

14 way the targets are being calculated in your proposal?

15 A. No.

16 Q. Commissioner Arriaga asked you some questions

17 about the graph shown on JAR-1, Schedule 3, Figure 1.

18 Do you have that in front of you?

19 A. Yes.

20 Q. What does this graph depict? What is it

21 measuring?

22 A. It depicts the Tampa Electric Company. And I

23 used the term "system" in the graph, but it really

24 refers to just the generating units that are included in

25 the GPIF EAF performance over a period of time. The

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1 blue bars represent the targets that were established in

2 the GPIF. The red line indicates the adjusted actuals,

3 how they were calculated at the end of the period and

4 plotted against the targets. The linear line, the black

5 line is a simple straight line curve fit of the actual

6 red line that's shown there.

7 What this graph depicts is that over time, the

8 Tampa Electric Company overall GPIF units' EAF for the

9 data that I have declines fairly dramatically over time.

10 Q. Now, EAF is the acronym for the availability

11 criterion within the GPIF; is that correct?

12 A. Equivalent availability factor.

13 Q. So if the objective -- is the objective of the

14 incentive within the GPIF to increase or decrease EAF?

15 A. If you had an incentive and it was operating

16 and the utility was performing the way you wanted them

17 to, this black line, instead of declining going from

18 left to right, it would increase going left to right.

19 It would completely tilt the other way.

20 Q. So is this graph -- does the direction of the

21 line indicate that the pattern there is consistent with

22 or inconsistent with the policy objectives of the GPIF?

23 A. Well, I would say that if I was advocating an

24 incentive program, the incentive -- this would

25 demonstrate that the incentive program is not having the

790

1 incentive that I would want to improve the equivalent

2 availability of the units or the system as a whole.

3 Q. Now, you said in response to a question a

4 moment ago that this incorporates the units within the

5 GPIF program as opposed to the full system of TECO; is

6 that correct?

7 A. That's correct.

8 Q. Does it reflect how those units behaved in the

9 aggregate? Is that what this graph --

10 A. Yes. It's a weighting of those units.

11 Q. All right. When in your testimony you alluded

12 to the fact that you do not see a pattern of sustained

13 improvement, were you speaking in terms of an overall

14 system impact, or were you speaking in terms of the

15 performance of individual units within the GPIF program?

16 A. Primarily individual units, individual units.

17 Q. And is that what this graph analyzes?

18 A. No. This is the aggregate. This is not an

19 individual unit.

20 Q. Commissioner Carter asked you several

21 questions about your use of the term "exemplary."

22 A. Yes.

23 Q. Would you elaborate on that concept as you

24 have used that term today?

25 A. The best I can. What I am referring to is

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1 something that is materially above the target that is

2 set for a particular year. That would encompass

3 exemplary in my mind. And for purposes of my

4 recommendation, I am defining that numerically as five

5 PIP points, which is the total aggregate performance of

6 the utility for that period.

7 MR. McGLOTHLIN: Those are all my questions.

8 MR. BUTLER: Madam Chairman?

9 CHAIRMAN EDGAR: Mr. Butler.

10 MR. BUTLER: Mr. McGlothlin raised a point

11 that I need to follow up regarding the JAR-1 schedule in

12 his redirect.

13 MR. McGLOTHLIN: Chairman Edgar, it's out of

14 the ordinary for recross to be permitted. I don't see

15 anything that I've asked that would warrant a departure

16 from your usual procedure.

17 MR. BUTLER: My reason for raising it simply

18 is that it's something that kind of came up as an issue

19 outside the scope of what Mr. Ross had been testifying

20 to in his direct testimony as a result of the colloquy

21 with Commissioner Carter, and I'm simply wanting to put

22 in proper perspective the points that Mr. McGlothlin

23 made about that particular schedule.

24 CHAIRMAN EDGAR: Ms. Helton?

25 MS. HELTON: I'm trying to remember, but I

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1 think Commissioner Carter asked his questions when

2 Mr. Burnett was conducting the cross-examination of the

3 witness. So it seems to me that if Mr. Butler had any

4 questions about the questions that Commissioner Carter

5 asked, that Mr. Butler would have had an opportunity to

6 do so already.

7 MR. BUTLER: That would be true, except that

8 what I want to ask about doesn't have to do with

9 Mr. Ross's -- what he discussed with Mr. Carter. It

10 arises out of Mr. McGlothlin's questions sort of in

11 response to that. And if would you indulge me, I would

12 appreciate it. If you don't, I understand you have a

13 time schedule to keep to.

14 MR. McGLOTHLIN: I would like to point out

15 that those exhibits were proffered with his direct

16 testimony, and Mr. Ross was available for cross on all

17 of that testimony and his exhibits the first time

18 around.

19 CHAIRMAN EDGAR: Ms. Helton.

20 MS. HELTON: I think I heard Mr. Butler say

21 that he was agreeing for us to go on.

22 MR. BUTLER: Reluctantly.

23 CHAIRMAN EDGAR: Mr. Butler, I appreciate your

24 cooperation. We will attempt with all balance to limit

25 the times the ball bounces back and forth and move us

793

1 forward.

2 Mr. McGlothlin, I think where we are is

3 evidence.

4 MR. McGLOTHLIN: I move 54 and 55.

5 CHAIRMAN EDGAR: Exhibits 54 and 55 are moved

6 into the record.

7 (OPC Exhibits Number 54 and 55 were admitted

8 into evidence.)

9 CHAIRMAN EDGAR: And the witness may be

10 excused. Thank you very much.

11 Mr. Butler, the ball is back in your court.

12 MR. BUTLER: I would call Pamela Sonnelitter

13 to the stand.

14 CHAIRMAN EDGAR: I would note to all parties

15 that the next four witness on direct are all on the same

16 two issues and the same two issues that Witness Ross has

17 just testified on, so if we could in the interest of

18 time try to limit the amount of time that we spend on

19 ground that has already been sown.

20 MS. HELTON: Madam Chairman, just for purposes

21 of the record, I wanted to check. I'm not sure that

22 we've admitted Mr. Ross's exhibits into the record.

23 CHAIRMAN EDGAR: Fifty-four and 55, we did.

24 MS. HELTON: Okay. Sorry about that.

25 CHAIRMAN EDGAR: That's okay. Mr. Butler.

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1 MR. BUTLER: Excuse me just one minute. May

2 we have an one-minute break to consider something that

3 might be able to speed the proceeding along regarding

4 the presentation of witnesses on the subject?

5 CHAIRMAN EDGAR: Why don't you take three.

6 MR. BUTLER: Okay. Thank you.

7 CHAIRMAN EDGAR: But everybody do stay close,

8 please.

9 MR. BUTLER: Thank you.

10 (Off the record briefly.)

11 CHAIRMAN EDGAR: Okay. Thank you all. We

12 will go back on the record. Mr. Butler.

13 MR. BUTLER: Thank you for your indulgence. I

14 understand you want to proceed with the testimony of our

15 witnesses, and I would call Ms. Sonnelitter.

16 Thereupon,

17 PAMELA SONNELITTER

18 was called as a witness on behalf of Florida Power &

19 Light Company and, having been first duly sworn, was

20 examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. BUTLER:

23 Q. Ms. Sonnelitter, have you previously been

24 sworn?

25 A. Yes, I have.

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1 Q. Thank you. Would you state your name and

2 address for the record.

3 A. Pamela Sonnelitter, 700 Universe Boulevard,

4 Juno Beach, Florida, 33408.

5 Q. Thank you. By whom are you employed, and in

6 what capacity?

7 A. I'm employed by Florida Power & Light, and I'm

8 the general manager of business services for the Power

9 Generation Division.

10 Q. Is your microphone on?

11 A. Yes, it is.

12 Q. Okay. It seems a little low volume. Thank

13 you.

14 Do you have before you testimony entitled

15 "Generating Performance Incentive Factor" dated

16 August 22, 2006, consisting of 11 pages, and one

17 attached exhibit, Exhibit PS-2?

18 A. Yes, I do.

19 Q. Okay. Was this testimony and exhibit prepared

20 under your direction, supervision, and control?

21 A. Yes, it was.

22 Q. Do you have any changes or corrections to make

23 to your testimony or the exhibit?

24 A. No, I do not.

25 Q. Do you adopt the prefiled testimony and

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1 exhibit as your testimony in this proceeding today?

2 A. Yes, I do.

3 MR. BUTLER: I would ask that

4 Ms. Sonnelitter's prefiled testimony be inserted into

5 the record as though read and that I note her Exhibit

6 PS-2 has been preidentified as Exhibit 16.

7 (Florida Power & Light Company Exhibit Number

8 16 was marked for identification.)

9 BY MR. BUTLER:

10 Q. Would you please summarize your testimony,

11 Ms. Sonnelitter?

12 CHAIRMAN EDGAR: The prefiled testimony will

13 be entered into the record as though read, and you may

14 go forward.

15 MR. BUTLER: I'm sorry.

16 CHAIRMAN EDGAR: That's okay.

17 BY MR. BUTLER:

18 Q. Ms. Sonnelitter, would you please summarize

19 your testimony?

20 A. Yes, I will. Good afternoon, Commissioners.

21 The purpose of my testimony is to respond to Office of

22 Public Counsel witness James Ross's testimony concerning

23 the GPIF as it relates to FPL. Specifically, my

24 testimony does the following:

25 First, it briefly summarizes the history and

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1 intended operation of the GPIF, which purpose, as stated

2 in the Commission-approved GPIF manual, is as to provide

3 an incentive for the efficient operation of base load

4 generation units.

5 Second, it illustrates that the GPIF works as

6 intended with respect to FPL, as demonstrated on pages 5

7 and 6 of my document PS-2. In other words, only when a

8 unit performs better than its specific target it

9 receives a reward. FPL does not receive any rewards for

10 just doing its job, as suggested in Mr. Ross's

11 testimony.

12 Third, my testimony refutes Mr. Ross's

13 erroneous assertion that the performance of FPL's

14 generating units has not steadily improved. In fact, as

15 demonstrated on pages 1 and 2 of my document PS-2, the

16 availability of FPL's system-wide fleet and FPL's GPIF

17 units has steadily improved over the last 16 years for

18 which we have continuous GPIF data available. Likewise,

19 as demonstrated on pages 3 and 4 of my document PS-2,

20 the combustion efficiency or heat rate of FPL's units

21 has steadily improved over the same period of time as

22 availability.

23 This high level of availability and heat rate

24 performance is above and beyond the expected reasonable

25 levels of any utility, as demonstrated by FPL's fossil

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1 fleet best in class availability performance for seven

2 out of the last eight years and best in class heat rate

3 performance for six out of the last eight years.

4 Lastly, my testimony explains why Mr. Ross's

5 proposals to impose an asymmetric dead band on the GPIF

6 reward/penalty calculation and to establish minimum

7 system performance levels for GPIF rewards are

8 unwarranted and unfair. This proposed dead band would

9 virtually eliminate the possibility of any rewards, in

10 fact, eliminate the GPIF incentive despite FPL's steady

11 improvements in availability and heat rate over time.

12 This concludes my summary.

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1 MR. BUTLER: Thank you, Ms. Sonnelitter. I

2 tender the witness for cross-examination.

3 CHAIRMAN EDGAR: We will begin first with a

4 question from Commissioner Arriaga.

5 COMMISSIONER ARRIAGA: I think I made a mess

6 with the last witness trying to clarify how you use

7 regression analysis, and I see that PS-2 here has quite

8 a few graphs. Would you please explain to me in order

9 to clarify my own questions, how do you apply regression

10 analysis to a set of data? What are you trying to show?

11 THE WITNESS: What we're trying to do is find

12 the best fit line. We use the linear least squares

13 method to find the best fit line, and that method

14 minimizes the square of the errors between the points in

15 the line.

16 COMMISSIONER ARRIAGA: Okay. Thank you.

17 CHAIRMAN EDGAR: Are there questions on cross

18 for this witness? No, no, no.

19 Mr. McGlothlin.

20 CROSS-EXAMINATION

21 BY MR. McGLOTHLIN:

22 Q. Good afternoon.

23 A. Good afternoon.

24 Q. I don't want to mispronounce your name. Is it

25 Sonnelitter?

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1 A. Sonnelitter.

2 Q. Sonnelitter. I'm very sorry.

3 Ms. Sonnelitter, in your summary, you used the

4 phrase "just doing its job." Is that something that you

5 used also in your prefiled testimony?

6 A. I would have to review that to see.

7 Q. Well, if you don't know the answer to that,

8 let's not spend the time on it.

9 A. Okay.

10 Q. At page 3, line 13, that's where you state in

11 your prefiled testimony that in your view, the GPIF has

12 achieved its intended purpose, because when you exceed

13 the targets, you get a reward, and if you fall below the

14 targets, you get a penalty; is that correct?

15 A. Yes, that's what I stated in my testimony, and

16 yes, that's the way that the GPIF has worked for Florida

17 Power & Light.

18 Q. But what you're really saying there is that

19 you're complying with the GPIF manual as it is currently

20 in effect; is that right?

21 A. Yes, that's what that sentence is saying.

22 However, we have actions that we can take, technical

23 activities, if you will, that we can do, such as

24 compressor water washes to improve heat rate, and

25 there's activities that we can do on a proactive basis

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1 to improve.

2 Q. But if the Commission sees fit to modify the

3 GPIF methodology and amend the manual and implement

4 that, then FPL would comply with that as well on a

5 prospective basis, would it not?

6 A. FPL is a performance-driven utility, and given

7 performance incentives, we will comply with them and

8 attempt to exceed them.

9 Q. Turn to page 5, if you will. At lines 4

10 through 14, you describe the graphs that appear in

11 document PS-2, do you not?

12 A. Yes.

13 Q. Do I understand correctly that your reference

14 there is to a graph depicting the entire system,

15 including new technology?

16 A. Yes. The first graph includes all of our

17 units, both fossil and nuclear, GPIF and non-GPIF. The

18 second graph in each case includes just the GPIF units.

19 Q. But in either instance, those graphs depict

20 the composite or aggregate values of all of the units in

21 the particular universe, either system-wide or those

22 within the GPIF; correct?

23 A. Yes, that's correct.

24 Q. And you have not depicted what the performance

25 has been on an individual unit basis in these graphs?

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1 A. No, I did not. However, there is a graph in

2 my testimony that does show one particular unit and the

3 impact of the GPIF on that unit.

4 Q. Okay. One unit. How many units does FPL have

5 within the GPIF mechanism?

6 A. It depends on year to year. But I just didn't

7 want to have voluminous testimony, and I used one as an

8 example.

9 Q. Okay. Approximately how many, if you know?

10 A. I believe it usually averages around 10, but

11 it can go up and down.

12 Q. If you will, turn to page 4, line 4.

13 Beginning with line 1, the question is, "Does the

14 compensation of FPL's power plant management take into

15 account factors are that consistent with the incentives

16 provided by the GPIF?"

17 And your answer says, "Yes. Two of the key

18 measures included in the performance evaluations for FPL

19 plant managers are the availability and heat rate

20 achieved by their plants. Thus, improvements in

21 availability and/or heat rate that would result in

22 better GPIF results directly impact the managers'

23 performance evaluations upon which their compensation is

24 based."

25 And my first question is simply one for

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1 clarification. Are you saying there that if FPL

2 receives a reward of any magnitude that there's some

3 sort of corresponding bonus that the plant managers

4 receive?

5 A. No. The attempt of that answer is to say

6 that, again, as noted, FPL is a performance-driven

7 utility, and the same performance indicators that the

8 GPIF utilizes are also included in the performance

9 evaluations and subsequent compensation of the plant

10 managers, among other factors.

11 Q. Okay. But apparently, as I understand your

12 answer, there isn't a direct one-for-one correlation

13 such that any bonus of any magnitude on the GPIF

14 translates into a corresponding bonus in the

15 compensation package.

16 A. No, we don't use as complex a formula as the

17 GPIF to reward the managers for their incentives, but we

18 do use the same underlying data that drives the GPIF

19 rewards and penalties to drive the compensation, the

20 performance evaluations of the managers.

21 Q. Do I understand correctly then that in order

22 for the plant managers to see an impact on their

23 compensation that flows from achievements in heat rate

24 and availability, those incremental improvements would

25 have to be greater than those that would be sufficient

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1 to qualify for a bonus or a reward under the GPIF

2 program?

3 A. Could you repeat that? I'm not sure that I

4 totally got the whole question.

5 Q. Yes. I think we established with the last

6 question and answer that if FPL exceeds its targets and

7 wins a reward under the GPIF program, that does not

8 translate on a one-for-one basis into a bonus in the

9 compensation of these plant managers, does it?

10 A. No, we don't use the same formulas as in the

11 GPIF to reward the plant managers. We use the same

12 indicators.

13 Q. So to the extent that you use the same

14 indicators -- those indicators being heat rate and

15 availability; am I correct?

16 A. Yes. Those are among some of the others, yes.

17 Q. So it would require incremental improvements

18 above and beyond that sufficient to receive a bonus

19 under the GPIF for that to translate into increased

20 compensation for the plant managers?

21 A. Yes. Just like the GPIF, if the managers meet

22 their targets, you know, there's not an additional

23 reward given. If they exceed their targets, they get a

24 -- you know, their performance evaluation is judged

25 favorably. If they do not achieve their targets, then

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1 their performance evaluation is judged unfavorably.

2 Q. And those targets are not one for one

3 correlated to the GPIF program?

4 A. I can't say with any certainty that they match

5 exactly.

6 Q. Turn to page 8, please. At line 9, this

7 question is posed. "Mr. Ross purports to show on his

8 Schedule 7 that some of FPL's individual units have not

9 experienced consistent improvement over time. Is this

10 meaningful from a GPIF perspective?" And you answer,

11 "No, it is not."

12 The first question is, do you take issue with

13 what is depicted on Mr. Ross's Schedule 7?

14 A. May I take a moment and review that schedule?

15 Q. Yes.

16 A. Yes. Actually, we did not know precisely what

17 numbers he was using to determine whether there was an

18 improvement or not an improvement, was he using actual

19 numbers, adjusted actual numbers, whether he was using

20 the initial point and the ending point, or whether he

21 was again using some type of regression to determine a

22 line and then just judge whether or not the performance

23 of each individual unit had improved or declined over

24 time.

25 Q. At lines 17 through 21, you make this

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1 statement: "Our customers pay for the fuel costs of all

2 units, not just particular, individual ones." But isn't

3 it true that the overall fuel cost is a function of the

4 build-up of the individual units' own fuel experience?

5 A. Yes, certainly. However, the individual unit

6 that may have had maybe either a target or a subtarget

7 performance, or even as Mr. Ross characterized it, a

8 modest improvement, maybe that unit is not as important

9 or not weighted as heavily in the GPIF overall

10 calculation.

11 Q. Okay. Granted that the units are weighted,

12 but nonetheless, the overall fuel cost is a function of

13 each individual unit's own fuel cost?

14 A. Yes.

15 Q. So to the extent one can improve an individual

16 unit, one will coincidentally improve the overall fuel

17 cost?

18 A. Yes. And certainly I believe that's the

19 intent of the GPIF.

20 MR. McGLOTHLIN: Those are all my questions.

21 CHAIRMAN EDGAR: Any other questions on cross

22 for this witness? No.

23 Questions from staff? No.

24 Commissioners? No.

25 Okay. Mr. Butler.

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1 MR. BUTLER: No redirect. I would move the

2 admission of Exhibit 16.

3 CHAIRMAN EDGAR: Exhibit 16 will be moved into

4 the record, and the witness may be excused. Thank you.

5 MR. BUTLER: Thank you.

6 (Florida Power & Light Company Exhibit Number

7 16 was admitted into evidence.)

8 CHAIRMAN EDGAR: Mr. Badders.

9 MR. BADDERS: Thank you. We call Lonnie

10 Noack. We are ready to proceed.

11 Thereupon,

12 LONZELLE S. NOACK

13 was called as a witness on behalf of Gulf Power Company

14 and, having been first duly sworn, was examined and

15 testified as follows:

16 DIRECT EXAMINATION

17 BY MR. BADDERS:

18 Q. Ms. Noack, were you present this morning when

19 the witnesses were sworn in?

20 A. I was present yesterday morning when the

21 witnesses were sworn in.

22 Q. That is correct. Please state your name and

23 business address for the record.

24 A. Sure. My name is Lonzelle S. Noack, and my

25 business address is One Energy Place, Pensacola,

819

1 Florida, 32520.

2 Q. For the record, could you please state by whom

3 you are employed and in what position?

4 A. Yes. I am employed by Gulf Power Company, and

5 I am the senior power generation performance specialist.

6 Q. Are you the same L. S. Noack who prefiled

7 direct testimony on August 21, 2006, consisting of five

8 pages?

9 A. Yes.

10 Q. Do you have any changes or corrections to that

11 testimony?

12 A. No, I do not.

13 Q. And if I were to ask you the same questions

14 today, would your answers be the same?

15 A. Yes, they would.

16 MR. BADDERS: We ask that the prefiled

17 testimony of Ms. Noack be inserted into the record as

18 though read.

19 CHAIRMAN EDGAR: The prefiled testimony will

20 be inserted into the record as though read.

21 MR. BADDERS: Mr. Noack does not have any

22 exhibits, so we would like to move to her summary.

23 THE WITNESS: Good afternoon, Commissioners.

24 My summary is in relation to the outstanding GPIF issues

25 that are related to OPC's proposed dead band

820

1 modification to the existing GPIF mechanism.

2 It is Gulf Power's position that the

3 Commission should not implement this dead band

4 modification as proposed by OPC. This proposed dead

5 band is neither reasonable, nor is it necessary. It is

6 biased, does not treat rewards and penalties

7 consistently, and is contradictory to the intent and the

8 design of the GPIF mechanism.

9 GPIF was incorporated into the fuel and

10 purchased power cost recovery clause to provide an

11 incentive for the efficient operation of base load

12 generating units. The intent of this incentive is to

13 reward utilities for performance that exceeds reasonably

14 expected performance and to penalize utilities for

15 performance that is reasonably less than -- or that is

16 less that reasonably expected for each period

17 encompassed by the relative fuel adjustment clause

18 period.

19 It is Gulf Power's position that the current

20 GPIF mechanism accomplishes its objective by setting

21 meaningful targets, reasonable performance ranges, and

22 equitable rewards and penalties. Therefore, no

23 modification to the current GPIF mechanism is warranted.

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1 MR. BADDERS: We tender this witness for

2 cross.

3 CHAIRMAN EDGAR: Are there questions on cross

4 for this witness? Mr. McGlothlin.

5 CROSS-EXAMINATION

6 BY MR. McGLOTHLIN:

7 Q. Good afternoon.

8 A. Good afternoon.

9 Q. I have only a very few questions for you,

10 Ms. Noack. At page 2, beginning at line 21, you make

11 this statement: "These targets are a reflection of how

12 each unit is expected to perform during the period based

13 on historical performance data." And specifically the

14 manual calls for the calculation to be based upon three

15 years of historical data; is that correct?

16 A. Three years of historical performance for heat

17 rate, and five years of historical performance for

18 equivalent availability.

19 Q. So the manual specifies the three years and

20 five years as opposed to two or six or any other that

21 could have been used by the Commission when it

22 formulated the GPIF manual; is that correct?

23 A. That is the standard mechanism, but the GPIF

24 manual also provides a mechanism whereby a utility can

25 use an alternative number of years of data if so

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1 warranted.

2 Q. But those three- and five-year criteria, would

3 you agree with me that the Commission made that decision

4 based upon its judgment of what would be reasonable and

5 what would work well in practice?

6 A. I would agree with that.

7 Q. And similarly, on page 3, you point out that

8 the maximum reward or penalty is limited to 25 basis

9 points of the utility's average common equity for the

10 period, do you not?

11 A. Yes.

12 Q. And that 25 basis points is specified in the

13 manual and the order adopting the methodology, is it

14 not?

15 A. I would agree with that.

16 Q. So the Commission when it implemented the GPIF

17 made a judgment that 25 basis points, not 20, not 30,

18 and not any other number, is the appropriate and

19 reasonable scope or magnitude of the rewards that should

20 be made available under the program?

21 A. I would agree with that.

22 Q. So would you agree with me that already the

23 GPIF mechanism is imbued with judgment and decisions

24 made by the Commission that perhaps were the result of

25 experience and technical input, but nonetheless are

828

1 judgmental in character?

2 A. Well, not necessarily, and let me explain to

3 you why. The reason why they limited the reward and

4 penalty to 25 basis points of the utility's average

5 common equity is because the Commission recognized that

6 for there to be an incentive for the utilities to make

7 improvements, that it had to be something -- reasonable

8 and economic improvements to their heat rate and

9 availability, that it had to be something less than what

10 the actual fuel savings to the customer would be. So if

11 you look at the -- one of the approving orders, I

12 believe it is either 9558 or 9576. Just a moment and

13 I'll find that for you.

14 Right. If you look at the approving order,

15 9558, it states -- do you have a copy of 9558 with you?

16 Q. I do in this stack somewhere.

17 A. This is on page 2 of Order 9558.

18 Q. Okay.

19 A. It states that, "The recommendation now

20 requires that a ceiling be placed on the amount of

21 incentive dollars available so that the incentive will

22 never exceed the savings realized by ratepayers. The

23 maximum amount of dollars has also been reduced to

24 assure that uneconomic operating decisions are not

25 encouraged." That is why that particular limit was

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1 established for the rewards and penalties.

2 Q. Yes, I see that, and I agree that you've read

3 that correctly. But the 25 basis points was the

4 judgment of the Commission as to how to quantify those

5 criteria, was it not, as opposed to any other number

6 that might have been available for use?

7 A. Yes, and I'm not exactly sure what the basis

8 for that was. There may have been in the underlying

9 discussions in determining why to choose 25 basis

10 points. I'm not aware of why that was, but there could

11 have been a reason behind choosing that particular level

12 for maximizing the rewards or penalties.

13 MR. McGLOTHLIN: Those are all my questions.

14 CHAIRMAN EDGAR: Are there questions from

15 staff?

16 MS. BENNETT: No.

17 CHAIRMAN EDGAR: Commissioners? No.

18 Mr. Badders.

19 MR. BADDERS: We would ask to have this

20 witness excused.

21 CHAIRMAN EDGAR: The witness is excused.

22 Thank you.

23 Mr. Burnett.

24 MR. BURNETT: Thank you, Madam Chairman. We

25 would call Robert M. Oliver.

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1 May I proceed, ma'am?

2 CHAIRMAN EDGAR: You may.

3 Thereupon,

4 ROBERT M. OLIVER

5 was called as a witness and, having been first duly

6 sworn, was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. BURNETT:

9 Q. Mr. Oliver, will you please introduce yourself

10 to the Commission and provide your business address.

11 A. Yes, sir. My name is Robert M. Oliver. My

12 business address is 410 South Wilmington Street,

13 Raleigh, North Carolina, 27601.

14 Q. And have you already been sworn as a witness

15 in this proceeding?

16 A. Yes, I have.

17 Q. Who do you work for, and what is your

18 position?

19 A. I'm employed by Progress Energy Carolinas as

20 the manager of portfolio management.

21 Q. And have you filed prefiled direct testimony

22 and exhibits in this proceeding, specifically on

23 August 22, 2006?

24 A. Yes, I have.

25 Q. Do you have a copy of that testimony in front

831

1 of you?

2 A. Yes, I do.

3 Q. Do you have any changes to make to your

4 prefiled testimony or the exhibits to that testimony?

5 A. No, I don't.

6 Q. If I asked you the same questions in your

7 prefiled testimony today, would you give the same

8 answers that are in your prefiled testimony?

9 A. Yes.

10 MR. BURNETT: Madam Chairman, we request that

11 the prefiled testimony of Mr. Oliver be entered into the

12 record if it were read today. And we would also note

13 that the exhibits relevant to this testimony have been

14 identified as 41 and 42.

15 CHAIRMAN EDGAR: What about 43?

16 MR. BURNETT: Actually, Madam Chair, that

17 relates to the September 1, '06, to a stipulated issue.

18 I failed to move it in earlier when I was doing the

19 stipulated, so if I may do so now, I could take care of

20 that.

21 CHAIRMAN EDGAR: Okay. Let's go ahead and

22 move Exhibit 43 into the record, and the prefiled

23 testimony will be entered into the record.

24 MR. BURNETT: Thank you.

25 (Progress Energy Florida Exhibits Number 41

832

1 and 42 were marked for identification.)

2 (Progress Energy Florida Exhibit Number 43 was

3 admitted into evidence.)

4 BY MR. BURNETT:

5 Q. Do you have a summary of your August 22nd

6 testimony?

7 A. Yes, I do.

8 Q. Would you please present it?

9 A. Yes, I will.

10 Good afternoon, Commissioners. My testimony

11 filed on August 22, 2006, was filed in response to OPC's

12 petition seeking modification to the GPIF mechanism and

13 focuses on the GPIF dead band proposal by OPC witness

14 James Ross.

15 OPC's petition and Mr. Ross's testimony

16 overlook several key points in the purpose and design of

17 the GPIF mechanism and selectively draw from GPIF

18 statistics that are taken out of context in an attempt

19 to portray the GPIF as being in need of modification.

20 The central weakness of Mr. Ross's testimony

21 is that his supporting evidence relies on grossly

22 oversimplified comparisons of year-over-year performance

23 without accounting for, as GPIF was designed to, the

24 cyclical nature of maintaining mechanical power systems

25 as well as factors external to a given unit that can

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1 affect how that unit is operated, and in turn, how it

2 performs.

3 Mr. Ross fails to recognize that Florida

4 utilities are obligated to balance costs associated with

5 maintaining operational efficiency and availability with

6 other cost impacts, such as fuel and emissions.

7 Mr. Ross also fails to recognize that the design of GPIF

8 was directly linked to the setting of annual fuel rates,

9 with the purpose of encouraging improvement of two key

10 factors which affect predicted fuel cost, availability

11 and heat rate.

12 I disagree with the OPC petition, the

13 testimony of Mr. Ross, and the associated

14 recommendations to modify the GPIF mechanism.

15 Thank you.

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1 MR. BURNETT: Thank you, Madam Chair. We

2 tender Mr. Oliver for cross-examination.

3 CHAIRMAN EDGAR: Thank you. Questions on

4 cross.

5 CROSS-EXAMINATION

6 BY MR. McGLOTHLIN:

7 Q. Mr. Oliver, you alluded in your summary, as

8 you did in your prefiled testimony, to such things as

9 the cyclical nature of operating equipment, external

10 factors, the applicability of a total cost as opposed to

11 a fuel cost only approach, and also emissions I think

12 you mentioned. Are those factors taken into account in

13 the way that the targets are set and that the utility

14 performs currently under the GPIF?

15 A. Yes, sir, they are.

16 MR. McGLOTHLIN: That's all the questions I

17 have.

18 CHAIRMAN EDGAR: Thank you. Are there

19 questions from staff?

20 MS. BENNETT: There are no questions. I may

21 have missed -- did Exhibits 41 and 42 get entered into

22 the record?

23 CHAIRMAN EDGAR: Not yet. We'll be taking

24 that up in just a moment. Mr. Burnett.

25 MR. BURNETT: I would so move the August 22nd

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1 testimony as well as Exhibits 41 and 42 into the record.

2 CHAIRMAN EDGAR: The testimony and exhibits

3 will be entered into the record.

4 (Progress Energy Florida Exhibits Number 41

5 and 42 were admitted into evidence.)

6 MR. BURNETT: Thank you.

7 CHAIRMAN EDGAR: Thank you. And no redirect?

8 MR. BURNETT: No redirect.

9 CHAIRMAN EDGAR: And the witness may be

10 excused. Thank you.

11 THE WITNESS: Thank you.

12 CHAIRMAN EDGAR: Mr. Beasley.

13 MR. BEASLEY: I would like to call witness

14 William A. Smotherman.

15 Thereupon,

16 WILLIAM A. SMOTHERMAN

17 was called as a witness on behalf of Tampa Electric

18 Company and, having been first duly sworn, was examined

19 and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. BEASLEY:

22 Q. Mr. Smotherman, would you please tell us your

23 full name and by who you're employed and in what

24 capacity?

25 A. Yes. My name is William A. Smotherman, and I

847

1 am employed by Tampa Electric Company, and I am the

2 director of resource planning.

3 Q. Mr. Smotherman, did you prepare and submit in

4 this proceeding a document entitled "Prepared Direct

5 Testimony of William A. Smotherman" on August 22, 2006,

6 addressing issues 21 and 22 in this proceeding?

7 A. Yes, I did.

8 Q. If I were to ask you the questions contained

9 in that prepared testimony, would your answers be the

10 same?

11 A. Yes, they would.

12 MR. BEASLEY: I would ask that

13 Mr. Smotherman's testimony be inserted into the record

14 as though read.

15 CHAIRMAN EDGAR: The prefiled testimony will

16 be entered into the record as though read.

17 MR. BEASLEY: Thank you.

18 BY MR. BEASLEY:

19 Q. And you don't have an exhibit with that

20 testimony, do you?

21 A. No, I do not.

22 Q. Do you have a summary of your testimony,

23 Mr. Smotherman?

24 A. Yes, I do.

25 Q. Please present it.

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1 A. Good afternoon, Commissioners. My name is

2 William A. Smotherman. I am director of Tampa Electric

3 Company's Resource Planning Department. My direct

4 testimony filed August 22, 2006, addresses Mr. Ross's

5 dead band proposal.

6 The existing GPIF methodology operates in a

7 fair and symmetrical manner. The adjustments to the

8 methodology proposed by Mr. Ross is not appropriate

9 because it is inconsistent with the primary objective of

10 the GPIF program, which is to encourage improved

11 performance through a fair and balanced application of

12 the GPIF incentive/penalty mechanism. In addition,

13 Mr. Ross has not demonstrated that the existing

14 methodology has not resulted in improved performance

15 through its reward and incentive provisions.

16 Tampa Electric believes that the GPIF should

17 continue to operate in accordance with the approved

18 methodology.

19 That concludes my summary of the testimony.

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1 MR. BEASLEY: And Mr. Smotherman is available

2 for questions.

3 CHAIRMAN EDGAR: Thank you. Questions on

4 cross.

5 CROSS-EXAMINATION

6 BY MR. McGLOTHLIN:

7 Q. Mr. Smotherman, were you involved last year

8 with TECO's GPIF submissions?

9 A. Yes, I was.

10 Q. Do you recall that in that case last year, the

11 Office of Public Counsel took issue with an aspect of

12 the TECO calculation to its GPIF proposed --

13 A. Yes, I'm aware of that.

14 Q. At page 7, lines 11 through 14, you state that

15 in 1987, the parties stipulated to modify the GPIF

16 program to place caps on rewards and penalties so they

17 would not exceed 50 percent of the fuel savings or loss.

18 Do you see that statement?

19 A. Yes, I do.

20 Q. So the proposal that is being advanced by the

21 Office of Public Counsel through witness Mr. Ross is not

22 the first modification that has been entertained by the

23 Commission, is it?

24 A. No, it is not.

25 MR. McGLOTHLIN: No further questions.

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1 CHAIRMAN EDGAR: Commissioner Arriaga.

2 COMMISSIONER ARRIAGA: Hello, Mr. Smotherman.

3 How are you?

4 THE WITNESS: Good. How are you doing?

5 COMMISSIONER ARRIAGA: Doing good.

6 Referring back to a year ago, the TECO case, I

7 think I recall, and help me recall, that we went -- we

8 directed you to meet with staff and revise your internal

9 book.

10 THE WITNESS: Correct.

11 COMMISSIONER ARRIAGA: Manual; is that

12 correct?

13 THE WITNESS: Not revise the internal manual.

14 We actually revised how we were applying the manual.

15 COMMISSIONER ARRIAGA: Okay. And then I

16 understand that OPC filed to participate, and the

17 Commission authorized the participation, and there was

18 -- can you tell me what came out of those meetings?

19 THE WITNESS: Yes. Essentially, TECO

20 developed a proposal and met with both the staff and

21 interested parties. And what the result of that was was

22 a change in how we implement our development of our

23 targets. In the prior, we had just used -- whatever the

24 historical data was was the strict basis of the

25 development of our targets for the next year upcoming.

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1 We've modified that, where we actually look on a

2 statistical basis and essentially look for outlying or

3 larger than normal outages, essentially, and remove

4 those outages from the data. So we modify our targets

5 essentially for things that might be larger than what we

6 would normally expect.

7 COMMISSIONER ARRIAGA: During those

8 meetings -- may I? Thank you.

9 During those meetings, did the issue of dead

10 band come to discussion?

11 THE WITNESS: No.

12 COMMISSIONER ARRIAGA: Okay. Thank you.

13 CHAIRMAN EDGAR: Questions from staff?

14 MS. BENNETT: No.

15 CHAIRMAN EDGAR: No questions. Okay.

16 MR. BEASLEY: No redirect.

17 CHAIRMAN EDGAR: Mr. Beasley, no redirect.

18 Okay.

19 MR. BEASLEY: I ask that Mr. Smotherman be

20 excused.

21 CHAIRMAN EDGAR: The witness may be excused.

22 Thank you.

23 Mr. McGlothlin.

24 MR. McGLOTHLIN: We call James Ross for

25 rebuttal.

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1 Thereupon,

2 JAMES A. ROSS

3 was called as a rebuttal witness on behalf of the

4 Citizens of the State of Florida and, having been first

5 duly sworn, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. McGLOTHLIN:

8 Q. Mr. Ross, do you have before you a document

9 captioned "Rebuttal Testimony of James A. Ross" dated

10 October 6, 2006?

11 A. I do.

12 Q. Was that prepared by you for submission in

13 this docket?

14 A. It was.

15 Q. Do you have any corrections or additions to

16 make to the prefiled rebuttal testimony?

17 A. Yes, I do. On page 3, at line 10, the word --

18 the second reference to targets should be stricken and

19 replaced by the phrase "reward/penalty triggers," so

20 that the sentence reads, "Both beg the question of

21 whether the reward/penalty targets are set."

22 On page 7, at line 6, the first word in that

23 line, targets, should be stricken and replaced with the

24 phrase "reward/penalty triggers."

25 Additionally, the testimony references

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1 Mr. Noack, and the proper reference should be to

2 Ms. Noack. That needs to be a global change. I can

3 give the reporter the references if need be.

4 Q. Let me join in the apology for that mistake.

5 As corrected and amended, with these changes,

6 Mr. Ross, do you adopt the questions and answers that

7 appear in this document as your rebuttal testimony?

8 A. Yes.

9 MR. McGLOTHLIN: I request that the rebuttal

10 testimony of Mr. Ross be inserted into the record as

11 though read.

12 CHAIRMAN EDGAR: The prefiled rebuttal

13 testimony of the witness will be entered into the record

14 as though read with the corrections noted by the

15 witness.

16 BY MR. McGLOTHLIN:

17 Q. Mr. Ross, please summarize your rebuttal

18 testimony.

19 A. Yes. The central point in my testimony is

20 that the existing generating performance incentive

21 factor sets the bar too low. When viewed in the proper

22 perspective, the utilities' testimony confirms the need

23 to raise the standard for the payments of GPIF rewards.

24 Florida Power & Light and Gulf Power state

25 that the GPIF penalizes utilities that miss their

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1 targets and rewards utilities that exceed their targets.

2 Both beg the question of whether the reward triggers are

3 set sufficiently high to be equitable to ratepayers and

4 establish a true incentive for exemplary performance.

5 FPL asserts that the lack of long-term

6 sustained improvement to base load units despite the

7 payment of substantial GPIF rewards is irrelevant to the

8 GPIF incentive mechanism. I hope the Commission rejects

9 this view of an incentive mechanism.

10 Tampa Electric addresses the impact of the

11 environmental systems and repowering on efficiency.

12 While the testimony is unrelated to the core of my

13 recommendation, the testimony does highlight that

14 external circumstances may be more of a driving force on

15 actual performance than the GPIF process. The testimony

16 confirms the need to adopt a change in the

17 reward/penalty determination.

18 The utilities propose that the GPIF

19 methodology remain unchanged and the status quo be

20 adopted by the Commission. Generally, the utilities

21 testify that the GPIF mechanism is performing as

22 designed. This testimony misses the point.

23 The issue before the Commission is whether or

24 not continuation of the status quo is equitable to

25 ratepayers in light of the utilities' obligation to

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1 operate efficiently. As addressed in my testimony, a

2 regulated utility has a fundamental obligation to

3 operate efficiently.

4 Currently, under the GPIF, utilities receive

5 rewards paid for by ratepayers for performance that is

6 not significantly above the targets. I believe now is

7 the time to modify the GPIF in a manner that treats

8 ratepayers more equitably when determining payments for

9 utilities effectively doing their job.

10 Thank you.

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1 MR. McGLOTHLIN: Mr. Ross is available for

2 cross-examination.

3 CHAIRMAN EDGAR: Are there questions on cross?

4 Mr. Badders?

5 MR. BADDERS: No questions.

6 CHAIRMAN EDGAR: No, no.

7 Commissioners? No.

8 Staff?

9 MS. BENNETT: No questions.

10 CHAIRMAN EDGAR: Mr. McGlothlin.

11 MR. McGLOTHLIN: No redirect.

12 CHAIRMAN EDGAR: Okay. The witness is

13 excused. Thank you.

14 THE WITNESS: Thank you.

15 CHAIRMAN EDGAR: Okay. I believe that that

16 concludes the evidentiary portion of the proceedings for

17 this docket. Ms. Bennett, are there any other matters

18 before we move to Docket 362?

19 MS. BENNETT: There are no other matters.

20 CHAIRMAN EDGAR: Okay. I realize, folks, that

21 the hour is getting late, but what I would like to

22 propose is that we push on for approximately another 45

23 to 50 minutes or so and see how far we get. Are all the

24 parties amenable to that? Does that work?

25 Okay. Commissioner Carter.

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1 COMMISSIONER CARTER: I just want to ask a

2 procedural question in the context of Docket No.

3 060001-EI. Should we deal with the matters that have

4 already been stipulated to and then go -- excuse me. I

5 should be talking into the microphone.

6 CHAIRMAN EDGAR: That's okay.

7 COMMISSIONER CARTER: Should we deal with the

8 matters that have already been stipulated to and go to

9 the resolution of other matters, or just forestall this

10 or hold this in abeyance until we deal with Docket No.

11 060362-EI?

12 CHAIRMAN EDGAR: We have -- thank you for the

13 question, Commissioner Carter. We do have the, as you

14 noted, natural gas storage docket, 362, and we also have

15 the emergency petition, Docket 041291 still to address.

16 And it is my opinion, and I believe that of

17 staff as well, that the three are integrally related,

18 and so if it's all right, I think we will move through.

19 Again, I'm hopeful that we can maybe move through them

20 in the next little while and then perhaps come back

21 tomorrow and take all the issues up in order, if that

22 meets your --

23 COMMISSIONER CARTER: That's fine. Thank you.

24 CHAIRMAN EDGAR: Okay. Give us just a minute

25 or two to get our paperwork in order, and then we will

881

1 push through.

2 (Off the record briefly.)

3 CHAIRMAN EDGAR: Okay. We are back on the

4 record. I think we are ready.

5 Ms. Bennett, preliminary matters.

6 MS. BENNETT: We have no additional

7 stipulations in this docket other than 1A. I do have a

8 Comprehensive Exhibit List and staff's Revised Exhibit

9 Lists 1 and 2 which have not been stipulated yet. I

10 would like to request that if no party objects that the

11 Comprehensive Exhibit List be entered into the record as

12 Number 1, and staff's Revised Exhibit Lists be entered

13 into the record as 2 and 3.

14 CHAIRMAN EDGAR: Are there any objections?

15 MR. BUTLER: No objection.

16 CHAIRMAN EDGAR: Seeing none, the exhibit

17 lists as described by staff will be marked as described

18 and moved into the record.

19 (Exhibits Number 1, 2 and 3 were marked for

20 identification and admitted into evidence.)

21 MS. BENNETT: As a matter of clarification,

22 yesterday morning when I moved the exhibit list for the

23 01 docket, I did state that there was item number 23 on

24 the confidential list and that that would be included in

25 this record. I apologize, but it actually belongs in

882

1 the confidential list of the 01 record, and it does

2 appear in our stipulated exhibit list, so as a matter of

3 clarification.

4 CHAIRMAN EDGAR: So noted.

5 MS. BENNETT: And the last thing I have for

6 you in the preliminary matters, there are some pending

7 motions or petitions regarding confidentiality. After

8 the fuel hearing, we will be taking care of that.

9 CHAIRMAN EDGAR: And that's it?

10 MS. BENNETT: That's all I have.

11 CHAIRMAN EDGAR: Okay. Then we will move here

12 in a second to opening statements. How many parties do

13 I have making opening statements?

14 MR. BUTLER: We have no opening statement for

15 Florida Power & Light Company.

16 CHAIRMAN EDGAR: Okay. Mr. Butler waives the

17 opportunity for an opening statement.

18 Mr. Beck.

19 MR. BECK: Than you, Madam Chairman.

20 Part of the agreement, Commissioners, that our

21 office and consumer parties reached with FPL in March of

22 2005 to settle their rate case prohibited Florida Power

23 & Light from petitioning the Commission for any new

24 surcharges to recover costs that are of a type that

25 traditionally and historically would be or are presently

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1 recovered through base rates. Commissioners, that's

2 either one. If it traditionally and historically would

3 be in base rates, they were prohibited from new

4 surcharges, or are presently.

5 In the same vein, all the parties agreed that

6 we would neither seek nor support any reductions in

7 FPL's base rates and charges that would take effect

8 during the term of the agreement.

9 This was a bargain that had benefits for both

10 sides. FPL was assured of stability in its base rates,

11 and customers were assured that FPL would not seek to

12 recover items traditionally and historically recovered

13 through base rates through other charges. If it were

14 any other way, our freeze on base rates would be

15 meaningless. If they could shift items from base rates

16 into the fuel clause, then there's really no freeze on

17 base rates at all.

18 When the MoBay issue came before you earlier

19 this year, your own staff told that you the fuel

20 inventory costs are types of costs that are

21 traditionally and historically recovered through base

22 rates. They said this: "Fuel inventory, whether it is

23 coal, oil, or gas, is a normal component of working

24 capital that is included in rate base for ratemaking

25 purposes. Therefore, the associated inventory costs are

884

1 included in and recovered through base rates."

2 Now, although the staff suggested that you

3 allow FPL to recover inventory carrying costs

4 temporarily through the fuel charges until they filed

5 another rate case, such treatment is flatly not allowed

6 by the base rate freeze agreement. And I think where

7 the staff differed from us is, they didn't recognize

8 that either condition was a prohibition on new charges,

9 either traditionally and historically in base rates, or

10 currently. Staff focused on currently, but they ignored

11 the provision that prohibited the historically and

12 traditionally criteria for not allowing new charges.

13 Fuel inventory has been an item in rate base

14 for a long time. It was about a quarter century ago

15 that the Commission adopted the balance sheet approach

16 for working capital, and fuel inventory is part of

17 working capital. Before that, the PSC used lead/lag

18 studies to determine working capital. But no matter

19 which method was used, there was no dispute that these

20 amounts were amounts in rate base, and the carrying

21 costs on such amounts, which is just a profit or rate of

22 return on the asset, are recovered through base rates.

23 In 2002, the Commission adopted what is known

24 as the hedging order. I think that has been brought up

25 a number of times during these hearings yesterday and

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1 today. Nothing in this order changes the treatment of

2 fuel inventory, whether it's coal, oil, or gas.

3 FPL would have you believe that the hedging

4 order allows them to recover a profit on gas fuel

5 inventory through the fuel clause, even though no other

6 fuel inventory costs are recovered that way. The

7 hedging order simply doesn't say what FPL wants it to

8 say. They torture the plain meaning of the order to

9 reach the conclusion they want that avoids the

10 consequences of the rate case settlement.

11 First, the hedging order applies to hedging

12 transactions. The order gives examples of the types of

13 transactions contemplated, such as transaction costs

14 associated with derivatives, for example, fees and

15 commissions, gains and losses on futures contracts,

16 premiums on option contracts, and net settlements from

17 swaps. These are costs related to transactions. None

18 of the examples give the slightest hint that it would

19 apply to and change the existing treatment of fuel

20 storage, because it was never intended to do that. All

21 of the examples in the order are for types of

22 transactions typically considered hedges, and it does

23 nothing to change the way fuel inventory has been

24 treated as a part of working capital.

25 Second, carrying costs are not the types of

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1 costs contemplated in the order, even if those

2 transactions were hedging transactions. According to

3 paragraph 4 of the resolution of issues attached to the

4 order, each investor-owned electric utility may recover

5 through the fuel and purchased power cost recovery

6 clause prudently incurred incremental operating and

7 maintenance expenses, and it goes on.

8 Carrying costs are not incremental operating

9 and maintenance expenses. There are rate of return

10 components included in base rates and would never be

11 considered an operating or maintenance expense of a

12 utility. So even if fuel storage were a type of

13 transaction covered by the hedging order, and fuel

14 storage isn't a transaction, it still wouldn't be

15 covered by the hedging order because it's not an

16 incremental operating and maintenance expense.

17 You've heard testimony over the last two days

18 about the way Gulf Power and TECO treat their carrying

19 costs of gas fuel inventory. Both of these companies

20 have gas storage agreements similar to FPL's MoBay

21 agreement. They treat the carrying costs of gas fuel

22 inventory as base rate items and are not attempting to

23 flow through such costs through the fuel clause as FPL

24 is attempting to do here.

25 In conclusion, I would like to make clear once

887

1 again that we are not opposed to the MoBay agreement,

2 and in fact, we support the procurement of additional

3 gas storage capacity by Florida Power & Light. The

4 issue is not whether it's a good idea for FPL to procure

5 additional inventory for its natural gas. The issue is

6 whether the carrying costs related to gas inventory are

7 a base rate item covered by the settlement agreement.

8 FPL's request would fundamentally alter the

9 traditional and historic rate base treatment of fuel

10 inventory.

11 Thank you. That concludes my opening

12 statement.

13 CHAIRMAN EDGAR: Thank you, Mr. Beck.

14 Mr. Butler.

15 MR. BUTLER: FPL would call its first witness.

16 Are you prepared for that?

17 CHAIRMAN EDGAR: We are.

18 MR. BUTLER: Okay. Mr. Yupp, his direct

19 testimony, his testimony was entered into the record

20 previously in conjunction with Docket 060001, and so the

21 testimony itself, I don't think we need to go through

22 introducing it and entering it into the record again,

23 but I would certainly defer to your wishes in that

24 regard.

25 MS. HELTON: Madam Chairman, as I recall, the

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1 Prehearing Officer entered an order consolidating Docket

2 Nos. 060362 and 060001 for purposes of the evidentiary

3 hearing. So it's my belief that the records are

4 intertwined and that Mr. Butler does not need to ask you

5 to insert the testimony into the record again.

6 CHAIRMAN EDGAR: Thank you, Ms. Helton.

7 MR. BUTLER: Let me just briefly then have

8 Mr. Yupp identify himself for the record.

9 I will note that there are two additional

10 exhibits to his testimony, GJY-3 and GJY-4, that were

11 not entered into the record in 060001 and have been

12 identified here as Exhibits 4 and 5. But beyond that,

13 his testimony has previously been entered into the

14 record.

15 (Florida Power & Light Company Exhibits Number

16 4 and 5 were marked for identification.)

17 MS. BENNETT: Madam Chair?

18 CHAIRMAN EDGAR: Ms. Bennett.

19 MS. BENNETT: We have in the past introduced

20 the direct testimony and the rebuttal testimony at the

21 same time, and I don't know if that's your preference

22 for this proceeding or not.

23 CHAIRMAN EDGAR: Mr. Butler?

24 MR. BUTLER: The Prehearing Order has it set

25 up for the testimonies to be done separately, and we

889

1 would prefer that approach.

2 CHAIRMAN EDGAR: Okay. Then we can do it

3 separately.

4 MR. BUTLER: Thank you.

5 Thereupon,

6 GERARD J. YUPP

7 was called as a witness on behalf of Florida Power &

8 Light Company and, having been first duly sworn, was

9 examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. BUTLER:

12 Q. Mr. Yupp, would you please state your name and

13 address for the record.

14 A. My name is Gerard Yupp. My address is 700

15 Universe Boulevard, Juno Beach, Florida, 33408.

16 Q. And by whom are you employed, and in what

17 capacity?

18 A. I'm employed by Florida Power & Light Company

19 as director of wholesale operations.

20 Q. Thank you. Mr. Yupp, would you please

21 summarize your September 1, 2006 testimony that has been

22 previously inserted into the record as it relates to the

23 gas storage projects?

24 A. Yes. Commissioners, the MoBay gas storage

25 project will serve as a physical hedge against the risks

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1 of supply unavailability and price volatility during

2 extreme weather events and periods of high demand.

3 MoBay provided the best and least cost alternative to

4 meeting FPL's storage requirements, including the

5 opportunity for FPL to self-provide its base gas

6 requirement, a cost component of all storage

7 arrangements. This option gave FPL the opportunity to

8 potentially lower the overall cost of storage for its

9 customers.

10 The MoBay project will help reduce FPL's

11 vulnerability to natural gas supply curtailments and

12 reduce FPL's exposure to the volatility inherent in

13 relying on spot market or higher priced alternate fuels

14 during extreme weather events and periods of high

15 demand.

16 And that concludes my summary.

17 MR. BUTLER: Thank you, Mr. Yupp. I tender

18 the witness for cross-examination.

19 CHAIRMAN EDGAR: Questions on cross?

20 MR. BECK: Thank you, Madam Chairman.

21 CROSS-EXAMINATION

22 BY MR. BECK:

23 Q. Good afternoon, Mr. Yupp.

24 A. Good afternoon.

25 Q. Mr. Yupp, could you differentiate for me the

891

1 difference between base gas and working gas?

2 A. Yes. Base gas is the volume of gas that is

3 required in the storage facility. No matter what type

4 of storage facility it is, all storage, underground

5 natural gas storage, requires base gas. Base gas is the

6 volume of gas required in order to allow for extraction

7 of the working gas volume. So base gas ultimately

8 provides the right pressurization in order to be able to

9 extract the working gas volumes.

10 Q. Could you tell me what percent of the total

11 gas at MoBay would be base gas and what percent would be

12 working gas?

13 A. Yes. In a facility such as MoBay, which is a

14 depleted oil reservoir facility, typically the base gas

15 requirements are 50 percent of the total volume, so

16 50 percent base gas, 50 percent working gas volume, so

17 50 percent.

18 Q. Is the base gas and working gas physically

19 separated, or is it all just mixed in together?

20 A. My understanding is it's all mixed in

21 together.

22 Q. Could you turn to page 27 of your direct

23 testimony, please?

24 A. Yes.

25 Q. And at line 16, you have a question and answer

892

1 addressing the annual cost to participate in the MoBay

2 gas storage project. Do you see that?

3 A. Yes, I do.

4 Q. And you refer to Exhibit GJY-4 for that; is

5 that correct?

6 A. That is correct.

7 Q. What I would like to ask you to do then is to

8 refer to GJY-4. And if I'm correct, the redacted

9 version is really redacted, and the confidential version

10 has all the information in it, so I need you to turn to

11 the confidential one.

12 A. That is correct.

13 Okay. I have the confidential version.

14 Q. And both the confidential version of GJY-4 as

15 well as the nonconfidential version say "Total Annual

16 Cost, SESH Pipeline Project." Do you see that at the

17 bottom of the exhibit?

18 A. Let me get to it.

19 Q. And what I want to ask you is, isn't it

20 actually MoBay, not --

21 A. That is incorrect, yes. That --

22 Q. It's just a typo.

23 A. -- should be MoBay.

24 Q. Could you look at column C of the exhibit?

25 MR. BUTLER: I'm sorry. Mr. Beck, let me ask

893

1 you at this point, do you want -- Madam Chairman, we

2 have copies of the confidential exhibits in question and

3 would be happy to distribute them to the Commission so

4 that you can follow along if that would be helpful.

5 CHAIRMAN EDGAR: If you have copies available,

6 let's go ahead and distribute them.

7 MR. BUTLER: Thank you.

8 MR. BECK: I'm sorry, Madam Chair. I thought

9 you had copies.

10 CHAIRMAN EDGAR: Usually the red folders

11 magically appear, but I think we're all tired.

12 (Documents distributed.)

13 BY MR. BECK:

14 Q. Mr. Yupp, the redacted version has even

15 redacted the titles of the columns, and I want to ask

16 you, the actual names of the columns isn't confidential,

17 is it? We can talk about that?

18 A. Yes, we should be able to talk about the names

19 of the columns.

20 Q. Okay. Column D, would you read the title to

21 that exhibit?

22 A. Column D reads, "Return on Unamortized Base

23 Gas."

24 Q. And what is that for? What does that show

25 there?

894

1 A. I believe that shows -- in the calculation as

2 proposed by what was in staff's recommendation

3 originally, that is the return that FPL would realize on

4 the unamortized base gas.

5 Q. Now, that's not actually in your proposal to

6 the Commission now, is it? I mean, this column

7 shouldn't be there if it's going to accurately reflect

8 what FPL is proposing before the Commission now, should

9 it?

10 A. I'm not sure I follow as to what we're

11 proposing now.

12 Q. Well, what are you proposing with respect to

13 base gas now?

14 A. Our original proposal with respect to base gas

15 was to expense it through the fuel clause, a one-time

16 expense at the beginning of the transaction and then a

17 credit at the end of the term of the transaction when we

18 actually withdrew that base gas and burned it in our

19 power plants.

20 That was our proposal at the time, treating

21 base gas identical to tank bottoms from the respect

22 of -- the oil that resides in a fuel oil tank below the

23 discharge piping, commonly referred to as tank bottom,

24 serves the same purpose as does base gas. It is a

25 volume of fuel that is required to provide or allow for

895

1 the extraction of the working gas volume. And so our

2 original proposal was the one-time expense.

3 Q. As you sit here right now -- maybe I

4 misunderstand it. What is your proposal to the

5 Commission? Your original proposal, or are you not

6 proposing to expense base gas?

7 A. That is our proposal.

8 Q. To expense the base gas?

9 A. Yes.

10 Q. Okay.

11 A. A one-time expense up front with a credit at

12 the end of the term of the transaction.

13 Q. Well, then let me go back to column D on your

14 exhibit. Since your proposal is to expense the base gas

15 up front in year one, there's no return on unamortized

16 base gas, is there?

17 A. No. But this exhibit was created as a result

18 of -- we put this exhibit together with staff's

19 recommendation, with what was proposed in staff's

20 recommendation, and what the annual cost would be under

21 that scenario.

22 Q. So this exhibit does not reflect what you are

23 actually proposing to the Commission. This exhibit

24 reflects costs as reflected in a staff recommendation;

25 is that right?

896

1 A. That is correct.

2 Q. Okay. How would this exhibit change to

3 reflect what you're actually proposing before the

4 Commission?

5 A. What FPL originally proposed, this exhibit

6 would remain fairly intact. The column -- well, I can

7 go through the column headings, but the monthly storage

8 reservation charge and the monthly inventory insurance

9 charge would remain the same, as would the cycling

10 charge. The injection and withdrawal charges, which

11 were estimates on our part, would remain the same. The

12 return on the unamortized base gas and I believe the

13 return on the inventory investment would not be there.

14 So you would have a one-time expense at the beginning

15 and then a credit at the end.

16 Q. So the total estimated annual cost for MoBay

17 as you're proposing it on an annual basis would be less

18 than the amount shown on this exhibit, because you're

19 going to take out columns D and E?

20 A. Columns D and E, yes.

21 Q. But on the other hand, the first year expense

22 of MoBay as you're actually proposing it is quite a bit

23 greater than the total amount shown on this exhibit,

24 isn't it?

25 A. That is correct. That will be a function of

897

1 what the market for natural gas is at the time that we

2 inject base gas.

3 Q. Okay. You see there's a total amount on your

4 exhibit, column G at the very bottom?

5 A. Yes.

6 Q. Can you give us an idea, without revealing

7 anything you claim is confidential, how much that item

8 would be less for the recurring annual expenses than is

9 shown here under your proposal?

10 A. Under our proposal, how much less per year it

11 would be?

12 Q. Right, and then I'm going to ask you how much

13 more the first year would be under your proposal.

14 A. I don't have a calculator with me.

15 Q. Just an order of magnitude, if you can.

16 A. Can you give me one second?

17 Q. Sure.

18 MS. HELTON: While he's doing that, Madam

19 Chairman, if I could just make clear that the exhibits

20 that have been identified as Exhibit Number 4 and 5 on

21 our composite exhibit list does include Mr. Yupp's

22 confidential exhibits that we're discussing now. And

23 the reason why I'm asking, our previous general counsel

24 used to like to identify separately the confidential

25 exhibits. I think he thought that that was a cleaner

898

1 approach. I'm not sure that it's necessary, but that is

2 an alternative as well. And perhaps --

3 CHAIRMAN EDGAR: Mr. Butler, do you have a

4 preference?

5 MS. HELTON: -- Mr. Butler has an opinion.

6 MR. BUTLER: I'm sorry. You would like to

7 identify separately the confidential exhibits that we

8 have just distributed?

9 MS. HELTON: That might be cleanest way to go

10 about this for the purposes of the record.

11 MR. BUTLER: That probably makes good sense,

12 so that we would end up just having -- I guess Exhibits

13 8 and 9 would end up being the confidential versions of

14 GJY-3 and 4 respectively.

15 CHAIRMAN EDGAR: The confidential exhibits

16 that have been distributed and discussed during

17 Mr. Yupp's testimony will be marked as Exhibit Number 8

18 and 9.

19 (Florida Power & Light Company Exhibits Number

20 8 and 9 were marked for identification.)

21 MR. BUTLER: Thank you.

22 THE WITNESS: Can you just rephrase the

23 question? How do you want me to give you the answer?

24 BY MR. BECK:

25 Q. Let me try to tell you where I'm going and see

899

1 how much you can reveal without confidential --

2 A. Okay.

3 Q. Your confidential exhibit was a total

4 estimated annual cost for MoBay on the --

5 A. Yes.

6 Q. We can all look at that if we have the

7 confidential exhibit in front of us.

8 A. Right.

9 Q. And in fact, that's not true under your

10 current proposal, because you propose to expense base

11 gas, correct, in the first year?

12 A. That is correct.

13 Q. And so that expensing of base gas will make

14 the first year more than is shown here in your exhibit,

15 and other years will be less, because you won't have the

16 carrying costs on base gas?

17 A. That is correct.

18 Q. And I think you told me earlier that what you

19 shouldn't have, to reflect what's currently on the table

20 by FPL, is that column D shouldn't be there?

21 A. Correct.

22 Q. And I think you said E also?

23 A. D and E, yes.

24 Q. E is your working gas inventory, return on

25 inventory investment?

900

1 A. I believe E is the carrying costs on the

2 inventory.

3 Q. And you're saying to reflect your proposal now

4 that E shouldn't be there either?

5 A. Our original proposal of expensing the gas up

6 front would not have carrying costs associated with it.

7 Q. Is your proposal -- when you say the original

8 proposal, that's what you're in fact proposing right

9 now; right?

10 A. Yes.

11 Q. And under your proposal right now, you would

12 expense base gas; right?

13 A. Yes.

14 Q. And so column D shouldn't be there to reflect

15 what you're proposing right now. In other words, if you

16 expense it, you're not going to have a return on

17 unamortized base gas.

18 A. Correct.

19 Q. But you are asking for a return on your

20 inventory investment even now, are you not?

21 A. No. And this is getting a little bit out of

22 my area on this. This is more for Witness Dubin. But

23 my understanding would be that columns D and E would not

24 be there under the scenario of expensing the base gas,

25 which was our -- which is our proposal originally.

901

1 Q. Earlier, one of the first questions I asked

2 you was to differentiate between base gas and working

3 gas, and you did that.

4 A. Yes.

5 Q. And in fact, FPL is proposing to expense base

6 gas; right?

7 A. Correct. I'm sorry. Let me go back. You're

8 right. D would be out of this calculation, yes. E

9 would be there.

10 Q. E is the carrying costs?

11 A. E is on the working gas volume, yes. I

12 apologize.

13 Q. E is the carrying costs on your working gas

14 that you're proposing to recover --

15 A. That is correct.

16 Q. That's one of our big items in dispute; right?

17 A. That is correct.

18 Q. Okay. So if we were to reflect what you're

19 actually proposing, the total in G that's shown there

20 would be reduced by the total amount of adding up

21 everything in column D?

22 A. That is correct.

23 Q. And we can -- just looking at it, I think most

24 of us can get an idea of what that is.

25 A. Yes.

902

1 Q. Now, to expense your base gas in the first

2 year as you are proposing, what does that do -- to the

3 extent you can verbally describe it without disclosing

4 confidential information, what does it do to the first

5 year cost to increase it over what's shown here?

6 A. Well, again, the cost of expensing that base

7 gas in the first year would be a function of where the

8 market is at that point in time. But if we were to take

9 where the current market is for the 2008 period, which

10 is what we're looking at here, roughly the cost of

11 expensing that base gas would be very similar, to the

12 best of my calculations, fairly close to what that

13 overall number is that is reflected in Exhibit GJY-4,

14 the bottom line number, with everything included.

15 Q. Thank you. So very roughly, just an order of

16 magnitude, the first year impact of what you're actually

17 proposing is about twice what we see there in column G,

18 at the bottom of column G, is it not, roughly?

19 A. That would be correct, yes.

20 Q. And then annual costs after that are less than

21 is shown at the end of column G by the amount on column

22 B; correct?

23 A. That is correct.

24 And maybe I can clarify one other point. The

25 proposal of expensing the base gas as a one-time expense

903

1 up front and then crediting back proved to be a lower

2 cost alternative for our customers by -- as compared to

3 this methodology. And I believe the last numbers we had

4 were by roughly 10 million.

5 So just to put that out there, as the gas then

6 is credited back at the end of this term of the

7 transaction, that base gas will be consumed in our power

8 plants and then credited back to our customers. So the

9 difference in the two proposals or as you see it laid

10 out here in GJY-4 versus the one-time expense, I

11 believe, subject to check, was roughly $10 million lower

12 cost to our customers by doing the expense up front.

13 Q. And the calculation you're referring to, that

14 was a net present value calculation over the -- what?

15 Fifteen years?

16 A. I believe so, yes.

17 Q. So you discounted the -- you used a discount

18 rate over that entire 15-year period; right?

19 A. Yes.

20 Q. And do you recall what that rate was?

21 A. I do not recall offhand, no. It might be

22 better for Ms. Dubin to answer that.

23 Q. Would you agree that a calculation like that

24 is highly dependent on what discount rate you use,

25 particularly when you go out that far in time?

904

1 A. Yes.

2 Q. Base gas has to be present at all times, does

3 it not, in order to utilize your working gas?

4 A. It does.

5 Q. So you need base gas over the entire 15 years

6 of the agreement?

7 A. That is correct.

8 Q. Assuming that you don't renew it at the end of

9 15 years.

10 A. Uh-huh.

11 Q. Would you agree that having the base gas

12 provides a benefit over the 15-year period?

13 A. It provides a benefit in that it allows us

14 access to our working gas volume, yes.

15 Q. Let me ask you about your fuel storage

16 practices for other than gas, if I could. Do you have

17 storage for coal and oil?

18 A. Yes, we do.

19 Q. Could you describe your coal storage

20 practices?

21 A. Our coal facilities are managed by -- or have

22 managing partners, so we are not directly involved in

23 that, and I can't speak too well on our coal practices.

24 But we do keep -- in a general sense, we keep inventory

25 on our piles in order to be able to run the facility.

905

1 And the amount of coal that's kept on a, let's say,

2 day-by-day basis, how many days supply we have varies by

3 location.

4 Q. And could you give us a general idea of what

5 the time periods are for -- how many days of inventory

6 you keep?

7 A. That has fluctuated a lot recently given the

8 PRB situation or the Powder River Basin situation that

9 we've experienced over the last couple of years and the

10 troubles in actually receiving coal from the Powder

11 River Basin. But in a general sense, 40 days supply is

12 probably not out of the realm of probability.

13 Q. And is the coal all kept on-site, or do you

14 have both on-site and off-site?

15 A. It is all kept on-site.

16 Q. You said Florida Power & Light doesn't manage

17 those directly?

18 A. We do not, no.

19 Q. Were there any changes in the coal storage

20 practice as a result of the 2004 and 2005 hurricane

21 seasons?

22 A. No, there was not.

23 Q. Okay. How about fuel oil? Does FPL maintain

24 an inventory of fuel oil?

25 A. Yes, we do.

906

1 Q. And about how many days worth of fuel oil do

2 you maintain?

3 A. Fuel oil days burn will vary by location, by

4 time of the year, so I can't give you an exact number.

5 Roughly, though, if you look at heavy fuel oil, pretty

6 much we have about a 10-day turn on resupplying residual

7 fuel oil, and so we look to keep roughly 10 days as a

8 minimum supply. During hurricane season, we do keep

9 more supply.

10 Q. Okay. Is oil all maintained on-site, or do

11 you have some on-site and some off-site?

12 A. We maintain all our oil on-site. There is

13 some that resides at a terminal, which is an

14 intermediate step, to change equipment, to be able to

15 bring the oil to our actual plant locations, but we

16 consider that to be on all on-site storage.

17 Q. And where is that that you do that?

18 A. Currently, we have to utilize inland barging

19 at our Turkey Point facility, at our Cape Canaveral

20 facility, and at our Sanford facility.

21 Q. Were there any changes in the way you manage

22 your oil inventory as result of the hurricane seasons in

23 2004 and 2005?

24 A. Changes? I guess you could say there were

25 changes. I think from the standpoint of being full,

907

1 heading into hurricane season, at all locations and

2 trying to maintain at least -- even in our inland

3 barging locations, trying maintain as full an inventory

4 as we can. I think the 2004 and 2005 hurricane seasons

5 reemphasized that that is an important component for us

6 of our hurricane plan.

7 Q. Okay. At page 24 of your testimony, I want to

8 switch a little bit, if I could.

9 A. Okay.

10 Q. You talk about the right that MoBay has to

11 terminate the contract if the PSC hadn't given final

12 approval by September 29th; is that right?

13 A. That is correct.

14 Q. Okay. You've attached the contract as an

15 exhibit to your testimony?

16 A. Yes, I have.

17 Q. And which exhibit is that?

18 A. I believe that is in Exhibit GJY-3.

19 Q. And that has two attachments to it, is that

20 right, Attachment 1 and Attachment 2?

21 A. Yes, that's correct.

22 Q. And Attachment 2, am I right that that's the

23 MoBay contract?

24 A. That is correct.

25 Q. The contract contains certain conditions

908

1 precedent, does it not?

2 A. Yes, it does.

3 Q. And one of those conditions precedent is the

4 right to terminate the contract without the PSC

5 approval; is that right?

6 A. That is correct.

7 Q. Okay. Is it true --

8 MR. BUTLER: Charlie, I'm sorry. Charlie, are

9 you going to be needing to talk to the confidential

10 terms in that?

11 MR. BECK: No.

12 MR. BUTLER: Okay. If you were, I wanted to

13 distribute it. But if not, fine.

14 MR. BECK: I wasn't planning to, but you never

15 know.

16 BY MR. BECK:

17 Q. Okay. I'm sorry. Where we were was whether

18 the right to terminate is in the contract as one of the

19 conditions precedent; is that right?

20 A. That's right.

21 Q. One of the parties has the right to waive that

22 condition precedent, does it not?

23 A. Yes. We could waive that. FPL could waive

24 that condition precedent.

25 Q. So to the extent the agreement contains a

909

1 requirement of PSC approval of the way to recover it,

2 that's something that FPL inserted in the contract for

3 its benefit; is that right?

4 A. That is correct.

5 Q. And of course could waive that requirement if

6 it chose to do so?

7 A. That is correct.

8 MR. BECK: Thank you, Mr. Yupp. That's all I

9 have.

10 CHAIRMAN EDGAR: Questions from staff?

11 MS. BENNETT: No, ma'am.

12 CHAIRMAN EDGAR: No questions.

13 Commissioners? No questions.

14 Mr. Butler.

15 MR. BUTLER: A little bit of redirect, please.

16 REDIRECT EXAMINATION

17 BY MR. BUTLER:

18 Q. Mr. Yupp, is the MoBay gas storage facility

19 on-site storage?

20 A. No, it is not.

21 Q. Is the Bay Gas storage facility a form of

22 on-site storage?

23 A. No, it is not.

24 Q. Is it necessary for FPL to have inventories of

25 coal and fuel oil for operating the plants that use

910

1 those fuel types as an ordinary part of their course of

2 operation?

3 A. Yes, it is, particularly coal and fuel oil.

4 It is necessary to maintain sufficient quantities of

5 fuel on-site in order to feed just normal operations,

6 day-to-day operations.

7 Q. Does that necessity have to do with the way

8 that the coal and fuel oil are delivered to the plant,

9 the transportation of them?

10 A. Yes, it does.

11 Q. Is there a similar necessity to have an

12 inventory of natural gas on-site at natural gas-fired

13 plants?

14 A. No. Natural gas storage is not a necessity to

15 run our gas-fired plants under normal operating

16 conditions. Natural gas is delivered to our facilities

17 on what I'll term a real-time basis, scheduled into a

18 pipeline and then delivered to our plants on a real-time

19 basis, whereas coal and fuel oil, as I described before,

20 particularly with fuel oil, the turnaround time for

21 resupply is 10 days, so we must keep adequate

22 inventories on-site to fuel natural operations. Natural

23 gas storage is not required for ordinary operations.

24 Where you'll find natural gas storage utilized is really

25 under abnormal conditions when there are supply

911

1 curtailments.

2 MR. BUTLER: Thank you. That's all the

3 redirect that I have.

4 Are you ready for me to move the admission?

5 CHAIRMAN EDGAR: I am.

6 MR. BUTLER: Okay. I would move the admission

7 of Exhibits 4 and 5, and also 8 and 9.

8 CHAIRMAN EDGAR: Exhibits 4, 5, 8 and 9 will

9 be moved into the record.

10 (Florida Power & Light Company Exhibits Number

11 4, 5, 8, and 9 were admitted into evidence.)

12 CHAIRMAN EDGAR: The witness may be excused.

13 Thank you.

14 Mr. Beck -- of course, the next witness,

15 Mr. Butler, is yours, and so to you as well. I am ever

16 the optimist, and I did have hopes that we would be able

17 to move through this docket, and maybe even the next,

18 today.

19 I always try to break at what seems to be a

20 natural time in the flow, but yet it is getting late,

21 and I'm getting tired, and I suspect maybe others are as

22 well. And I don't want either you, Mr. Beck, or you,

23 Mr. Butler, to feel rushed beyond -- it's important, and

24 so I don't want you to feel rushed.

25 So I guess I'm going to ask you, does this

912

1 seem like a place to break, or do you want to try to

2 move through one or two more witnesses?

3 MR. BUTLER: It's a reasonable place to break

4 as far as FPL is concerned. Obviously, we could go on

5 if you want, but this would be a reasonable place to

6 break.

7 MR. BECK: I feel the same way. Either way,

8 Madam Chairman. It's fine to break, but if you want to

9 keep going, we're ready also.

10 CHAIRMAN EDGAR: Okay. Okay for break time?

11 Okay. Then again, I was hopeful that we would move

12 through, but it is getting late, and I want to make sure

13 that we give each witness and their testimony the time

14 and attention that is deserved.

15 So we will break for the evening, and we will

16 come back at 9:00 in the morning, at which point we will

17 start with witness Dubin, we will move to then Witness

18 Merchant, go into rebuttal, and then into the next

19 docket. And after that docket, then we will take a

20 break for our staff to regroup and come back and make

21 recommendations. And I don't know how long that brake

22 will be. We'll just figure that out in the morning.

23 Any closing comments for the evening?

24 MR. BUTLER: None from FPL.

25 CHAIRMAN EDGAR: Is everybody okay? All

913

1 right. Then thank you all. We will reconvene at 9:30

2 in the morning, and we are on break.

3 MR. BUTLER: Thank you.

4 (Proceedings recessed at 5:35 p.m.)

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1 CERTIFICATE OF REPORTER

2

3 STATE OF FLORIDA:

4 COUNTY OF LEON:

5 I, MARY ALLEN NEEL, Registered Professional

6 Reporter, do hereby certify that the foregoing

7 proceedings were taken before me at the time and place

8 therein designated; that my shorthand notes were

9 thereafter translated under my supervision; and the

10 foregoing pages numbered 741 through 913 are a true and

11 correct record of the aforesaid proceedings.

12 I FURTHER CERTIFY that I am not a relative,

13 employee, attorney or counsel of any of the parties, nor

14 relative or employee of such attorney or counsel, or

15 financially interested in the foregoing action.

16 DATED THIS 8th day of November, 2006.

17

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