

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 100009-EI

In the Matter of:
NUCLEAR COST RECOVERY CLAUSE.

VOLUME 7

Pages 1490 through 1617

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PROCEEDINGS: HEARING

COMMISSIONERS
PARTICIPATING: CHAIRMAN NANCY ARGENZIANO
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER NATHAN A. SKOP
COMMISSIONER ART GRAHAM
COMMISSIONER RONALD A. BRISÉ

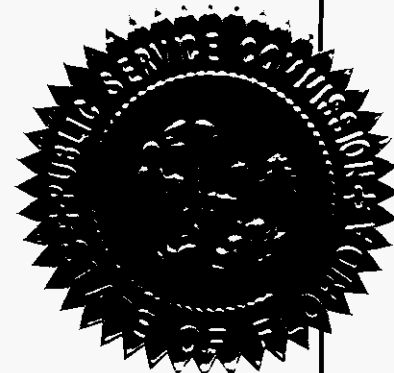
DATE: Friday, August 27, 2010

TIME: Commenced at 9:57 a.m.

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

REPORTED BY: LINDA BOLES, RPR, CRR
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APPEARANCES: (As heretofore noted.)



20100827 1490-1617

SEP 8 2010

FPSC-COMMISSION CLERK

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P R O C E E D I N G S

(Transcript follows in sequence from
Volume 6.)

CHAIRMAN ARGENZIANO: Good morning. We'll
call the meeting to order. Excuse me.

And, Commissioner Skop, you wanted to be
recognized.

COMMISSIONER SKOP: Thank you, Madam Chair.
Just two preliminary matters this morning. First, I'd
like to briefly discuss an aspect related to the
proposed stipulation, and ask Mr. Rehwinkel, not, excuse
me, I'm sorry, Mr. McGlothlin a follow-up question.

With respect to the proposed stipulation, the
stipulations provide for cost recovery and litigate the
issue or issues next year. And what I would note in
that regard, in all prior NCRC hearings, the Commission
has always required a determination of reasonableness of
all costs prior to cost recovery, consistent with the
Commission's rule.

Under their proposed stipulation and per Issue
23 in the Prehearing Order, this Commission will be
allowing FPL to charge its customers a total of
\$81,317,333 in 2011 for the projected 2011 EPU costs to
the capacity cost recovery clause.

Per the proposed stipulation, we're deferring

1 consideration of the reasonableness of this amount, yet
2 cost recovery is allowed. And that's listed on page 4
3 of the stipulation that was filed with this Commission
4 on August 17th, 2010. Therefore, this cost recovery
5 goes forward, notwithstanding the company's issues
6 associated with the EPU costs, plans to submit the LAR,
7 and some of the disclosure issues that have been brought
8 to light within the past few weeks.

9 Rule 25-6.0423(5)(c)(2) states that the
10 Commission shall, prior to October 1st of each year,
11 conduct a hearing and determine the reasonableness of
12 the projected preconstruction expenditures and projected
13 construction expenditures. The Commission has not
14 conducted a hearing and has not determined the
15 reasonableness of expenditures. In fact, under their
16 proposed stipulation, we will only be able to consider
17 the reasonableness after the fact, which is counter to
18 the rule's clear intent.

19 In my view, it may be inappropriate to allow
20 such cost recovery for the projected EPU costs from FPL
21 customers, and at the appropriate time when we get to
22 the motion, I do, you know, have some concerns about
23 that. But, you know, what it boils down to is without a
24 determination of the reasonableness of any costs
25 proposed for recovery by FPL in this proceeding,

1 particularly in relation to the EPU, none of the costs
2 could be recovered under the NCRC rule. That's
3 inconsistent because the rule requires a determination
4 of reasonableness.

5 Now bringing up the point that Mr. Anderson
6 raised trying to, you know, present to the Commission
7 that this is done in the past, clearly we need to shed
8 some light on what the truth really is regarding that
9 representation.

10 In the 2008 NCRC hearing, by Order
11 PSC-08-0749-FOF-EI, the PSC approved a stipulation among
12 some other parties to defer a prudence review of new
13 power plant costs incurred in 2007, yet allow cost
14 recovery in 2009 capacity cost recovery clause rates.
15 This was done because of the lateness of the Turkey
16 Point 6 and 7 and the St. Lucie need determinations or
17 nuclear, or some other need determinations in which
18 approval was granted after the NCRC filing dates for the
19 final true-ups in March 1, 2008.

20 But most importantly, staff conducted a review
21 of those costs and made a recommendation on the
22 reasonableness of the costs in full compliance with
23 Rule 25-6.0423(5)(c)(2). Specifically in that order, on
24 page 3 of the order, it found that the costs were
25 reasonable.

1 So I guess the question I have to
2 Mr. McGlothlin, or perhaps you might want to confer
3 amongst the parties as we move forward in this
4 proceeding, because I don't want to hold up Mr. Reed's
5 testimony, but the proposed stipulation seems to ignore
6 the reasonableness, the finding of reasonableness
7 requirement that the Commission has pursuant to its own
8 rule.

9 So I think the question I have is if we're
10 going to defer or if the intent of the proposed
11 stipulation is to defer the entire, or a blanket
12 deferral of the entire FPL case until next year, then
13 perhaps the proposed costs related to the EPU should
14 equally be deferred, because I don't see how we're going
15 to get to a determination of reasonableness.

16 So, Mr. McGlothlin, if you'd like to briefly
17 respond. If not, I'll let you ponder that and move on
18 to my next point.

19 **MR. MCGLOTHLIN:** Well, you've referred to some
20 orders and other things that I don't have with me, so
21 I'd like a chance to review that before I respond.

22 **COMMISSIONER SKOP:** All right. Very well.
23 And I'll do that.

24 Madam Chairman, my second issue that I'd like
25 to address this morning deals with my request to have

1 Mr. Olivera appear before the Commission. Now I've
2 asked Mr. Anderson at least twice on the record and I am
3 reiterating that request now. Now it's a reasonable
4 request. The company could comply. The company has
5 raised a host of concerns, due process -- you know, we
6 can end all that.

7 But the bottom line is I have questions
8 related, amongst other things, to the accuracy and
9 timeliness of information that was provided to the
10 Florida Public Service Commission.

11 Now let's talk about due process in course.
12 The Concentric report, which Mr. Anderson alleged that
13 is the sole basis of my concern, it's not. There are
14 other issues. But with respect to the accuracy of
15 information provided to the Florida Public Service
16 Commission, Mr. Jones yesterday testified that
17 Mr. Olivera was in fact in attendance at the July 25th,
18 2009, Executive Steering Committee. So Mr. Olivera,
19 therefore, has personal knowledge, which I feel is an
20 appropriate line of questioning.

21 Moreover, as to the timeliness of information
22 provided to this Commission, the fact that FPL did not
23 provide the Florida Public Service Commission with its
24 notice to withdraw its LAR for St. Lucie 1 until ten
25 days after that was filed and hours before the start of

1 this current year's NCRC proceeding in my view
2 constitutes failure to disclose material information.
3 At the very least it's a due process, denial of due
4 process to the Commission and Commission staff. Okay?

5 And that seems to be a consistent trend, to
6 disclose at the last minute, to keep staff at bay, to
7 keep Commissioners at bay. So, again, there is a due
8 process interest there and that has not been
9 controverted. It's actually been shown the facts are
10 what they are. FPL knew on or before August 13th that
11 it would be pulling its LAR. It did so on the 13th.
12 The NCRC, I mean, the NRC, Nuclear Regulatory
13 Commission, responded on the 13th, and we got a
14 one-page, a one-paragraph letter ten days later, only
15 after Commission staff had placed the information in the
16 docket, and it has a serious question whether all the
17 intervening parties were provided due process of that
18 letter also.

19 So, again, I think that my request is
20 reasonable. I would ask that the company comply. You
21 know, certainly I have some relevant lines of questions.
22 In the absence of not complying, I will request my
23 colleagues to honor my request to have Mr. Olivera
24 appear before this Commission so I can ask him some
25 constructive questions in relation to things that are

1 specifically related to documents contained in this
2 record and personal information he may have in that
3 regard.

4 So, Mr. Anderson, I'm going to ask one final
5 time, does your company plan to make Mr. Olivera
6 available pursuant to my request? I am not negotiating.
7 It doesn't require a full Commission vote because the
8 Chairman has subpoena power, but I will take it to a
9 vote. But I'm asking nicely, on behalf of your company
10 in good faith, that Mr. Olivera appear.

11 **COMMISSIONER GRAHAM:** Madam Chair, I've got a
12 point of order. We had this conversation yesterday, and
13 I believe the motion that we're on, we're supposed to
14 interview both Mr. Reed and Mr. Jones, and then we're
15 supposed to go back and address this issue.

16 So I guess my question would be, should we
17 even be having this conversation now? Should we go
18 ahead and continue with these two witnesses and then go
19 back and have this conversation?

20 **COMMISSIONER SKOP:** Madam Chair, to the point
21 of order.

22 **CHAIRMAN ARGENZIANO:** To the point.

23 **COMMISSIONER SKOP:** Commissioner Graham, to
24 your point of order. A motion was made. We are hearing
25 from two witnesses. Staff is asking questions of those

1 witnesses. I have additional questions, which I've
2 reiterated in my request three times before this
3 Commission. The situation I see us in and the reason
4 why my request is not out of order, upon the conclusion
5 of Mr. Reed's testimony, I will still have those
6 questions. And to provide due process and adequate
7 notice, it's important that Mr. Olivera be provided
8 adequate time so he can appear before the Commission.
9 So there is detriment to waiting and that's why I've
10 brought forth my request.

11 **CHAIRMAN ARGENZIANO:** Well, we're in a logjam
12 again, because Commissioner Skop has asked the question
13 before and we have not answered -- well, I think the
14 company did answer his question. Let me take a
15 five-minute recess and give it some thought.

16 **COMMISSIONER SKOP:** Thank you.

17 (Recess taken.)

18 **CHAIRMAN ARGENZIANO:** We're back.

19 **COMMISSIONER SKOP:** Thank you, Madam Chair.
20 And, you know, to provide convenience to Mr. Olivera, if
21 there is a way that he could appear telephonically, that
22 would equally be acceptable to me, as long as it would
23 be under oath.

24 **CHAIRMAN ARGENZIANO:** Okay. We have a point
25 that I have to address. And the point is well taken

1 since the motion was that we would see, go through the
2 two witnesses, but it is my desire then immediately upon
3 Mr. Reed's questions and answers and immediately upon
4 his release, his freedom from questioning, we will go,
5 revert back to Commissioner Skop's request.

6 **COMMISSIONER SKOP:** Madam Chair.

7 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

8 **COMMISSIONER SKOP:** Thank you. And thank you,
9 Madam Chair. I appreciate that. And, you know, I
10 respect the ruling. For the record, I'd also like to
11 state that I first stated my request prior to the
12 motion, current motion being adopted, so I do think that
13 I have preserved that. And I thank the Chair for trying
14 to find a way to harmonize obtaining a result that
15 balances the interests of Commissioner Graham with the
16 interest that I have. Thank you.

17 **CHAIRMAN ARGENZIANO:** Thank you. And before
18 we get started, I have a concern that I want to raise,
19 because I don't understand something that's kind of
20 befuddling.

21 We have in the -- I guess the Prehearing
22 Officer, Commissioner Skop, the Concentric, the staff's
23 audit of the Concentric report to FPL is not
24 confidential except for one individual's name; correct?
25 Wait a minute. I'm not finished.

1 **COMMISSIONER SKOP:** Okay.

2 **CHAIRMAN ARGENZIANO:** But yet what's not
3 confidential in here leads you to a date and a time of a
4 particular public record where the name of that person
5 is not confidential. Why is this person's name
6 confidential?

7 **COMMISSIONER SKOP:** Can I explain?

8 **CHAIRMAN ARGENZIANO:** Yes, please.

9 **COMMISSIONER SKOP:** All right. Madam Chair,
10 in my ruling on the issue, FPL, we had to have an
11 evidentiary hearing. Unlike Progress, FPL, again,
12 pursuant to OPC's representations, had a very broad, if
13 not overreaching, request for confidentiality. So we
14 had to go through the evidentiary hearing process.

15 At hearing we discussed the Concentric report.
16 There were two issues that we took specific testimony
17 on. One was a third-party audit that was conducted at
18 the direction of internal audit staff that remained
19 confidential. The second, I believe, was the name of
20 the person who provided live testimony before the
21 Commission. FPL had agreed to provide or to redact the
22 majority of the information after a long, lengthy
23 discussion during the evidentiary hearing.

24 However, on that issue, they put forth witness
25 testimony that asserted there would be some sort of

1 competitive harm in relation to disclosing the staff
2 audit report. Okay? So the issue became do you hold up
3 disclosure of the document at that point over denying
4 the request for confidentiality over a single name, or
5 do you allow that docket to be properly disclosed so we
6 can have an open discussion?

7 Please let me finish. I'm going to get to my
8 point.

9 Or do you allow that name to remain
10 confidential in that specific document because of the
11 testimony they provided that would have probably been
12 uncontroverted by staff, but staff withdrew its request.
13 So the decision was made on behalf of the Prehearing
14 Officer not to pursue fighting that or ruling against
15 it, because otherwise the entire document would have
16 been cloaked in a cloud of confidentiality pending
17 appeal.

18 But, Madam Chair, to your point, there is a
19 transcript. Transcript is a public record and questions
20 can be asked regarding that transcript.

21 **CHAIRMAN ARGENZIANO:** I understand that,
22 Commissioner Skop. That was my point.

23 **COMMISSIONER SKOP:** Okay.

24 **CHAIRMAN ARGENZIANO:** My point is that it's
25 somewhat ridiculous, to be honest with you, that if you

1 can sit here and everything that's not confidential --
2 I'm not saying your decision was ridiculous, because I
3 understand the need to have the document --

4 **COMMISSIONER SKOP:** I understand. But --

5 **CHAIRMAN ARGENZIANO:** Excuse me.

6 **COMMISSIONER SKOP:** Okay.

7 **CHAIRMAN ARGENZIANO:** To have the document
8 held not confidential. I understand the dilemma.

9 But when one looks at it and can easily say,
10 well, let me go back to such and such a date and you
11 pull up the transcript and here it is. Now my question
12 to legal staff is if I am referring to the public
13 document, is the name confidential or not?

14 **MR. KISER:** I don't think so.

15 **COMMISSIONER SKOP:** No, it's not. Madam
16 Chair, may I --

17 **CHAIRMAN ARGENZIANO:** See how ridiculous that
18 is?

19 **COMMISSIONER SKOP:** Madam Chair.

20 **CHAIRMAN ARGENZIANO:** Yes, Commissioner Skop.

21 **COMMISSIONER SKOP:** Okay. And, again, if you
22 would look at the footnote one in my order, which was --
23 I have to get the order number. I alluded to that.
24 Footnote 1 said, "Notwithstanding the FPL testimony, in
25 my ruling to maintain confidentiality of FPL employee

1 and former employee names, the Prehearing Officer
2 questions whether the confidentiality provisions were
3 intended to protect the identity of a witness when the
4 veracity of the witness's sworn testimony to the
5 Commission is called into question."

6 So I did challenge that. But to rule against
7 that based on the evidence I had before me would have
8 shielded, allowed FPL, and that would have, I'm sure,
9 been to their pleasure, to keep this entire document
10 under wraps and none of this open discussion could be
11 held. And the workaround for that is that they claim
12 confidentiality specific to the staff audit report. I
13 knew the transcript existed.

14 **CHAIRMAN ARGENZIANO:** Okay.

15 **COMMISSIONER SKOP:** We can take official
16 recognition of the transcript and read in whatever
17 questions need to be directed to the witness. Thank
18 you.

19 **CHAIRMAN ARGENZIANO:** I understand. I just
20 wanted to make sure that if I refer to this public
21 document in any way, that it is not confidential.

22 **COMMISSIONER SKOP:** Yeah. Well, I think that
23 speaks to FPL's desire to shield much of its information
24 in the cloud of confidentiality, unlike Progress. But,
25 again, we --

1 **CHAIRMAN ARGENZIANO:** Okay. Let's, let's move
2 on with our witness and start with Mr. Reed, please.

3 **MR. ROSS:** Madam Chairman, Mr. Reed is on the
4 stand. He was sworn yesterday. What I would propose is
5 a couple of questions to briefly introduce him. He has
6 a brief summary that's prepared for the Commission, then
7 he'd be available for questions.

8 **CHAIRMAN ARGENZIANO:** Fine. Let's move
9 forward.

10 **JOHN J. REED**

11 was called as a witness on behalf of Florida Power &
12 Light Company and, having been duly sworn, testified as
13 follows:

14 **DIRECT EXAMINATION**

15 **BY MR. ROSS:**

16 **Q.** Good morning. Would you please state your
17 name and business address.

18 **A.** My name is John Reed. My business address is
19 293 Boston Post Road, Marlborough, Massachusetts.

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

21 **A.** I am the Chairman and CEO of Concentric Energy
22 Advisors and CE Capital.

23 **Q.** Have you prepared a brief summary of your
24 testimony in this proceeding for the Commission?

25 **A.** Yes, I have.

1 Q. Would you please provide that summary to the
2 Commission now?

3 A. Certainly.

4 Good morning, Madam Chair and Commissioners.
5 Concentric Energy Advisors was retained by Florida Power
6 & Light in this proceeding for a review of project
7 controls and project management for the EPUs and Turkey
8 Point 6 and 7. We provided the same services for the
9 last two nuclear cost recovery cases. We also have been
10 asked to benchmark FPL's Turkey Point 6 and 7 cost
11 estimate and to review the economic feasibility analysis
12 it has presented regarding the EPU and Turkey Point 6
13 and 7.

14 I have 125 pages of direct testimony on these
15 issues. However, given the limited purpose for which
16 I'm appearing now, I don't propose to address those
17 issues in my summary.

18 This year, Concentric was also asked to
19 conduct a separate investigation of a number of concerns
20 regarding the EPU projects raised in a letter sent by an
21 FPL nuclear manager to NextEra's CEO. These findings
22 are detailed in our separate report on that matter.

23 Our report has concluded that during the first
24 half of 2009, FPL did not satisfactorily comply with its
25 written procedures regarding cost estimation and changes

1 in scope for the EPU projects. In addition, we have
2 concluded that in September 2009 in the nuclear cost
3 recovery hearings, certain information was provided by
4 an FPL witness to the FPSC and that information was out
5 of date.

6 Notwithstanding these findings, we have also
7 concluded that FPL's actions have not led to any
8 imprudently incurred costs or to any incorrect decisions
9 regarding moving forward with the EPU projects.

10 I want to comment briefly on the process of
11 our investigation. In launching our investigation in a
12 response to the employee letter, I think FPL did exactly
13 what it should have done. In granting us the autonomy,
14 independence and access that it did that we requested,
15 again, I think FPL did exactly what it should have done.

16 Last, but certainly not least, even though FPL
17 does not fully agree with our conclusions and
18 recommendations, it is currently implementing 13 out of
19 14 of our recommendations and further evaluating the one
20 remaining recommendation. I commend them for that.

21 I would like to conclude by saying that I have
22 worked with but actually more often across the table
23 from the FPL nuclear organization many times over the
24 past dozen years. Our findings in our report are not
25 characteristic of the FPL nuclear organization that I

1 have come to know and respect over that time.
2 Furthermore, FPL is a self-critical and learning
3 organization that is committed to continuous
4 improvement, and our report is offered in that vein.

5 Finally, with regard to the EPU organization
6 which was the subject of our investigation, that
7 organization is focused on the right issues and has made
8 substantial progress to effectively deal with our
9 concerns.

10 That concludes my summary. Thank you.

11 **MR. ROSS:** Madam Chairman, Mr. Reed is now
12 available for questions.

13 **CHAIRMAN ARGENZIANO:** Thank you.

14 Mr. Young.

15 **MR. YOUNG:** Thank you. Thank you, Madam
16 Chairman.

17 **CROSS EXAMINATION**

18 **BY MR. YOUNG:**

19 **Q.** Good morning, Mr. Reed.

20 **A.** Good morning, Mr. Young.

21 **Q.** You've been sworn; correct?

22 **A.** Yes, I have.

23 **Q.** Do you have a copy of your Concentric report,
24 the revised copy, the unredacted and the redacted copy?

25 **A.** You want me to have both versions in front of

1 me?

2 Q. Yes.

3 MR. YOUNG: And the unredacted copy was passed
4 out yesterday, Madam Chairman. It was previously marked
5 as Exhibit 242. It's included in that Exhibit 242 and I
6 think it's at the -- if you open your package and if
7 it's in the order like I thought it is, it's at the end
8 at the back of your package.

9 MR. MOYLE: Just a point of clarification, if
10 I could, Madam Chair.

11 CHAIRMAN ARGENZIANO: Mr. Moyle.

12 MR. MOYLE: 242 is the confidential exhibit.

13 MR. YOUNG: The confidential exhibit. 242 is
14 a confidential exhibit.

15 CHAIRMAN ARGENZIANO: Okay. Here it comes.
16 Okay. Thank you.

17 MR. YOUNG: Also, Madam Chairman, we are
18 handing out, and we're going to ask that this be marked
19 for identification purposes, the revised, the redacted
20 copy of the Concentric report. And that will be 243.

21 (Exhibit 243 marked for identification.)

22 CHAIRMAN ARGENZIANO: Commissioner Skop.

23 COMMISSIONER SKOP: Thank you, Madam Chair.

24 As a point of information, Mr. Young, I can
25 reserve this until I ask my question, but does staff

1 intend to mark a copy of the transcript for
2 identification at any future point in time from the
3 September 8th, 2009?

4 **MR. YOUNG:** The, the -- if I could have one
5 second, Madam Chairman.

6 **CHAIRMAN ARGENZIANO:** Uh-huh. Sure.

7 (Pause.)

8 **MS. HELTON:** Madam Chairman, we may be able to
9 avoid having to do that if the company would be willing
10 to let us officially recognize the transcript from last
11 year.

12 **COMMISSIONER SKOP:** Madam Chair.

13 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

14 **COMMISSIONER SKOP:** Madam Chair, the company
15 does not let, does not need to allow us to take official
16 recognition of our own document. So what I would ask is
17 that we can certainly take official recognition of our
18 own document, which is a public record which I printed
19 off our docket file this morning, or we could mark it
20 for identification and enter it into the record subject
21 to objection.

22 So that's my intent. Mr. Young, just proceed,
23 and I'll deal with it at the appropriate time. Thank
24 you.

25 **CHAIRMAN ARGENZIANO:** Mr. Young.

1 **MR. YOUNG:** Thank you, Madam Chairman.

2 **BY MR. YOUNG:**

3 **Q.** Mr. Reed, on March 10th, 2010, you were
4 contacted by FPL regarding an employment letter;
5 correct?

6 **A.** Yes. That's correct.

7 **Q.** And you were -- and that contact was by FPL's
8 attorney Mitchell Ross; correct?

9 **A.** That's correct.

10 **Q.** And on March 11th, 2010, you were given,
11 quote, unquote, soft authorization; correct?

12 **A.** Soft authorization to proceed with our work.
13 Yes.

14 **Q.** What does soft authorization mean? What does
15 that mean?

16 **A.** Subject to working out the paperwork.

17 **Q.** Okay. And that, just to clarify, that was
18 based on the employee letter; correct?

19 **A.** Yes.

20 **Q.** And you were given points of contacts as
21 relates to this investigation; correct?

22 **A.** Yes.

23 **Q.** Who were your point of contacts?

24 **A.** Our primary point of contact was Mr. Ross. We
25 also had a day-to-day coordinator for data information

1 and interview requests.

2 Q. Okay. Was there anybody else other than
3 Mr. Ross was your point of contact?

4 A. Mr. Ross was the primary point of contact. We
5 had interaction with numerous people, but Mr. Ross was
6 the person to whom we reported and had our primary
7 contact.

8 Q. All right. If you can reveal, if it's not
9 confidential, who did you have contact with as relates
10 to your investigation in this report?

11 A. The FPL legal organization, Mr. Anderson,
12 Mr. Litchfield, the FPL EPU nuclear organization,
13 obviously Mr. Jones and a number of his direct reports.
14 We had access to everyone we asked to have access to.
15 Ms. Tiffany Cohen was our day-to-day data coordinator in
16 interaction. The specific people that we interviewed,
17 that list is confidential still, so I don't propose to
18 go into that list.

19 Q. All right. Did you -- and I think -- were you
20 here yesterday when Mr. Jones was testifying?

21 A. Yes, I was here.

22 MR. YOUNG: Madam Chairman, if I could get one
23 second to confirm something with the parties -- with
24 the, with the company.

25 CHAIRMAN ARGENZIANO: Certainly.

1 **COMMISSIONER SKOP:** Madam Chair, may I?

2 **CHAIRMAN ARGENZIANO:** Commissioner Skop, go
3 ahead.

4 **COMMISSIONER SKOP:** Thank you, Madam Chair.
5 Getting to the matters which may be judicially noticed,
6 or in this case official recognition, under *Florida*
7 *Statute* 90.202, "The court may take judicial notice of
8 the following matters to the extent they're not embraced
9 within Section 90.201(6). Records of any court of this
10 state or any court of record in the United States of any
11 state, territory or jurisdiction in the United States;
12 11, facts that are not subject to dispute because
13 they're generally known within the territorial
14 jurisdiction of the court; 12, facts that are not
15 subject to dispute because they're capable of accurate
16 and ready determination by resort to sources whose
17 accuracy cannot be questioned."

18 This is official, this transcript is in our
19 official public record docket, so I would respectfully
20 disagree with the advice of counsel to the extent that I
21 do not need to ask FPL's permission to take official
22 recognition on behalf of this Commission. Thank you.

23 **CHAIRMAN ARGENZIANO:** Ms. Helton.

24 **MS. HELTON:** Thank you, Madam Chairman. I'm
25 in kind of an awkward position here. I also think it's

1 important that we're to remember that we're under
2 Chapter 120, the Administrative Procedures Act, as
3 adopted by the Legislature. And in Chapter 120 in the
4 section governing evidentiary proceedings, which we are
5 now in, it states -- and if you'll hold on one minute.
6 These are awkward glasses for me to work with.

7 **CHAIRMAN ARGENZIANO:** Sure. Go right ahead.

8 **MS. HELTON:** 120.569(2)(i), "When official
9 recognition is requested, the parties shall be notified
10 and given an opportunity to examine and contest the
11 material."

12 I can't remember whether in our, if it's in
13 our Order Establishing Procedure that we give a certain
14 time frame by when parties are expected to identify and
15 notify those participating in the proceeding that they
16 expect to take official recognition of certain
17 information. I think that it is, and I need one of the
18 younger lawyers who can remember better than me to
19 confirm that.

20 We as a regular course take official
21 recognition of our orders. I don't think anyone in our
22 proceedings can dispute that. However, in my mind, a
23 transcript is a little bit different than an order. And
24 I believe that it's appropriate to learn whether Florida
25 Power & Light objects, and from there to make an

1 appropriate ruling based on the request made and any
2 discussion that's had on the subject.

3 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

4 **COMMISSIONER SKOP:** Madam Chair, in response,
5 and I've anticipated this, and, again, it's amazing what
6 roadblocks get put up before the Commission.

7 So, again, in the alternative to avoid this
8 protracted discussion, I intend to mark the transcript
9 for identification purposes in a line of questioning and
10 we'll handle it that way. Thank you. Subject to
11 objection by the company at the appropriate time when
12 the exhibit would be entered.

13 **CHAIRMAN ARGENZIANO:** May I ask a question of
14 legal? If someone off the street walked up to me and
15 handed me that transcript today and said this is the
16 case you're, I'm talking about a customer, says this is
17 the case, this is part of the case you're talking about
18 and how come this has to be confidential if it's there,
19 do I have to submit that to be entered into the record?

20 **MS. HELTON:** Ma'am, I'm not talking about --
21 obviously the transcript is what it is and it speaks for
22 itself. My concern is notice. My concern is notice to
23 all --

24 **CHAIRMAN ARGENZIANO:** The question I asked was
25 would I have to enter it into the record because someone

1 approached me with it and said here it is, it's
2 pertaining to a case you're working on? Would it have
3 to be entered into the record or should it be entered
4 into the record?

5 **MS. HELTON:** If it's something that you want
6 to rely on in making your decision and you want it to be
7 part of the competent, substantial evidence upon which
8 you base your decision, yes, it would need to be entered
9 into the record.

10 **CHAIRMAN ARGENZIANO:** Okay. Commissioner
11 Skop.

12 **COMMISSIONER SKOP:** Thank you, Madam Chair.
13 And that was my intent on doing it the proper
14 evidentiary way. Just mark it for identification and
15 I'll ask questions. And then when we move to enter,
16 then it can be subject to objection.

17 However, I would note that there is no due
18 process issue. Excerpts of this transcript have already
19 been declassified with the exception of the witness name
20 in the Concentric report in the -- and it may even be in
21 the staff audit report. There's been ample notice. The
22 company was a party to the proceeding last year, the
23 party knows that this is at issue, or should have known
24 it's an issue. And, you know, I respect advice of
25 counsel, but I disrespect what appear to be -- I'll just

1 stop there. It's just -- I'll get it in the record.
2 Thank you.

3 **CHAIRMAN ARGENZIANO:** Can I -- I just want to
4 say something, because it's very easy in times when
5 we're talking about very substantial issues for people
6 to get excited, to get emotional, or to have a real
7 strong point of view. And some may not like it and some
8 may want to just move on for time's sake or whatever.
9 But it is really a very important issue to the
10 companies, to the parties involved and to the people of
11 the State of Florida.

12 So let's take a breather and let's not get mad
13 if anybody asks questions or has a strong point of view,
14 because that's what we get paid for. So let's take a
15 breather and let's not get angry. If we have to stay
16 'til 8:00 tonight and we don't like it, that's too bad,
17 we all get paid a good amount of money, that's what
18 we'll do.

19 So I'm going to say right now, I'm going to
20 take another five-minute break, and the reason to do
21 that is because I want things to cool off and I want
22 people to think about some things. And then when --
23 we're going to take a five-minute break and then we'll
24 come back.

25 (Recess taken.)

1 If everyone will return to their seats, we'll
2 get started.

3 Mr. Young, whenever you're ready.

4 **MR. YOUNG:** Thank you, Madam Chairman.

5 **BY MR. YOUNG:**

6 **Q.** Mr. Reed, where we left off, you were telling
7 me what soft authorization was. Can you repeat that
8 answer, please?

9 **A.** Yes. It is authorization to proceed with our
10 scope of work subject to working out the paperwork.

11 **Q.** And you were telling me your point of contacts
12 were, who you spoke with, and you didn't want to reveal
13 the confidential names; correct?

14 **A.** I did not want to reveal the names of the
15 people we interviewed.

16 **Q.** Okay. However, one of those persons revealed
17 that you were, he, you -- excuse me. One of those
18 persons revealed that you interviewed him for this
19 report; correct?

20 **A.** Yes. I believe yesterday Mr. Jones indicated
21 voluntarily that he was one of the interviewees.

22 **Q.** Okay. And Mr. Jones also said that he
23 reviewed copies of the draft reports; correct?

24 **A.** Yes.

25 **Q.** Did the other interviewees review copies of

1 the draft reports?

2 A. I don't know to whom the reports were
3 circulated within FPL on a draft basis. But I can say
4 that in terms of people we received comments from, no
5 other interviewees were people that we received comments
6 from.

7 Q. But you received comments from Mr. Jones;
8 correct?

9 A. Orally, yes.

10 Q. Yes. Now is it customary for a person who is
11 interviewed for an investigation to give you comments in
12 terms of reviewing your final work product?

13 A. Yeah. It's not unusual at all, especially
14 where all of the data that we're counting on and using
15 in our analysis comes from the company.

16 Q. All right.

17 A. We want to always fact-check and verify the
18 information we received, so that's part of our fact
19 checking process.

20 Q. All right. Did, did he give any other
21 comments to you? Did Mr. Jones provide any other
22 comments besides the factual basis of your report?

23 A. He provided qualitative or subjective comments
24 as well, areas in which he disagreed with our
25 conclusions.

1 Q. Okay. Now in your statement you made that, in
2 your summary you made a statement that you did not think
3 FPL was imprudent in their actions at all; correct? Did
4 I summarize your statement correctly?

5 A. What I said specifically was there are no
6 costs in this proceeding or in the prior proceedings
7 that relate (phonetic) to any imprudent decision.

8 Q. All right. Did you have Mr. Jones' letter
9 prior to issuing your report?

10 A. Yes. We saw a draft of Mr. Jones' management
11 response shortly before we issued the final report.

12 Q. Okay. Can you look at that draft, and it's
13 dated, it's for --

14 **MR. YOUNG:** Point of information, Madam
15 Chairman. It's the purple cover sheet that was marked
16 as Exhibit Number 243 for identification purposes. And
17 it is -- one, two -- the fourth to the last page, and
18 it's dated June 21st, 2010.

19 **THE WITNESS:** I have that document.

20 **BY MR. YOUNG:**

21 Q. All right. If you can look in the second full
22 paragraph that starts, "In summary."

23 A. Yes.

24 Q. And the last two sentences that starts, "While
25 there was acknowledgment," can you read that aloud,

1 please?

2 A. I'm sorry. Where are you on that paragraph?

3 Q. The last two sentences. The sentence that
4 starts with, "While there was." Do you see it?

5 A. Yes.

6 Q. Can you read that, can you read that sentence
7 aloud, please?

8 A. "While there was acknowledgment that as
9 detailed engineering proceeded there would be additional
10 scope and therefore cost, there were also indications
11 that there were opportunities to eliminate scope and
12 reduce costs as well that simply were not being acted
13 upon. The interactions between FPL and the major
14 vendors -- "

15 Q. If I can have you stop there.

16 A. Okay.

17 Q. Now you just read that statement. And the
18 last part of that statement, that simply was not acted
19 upon as relates to costs and missed opportunities. Did
20 you investigate that in your, before you issued your
21 report?

22 A. Yes.

23 Q. So you believe that Mr. Jones' statement is
24 incorrect that there were missed opportunities that were
25 not acted upon that potentially could have reduced cost?

1 **A.** Let's put this in context. No, I don't
2 believe his statement is wrong.

3 **Q.** Okay.

4 **A.** I agree with his statement that we're talking
5 about in mid 2009.

6 **Q.** Yes. Mid 2009. Now moving forward --

7 **MR. YOUNG:** And, Madam Chairman, what I'd like
8 to do at this time is mark as a placeholder Exhibit 244,
9 and this is a, these are copy, this is a copy of the
10 direct testimony of Mr. Kundalkar, and I have 15 copies
11 that I'll be bringing down shortly.

12 **CHAIRMAN ARGENZIANO:** 244?

13 **MR. YOUNG:** Yes.

14 **CHAIRMAN ARGENZIANO:** Okay.

15 (Exhibit 244 marked for identification.)

16 **BY MR. YOUNG:**

17 **Q.** Now, Mr. Jones, I mean, excuse me, Mr. Reed, I
18 want to ask you a question about Mr. Jones right now.
19 Again, you were in the room when Mr. Jones was giving
20 his testimony; correct?

21 **A.** Yes.

22 **Q.** And you were, you were here for the discussion
23 as it relates to performance, whether the EPU management
24 was removed because of performance; correct?

25 **A.** Yes.

1 Q. Do you agree with his assessment that they
2 were not removed because of performance?

3 A. I'm not sure that fully and correctly
4 characterizes his testimony.

5 Q. Let me, let me stop you there.

6 Did Mr. Jones, did Mr. Jones state that he
7 does not believe that the EPU, some of the EPU team was
8 removed for performance?

9 A. I think that's correct.

10 Q. In your findings did you not find that the
11 EPU, some of the members of the EPU team was removed
12 based on performance?

13 A. What we found was that the change in
14 management was to enhance the performance of the
15 project. So, yes, I would say in my mind that phrase
16 includes making the change due to performance.

17 Q. So you would agree with me that they were
18 removed because of performance, partly because of
19 performance?

20 A. Again, the management change, I don't think I
21 would characterize that as removal. It was a
22 reorganization, it was a reassignment, and then other
23 people left voluntarily. But the management change was
24 to enhance performance of the project.

25 Q. Okay.

1 **CHAIRMAN ARGENZIANO:** I have just a question,
2 if I can, to that point. So does that mean in your
3 opinion that management felt that some members of the
4 team were not performing up to their expectations?

5 **THE WITNESS:** In general, yes. I would say
6 that the senior management seems to have felt that the
7 project needs had changed and that a change was
8 warranted to reflect the change in needs and to align
9 performance with that change.

10 **CHAIRMAN ARGENZIANO:** Thank you.

11 **BY MR. YOUNG:**

12 **Q.** Now, Mr. Jones [sic], let's focus back on the
13 draft of the Concentric report in terms of who edited
14 the report and what feedback they provided to you.

15 Did you present -- did you meet with FPL to
16 discuss each draft of the Concentric report?

17 **A.** No.

18 **Q.** How many drafts of the Concentric report are
19 out there?

20 **A.** Approximately 20.

21 **Q.** Twenty drafts. Do any of those drafts include
22 feedback from FPL employees?

23 **A.** I'm not sure I would use the word include.
24 Some of the revisions reflect comments and feedback from
25 FPL employees.

1 Q. How often did you meet with FPL employees as
2 relates to receiving feedback as related, for the
3 Concentric report, in your finalization of the
4 Concentric report?

5 A. If you can give me just a moment. And just to
6 indicate what I'm looking at, this is a data request
7 response, EPU data request 10-7, which is confidential,
8 but it does list all the occasions in which we met with
9 the company to receive their comments. And looking at
10 that --

11 Q. While you're looking for that, let me ask you,
12 did you provide each draft to FPL, to Florida Power &
13 Light?

14 A. No. More than half of the drafts were just
15 internal drafts that we revised internally without
16 sending to FPL. It appears that we had four sessions in
17 which we received comments from FPL.

18 Q. If you can, I'd like to go through that draft.
19 And with the Commission's --

20 **CHAIRMAN ARGENZIANO:** One second, Mr. Young.
21 Commissioner Skop.

22 **COMMISSIONER SKOP:** Yes, briefly, Madam Chair.
23 Mr. Reed, in response to your last question,
24 you said the four sections that you received FPL input.
25 Can you identify what those sections are?

1 **THE WITNESS:** Sessions, sessions of time.

2 **COMMISSIONER SKOP:** Sessions. Okay. All
3 right. Sorry. Thank you.

4 **CHAIRMAN ARGENZIANO:** Mr. Young, sorry.

5 **MR. YOUNG:** With the Commission's indulgence,
6 I'd like to go through the draft while we wait on
7 Ms. Bennett to come forward with the copies of the
8 testimony so we can move on that line of questioning.

9 **CHAIRMAN ARGENZIANO:** That's fine.

10 **BY MR. YOUNG:**

11 **Q.** Mr. Reed, do you have what is marked as
12 Exhibit Number 243?

13 **A.** That's the redacted report?

14 **Q.** That's the redacted report.

15 **A.** Yes.

16 **Q.** 242. Excuse me.

17 **MR. YOUNG:** And, Madam Chairman, I know I'm
18 treading on some confidential information, so I'd like
19 the company to be totally alert and alert me and inform
20 me if I'm moving towards that confidential information
21 so I don't divulge that information.

22 **CHAIRMAN ARGENZIANO:** Mr. Young, did you say
23 243 or 242?

24 **MR. YOUNG:** 242, Madam Chairman.

25 **CHAIRMAN ARGENZIANO:** Okay.

1 **MR. MOYLE:** Do you have a Bates number that we
2 might --

3 **MR. YOUNG:** Pardon me? It's the last draft in
4 the back of the packet.

5 **MR. ROSS:** Mr. Young, is this from the red
6 confidential folder that you passed out?

7 **MR. YOUNG:** Yes, sir.

8 **MR. ROSS:** Mr. Reed, do you have that in front
9 of you?

10 **THE WITNESS:** No. If we're talking about a
11 draft report, I do not have those.

12 **MR. YOUNG:** Okay.

13 **MR. ROSS:** Can I request that Mr. Reed get a
14 copy of the folder? Thanks.

15 **CHAIRMAN ARGENZIANO:** Is it marked as draft,
16 as a draft?

17 **MR. YOUNG:** Is it marked -- no, ma'am. It's
18 marked as document, FPL's response to staff's fourth
19 POD.

20 **CHAIRMAN ARGENZIANO:** Could you give the
21 document number to make sure that I'm on the right one?
22 Is it -- what is the document number on the bottom of
23 the --

24 **MR. YOUNG:** Document Number 06790-10.

25 **CHAIRMAN ARGENZIANO:** Got it. Thank you.

1 **BY MR. YOUNG:**

2 Q. Now, Mr. Reed, before we get there, earlier I
3 asked you was the FPL employee removed because -- some
4 of the EPU management team was removed because of
5 performance; correct?

6 A. Yes, you did.

7 Q. Now in your interviews did several
8 interviewees express that they believed, if I'm going
9 confidential information, please alert me, that they
10 believed the EPU, some of the EPU management team was
11 removed because of performance?

12 A. Yes, they did.

13 Q. Okay. And these would be people who were
14 close enough to the information to, to form an opinion
15 as it relates to the EPU management team being removed;
16 correct?

17 A. They formed an opinion based on perception.
18 Obviously they're not subject to being able to review
19 personnel files, but that was their perception.

20 Q. Okay.

21 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

22 **COMMISSIONER SKOP:** Yes, Madam Chair. Thank
23 you.

24 To Mr. Young. Mr. Young, can someone from
25 legal, while you continue your cross-examination, find

1 the FPL response to staff data request DR-8.9, please?

2 **MR. YOUNG:** I'm sorry. I was talking to
3 Ms. Bennett. Can you --

4 **COMMISSIONER SKOP:** I'm sorry. Yes. While
5 you're continuing your cross-examination, can someone
6 from legal staff please provide me with a copy of the
7 FPL response to staff data request DR-8.9? Thank you.

8 **MR. YOUNG:** And Ms. Bennett is here, Madam
9 Chairman. So with your indulgence, if I can pass out
10 that document.

11 **CHAIRMAN ARGENZIANO:** Absolutely. Thank you.

12 **MR. YOUNG:** Okay.

13 **CHAIRMAN EDGAR:** Madam Chair, while that's
14 being passed out, can you tell me, so I'm keeping up,
15 this has been marked and which number and what is the
16 title? I've got so many pieces of transcript here.

17 **CHAIRMAN ARGENZIANO:** This is 244, copy of
18 direct testimony of Mr. Kundalkar. I hope I said that
19 right.

20 **MR. YOUNG:** Yeah. And it would be the entire
21 transcript that is going to be entered. We just put
22 portion, we just have a portion of it.

23 **CHAIRMAN EDGAR:** All right. Thank you. Thank
24 you.

25 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

1 **COMMISSIONER SKOP:** Thank you, Madam Chair.

2 And to that same point, Mr. Young, the entire
3 transcript will include the Florida PSC Clerk Bates
4 stamp number with the cover page and the clerk seal
5 that's being printed?

6 **MR. YOUNG:** Yes, sir.

7 **COMMISSIONER SKOP:** All right. Thank you.

8 **MR. YOUNG:** And it'll be just Volume 2 of that
9 transcript.

10 **COMMISSIONER SKOP:** Yes. Thank you.

11 **CHAIRMAN ARGENZIANO:** Thank you. Whenever
12 you're ready.

13 **BY MR. YOUNG:**

14 **Q.** All right. Mr. Reed, what Ms. Bennett has
15 handed you is now marked as Exhibit Number 244. I want
16 to walk through this document. It's a public document,
17 so we can discuss really the names as relates to who
18 testified, when they testified, what they said. Okay?

19 **A.** Okay.

20 **Q.** All right. On page 207 of that document,
21 Mr. Anderson said, "Thank you." Raj S. Kundalkar was
22 called to the stand, and then Mr. Anderson began a
23 direct examination of Mr. Kundalkar.

24 **A.** I see that.

25 **Q.** Would you agree I summarized that correctly;

1 correct?

2 A. Yes.

3 Q. All right.

4 MR. YOUNG: And, Madam Chairman, I'd like
5 to --

6 BY MR. YOUNG:

7 Q. And in the course of this testimony,
8 Mr. Kundalkar made certain statements; correct?

9 A. Yes.

10 Q. And one of those statements was as relates to
11 his prefiled direct testimony; correct?

12 A. Yes.

13 Q. And in that statement in one of the responses
14 Mr. Kundalkar gave to this, before this Commission was a
15 response when Mr. Anderson asked, "If I asked you the
16 questions as in your prefiled testimony, would your
17 answers be the same"; correct?

18 A. He did ask that question, yes.

19 Q. And part of that, part of the testimony to his
20 answers -- part of the answers relates to his May
21 testimony, correct, 2009 testimony?

22 A. His May 2009 prefiled testimony. Yes.

23 Q. All right. And you have reviewed --

24 CHAIRMAN ARGENZIANO: Commissioner Skop.

25 I'm sorry, Mr. Young.

1 **COMMISSIONER SKOP:** Thank you, Madam Chair.

2 Mr. Young, just for purposes of your last few
3 questions, that would be on page 208 of the transcripts
4 beginning at lines 23, continuing on to 209, line 2?
5 Actually, hold on. Wait a second. I'm confused. Wait
6 for one second. Okay. Yes. I'm -- beginning on page
7 208 of that transcript, beginning on lines 24,
8 continuing on to page 209 through line 2; is that
9 correct?

10 **MR. YOUNG:** Yes, sir.

11 **COMMISSIONER SKOP:** Okay. All right. Thank
12 you.

13 **BY MR. YOUNG:**

14 **Q.** Now his testimony, he said his answers would
15 be the same as relates to his 2009 testimony; correct?

16 **A.** That's correct.

17 **Q.** All right. And you have done an
18 investigation. Part of your investigation was to look
19 at the, whether that statement was correct; correct?

20 **A.** Our testimony, I'm sorry, our investigation
21 reviewed all of the testimony from the 2009 proceeding
22 to see if it was correct.

23 **Q.** All right. And what is your opinion as
24 relates to the, Mr. Kundalkar's 2009 testimony, the
25 truthfulness of Mr. Kundalkar's 2009 testimony?

1 **A.** My conclusion is that some of the information
2 provided in the prefiled testimony was out of date as of
3 the date of this hearing, September 8th, 2009.

4 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

5 **COMMISSIONER SKOP:** Thank you.

6 Mr. Reed, in your opinion to that last
7 question, would that mean that the testimony given was
8 in your opinion inaccurate and incomplete?

9 **THE WITNESS:** Incomplete, yes. Inaccurate may
10 border on a legal opinion. What I said in our report is
11 it did not meet the standards that we believe apply to
12 testimony before a regulatory agency.

13 **COMMISSIONER SKOP:** Thank you.

14 **CHAIRMAN ARGENZIANO:** Well, that begs the
15 question then, did, was the answer -- the question was,
16 "If I asked you the same questions contained in your
17 prefiled direct testimony, would your answers be the
18 same?" And the gentleman answered, "Yes, they would
19 be." Is that accurate?

20 **THE WITNESS:** Well, I think his answers would
21 have been the same and were the same. I think his
22 answers should have been different. I think he should
23 have provided updated testimony with regard to the cost
24 estimate.

25 **CHAIRMAN ARGENZIANO:** And that's different

1 than inaccurate? Or you're meaning that his answers to
2 the original questions on that original day they were
3 asked or contained in the prefiled direct testimony.
4 Because it seems like we're splitting hairs and I'm
5 trying to figure out --

6 **THE WITNESS:** I think perhaps we are splitting
7 hairs. What our report says is the, we believe the
8 information was appropriately presented in the May and
9 March testimony as of that date. As of September it was
10 out of date.

11 **CHAIRMAN ARGENZIANO:** Thank you.

12 Commissioner Skop.

13 **COMMISSIONER SKOP:** Thank you.

14 And further clarification of that point, Mr.
15 Reed. I believe in response to my previous question,
16 you indicated that in your professional opinion that the
17 information contained in the, in his testimony on
18 September 9th, 2009, because it had not been amended,
19 was inaccurate. I believe you stated that; is that
20 correct?

21 **THE WITNESS:** Yes.

22 **COMMISSIONER SKOP:** Okay. And with respect to
23 whether his testimony was incomplete, you deferred
24 because you thought it would be a legal opinion. Do you
25 have a layman's person opinion as to whether his

1 testimony was incomplete based on your investigation?

2 **THE WITNESS:** In my lay opinion, again, the
3 information was out of date. I would characterize that
4 as inaccurate and incomplete.

5 **COMMISSIONER SKOP:** Thank you.

6 **BY MR. YOUNG:**

7 **Q.** Now, Mr. Reed, can you turn to page 37 of your
8 revised rebuttal testimony?

9 **A.** Did you say rebuttal testimony?

10 **Q.** Yes. But your -- before we get there, do you
11 believe he, that Mr. Kundalkar should have informed the
12 Commission that his, the forecast in his testimony was
13 out of date?

14 **A.** In September 2008, I'm sorry, September 8th,
15 2009, I believe he should have.

16 **Q.** And that is based on your report, correct,
17 your investigation, your independent investigation;
18 correct?

19 **A.** Yes.

20 **Q.** Your interviewing of the, of several FPL
21 employees; correct?

22 **A.** Yes.

23 **Q.** Your interviewing -- and some of those
24 employees including the EPU management team; correct?

25 **A.** Yes.

1 Q. And the July 25th, 2009, meeting of the upper
2 management; correct?

3 A. Yes. Our investigation included a review of
4 the documentation from that meeting.

5 Q. And that is the, and that is based on the ESC
6 meeting on July 25th, just to be clear.

7 A. Yes.

8 Q. Can you please turn to page 37 of your revised
9 rebuttal testimony?

10 A. Do you mean the report? My rebuttal testimony
11 doesn't have 37 pages.

12 Q. Yes, the report. If I'm not mistaken, I'm
13 looking at your rebuttal testimony, and I'm seeing 39
14 pages.

15 A. Okay. I'm sorry. You did mean the rebuttal.
16 If you'll give me just a moment. Yes, I'm sorry.
17 Page 37, I have that.

18 Q. Now looking at line 11 on page 37, do you see
19 the question?

20 A. Yes, I do.

21 Q. Can you please read that question aloud?

22 A. It says, "Has Concentric found any evidence of
23 costs that were imprudently incurred by the EPU project
24 in 2009?"

25 Q. And your response is?

1 **A.** "No. Concentric thoroughly reviewed the EPU
2 project's 2009 costs. In neither case did Concentric
3 identify any imprudently incurred costs."

4 **Q.** What do you mean, in neither case? What does
5 that mean? What do you mean by that?

6 **A.** For neither the Turkey Point uprate nor the
7 St. Lucie uprate.

8 **Q.** Can you please describe the costs you looked
9 at, the methodology for examining those costs, and
10 indicate whether a separate examination of those costs
11 was done for purposes of the investigation, as distinct
12 from the normal prudence evaluation performed by
13 Concentric?

14 **A.** No. It was not a separate investigation
15 relating to the employee letter. It was part of our
16 overall review of project controls, procedures, project
17 management and costs that's presented in our direct
18 testimony.

19 **Q.** Okay. Did you examine the work authorization?

20 **A.** We examined several work authorizations, yes.

21 **Q.** Did you examine the change orders?

22 **A.** Yes.

23 **Q.** Status reports?

24 **A.** Yes.

25 **Q.** And other related documents that could reveal

1 potential costs, any potential costs or schedule impact?

2 A. Yes.

3 Q. Of the fluctuating project scope?

4 A. Yes.

5 Q. Time lines, cost estimates, staffing levels?

6 A. Yes, all of those.

7 Q. So if I, I opened my question as relates to
8 pointing you to Witness Jones' letter too, that is
9 including your Concentric report; correct?

10 A. Yes. I'm sorry. I'm not sure I follow your
11 question.

12 Q. What is marked as -- I haven't gotten to the
13 question. I'm asking -- I started with this line of
14 questioning as relating to witness Jones' letter that is
15 included in part of your Concentric report, which is
16 Exhibit Number 243.

17 A. Yes, I have that.

18 Q. Witness Jones believed that some costs, there
19 were missed opportunities; correct?

20 A. As missed opportunities in terms of
21 opportunities to reduce costs through negotiations with
22 vendors. He felt that they had not been fully pursued
23 at that point and that they were going to be.

24 Q. In fact, you believe they were missed
25 opportunities; correct?

1 **A.** Can you be more specific? Missed
2 opportunities for what?

3 **Q.** In terms of the cost overruns as relates to
4 the EPU project.

5 **A.** We --

6 **Q.** In fact, you stated that there were a
7 five-month window that there was a missed opportunity;
8 correct?

9 **A.** Yes. We stated that there was a missed
10 opportunity in terms of having earlier recognition of
11 the increase in the cost projection.

12 **Q.** Now I think, if I'm correct, you believed that
13 imprudent, actions are imprudent, correct, not costs?

14 **A.** That's correct.

15 **MR. YOUNG:** No further questions.

16 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

17 **COMMISSIONER SKOP:** Madam Chair, I'm going to
18 have some questions, but I need a few minutes to collect
19 my thoughts. Perhaps there may be other questions from
20 the Intervenors, or if we could take perhaps a five- or
21 ten-minute break at this point.

22 **CHAIRMAN ARGENZIANO:** Intervenors?

23 **MR. MCGLOTHLIN:** I have several.

24 **CHAIRMAN ARGENZIANO:** Okay. You're
25 recognized.

CROSS EXAMINATION

BY MR. McGLOTHLIN:

Q. Mr. Reed, I'm looking at the redacted version of your investigation report. And I think for my purposes I don't need to get into anything confidential. Attached to your investigation report is a list of the documents on which you relied for the report; is that correct?

A. Yes.

Q. Also you've included a schedule showing the past assignments that you've had with FP&L; correct?

A. Yes, we did.

Q. I noticed that, among other things along the way, you have trained FPL witnesses; correct?

A. I wasn't involved in that, but our firm did, yes.

Q. That was in the, an earlier rate case. Have you or your firm members trained FPL witnesses since that time?

A. No. I should comment that I have participated in several witness training sessions, but our firm did not conduct those sessions.

Q. Were any of those sessions related to this docket?

A. Yes. We had one session related to this

1 docket.

2 Q. So were you in sessions related to the
3 training of witnesses who are appearing in front of the
4 Commission in this proceeding?

5 A. Yes, I would say so.

6 Q. At page 17 of 23 -- let me start again. I
7 think you replied in response to a question from staff,
8 or perhaps it was in your summary, that as a result of
9 your investigation report, you've made something like 13
10 recommendations to FPL and 12 of them have been
11 accepted; correct?

12 A. There are 14, 13 of which have been accepted.

13 Q. Well, I was close. At page 17 of 23, VIII,
14 there are several recommendations for improvements
15 related to the NCRC; do you see that?

16 A. I do.

17 Q. And were some of those recommendations
18 designed to avoid circumstances in the future in which
19 FPL witnesses would be incomplete or inaccurate or fail
20 to update their information when they've testified at
21 the PSC?

22 A. Yes.

23 Q. Were those recommendations among those that
24 were accepted by FP&L?

25 A. Yes. All four of these recommendations have

1 been accepted by FPL, and I would comment that I think
2 they've been actually implemented quite effectively for
3 this proceeding.

4 **Q.** Now in terms of a time line, you submitted
5 your first testimony in March of this year; correct?

6 **A.** In this docket, yes.

7 **Q.** And I understand that those testimonies have
8 not been sponsored in full, but I want to ask you just a
9 couple of general questions that I think you'll be able
10 to answer without reference.

11 In your first testimony you devoted, you
12 devoted a great amount of attention to a review of the
13 controls, processes and procedures that the company put
14 in place; correct?

15 **A.** Yes.

16 **Q.** And your testimony basically approved those as
17 being adequate for the purpose; correct?

18 **A.** Yes.

19 **Q.** Now subsequently, in your May testimony, you
20 said as a result of the request that you perform an
21 investigation, something had come to light that
22 indicated that some of those procedures had not been
23 fully followed; correct?

24 **A.** Correct.

25 **Q.** Would you agree with me then, sir, that

1 procedures, mechanisms, controls cannot be effective
2 unless they are implemented and adhered to?

3 A. That's correct. There is a performance
4 element as well as a structural element. The concerns
5 we raised in the report were with regard to performance.

6 Q. Also in your May testimony you indicated that
7 the, you were going to perform an investigation of those
8 inadequacies and that the report should be considered,
9 or that those details should be considered as supplement
10 to your March testimony. Do you remember that
11 statement?

12 A. That's correct.

13 Q. Now did you file testimony that was designed
14 to supplement your March testimony?

15 A. We did not file testimony. We submitted the
16 report. And if we were to get to the stage of adopting
17 that testimony, it would include that report.

18 Q. I see. But the report was not submitted in
19 the form of supplemental testimony per se, was it?

20 A. No. It's essentially the equivalent of an
21 exhibit to the testimony.

22 Q. When did you begin your investigation?

23 A. On March 11th, 2010.

24 Q. And your second testimony was submitted on
25 May 3rd, was it not?

1 **A.** The second piece, yes.

2 **Q.** And in that testimony you said that in neither
3 case did Concentric identify any imprudently incurred
4 costs. Isn't it true that at that point in time the
5 investigation was work in progress?

6 **A.** Yes.

7 **Q.** What was the date of your final investigation
8 report?

9 **A.** June 21st, 2010.

10 **Q.** And if you'll turn to page 11 of 23 of Exhibit
11 243.

12 **A.** I have that page.

13 **Q.** The section VI is the portion of your
14 investigation report where you provide your conclusions
15 as to those costs; correct?

16 **A.** That's correct.

17 **Q.** And that section VI consists of the three
18 paragraphs at the top of the page?

19 **A.** That's correct.

20 **Q.** And would you agree with me that your findings
21 are confined to the third of those three paragraphs?

22 **A.** I'm sorry. Is your question, are our findings
23 only in the third of the three paragraphs?

24 **Q.** With respect to the, whether the costs were
25 the result of imprudent decisions or actions.

1 **A.** That's true with regard to the costs, yes.

2 **Q.** Would you -- without reading the information
3 that's shown to be confidential, would you read that
4 third paragraph that begins "Similarly"?

5 **A.** Yes. "Similarly, Concentric found no
6 indications of costs that were the result of imprudent
7 decisions or actions on the part of FPL's management.
8 This conclusion was reinforced by all interviewees.
9 When asked whether they were aware of any costs that
10 should not be passed along, the unanimous answer was no.
11 Indeed," blank, a redacted name, "acknowledged during
12 our interview that the costs will be what they are, and
13 his concerns are related to what information would be
14 presented to the Florida Public Service Commission. As
15 a result, Concentric believes there are no costs which
16 should be subject to disallowance by the Florida Public
17 Service Commission on the basis of imprudent
18 decision-making."

19 **Q.** Now you referred to interviewees. Were all of
20 the interviewees FPL employees?

21 **A.** No. Some are contractors, some are former
22 employees.

23 **Q.** So they were either employees or contractors
24 engaged by FPL?

25 **A.** Or former employees.

1 Q. When Mr. Young asked you some questions about
2 what you reviewed, one of the first items, one of the
3 first items -- you said you reviewed several of them.
4 Do you remember that question and answer?

5 A. Yes.

6 Q. Does that qualification apply to the other
7 types of documents that he listed as well?

8 A. We reviewed many of the documents in those
9 categories, in each category. Overall we reviewed many
10 tens of thousands of pages of material.

11 Q. But you did not review all of the costs
12 incurred by FPL in 2009 for the uprates, did you not?

13 A. No. Any audit or review is not going to
14 review every invoice, every cost. It reviews the
15 decisions and it reviews the costs that stem from those
16 decisions. But it's not meant to be a, an analysis of
17 every dollar spent.

18 Q. You, and you also reviewed the controls and
19 mechanisms in place with respect to cost; correct?

20 A. We did.

21 **MR. MCGLOTHLIN:** Those are all of my
22 questions.

23 **CHAIRMAN ARGENZIANO:** Thank you.

24 Mr. Davis. Mr. Moyle.

25 **MR. MOYLE:** Thank you. Thank you, Madam

1 Chairman.

2 **CROSS EXAMINATION**

3 **BY MR. MOYLE:**

4 Q. Mr. Reed, good morning. I'm going to go
5 through and ask you some questions primarily about your
6 report and your views on some of the issues that I think
7 are squarely and fairly raised by your report. And
8 given that this is kind of a limited proceeding, you
9 tailored your opening comments to the report, and I'm
10 going to try to direct my questions to, to the limited
11 basis.

12 So a couple of, a couple of things. In
13 response to a question, you said you had to work out
14 some paperwork with FPL and it was a soft authorization.
15 What paperwork did you have to work out with them?

16 A. Our engagement letter.

17 Q. Okay. And have you produced and provided a
18 copy of that to the Commission staff?

19 A. It has been produced in discovery, yes.

20 Q. Okay. And you have been asked some questions
21 about the review of your, you know, of your, of your
22 work product and the fact that you had a number of
23 sessions with FPL to review, I guess, your preliminary
24 findings and your, as you headed down the road, your
25 conclusions; is that right?

1 **A.** Yes.

2 **Q.** Okay. And those discussions included, you
3 know, word choices and semantics and, you know,
4 suggested both -- well, I guess I would say subjective
5 wording was kind of debated back and forth during those
6 discussions in certain cases; isn't that right?

7 **A.** To be honest, there was no debate. I listened
8 to FPL's comments and everything from wording to
9 punctuation.

10 **Q.** All right. So let me -- do you have a copy of
11 your confidential report, 242?

12 **A.** I do.

13 **Q.** Page 21 of 23.

14 **A.** Yes.

15 **Q.** The third deleted box there and the fourth
16 deleted box, those, those deletions aren't confidential,
17 are they?

18 **MR. ROSS:** Mr. Moyle, could you be more
19 specific as to what you're referring to?

20 **MR. MOYLE:** Sure. I'm referring to Exhibit
21 242, page 21 of 23. It's toward the back of the
22 document.

23 **MR. ROSS:** Could we have a Bates number?

24 **MR. MOYLE:** Oh, I'm sorry. Yeah. FPL 153507,
25 up at the top right-hand corner.

1 **THE WITNESS:** I'm sorry. That was FPL 153197?

2 **BY MR. MOYLE:**

3 **Q.** No. 153507. So it's NCR-10, and it's a draft
4 report. Page 21 of 23 is what I'm referring to. And it
5 came out of the big red folder.

6 **A.** I'm sorry. I don't see that document in the
7 folder that's been handed me. I have that as 153484.
8 Okay.

9 **Q.** A lot of documents flying around us.

10 **A.** And, Mr. Moyle, just to clarify, this isn't
11 our report. It's an earlier draft of the report, but go
12 ahead.

13 **Q.** Okay. And I referenced you to the third and
14 fourth deletions on that document. You don't consider
15 those deletions confidential, do you?

16 **MR. ROSS:** I would object. This document in
17 all of its entirety is confidential. It's not what
18 Mr. Reed's opinion is. That was the ruling of the
19 Prehearing Officer.

20 **CHAIRMAN ARGENZIANO:** Mr. Moyle, to the
21 objection.

22 **MR. MOYLE:** Well, my understanding of
23 confidentiality is it's designed to protect sensitive
24 information with respect that gives somebody a business
25 advantage or, you know, trade secrets and, you know, the

1 use of an, of an adjective. My initial question was,
2 you know, during the back and forth were there
3 discussions and, you know, about subjective terms. This
4 is a subjective term, an adjective. You know, I don't
5 know that the adjective in and of itself is
6 appropriately considered as a trade secret or, or
7 confidential.

8 **CHAIRMAN ARGENZIANO:** Commissioner Skop, and
9 then to staff, please.

10 **COMMISSIONER SKOP:** Thank you. And just on
11 the document in question. Again, no ruling has been
12 rendered. Some of the information probably contained on
13 that page has been redacted in the final report that was
14 declassified, but no ruling has been made on the
15 comments.

16 Again, as a general proposition, I mean,
17 that's the problem I have with the use of
18 confidentiality statute is, you know, confidentiality
19 should protect numbers and critical business
20 information, not adjectives. But it gets used a little
21 bit more broadly and sometimes we don't have time to
22 sort all that out.

23 **CHAIRMAN ARGENZIANO:** Ms. Helton.

24 **MS. HELTON:** Madam Chairman, when a request
25 for confidentiality is made, and even if, even if

1 there's an order entered that denies the request, under
2 our rules we keep that information confidential until
3 the time for appeal has run and the court can actually
4 rule whether it's confidential or not.

5 So it's my understanding that for the
6 information that's in the little red boxes on the side,
7 that a request has been made. And while that request is
8 pending and until there's a Prehearing Officer's order
9 and until the court has ruled, then we need to maintain
10 the confidentiality of that information.

11 **CHAIRMAN ARGENZIANO:** The objection --

12 **MS. HELTON:** Regardless --

13 **CHAIRMAN ARGENZIANO:** Yeah. The objection is
14 sustained.

15 **BY MR. MOYLE:**

16 **Q.** The -- you see the boxes I'm referring to, the
17 third and fourth there, Mr. Reed?

18 **A.** Yes, I see them.

19 **Q.** Were those your deletions or were those
20 deletions of FP&L?

21 **A.** All of the additions and deletions in the
22 draft are mine.

23 **Q.** Okay. Did you make those two deletions there
24 after discussions with FP&L?

25 **A.** Well, as I said, we had four different

1 sessions in which we discussed our drafts with FPL. I'm
2 sure this was after one of those sessions. But I can
3 assure you that the changes made here are changes that I
4 decided to make, not that were urged upon me by FPL.

5 Q. How did you communicate with FP&L typically?

6 A. Both by phone and e-mail, as well as a couple
7 of face-to-face meetings.

8 Q. So when you were having discussions about the
9 report, I presume that most of those discussions were in
10 face-to-face meetings and by telephone, as compared to
11 e-mail; is that right?

12 A. There were three face-to-face meetings. So,
13 yes, most of the sessions to review the draft were
14 face-to-face.

15 Q. Right. And you produced some e-mails. I
16 mean, I didn't see a lot of e-mail traffic, so that's
17 why I'm asking the question. I just assumed most of
18 them were telephones or face-to-face.

19 A. Most of the review sessions were face-to-face.

20 Q. You talked about folks you interviewed. Did
21 you interview anyone who was on the, the, what is it,
22 the ESC committee?

23 A. We interviewed people that attend those
24 meetings. I'm not sure that the committee has an
25 official roster of members, but we interviewed people

1 that attend those meetings.

2 Q. Do you understand the term ESC as to what it
3 means in FPL's hierarchy?

4 A. It's Executive Steering Committee.

5 Q. Okay. And as part of your investigation, did
6 you determine who was on the Executive Steering
7 Committee?

8 A. Yes.

9 Q. Okay. And did you interview any of the
10 members of the Executive Steering Committee pursuant to
11 your investigation?

12 A. I would say yes, we did.

13 Q. Okay. And those would include members who
14 attended the July meeting; correct?

15 A. Yes.

16 Q. Okay. I want to just walk you through a
17 couple of portions of your report. You've already been
18 asked a lot of questions by staff, so I'm going to try
19 to make this pretty succinct and brief, if I can.

20 Mr. McGlothlin asked you some questions about,
21 this is on the Exhibit 243 that is a public record as I
22 understand it. It's been redacted. And I want to refer
23 you to page 11 of 23.

24 A. I have that.

25 Q. Okay. Do you see the section under 7, the

1 flow of information to the Florida Public Service
2 Commission?

3 A. Yes.

4 Q. Okay. As you described the scope of inquiry,
5 it was whether the information presented by FPL in those
6 proceedings related to the EPU cost estimate schedule
7 and cost-effectiveness was accurate and consistent with
8 the standards expected for testimony before and
9 submissions made to a regulatory agency. Given your
10 testimony previously, I assume that your answer to that
11 question as you phrased it was no; correct?

12 A. In the one instance, yes, that's correct.

13 Q. And on that, on that instance, page 15 of 23,
14 down at the bottom you reach a conclusion that indicates
15 the information, you know, was out of date or inaccurate
16 or not capable of being relied upon. The reason you
17 reached that conclusion -- all of those things are true,
18 correct, in your view?

19 MR. ROSS: I object. It mischaracterizes
20 Mr. Reed's testimony, especially the last statement.

21 CHAIRMAN ARGENZIANO: Mr. Moyle, can you
22 rephrase?

23 MR. MOYLE: Sure.

24 BY MR. MOYLE:

25 Q. Do you believe the information that was

1 provided in live testimony in front of the Commission
2 was, was inaccurate?

3 A. Yes, I would characterize in this one instance
4 that that information was inaccurate.

5 Q. Okay. And all my questions are limited to the
6 one instance. You believe it was out of date?

7 A. Yes.

8 Q. And you believe also it was not capable of
9 being relied upon at that point in time?

10 A. Not for the purpose for which it was
11 presented.

12 Q. Okay. It was wrong, it was false.

13 A. It was out of date. It was originally correct
14 and the information had been superseded by new
15 information.

16 Q. Okay. So it was not right?

17 A. It was no longer the best information
18 available.

19 Q. And the reason you reached the conclusion that
20 you reached was, is that it was wrong to the tune of
21 \$300 million; correct?

22 A. Well, let me again object to the
23 characterization. When you're talking about a cost
24 forecast like this, there is not a right or wrong
25 number. What I said was it was out of date. It was no

1 longer the best information available. New information
2 had been presented to management. And even with all of
3 the caveats that that new information was uncertain, it
4 was simply an estimate that could be one of many
5 estimates. I believed that the prior estimate was no
6 longer the best information available.

7 Q. Okay. And it was no longer the best
8 information available to the tune of \$300 million;
9 correct?

10 A. The difference between the updated forecast
11 and the prior forecast was about 300 million.

12 Q. And on the basis of the overall project, that
13 was over a 27 percent delta; correct?

14 A. That's correct.

15 Q. Okay. And in this whole business of nuclear
16 power plant building and, you know, EPU changes, the
17 best information you have to work with are estimates;
18 correct?

19 A. Yes. They are all estimates in terms of cost.
20 Obviously there's some science with specific definable
21 numbers.

22 Q. Right.

23 A. But the cost estimates are estimates.

24 Q. And on page 16 of your report, 16 of 23, I'll
25 just read it. It might be easier. The third paragraph,

1 the last sentence, you conclude, quote, "In short, while
2 the July 25th, 2009, and subsequent cost forecasts are
3 and were preliminary, they represented the best
4 information available at that time and were relied upon
5 by FPL and were more advanced than," should have been
6 than, I think, "than the 2007, 2008 cost projections."
7 Correct?

8 A. Yes. That's correct.

9 Q. And, you know, essentially it was an apples to
10 apples comparison. So the notion that, you know, that
11 these numbers were preliminary, I mean, that's all we're
12 working with in this nuclear business are preliminary
13 numbers, until you get final nuclear design specs;
14 correct?

15 A. I'm not quite sure what you mean by apples to
16 apples. I would say that 2007, 2008 was an estimate.
17 The July 2009 number was an estimate. And you continue
18 to work with estimates and forecasts until the project
19 is completed.

20 Q. Okay. The -- you've testified as an expert
21 many, many times; correct?

22 A. Yes.

23 Q. Can you give me a ballpark?

24 A. Something approaching 200 times now.

25 Q. Okay. And you did it yesterday and you do it,

1 I believe, in about every proceeding that you testify
2 in, which is before you take the stand, you take an oath
3 to tell the truth; correct?

4 A. That's correct.

5 Q. In your opinion, given your review and the
6 conclusions you reached, do you believe that the
7 particular person who testified last year whose actions
8 are being questioned properly fulfilled the oath that
9 was taken?

10 MR. ROSS: Objection. That calls for a legal
11 conclusion and this witness is not here as a legal
12 witness.

13 CHAIRMAN ARGENZIANO: Do you want to rephrase?

14 MR. MOYLE: I don't, I don't think it, I mean,
15 I would -- the legal conclusion is -- I don't, I don't
16 think it calls for a legal conclusion. But even if it
17 does, he's able to give his layman's view of it.

18 CHAIRMAN ARGENZIANO: Staff?

19 You're not asking for a legal opinion?

20 MR. MOYLE: No. I'm just asking in his
21 opinion. I mean, he's put together a report.

22 CHAIRMAN ARGENZIANO: In his opinion.

23 MR. MOYLE: I think it's --

24 MS. HELTON: Let's do it -- Madam Chairman, I
25 suggest, let's see if Mr. Moyle can rephrase the

1 question in a way that won't be objectionable to Florida
2 Power & Light and kind of go from there.

3 **CHAIRMAN ARGENZIANO:** We'll let him try and
4 we'll see what happens.

5 **MR. MOYLE:** This is kind of my last question
6 along these lines, and I have a sneaking feeling that
7 they may not like my last question regardless of how
8 it's phrased.

9 **CHAIRMAN ARGENZIANO:** Okay. Let's proceed.

10 **BY MR. MOYLE:**

11 **Q.** If you put yourself in the position of the
12 person who testified last year and you were in that
13 position and you were asked the question, if the
14 questions that were posed to you in your prefiled direct
15 testimony were asked of you today, would the answers as
16 set forth in your prefiled testimony be the same, how
17 would you have answered that question?

18 **A.** I would have chosen to answer differently and
19 to provide the updated information.

20 **Q.** Okay.

21 **CHAIRMAN ARGENZIANO:** Commissioner Skop, did
22 you have a question?

23 **COMMISSIONER SKOP:** If Mr. Moyle is done, I --

24 **MR. MOYLE:** I have a couple more.

25 **CHAIRMAN ARGENZIANO:** I think he has another

1 question.

2 **MR. MOYLE:** I'll defer to --

3 **COMMISSIONER SKOP:** Okay. No. Just go -- no,
4 go ahead.

5 **CHAIRMAN ARGENZIANO:** Mr. Moyle.

6 **BY MR. MOYLE:**

7 **Q.** And I appreciate that. And this isn't an easy
8 topic to discuss, as I think we've gotten a sense over
9 the last couple of days. But you would agree that it's
10 an important conversation to have in order for the
11 regulatory compact to work; correct?

12 **A.** By conversation, you mean this part of the
13 proceeding?

14 **Q.** Yes, sir.

15 **A.** Yes.

16 **Q.** And that is, is because in order for
17 regulators to do their jobs and for companies to be
18 regulated, you have to have true, accurate and complete
19 information provided to a tribunal like this and to
20 intervenors; correct?

21 **A.** Yes. In general I think that's correct.

22 **Q.** Okay. And if you don't have that, then it
23 kind of breaks down the, you know, the regulatory
24 compact that we often hear about; correct?

25 **A.** I'm not sure it goes to the regulatory

1 compact. I agree that regulators are entitled to
2 accurate, correct, truthful and complete information.

3 Q. And they need that in order to do their job,
4 which is to make, make judgments and make decisions;
5 correct?

6 A. Yes.

7 Q. And in this case you don't believe, with the
8 exception we've been, with the instance we've been
9 talking about, that that information was provided to
10 them last year; correct?

11 A. I think the other way around. But for that
12 instance I believe it was truthful, correct and
13 complete.

14 Q. Okay. But you would agree that the
15 information that was not was pretty significant
16 information as it related to the overall cost of the
17 nuclear uprate project, you know, \$300 million,
18 27 percent of the project; correct?

19 A. I believe that information was material.

20 Q. Okay. So as you sit here today, and you've
21 testified over 200 times, the question I think that is
22 sort of begging is what should be done about the fact
23 that inaccurate information was, was provided? And I
24 want to spend just a couple of minutes and ask you your
25 views on a couple of, a couple of things. This

1 Commission as currently constituted, there's going to be
2 some, some changes upcoming; you're aware of that?

3 A. Yes.

4 Q. Okay. You would agree that the Commission
5 needs to send a strong message with respect to
6 expectations of full, complete and accurate information;
7 correct?

8 A. I'm not sure I feel that they have to send
9 that message. I think that's understood.

10 Q. Okay. Do you think if they did nothing, given
11 the evidence and the testimony, that if they did nothing
12 and said, well, you know, we're not going, we're not
13 going to take any action or review it or do anything,
14 that that would be consistent with a message about
15 making sure that you have clear, accurate and complete
16 information?

17 MR. ROSS: I'm going to object, Madam
18 Chairman. This line of questioning is really, it's
19 irrelevant, it's not pertinent to any issue in the case,
20 and it's beyond the scope of Mr. Reed's report and of
21 his testimony.

22 MR. MOYLE: Well, I, I think that it is
23 pertinent. I think it is relevant. You know, the
24 proceeding has shifted and has focused largely on this
25 report and flow of information and accuracy of

1 information. And then the question logically flows from
2 there, you know, what's, what's the end result of it,
3 you know, what, what is done about it? So this
4 gentleman is an expert, he's testified all around the
5 country on it, he probably has some background and
6 experience as to how these things may be handled, and I
7 think it's fair game.

8 **CHAIRMAN ARGENZIANO:** I'll ask our staff.

9 **MS. HELTON:** Madam Chairman, I think it's, if
10 you want to hear the answer to the question, it's within
11 your discretion to hear it, and it's also, the five of
12 you, it's within, it's your responsibility to decide how
13 much weight to give it.

14 **CHAIRMAN ARGENZIANO:** The objection is
15 overruled.

16 **THE WITNESS:** I don't believe this Commission
17 should do nothing, and I want to elaborate on that
18 because I think it's a very important question. I think
19 the Commission should begin by examining that
20 information that was provided in the last case and ask
21 itself what impact did that have on the decision and
22 what impact did that have on the costs? I have
23 attempted to do that in our report. Our report has
24 indicated that even with the new information, the
25 cost-effectiveness of the uprates did not change. The

1 decision to go forward with the uprates and to continue
2 to pursue them was the right decision. That I think
3 first and foremost is what needs to be asked and
4 answered.

5 Secondly, did the information that was
6 provided that was out of date in any way lead to an
7 imprudent decision or to imprudently incurred costs?
8 And once again we have attempted to review that, analyze
9 that, and we have concluded that there were no
10 imprudently incurred costs that stemmed from that
11 provision of out-of-date information.

12 So I think because those are the issues that
13 this Commission hears and adjudicates upon in these
14 nuclear cost recovery cases, the decision to proceed and
15 the costs, I think those are both important follow-ups
16 for the Commission in light of the information we've
17 provided.

18 We have attempted to provide the Commission
19 with information that I hope is helpful in addressing
20 those issues. But I absolutely agree that something
21 should be done, and I think those are the two things
22 that should be done.

23 **CHAIRMAN ARGENZIANO:** Thank you.

24 **BY MR. MOYLE:**

25 Q. And in terms of options, I mean, you would

1 agree in your experience that the Commission has the
2 ability to impose administrative penalties or fines.
3 Are you aware of that?

4 **MR. ROSS:** Same objection. This is, this is
5 not at issue in this limited proceeding.

6 **MR. MOYLE:** I would make the same statement in
7 response.

8 I tell you what -- well, I only have like two
9 more questions on this. Let me just substitute in this
10 question instead.

11 **CHAIRMAN ARGENZIANO:** Okay.

12 **BY MR. MOYLE:**

13 **Q.** Wouldn't, wouldn't you think that, given your
14 involvement in the investigation and all the time we
15 spent on this, that it would be appropriate to refund to
16 ratepayers all costs associated with this investigation?

17 **A.** Let's clarify that. The costs of our
18 investigation have not been and will not be charged to
19 ratepayers.

20 **Q.** How about with respect to preparation for
21 last, last year's proceeding?

22 **A.** Our preparation, is that your question?

23 **Q.** The Public Counsel's, Intervenors, others.

24 **A.** I think last year's proceeding was
25 appropriately prepared for and conducted. I don't see

1 the fact that the information that was provided in this
2 one instance being out of date as affecting the cost of
3 preparing or conducting that hearing.

4 Q. And if I heard your recommendation properly,
5 you said they ought to look into it thoroughly. I
6 assume that's sort of opening a separate docket to
7 examine that issue. Would that, would that be your
8 recommendation?

9 A. No. That's actually not my recommendation in
10 terms of creating a separate docket. But I would defer
11 to the Commission's judgment on that point.

12 Q. And your, your, your end-of-the-day kind of
13 result is -- you've heard the expression "no harm, no
14 foul"?

15 A. I've heard that expression.

16 Q. Okay.

17 A. If you're asking is that my conclusion, no,
18 that is not my conclusion. I view the matters discussed
19 in our report and the concerns we've raised as being
20 very serious, regardless of whether there was any
21 financial consequence from the actions that occurred.

22 Q. All right. And this task that you were asked
23 to do, this work, kind of puts you in a difficult spot
24 in some respects; wouldn't you agree?

25 A. In some respects.

1 **Q.** I mean, here you have a recommendation that
2 the company doesn't agree with with regard to your
3 characterization of the information. You're aware that
4 they disagree with that; correct?

5 **A.** Let's clarify that. They actually haven't
6 disagreed with any of our recommendations. They did
7 disagree with one of our conclusions, but they are still
8 implementing 13 out of 14 recommendations and still
9 considering the 14th.

10 **Q.** Okay.

11 **MR. MOYLE:** Let's just spend a couple of a
12 minutes, Madam Chairman. I only have a couple more
13 minutes, but --

14 **CHAIRMAN ARGENZIANO:** Go right ahead.

15 **MR. MOYLE:** And talk about prudence.

16 **BY MR. MOYLE:**

17 **Q.** And you said, as I heard your answer to the
18 question about what should be done, that, well, take a
19 look, but I've looked at it myself and I don't think
20 that there are any costs that are imprudent as it
21 related to the incorrect information; correct?

22 **A.** Yes. I've said I don't think there were any
23 imprudently incurred costs as a result of this provision
24 of outdated information.

25 **Q.** Right. If you had found to the contrary that

1 there were imprudent costs, that would conflict directly
2 with your testimony that you presented in the 2009
3 nuclear cost recovery proceeding; correct?

4 **A.** Yes.

5 **Q.** And it would also directly conflict with the
6 testimony as filed in this year's nuclear cost recovery
7 proceeding; correct?

8 **A.** Except that not all of it had been provided.
9 Short answer is, if I had found that there were any
10 imprudently incurred costs, we would have brought them
11 to the attention of the Commission regardless of what
12 had been said before. We have new information. That
13 new information should be considered. We have
14 considered it.

15 **Q.** Right. You would agree with me that prudent
16 costs and prudence is an issue that ultimately the judge
17 of the Commission -- that the Commission makes; correct?

18 **A.** Yes.

19 **Q.** And while it's a legal conclusion, prudence,
20 it also is imbued with a lot of facts; correct?

21 **A.** That's correct.

22 **Q.** Okay. In your opening you had said that, that
23 you found that FPL did not comply with certain written
24 procedures. Could you elaborate on what written
25 procedures that they didn't comply with?

1 **A.** That's laid out in detail in the report. It
2 has to do with changes in scope and reflecting those
3 changes in scope in the cost estimate. It has to do
4 with the release of contingency, it has to do with the
5 development of the contingency, and I think the report
6 speaks for itself. But those are among the areas that
7 we've highlighted here.

8 **Q.** Okay.

9 **A.** And that's, again, focusing on the first half
10 of 2009.

11 **Q.** And, and procedures and processes are put in
12 place so that you have a pretty good road map about how
13 to conduct business; correct?

14 **A.** Yes.

15 **Q.** And to the extent that you found that
16 procedures and processes were not followed, you would
17 agree that other people looking at that fact might deem
18 it imprudent; correct?

19 **A.** They may deem the conduct to have been
20 imprudent. But let's be clear what the conduct is. The
21 conduct relates to the preparation of cost estimates,
22 not to the incurrence of costs. And we tried to point
23 that out very clearly in the report.

24 In terms of costs that were incurred in 2008
25 or 2009, there are no cost incurrence consequences of

1 not having followed these procedures, policies and
2 instructions for the preparation of cost estimates.

3 Q. And why, why is that? Did FPL back out the
4 cost of their, of their engineer's time and their third
5 party's time associated with preparing these cost
6 estimates?

7 A. No, they did not back out time. The point was
8 that there are no costs incurred in terms of
9 construction or processing the EPU, pursuing the EPU
10 related to anything that was imprudent. I think, as
11 I've said, they did not follow the procedures correctly,
12 they have amended that process and those procedures, and
13 they have amended their conduct. But, number one, I
14 don't see anything there that's imprudent. Number two,
15 there aren't any costs incurred relating to that.

16 Q. So with respect to employee time spent on, on
17 actions that were not consistent with written
18 procedures, you wouldn't think that that cost associated
19 with that employee time should be disallowed?

20 A. I haven't either examined or determined what
21 costs may have been incurred with result to, with regard
22 to employee time on those matters. It is a de minimis
23 amount compared to what we're talking about for the
24 uprate. So, no, I don't think that's the type of thing
25 that either relates to imprudence or should be

1 disallowed. I think it should be corrected and I think
2 it is being corrected.

3 Q. As we sit here today, do you know what the
4 estimated cost for, for the nuclear uprate project,
5 projects are?

6 A. Yes. The costs at completion are currently
7 estimated to be between 2.1 and \$2.3 billion.

8 Q. Okay. There's been in, there's been a lot of
9 discussion about a February 19th, 2010, letter that was
10 written to Mr. Hay by an employee. It's actually
11 attached to your, to the redacted Exhibit 243.

12 A. Yes.

13 Q. You're from -- you live in Massachusetts;
14 correct?

15 A. I live in Washington, DC, and Massachusetts.

16 Q. Did it concern you that FPL has set forth in
17 this letter that the project controls team developed
18 extensive project indicators patterned after the Big Dig
19 in Boston?

20 A. To be clear, that was a reference that this
21 individual made in the letter. That's not an accurate
22 characterization of the project controls that FPL is
23 using.

24 Q. Yeah. That project didn't really come in on
25 budget, did it?

1 **A.** No, it did not, that project being the Big
2 Dig.

3 **MR. MOYLE:** That's all I have. Thank you.

4 **CHAIRMAN ARGENZIANO:** Thank you.

5 Commissioner Skop.

6 **MR. DAVIS:** May I just ask a couple of
7 questions --

8 **CHAIRMAN ARGENZIANO:** Yes, absolutely.
9 Absolutely.

10 **MR. DAVIS:** -- before Commissioner Skop?
11 Because I think you might be longer than me,
12 Commissioner Skop.

13 **CHAIRMAN ARGENZIANO:** Mr. Davis, go right
14 ahead.

15 **MR. DAVIS:** Just a couple of quick questions
16 for the witness.

17 **CROSS EXAMINATION**

18 **BY MR. DAVIS:**

19 **Q.** I'm Gary Davis with the Southern Alliance for
20 Clean Energy. And I think I heard you state in response
21 to a question from Mr. McGlothlin that you reviewed all
22 of the testimony from 2009 from the hearing to see if it
23 was correct; is that right?

24 **A.** Yes.

25 **Q.** Did you prepare any reports concerning any of

1 the other testimony other than the testimony by
2 Mr. Kundalkar?

3 **A.** We prepared a report which offered our
4 conclusions, and that is the only testimony that we
5 found to be inaccurate, incomplete or out of date.

6 **Q.** Just -- and has that report been provided to
7 the Commission?

8 **A.** Yes. That's the report that we have marked as
9 Exhibit 243, and of course we have other versions as
10 well.

11 **Q.** So is there any discussion in Exhibit 243
12 about testimony other than Mr. Kundalkar's?

13 **A.** Yes.

14 **Q.** Can you refer us to that, please?

15 **A.** Sure. Beginning on page 11 of 23, we talk
16 about the flow of information to the Florida Public
17 Service Commission. At the top of page 12 we talk about
18 the four witnesses in that case. Only one name has not
19 been redacted in the public version. We talk about as
20 well data request responses that were provided that's in
21 part C beginning on page 14 of the document. And, of
22 course, then the testimony at the hearing beginning on
23 page 15. We reviewed the prefiled and oral testimony of
24 all four witnesses, and we reviewed lots, dozens and
25 dozens of data requests in that case.

1 Q. Let me ask you, you also testified in the 2009
2 docket; correct?

3 A. That's correct.

4 Q. And you submitted prefiled testimony in that
5 docket; right?

6 A. That's correct.

7 Q. And you testified live in this room on
8 September 8th, 2009; correct?

9 A. I believe that was the date.

10 Q. And your testimony concerned, among other
11 things, the reasonableness of the costs of the EPU
12 project; correct?

13 A. Not specifically. And that's referred to on
14 page 12. I offered no estimate of the project, of the
15 projected cost of completion or opinions on the
16 cost-effectiveness of the EPU's. That statement is on
17 page 12.

18 Q. Okay. You can correct me if I'm wrong, but
19 I'm going to quote you from your testimony, your written
20 testimony submitted prior to the hearing. "Concentric
21 has determined that the costs FPL was seeking to recover
22 in this proceeding are reasonable."

23 **MR. ROSS:** Excuse me. Could you please refer
24 the witness to the specific testimony page and line
25 number since there are several sets of testimony that

1 were filed?

2 **MR. DAVIS:** I can -- I don't have -- well, I
3 can do that. It'll take me a minute to do that. I have
4 a quote from it.

5 **CHAIRMAN ARGENZIANO:** We have time. Go right
6 ahead.

7 **BY MR. DAVIS:**

8 **Q.** This is from the May 1st, 2009, testimony. Do
9 you happen to have that with you?

10 **A.** No, I do not.

11 **MR. ROSS:** I'd request that a copy be put in
12 front of the witness if he's going to be asked about it.

13 **CHAIRMAN ARGENZIANO:** Okay. Let's --

14 **MR. DAVIS:** That'll take a minute.

15 **CHAIRMAN ARGENZIANO:** Okay.

16 **BY MR. DAVIS:**

17 **Q.** But without having to do that, let me just ask
18 a question. Are you saying that you did not provide an
19 opinion that the costs FPL was seeking to recover in
20 that proceeding were reasonable?

21 **A.** I did offer that opinion. Of course that's
22 with regard to the costs incurred in 2008 that are filed
23 for recovery in 2009.

24 **Q.** Are you saying you did not provide any opinion
25 about the cost estimates for the project?

1 **A.** That's my belief, yes.

2 **Q.** Okay. Now were you provided, as part of your
3 preparation for your testimony at the hearing on
4 September 8th, 2009, information about the July 25th,
5 2009, cost forecasts that FP&L had with the ESC?

6 **A.** That's a fair question. No. We did not see
7 any of the information relating to the June, July or
8 August ESC meetings until after the hearing, until in
9 fact we were preparing for this year's case.

10 **Q.** So by the time you took the stand, the
11 information you presented was out of date, was it not?

12 **A.** I don't think so. I didn't present any
13 information with regard to a cost estimate.

14 **Q.** That would have been important to your
15 opinion, however.

16 **A.** I'm not sure it would. Would you direct me to
17 an opinion expressed in that testimony? And I would
18 agree with you that that information I would like to
19 have had before I took the stand. I don't think it
20 relates to any opinion that I offered in either the
21 March or the May testimony.

22 **Q.** Does it relate to your opinion that the, that
23 FP&L followed proper procedures and processes in
24 arriving at their cost estimates?

25 **A.** I don't even recall offering that opinion in

1 March or May. So I'd have to see the document to answer
2 that question.

3 I will say that apart from the actual cost
4 estimate, we have raised concerns in our report with
5 regard to compliance with procedures, policies and
6 instructions. Had I known that in September of 2009
7 when the hearing occurred, I would have raised it. We
8 obviously became aware of that afterwards and we did
9 raise it.

10 Q. Now you also presented testimony in 2009 about
11 the Turkey Point 6 and 7 costs as well?

12 A. That's correct.

13 MR. ROSS: Madam Chairman, I'm going to
14 continue to object. He's asking about testimony that's
15 not been put in front of the witness, it's a year old,
16 and it should be put in front of the witness.

17 MR. DAVIS: He can remember the subject of his
18 testimony.

19 MR. ROSS: I object. He's asking specific
20 opinions, specific questions about specific opinions and
21 testimony that's not been put in front of the witness.
22 It's a pretty simple request.

23 CHAIRMAN ARGENZIANO: Can we provide a copy?

24 MR. DAVIS: It'll take me a while, Madam
25 Chair, to do that, because I thought he could remember

1 the subject matter of his testimony, and I think it's a
2 fair question without having to refer him to it.

3 **MR. YOUNG:** Madam, Madam Chairman?

4 **MR. DAVIS:** I'd call for an opinion on the
5 objection, please.

6 **CHAIRMAN ARGENZIANO:** Okay.

7 **MR. YOUNG:** As relates to providing his
8 testimony, we have part of his testimony and we can get
9 copies of Volume 3. We have Volume 2, which includes
10 his testimony from last year's proceeding, and we can
11 get Volume 3 for you.

12 **CHAIRMAN ARGENZIANO:** Does that --

13 **MR. DAVIS:** I don't know that we, if he would
14 withdraw the objection, then -- I'm not going to ask
15 specific line-by-line opinions. It was just a subject
16 matter, and I think the witness probably remembers that
17 question without reference.

18 **MR. ROSS:** I'm not going to withdraw the
19 objection.

20 **CHAIRMAN ARGENZIANO:** You're not going to
21 withdraw. Let's take the minute, let's make the copies,
22 and we'll move forward.

23 **MR. DAVIS:** That's fine.

24 **CHAIRMAN ARGENZIANO:** Let's take a five-minute
25 break.

1 **MR. DAVIS:** Thank you.

2 (Recess taken.)

3 **CHAIRMAN ARGENZIANO:** Could I get everyone to
4 take their seats, and let's go first back to where we
5 left off so that Mr. Davis can finish his questions.

6 And the copies have been provided, and then --

7 **BY MR. DAVIS:**

8 Q. Mr. Reed --

9 **CHAIRMAN ARGENZIANO:** Okay.

10 **BY MR. DAVIS:**

11 Q. Mr. Reed, do you have the transcript from the
12 2009 cost recovery proceeding in front of you?

13 A. I have Volume 2.

14 Q. Okay. And if you can turn to page 413,
15 please.

16 A. I have that page.

17 Q. And that begins your May 1st, 2009, prefiled
18 testimony; correct?

19 A. Correct.

20 Q. Okay. Please turn to page 414. And starting
21 on line 16, there's a question, "What is the purpose of
22 your testimony in this proceeding?" And let me just ask
23 a general question.

24 **COMMISSIONER SKOP:** Excuse me. What --

25 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

1 **COMMISSIONER SKOP:** What Bates number is that
2 on?

3 **CHAIRMAN ARGENZIANO:** 358.

4 **COMMISSIONER SKOP:** Okay. Thank you.

5 **CHAIRMAN ARGENZIANO:** Is that correct?

6 **MR. DAVIS:** This is Volume 2, page 414.

7 **CHAIRMAN ARGENZIANO:** Oh, I'm sorry. Okay.
8 414. Thank you.

9 **COMMISSIONER SKOP:** Thank you.

10 **BY MR. DAVIS:**

11 **Q.** Just a general question as you review this,
12 going over to page 415, your testimony in the proceeding
13 that was prefiled on May 1st, 2009, included the Turkey
14 Point 6 and 7 reactor project; correct?

15 **A.** Yes.

16 **Q.** Okay. And can you read the, on page 415,
17 starting on line 2, the last sentence of that paragraph?

18 **A.** The last sentence reads, "The purpose of my
19 testimony is to present and summarize Concentric's
20 findings with respect to FPL's system of internal
21 control and how compliance with this detailed system of
22 internal control has resulted in reasonable costs and
23 projections of the company's expenditures for 2009 and
24 2010."

25 **Q.** And does that sentence refer to both the EPU

1 projects as well as Turkey Point 6 and 7?

2 A. Yes.

3 Q. Okay. So you, for Turkey Point 6 and 7 you
4 were also looking at whether or not costs and
5 projections were reasonable for 2009 and 2010; correct?

6 A. For those two years, that's correct.

7 Q. Okay. And do you know if you were provided
8 all the information from FP&L that would have informed
9 your opinion about that subject for Turkey Point 6 and 7
10 prior to your testimony on September 8th, 2009?

11 A. Yes, I believe I was. None of the information
12 that we have since gained access to relates to Turkey
13 Point 6 and 7.

14 Q. Were there any employee letters or complaints
15 or other information provided about improper cost
16 estimates for Turkey Point 6 and 7?

17 A. None that I am aware of. I asked that
18 question, and the answer we received was there are no
19 other letters.

20 Q. Okay. Was your review of Turkey Point 6 and 7
21 costs in 2009 as thorough as your review of the EPU
22 costs?

23 A. I would say that our review of Turkey Point 6
24 and 7 was probably more comprehensive than our review of
25 the EPU costs.

1 Q. I didn't ask comprehensive. I said thorough.

2 A. Same answer.

3 Q. Okay.

4 A. Probably more thorough. Our focus was not on
5 the cost of completion for the EPU. We did do a
6 broader, more thorough review of the costs estimate for
7 Turkey Point 6 and 7.

8 Q. And as you sit here, are you confident that
9 FP&L provided you with all the information you needed to
10 arrive at your opinion in 2009?

11 A. With regard to the cost for Turkey Point 6 and
12 7?

13 Q. Correct.

14 A. Yes. I have no concerns with regard to the
15 adequacy or completeness of that information.

16 Q. And as we sit here, was your -- I'll ask you
17 the same question about your 2010 testimony. We're not
18 going to go into any details about that at this point,
19 but you've also provided testimony for this proceeding
20 in 2010 concerning the reasonableness of costs of Turkey
21 Point 6 and 7; correct?

22 A. Yes.

23 Q. And do you know if FP&L has withheld any
24 information from you that you would need to provide that
25 opinion?

1 **A.** I am satisfied that we have had access to all
2 of the information we need to express that opinion.

3 **Q.** And how have you satisfied yourself for that,
4 with regard to Turkey Point 6 and 7?

5 **A.** We have asked very detailed data requests of
6 FPL, we have made sure that those requests are complied
7 with, and we have reviewed all the information. Nothing
8 has been withheld, and we have followed up to make sure
9 there are no other employee letters, investigations or
10 accusations that we should be made aware of.

11 **Q.** And with regard to your testimony, have you
12 updated information since you prefiled testimony in this
13 docket in 2010?

14 **A.** Yes.

15 **MR. DAVIS:** Okay. That's all I have right
16 now.

17 **CHAIRMAN ARGENZIANO:** I think what we're going
18 to do -- Commissioner Skop, did you want to ask, did you
19 have questions?

20 **COMMISSIONER SKOP:** I have a few questions for
21 Mr. Reed, but I was going to look to the Chair as to
22 what time we'd break for lunch. I probably have a few
23 minutes and then I could break it off reasonably quick.

24 **CHAIRMAN ARGENZIANO:** I told the court
25 reporters that we would break for lunch at 1:30 because

1 they have to change out, and if we're going to go late,
2 and I have no idea where we're going to go, I think
3 splitting it between 1:00 to 2:00, which they had
4 requested, 1:30 would be fair and give them an
5 opportunity. So 1:30. If you would proceed to ask your
6 questions now and then we'll adjust accordingly.

7 **COMMISSIONER SKOP:** All right. Very well.

8 Thank you.

9 **CHAIRMAN ARGENZIANO:** And then I think
10 Commissioner Edgar has a few questions and then
11 Commissioner Graham wanted to make a comment, and I also
12 have some things that I wanted to ask before we shift
13 gears. Thank you.

14 **COMMISSIONER SKOP:** Thank you, Madam Chair.

15 Good afternoon, Mr. Reed.

16 **THE WITNESS:** Good afternoon, Commissioner
17 Skop.

18 **COMMISSIONER SKOP:** I want to thank you for
19 appearing here before the Commission today, and I do
20 greatly appreciate your candor and the direct manner in
21 which you've responded to the questions that have been
22 presented.

23 **THE WITNESS:** Thank you.

24 **COMMISSIONER SKOP:** I guess my first question,
25 have you discussed the testimony that you're, that

1 you're giving here today with any member of FPL's
2 regulatory affairs or legal department since the start
3 of this proceeding?

4 **THE WITNESS:** I am sure I've discussed it.
5 I've not been coached or told what to say or anything
6 like that.

7 **COMMISSIONER SKOP:** Could you -- who did you
8 discuss your testimony with?

9 **THE WITNESS:** I've discussed it with Mr. Ross
10 and Mr. Anderson with regard to the logistics of the
11 testimony, should I do a summary, shouldn't I do a
12 summary, that kind of thing.

13 **COMMISSIONER SKOP:** All right. Mr. Silagy or
14 Mr. Hoffman?

15 **THE WITNESS:** Yes. I've had discussions with
16 both of them about my testimony, as well as the case as
17 a whole.

18 **COMMISSIONER SKOP:** Okay. All right. In
19 relation to Mr. Kundalkar's testimony, which was given
20 under oath to the Commission on September 8th, 2010.

21 **THE WITNESS:** 2009.

22 **COMMISSIONER SKOP:** Excuse me?

23 **THE WITNESS:** 2009.

24 **COMMISSIONER SKOP:** I'm sorry. Thank you for
25 that correction. Okay. Let me reframe that question.

1 In relation to Mr. Kundalkar's testimony which
2 was given under oath to the Commission on September 8th,
3 2009, Concentric concluded, based on its investigation,
4 that a \$300 million or 27 percent increase in the
5 projected cost of the EPU project should have been
6 discussed in the live testimony that was given on
7 September 8th, 2009; correct?

8 **THE WITNESS:** Yes.

9 **COMMISSIONER SKOP:** Okay. Now with respect to
10 your testimony in response to my question and
11 Mr. Moyle's question, you characterized in your lay
12 opinion that the testimony given by Mr. Kundalkar during
13 his appearance under oath before the Commission on
14 September 8th, 2009, was inaccurate and incomplete on
15 the basis that he did not amend his testimony; is that
16 correct?

17 **THE WITNESS:** Yes, I did say that.

18 **COMMISSIONER SKOP:** Okay. All right. If I
19 could turn your attention to the, what has been marked
20 for identification as Exhibit Number 243, please.

21 **THE WITNESS:** I have that.

22 **COMMISSIONER SKOP:** Okay. And on page 7 of
23 that document, at the bottom of the page. My -- I would
24 give you the Bates stamp number, but my Bates stamp on
25 that page is cut off. I believe it would be, subject to

1 check, FPL 152907.

2 **THE WITNESS:** I think I have the page.

3 **COMMISSIONER SKOP:** Okay. And do you see the
4 second paragraph on that page?

5 **THE WITNESS:** Yes.

6 **COMMISSIONER SKOP:** Okay. And the second
7 sentence that begins with the EC, the ESC, can you read
8 that sentence, please?

9 **THE WITNESS:** Yes. It says, "The ESC is
10 charged with corporate governance of the EPU project and
11 includes FPL's President, Chief Nuclear Officer, Chief
12 Financial Officer, FPL Group's President, and several
13 others."

14 **COMMISSIONER SKOP:** All right. Thank you.
15 And at the bottom of that page there's discussion about
16 the July 2009 EC -- ESC presentations, and also the
17 line-by-line cost review that was prepared for those
18 projects; is that correct?

19 **THE WITNESS:** That's correct.

20 **COMMISSIONER SKOP:** Okay. And concurrently
21 there was a decision to replace the EPU senior
22 management, or the decision was, to replace the EPU
23 senior management team was made. Do you see that?

24 **THE WITNESS:** I see that statement, yes.

25 **COMMISSIONER SKOP:** Okay. All right. If I

1 could now turn your attention to that same document,
2 Bates page 152930, please.

3 **THE WITNESS:** Can you tell me what page of the
4 report that is?

5 **COMMISSIONER SKOP:** It's probably Exhibit 5,
6 page 1 of 2. That's the documents relied upon.

7 **THE WITNESS:** Yes, I have that.

8 **COMMISSIONER SKOP:** Okay. And that page
9 reflects the documents that you and Concentric relied
10 upon in preparing your report; is that correct?

11 **THE WITNESS:** That's correct.

12 **COMMISSIONER SKOP:** All right. Now do you see
13 what's been marked on that page as item 31?

14 **THE WITNESS:** Yes.

15 **COMMISSIONER SKOP:** Okay. And can you read
16 that for us, please?

17 **THE WITNESS:** It says, "Meeting request for
18 EPU Saturday session July 25th, 2009, 8:00 a.m. to 3:30
19 p.m."

20 **COMMISSIONER SKOP:** All right. Thank you.
21 And with respect to that meeting was held, I'm sure you
22 reviewed, or did you review the meeting request document
23 and the list of attendees for that meeting?

24 **THE WITNESS:** It listed invitees to the
25 meeting, yes.

1 **COMMISSIONER SKOP:** Okay.

2 **THE WITNESS:** I did review it.

3 **COMMISSIONER SKOP:** Do you have personal
4 knowledge of who attended that meeting?

5 **THE WITNESS:** I don't have personal knowledge
6 in the sense of I wasn't there, but I did ask that
7 question of many of our interviewees.

8 **COMMISSIONER SKOP:** Okay. All right. To the
9 best of your ability in that regard, do you know if
10 Mr. Kundalkar attended that meeting that was held on
11 July 29th, 2009 -- or, I mean, July 25th, 2009?

12 **THE WITNESS:** It is my understanding that
13 Mr. Kundalkar did attend the meeting.

14 **COMMISSIONER SKOP:** Okay. Is it your
15 understanding that Mr. Olivera attended that meeting?

16 **THE WITNESS:** It is my understanding that
17 Mr. Olivera attended the meeting as well.

18 **COMMISSIONER SKOP:** Okay. Is it also your
19 understanding that one or more members of the FPL Group
20 executive management team attended that meeting?

21 **THE WITNESS:** Yes.

22 **COMMISSIONER SKOP:** Okay. And that would
23 include -- to the best of your ability, did that include
24 the Chief Operating Officer of FPL Group?

25 **THE WITNESS:** Yes. Mr. Robo, I believe, has

1 that title, and it is my understanding he attended the
2 meeting as well.

3 **COMMISSIONER SKOP:** Do you know if Mr. Hay
4 attended that meeting?

5 **THE WITNESS:** I do not believe he did.

6 **COMMISSIONER SKOP:** Okay. Do you know if
7 Mr. Silagy attended that meeting?

8 **THE WITNESS:** I don't know.

9 **COMMISSIONER SKOP:** Okay. All right. Thank
10 you.

11 With respect to the discussion that was held
12 in your testimony about inaccurate and incomplete
13 information being provided to the Commission, you
14 mentioned out-of-date information was provided that was
15 not the best available at the time. The, it is true to
16 the best of your opinion, is it not, that there was a
17 line-by-line project review of the EPUs conducted by the
18 Executive Steering Committee on July 25th, 2009; is that
19 correct?

20 **THE WITNESS:** Yes. Just a slight
21 clarification. The line-by-line review of the project
22 cost estimate was prepared by the EPU project team,
23 primarily the project controls group, and it was
24 presented to the steering committee on July 25th.

25 **COMMISSIONER SKOP:** Okay. But at that

1 steering committee meeting, as you've previously
2 testified, there were FPL, Florida Power & Light
3 executives in attendance as well as Mr. Kundalkar, or I
4 may be mispronouncing his name, as well as executive
5 officers from FPL Group in attendance for that review;
6 is that correct?

7 **THE WITNESS:** That is my understanding.

8 **COMMISSIONER SKOP:** Okay. All right. So I
9 guess what, what, you know, is concerning me is that
10 there are, I guess in your opinion there were a lot of
11 executive managers not only at the regulated utility
12 level but also at the corporate parent group that were
13 aware of the cost estimates that were being reviewed at
14 that meeting; is that correct?

15 **THE WITNESS:** That's correct.

16 **COMMISSIONER SKOP:** Okay. So is it fair to
17 say that on July 25th, 2009, with the line-by-line
18 presentation that was given as a result of your
19 investigation, that there were indicators that clearly
20 indicated the magnitude of the cost estimate for the EPU
21 had increased significantly? I'm not talking about the
22 actual number, what the final number would be. I'm
23 talking about indicators that there was substantial cost
24 escalation in terms of the EPU.

25 **THE WITNESS:** I would say yes. There were

1 indicators of substantial cost escalation with regard to
2 the 2008 estimate with regard to the EPU cost forecast.
3 There was considerable uncertainty, but there were
4 certainly indicators that, based upon the current scope,
5 costs were going up substantially.

6 **COMMISSIONER SKOP:** Okay. And that seems to
7 be my focus of concern as you spoke to the need for
8 regulators to have accurate and truthful information.
9 It seems as if on the July 25th meeting there was
10 substantial discussion and knowledge across both
11 organizations that the magnitude of the cost estimate
12 had increased. And that's, that's the point I'm trying
13 to hit home on here.

14 Let's talk for a second about project controls
15 and the adequacy thereof. When did you -- you gave
16 testimony in last year's NCRC proceeding; is that
17 correct?

18 **THE WITNESS:** That's correct.

19 **COMMISSIONER SKOP:** And you're testifying here
20 today; is that correct?

21 **THE WITNESS:** Yes.

22 **COMMISSIONER SKOP:** Okay. Did you, in
23 conducting or preparing your testimony, both your
24 prefiled and the amendments to your testimony, did you
25 conduct an independent review of Florida Power & Light's

1 project controls as they relate to the uprate projects?

2 **THE WITNESS:** Yes. Were you talking about
3 2009 or 2010 in your question?

4 **COMMISSIONER SKOP:** 2010 for the moment.

5 **THE WITNESS:** Yes, I did.

6 **COMMISSIONER SKOP:** Okay. And when did you
7 complete that review?

8 **THE WITNESS:** Our review really was completed
9 with the presentation of our final report on this
10 matter. The issues were discussed in my March prefiled
11 direct testimony and in my May prefiled direct
12 testimony. But as indicated there, that testimony
13 really needed to be amended with the results of the
14 investigation.

15 **COMMISSIONER SKOP:** Okay. So when you
16 performed your initial investigation, the final
17 Concentric report as it related to the information flow
18 to the PSC and other aspects was not yet complete; is
19 that correct?

20 **THE WITNESS:** That's correct.

21 **COMMISSIONER SKOP:** Okay. Let's go to your
22 prior testimony given in 2009 for a moment. And, again,
23 I'm not asking this to be inflammatory. I'm asking this
24 just as a straightforward question.

25 You also prepared and gave testimony on, as to

1 the adequacy of project controls for the 2009 NCRC
2 proceedings; is that correct?

3 **THE WITNESS:** Yes, I did.

4 **COMMISSIONER SKOP:** Okay. Now nowhere in your
5 review until such time as you were retained by Florida
6 Power & Light's legal department to conduct a review of
7 the employee letter were you aware of the July 25th,
8 2009, meeting; is that correct?

9 **THE WITNESS:** That's correct. And let me
10 address that issue briefly.

11 That speaks to a structural issue that's
12 addressed in one of our recommendations. In prior
13 years, the structure of the NCRC presentation by FPL has
14 been one in which we came in, or I should say the
15 presentation by us of the project controls work, is we
16 came in in December of the prior year, reviewed all of
17 the documents, interviewed people, and then essentially
18 wrapped up our testimony in March and May. So the
19 document review in 2009 ended with documents that were
20 in existence as of the date of the submission of the
21 testimony, which was, I think, May 1st of 2009.

22 Documents after that were considered to be
23 part of the next year's cycle. We have addressed that
24 with the recommendation here that that no longer be the
25 case, that the annual cycle beginning and ending May 1st

1 should not be the essentially limits of the documents
2 reviewed in a given year. It's no longer the limit that
3 we use, and we recommend that the company make available
4 information to staff on a more current basis as well so
5 that we don't have this situation where documents can be
6 created between May 1st and the hearing that we don't
7 know about.

8 **COMMISSIONER SKOP:** Okay. And thank you. And
9 so but for the employee letter and the resulting
10 independent investigation that you were, Concentric was
11 retained to perform and the conclusions of that
12 investigation, you would not have known about the
13 inaccurate and incomplete information that was
14 previously furnished to the Florida Public Service
15 Commission on September 8th, 2009; is that correct?

16 **THE WITNESS:** I can't say that completely. We
17 would have had access to the July, for example, 25th
18 presentation to the steering committee as part of our
19 2010 cycle anyway. I will say that I think the employee
20 letter has been helpful in bringing up issues that has
21 caused us to dig deeper and look at some of the project
22 controls issues, and I think it's helped to develop
23 recommendations that'll be beneficial going forward.
24 But the information would have been part of the 2010
25 cycle anyway.

1 **COMMISSIONER SKOP:** Okay. I guess what I was
2 trying to get at in terms of, you know, evaluating the
3 adequacy of the project controls that exist and the
4 information flow, you know, certainly the employee
5 letter was beneficial because it prompted the
6 investigation and the outcome thereof. But you're
7 saying that, if I heard your testimony correctly, that
8 you would have seen the, some information in terms of
9 the projections in the 2010 cycle. But would that have
10 necessarily allowed this open, candid discussion to have
11 taken place in and of itself?

12 **THE WITNESS:** I think the employee letter was
13 helpful in focusing on this issue.

14 **COMMISSIONER SKOP:** Okay. All right.

15 **THE WITNESS:** I'll stop there.

16 *****REPORTER'S NOTE: CONFIDENTIAL PORTION OF**
17 **TRANSCRIPT REDACTED.*****

18 **COMMISSIONER SKOP:** Okay. Thank you.

19 **MR. ROSS:** Madam Chairman, in Mr. Skop's
20 question, he linked the name of the employee with a
21 personnel matter. That's confidential, has been ruled
22 to be confidential in this proceeding. It did not, his
23 question did not deal with the testimony, which is
24 public, and we understand that. So I would move that
25 the link of the name with the personnel matters be

1 stricken.

2 **COMMISSIONER SKOP:** Just to prevent it, I'll
3 move to -- I apologize if there was an inadvertent link.
4 I'll move to strike my entire question and response, if
5 that would be acceptable to the company.

6 **MR. ROSS:** And that's fine. Thank you.

7 **COMMISSIONER SKOP:** All right.

8 **CHAIRMAN ARGENZIANO:** So moved.

9 **COMMISSIONER SKOP:** And if it was done, it was
10 inadvertent.

11 Mr. Reed, I want to turn your attention to a
12 recent management decision that was made by FPL
13 regarding FPL's request to withdraw the LAR for the
14 St. Lucie 1 nuclear plant on the EPU. Are you aware of
15 FPL's request regarding that withdrawal?

16 **THE WITNESS:** Yes.

17 **COMMISSIONER SKOP:** Okay. When were you made
18 aware that FPL would be doing that?

19 **THE WITNESS:** I was first made aware of the
20 issue on August 10th, Tuesday morning. And that was
21 with regard to the fact that the NRC staff was not
22 likely to approve the, or accept, I should say, not
23 approve, but accept the LAR application as submitted. I
24 then actually didn't become aware of the decision to
25 implement the withdrawal of the application until that

1 letter was posted on the NRC website.

2 **COMMISSIONER SKOP:** Okay. With respect to
3 that decision, would you consider the decision to
4 withdraw the application for LAR to be a material event
5 as it relates to the EPU projects?

6 **MR. ROSS:** I would object. I'm not sure what
7 is being meant by the term "material event." If there's
8 some definition around it or it can be asked without a
9 legal, without a legal overtone to it.

10 **COMMISSIONER SKOP:** I can refrain. But,
11 again, I was just asking for his lay opinion whether
12 he -- I mean, he had previously testified in relation to
13 Mr. Moyle's question whether he thought the cost
14 estimate amount of \$300 million and 27 percent was
15 material, and he indicated that, yes, it was. So I
16 don't --

17 **CHAIRMAN ARGENZIANO:** Okay. To the objection.

18 **COMMISSIONER SKOP:** To the objection, I will
19 try to reframe to avoid the objection.

20 Mr. Reed, in relation to the FPL request to
21 withdraw the LAR for the St. Lucie 1 EPU, the letter to
22 the NRC, and as it relates to the flow of information to
23 the PSC and project controls, in your opinion should FPL
24 have informed this Commission of that withdrawal or
25 request to withdraw as soon -- contemporaneously with

1 and at the same day that it informed the NRC?

2 **THE WITNESS:** Commissioner Skop, I don't
3 really have an opinion with regard to the timeliness
4 there. Do I think it's a relevant piece of information?
5 Yes. I have no doubt that it was going to come before
6 this Commission in this proceeding. But I don't have an
7 opinion as to the timing.

8 **COMMISSIONER SKOP:** Okay. And how -- you, you
9 just opined that it would come before the Commission in
10 this proceeding. Certainly you would agree that it was
11 not disclosed by FPL until such time as Commission
12 staff, to the best of your knowledge, put it in our
13 docket file; is that correct?

14 **THE WITNESS:** My understanding of the sequence
15 is the company's letter came in after the Commission
16 staff posted the document to the website. But as I
17 said, I have no doubt the information was going to come
18 in.

19 **COMMISSIONER SKOP:** Well, I think the
20 timeliness of the information provided to the
21 Commission, as you testified, it's important that the
22 Commission have timely information, not information that
23 is ten days dated less than 24 hours before the
24 commencement of this proceeding; is that correct?

25 **THE WITNESS:** I agree that having timely

1 information is important. But, again, I don't have an
2 opinion about the obligation or appropriateness of the
3 timing on this particular letter.

4 **COMMISSIONER SKOP:** Okay. And just I believe
5 a few more questions. I think many of my concerns have,
6 have been covered by staff and Mr. Moyle and some of the
7 Intervenors and some of the other questions that I've
8 asked.

9 In your testimony and in response to
10 Mr. Moyle's question, you indicated that, I believe, and
11 correct me if I'm wrong, the regulatory compact requires
12 that utilities provide accurate and truthful information
13 to the Commission; is that correct?

14 **THE WITNESS:** My earlier answer was I don't
15 think it really goes to the regulatory compact, but I do
16 believe that regulators are entitled to that
17 information.

18 **COMMISSIONER SKOP:** Okay. Regulators are
19 entitled to accurate and truthful information; is that
20 correct?

21 **THE WITNESS:** Yes.

22 **COMMISSIONER SKOP:** Okay. And failure to
23 provide -- in your opinion, would failure to provide
24 accurate and truthful information to the Commission
25 reflect upon the credibility of the provider?

1 **THE WITNESS:** It could, depending on the
2 circumstances.

3 **COMMISSIONER SKOP:** Okay. But certainly you
4 would agree, would you not, that the accuracy and
5 timeliness of information provided to this Commission is
6 of significance, significant importance?

7 **THE WITNESS:** You said accuracy and
8 timeliness?

9 **COMMISSIONER SKOP:** Yes. Accuracy and
10 timeliness of information provided to this Commission by
11 regulated entities of significant importance.

12 **THE WITNESS:** Yes. I believe that's
13 important.

14 **COMMISSIONER SKOP:** Okay. And in terms of
15 ultimate responsibility at the corporate level, who is
16 accountable to ensure in your opinion that that
17 information is provided in a timely and accurate manner?

18 **THE WITNESS:** In my view, it is first and
19 foremost the responsibility of each witness. And I
20 think, again, those steps have been appropriately taken
21 with regard to the 2010 proceeding.

22 From a corporate governance perspective,
23 again, it's difficult to say because span of control and
24 management of activities differs within each company.
25 You know, some people would say with the CEO the buck

1 stops there. I'm CEO of a company, I used to be the CEO
2 of a publicly traded company on the New York Stock
3 Exchange. I understand that view. But obviously CEOs
4 don't manage every aspect of every management function
5 and activity.

6 **COMMISSIONER SKOP:** Okay. And thank you. I
7 think that that'll give me the basis for my last
8 question.

9 Given your experience as a former CEO of
10 publicly traded company, I think former, if not
11 currently; right?

12 **THE WITNESS:** Correct.

13 **COMMISSIONER SKOP:** Okay. Given your
14 experience as a former CEO of a publicly traded company,
15 and noting that the truthfulness, accuracy and veracity
16 of information provided to this Commission was at issue
17 in this proceeding, if you were CEO or President, would
18 you make yourself available to field questions
19 regarding, that the Commission may have in that regard?

20 **THE WITNESS:** I don't have an opinion with
21 regard to the facts here. Again, I think that's an
22 issue that's always going to be addressed by the CEO's
23 staff, and I would turn to my staff for guidance on
24 that.

25 **COMMISSIONER SKOP:** All right. Thank you.

1 Madam Chair, I don't believe I have any additional
2 questions at this time.

3 **CHAIRMAN ARGENZIANO:** Okay. I know, we're
4 still in question mode, so I know Commissioner Edgar had
5 some questions. You're recognized, Commissioner Edgar.

6 **COMMISSIONER EDGAR:** Thank you. Just a couple
7 of brief questions.

8 Switching gears a little bit, I think, but
9 still with the background generally of the report that
10 we have been discussing that we've been kind of
11 referring to as the Concentric report, what is your
12 obligation as CEO of Concentric to provide independent
13 reports to your clients?

14 **THE WITNESS:** We do so when asked. We have
15 done so before on similar matters. So I don't think I
16 would describe it as an obligation. It's a service we
17 provide when asked.

18 And, again, in this case, obviously FPL's
19 activities in commencing the investigation were
20 voluntary. They chose to undertake the investigation.
21 They appropriately did so and, again, I commend them for
22 that.

23 **COMMISSIONER EDGAR:** Do you believe that the
24 report that, that is before us, before us as a part of
25 this proceeding represents Concentric's independent

1 assessment and conclusions?

2 **THE WITNESS:** Yes. Every word, every
3 sentence, every paragraph is ours, and we stand behind
4 it.

5 **COMMISSIONER EDGAR:** And along that same line,
6 who made the final determination as to what edits from
7 FPL were included in the final report?

8 **THE WITNESS:** Me. I'm the only person that
9 had the approval authority for any change in the report.

10 **COMMISSIONER EDGAR:** Thank you.

11 **CHAIRMAN ARGENZIANO:** Commissioner Skop for a
12 question.

13 **COMMISSIONER SKOP:** Yes. I had probably about
14 three more brief questions and hopefully I will be done.

15 **CHAIRMAN ARGENZIANO:** Okay. I've got one
16 question at one point.

17 **COMMISSIONER SKOP:** Okay. I'll yield.

18 **CHAIRMAN ARGENZIANO:** No. You go, you go
19 ahead and then I'm going to ask questions, I'm going to
20 ask for any other questions after that and then we'll
21 proceed. Go ahead.

22 **COMMISSIONER SKOP:** Okay. Mr. Reed, on -- if
23 I could ask you to turn to page 24 of what has been
24 identified as the staff audit report for Florida Power &
25 Light Company, and I need to -- I believe it's

1 Exhibit 178. Yes. Okay. So it's been marked for
2 identification as Exhibit 178, and it's the staff audit
3 report for Florida Power & Light related to the nuclear
4 projects.

5 **THE WITNESS:** I'll ask someone to provide me
6 with a copy, if they can.

7 **CHAIRMAN ARGENZIANO:** Okay. Let's give a
8 moment and make sure we get a copy to Mr. Reed.

9 **COMMISSIONER EDGAR:** And could you mention the
10 page number again that you're pointing us to?

11 **COMMISSIONER SKOP:** It's page 24.

12 **COMMISSIONER EDGAR:** Thank you.

13 **CHAIRMAN ARGENZIANO:** 24.

14 **THE WITNESS:** Thank you. I have Exhibit 178,
15 page 24.

16 **COMMISSIONER SKOP:** Okay. And if I can draw
17 your attention to the paragraph that's entitled Removal
18 of the EPU Senior Management Team.

19 **THE WITNESS:** I see that.

20 **COMMISSIONER SKOP:** Okay. And do you see the
21 sentence at the bottom of that first paragraph with the
22 footnote?

23 **THE WITNESS:** Yes.

24 **COMMISSIONER SKOP:** Okay. And basically the
25 indented text on that page refers to data that was

1 provided in an FPL response to a staff data request; is
2 that correct?

3 **THE WITNESS:** Yes.

4 **COMMISSIONER SKOP:** Okay. And can you read
5 the indented portion of that text, please?

6 **THE WITNESS:** That text reads, "Both
7 previously assigned VP level managers were no longer
8 involved in the EPU project because FPL Group senior
9 management decided that changes to these leadership
10 positions would enhance FPL's ability to bring the EPU
11 projects to successful completion, promote effective
12 succession planning and talent utilization, and improve
13 the quality and timeliness of forecasted project costs."

14 **COMMISSIONER SKOP:** Okay. So in that it --
15 the timeliness is mentioned in that paragraph; is that
16 correct?

17 **THE WITNESS:** Yes.

18 **COMMISSIONER SKOP:** Okay. Do you have any
19 knowledge as to why FPL Group senior management would be
20 involved in a Florida Power & Light personnel decision?

21 **THE WITNESS:** I can't answer that from a
22 generic perspective. I can answer it with regard to
23 this decision, and it is my understanding that FPL Group
24 senior management was involved because they are involved
25 in and essentially chair the ESC.

1 **COMMISSIONER SKOP:** Okay. So, and then that
2 gets back to the point of the EC -- ESC meeting that was
3 held on July 25th, 2009, FPL Group senior management was
4 involved in that meeting, were they not?

5 **THE WITNESS:** Yes.

6 **COMMISSIONER SKOP:** Okay. All right. I want
7 to go on to two follow-up questions that deal with
8 revisions to the Concentric report. And let me have a
9 moment and I'll get to the right Bates page.

10 **MS. BENNETT:** Madam Chairman, while
11 Commissioner Skop is looking for that, I just wanted to
12 let you know that I had handed out a data request
13 response from FPL that Commissioner Skop had asked for.
14 It's on your desks. It's EPU DR 8.9, and it's got a
15 little yellow highlight through it. I just wanted to
16 let you know that is a confidential document. The
17 attorneys can address it. There's parts of it that
18 aren't.

19 **CHAIRMAN ARGENZIANO:** Okay. Thank you.

20 **MR. ROSS:** Madam Chairman, with respect to
21 this data request 8.9, I think that most of these issues
22 now have been discussed in the hearing, so we will
23 withdraw our claim of confidentiality for this
24 particular data request.

25 **CHAIRMAN ARGENZIANO:** Okay. And that is

1 withdrawn. Thank you.

2 **COMMISSIONER SKOP:** Madam Chair, I just need a
3 few moments.

4 Okay. Mr. Reed, I'd ask you to turn to
5 confidential document 06790-10, which is POD 29 at Bates
6 page 153197.

7 **CHAIRMAN ARGENZIANO:** That's a lot of numbers.
8 Let's make sure everybody has got it.

9 **COMMISSIONER SKOP:** That's the big stack of
10 documents we had last --

11 **CHAIRMAN ARGENZIANO:** Okay.

12 **THE WITNESS:** I'm sorry. The 153, what was
13 the --

14 **CHAIRMAN ARGENZIANO:** Let's repeat them
15 slowly.

16 **COMMISSIONER SKOP:** Yes. 153197.

17 **THE WITNESS:** I have that.

18 **COMMISSIONER SKOP:** Okay. With respect -- and
19 if I could draw your attention to the comment on that
20 page.

21 **THE WITNESS:** I see that.

22 **COMMISSIONER SKOP:** Okay. And was that --
23 who, who, without giving up any confidential
24 information, inserted that comment?

25 **THE WITNESS:** One of my staff members working

1 on the investigation.

2 **COMMISSIONER SKOP:** Okay.

3 **THE WITNESS:** His name is in footnote 2 on
4 that page.

5 **COMMISSIONER SKOP:** Okay. All right. Thank
6 you. And if I could ask you to move forward to, on that
7 same document to what has been marked as Bates page FPL
8 153212.

9 **THE WITNESS:** I see that.

10 **COMMISSIONER SKOP:** Okay. Is there any
11 significance in that comment?

12 **THE WITNESS:** Well, I think there's probably
13 significance in all comments. But I don't take any
14 particular significance there. It was a comment about a
15 question that we should expect on the words that are
16 there.

17 **COMMISSIONER SKOP:** Okay. All right. With
18 respect to the revisions of the Concentric, draft
19 Concentric report -- I mean, excuse me. With respect to
20 the draft Concentric reports and the revisions thereof,
21 were there any members of the Executive Steering
22 Committee that reviewed those drafts and provided
23 comments?

24 **THE WITNESS:** I don't know the answer to that.
25 I did not receive comments from any member of the

1 Executive Steering Committee. Whether they were
2 received internally within FPL, I don't know. But none
3 came to me.

4 **COMMISSIONER SKOP:** Did any comments from
5 members of the Executive Steering Committee come to any
6 other members of Concentric staff to your knowledge?

7 **THE WITNESS:** No. Nothing from the ESC in
8 terms of comments came to our firm.

9 **COMMISSIONER SKOP:** Okay. As a -- in the
10 course of your investigation, did you discuss the
11 employee allegations or interview members of the
12 Executive Steering Committee in preparation of your
13 report?

14 **THE WITNESS:** No. No. We did not interview
15 any, what I would call member of the Executive Steering
16 Committee.

17 And let's clarify this. Again, I don't think
18 there is a roster of who's a member versus who's a
19 presenter. We did interview an individual who attends
20 all of the ESC meetings.

21 **COMMISSIONER SKOP:** Okay.

22 **THE WITNESS:** Whether he's a member of the
23 committee or a presenter is, I suppose, a point of
24 clarity.

25 **COMMISSIONER SKOP:** Well, let me be more

1 specific again. Again, I'm trying to just ask probably
2 generically and I probably should be more specific.

3 As a result of the employee letter and
4 resulting investigation, did you interview Mr. Olivera?

5 **THE WITNESS:** No, not for that purpose.

6 **COMMISSIONER SKOP:** Okay. All right. Is
7 there a reason why?

8 **THE WITNESS:** I didn't feel it was necessary.

9 **COMMISSIONER SKOP:** Okay. All right. As part
10 of your investigation, did you interview Mr. Robo?

11 **THE WITNESS:** No. The same answer. We had
12 some issues that came up with regard to ESC member
13 participation, and we were able to address all of our
14 questions with documents. Therefore, we did not need to
15 go to do interviews with them.

16 **COMMISSIONER SKOP:** Okay. Madam Chair, I
17 believe I just have one final question. And I need to
18 find the page, so bear with me for one second.

19 (Pause.)

20 If I could turn your attention now, Mr. Reed,
21 to what has been marked for identification as Exhibit
22 Number 243.

23 **THE WITNESS:** I have that.

24 **COMMISSIONER SKOP:** Okay. And on Exhibit 8 in
25 that document, page 8 of 8.

1 **THE WITNESS:** This is the chronology. Yes, I
2 have that.

3 **COMMISSIONER SKOP:** Okay. And if I could just
4 now ask you to look at what is a confidential document.
5 It is Document Number 06789-10, and it is the response
6 to Interrogatory Number 24.

7 **THE WITNESS:** Yes, I have that.

8 **COMMISSIONER SKOP:** Okay. And I just need to
9 look at one additional thing before I ask my question.
10 Do you see the response that was given by FPL to the
11 staff interrogatory?

12 **THE WITNESS:** Yes.

13 **COMMISSIONER SKOP:** Okay. In relation to whom
14 the letter was provided to?

15 **THE WITNESS:** Yes.

16 **COMMISSIONER SKOP:** Okay. As a result of the
17 existence of the employee letter and the conclusions of
18 the Concentric report, do you know whether the
19 Concentric findings were ever provided back to the
20 entity identified in the first line of the response to
21 that interrogatory?

22 **THE WITNESS:** I don't know for sure. I have
23 no understanding that they did receive it. My
24 understanding is their involvement in this matter ended
25 with their response.

1 **COMMISSIONER SKOP:** I understand. And my
2 question goes to the heart of in light of the conclusion
3 and findings as it relates to the veracity of statements
4 given under oath by an FPL witness to the Florida Public
5 Service Commission, my question would be do you know
6 whether that conclusion was ever then provided back to
7 the entity identified in the first line of that
8 interrogatory response?

9 **THE WITNESS:** I don't know.

10 **COMMISSIONER SKOP:** Okay. Could you offer
11 opinion as to why it might not have?

12 **MR. ROSS:** I'd like to object. There's no
13 foundation as to this witness's relationship or
14 connection or involvement with the work performed by the
15 entity listed on the first line of the confidential
16 document the Commissioner is referring to.

17 **CHAIRMAN ARGENZIANO:** To the objection.

18 **COMMISSIONER SKOP:** To the objection, Mr. Reed
19 deals with project controls, he deals with the adequacy
20 of project controls, he's testified to the importance of
21 providing accurate and timely information to the
22 Commission. The matter deals with the veracity of
23 statements made under oath to the Florida Public Service
24 Commission. Mr. Reed has testified that the testimony
25 in his professional opinion was inaccurate and

1 incomplete. And as part of a complete review cycle
2 process, seeing that there was a starting point, an
3 investigation, and that's where it ended, I'm merely
4 asking Mr. Reed if he in his professional opinion knows
5 why the findings of the Concentric report were not
6 provided back to the starting point.

7 **MR. ROSS:** And, again, there's no foundation
8 that Mr. Reed can even address that issue. There's no
9 foundation as to whether he had any involvement with
10 this entity that's listed on the first line of the
11 response to Interrogatory Number 24.

12 **COMMISSIONER SKOP:** Okay.

13 **CHAIRMAN ARGENZIANO:** An opinion from staff.
14 Was that your last question, Commissioner Skop?

15 **MS. HELTON:** Madam Chairman, I need to look at
16 this because I haven't been -- I've been listening but
17 not reading.

18 **CHAIRMAN ARGENZIANO:** Okay. Do that. And
19 while I said that we would take lunch at 1:30, depending
20 on how many questions are left to the witness, how about
21 we, after Commissioner Skop finishes his question, I
22 have one question, most of my questions have been asked,
23 and we have two here, and questions now, then we're
24 going to have comments. Okay. So it may be that we can
25 get through the questions. And originally the, I think

1 the court reporter asked for 2:00. Would that be okay
2 with the court reporter if we extended it to 2:00?

3 **THE COURT REPORTER:** Yes. But I'm going to
4 need a five-minute --

5 **CHAIRMAN ARGENZIANO:** Okay. Let's take a
6 five-minute break right now. Okay. Thank you.

7 (Recess taken.)

8 (Transcript continues in sequence with Volume
9 8.)

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

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I, LINDA BOLES, RPR, CRR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 3rd day of September, 2010.

Linda Boles
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