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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposal to extend plan) DOCKET NO. 970410-EI
for recording of certain expenses) ORDER NO.
for years 1998 and 1999 for) ISSUED:
Florida Power & Light Company) November 14, 1997

AFTERNOON SESSION

VOLUME II

Pages 164 through 233

PROCEEDINGS: HEARING

BEFORE: CHAIRMAN JULIA JOHNSON
COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK

DATE: Tuesday, November 25, 1997

TIME: Commenced at 3:00 p.m.

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

REPORTED BY: RAY D. CONVERY, Court Reporter
(904) 224-0728

APPEARANCES: (As heretofore noted.)

BUREAU OF REPORTING

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WITNESS - VOLUME II

THOMAS deWARD

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EXHIBITS

9	NUMBER		ID	ADMTD.
10	10	Notice of Adoption of Rule	205	233
11	11	Staff Recommendation and Order	209	233
12	12	Order No. PSC 930818-FOF-TL	226	233

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P R O C E E D I N G S

(Transcript follows in sequence from Volume 1.)

MR. BREW: Commissioners, as we discussed previously, we'll be offering Mr. deWard's rebuttal out of order in order to try to finish with him today.

CHAIRMAN JOHNSON: Okay. Was he sworn this morning?

MR. BREW: Yes, he was.

CHAIRMAN JOHNSON: Okay.

Whereupon,

THOMAS deWARD

was called as a witness, having been previously sworn to speak the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BREW:

Q Are you ready? Mr. deWard, do you have in front of you a document entitled "Rebuttal Testimony of Thomas deWard" in this docket number filed November 3, 1997?

A Yes, I do.

Q Consisting of 11 pages of questions and answers?

A Yes, I do, and yes, it is 11 pages.

Q And if I were to ask you each of the questions contained in that testimony today, would your answers be the same day?

1 A With one small exception.

2 Q Would you please give it to us?

3 A On page 7, line 18, change the word "funding,"
4 which is the first line, first word on the line, to
5 "recovery." Other than that, my answers would be the same.

6 Q And there are no other changes?

7 A No other changes.

8 Q Do you have any exhibits for your testimony?

9 A No, I don't.

10 MR. BREW: Okay. The witness is available for
11 cross-examination.

12 MR. CRUZ-BUSTILLO: Commissioner? Commissioner
13 Johnson? I didn't hear what he wanted to change the word
14 to, funding to what, change it to recovery?

15 MR. CRUZ-BUSTILLO: Funding to recovery.

16 THE WITNESS: Yes, funding to recovery.

17 CHAIRMAN JOHNSON: And sir, you said, there was --
18 is there a summary or are you going to have this inserted
19 into the record?

20 MR. BREW: I'll ask that it be inserted into the
21 record.

22 CHAIRMAN JOHNSON: It will be inserted into the
23 record as though read and there is no summary? Can we
24 proceed directly --

25 MR. BREW: We can proceed directly.

1 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

2 AMERISTEEL CORPORATION

3 REBUTTAL TESTIMONY OF THOMAS DE WARD

4 DOCKET NO. 970410-EI

5 NOVEMBER 3, 1997

6
7 Q. Please state your name and address8 A. My name is Thomas DeWard and my business address is 25806 Glover Court.
9 Farmington Hills, Michigan 48335.10 Q. Please briefly describe your educational background and your prior experience in
11 regulatory matters.12 A. I have an M.B.A. from the University of Michigan. I am a C.P.A., licensed in the
13 State of Michigan. Prior to becoming the Vice President-Finance of Midwest
14 Door and Window Co. in April of this year, I spent nearly sixteen years in the
15 regulatory field. I have testified in numerous cases in the states of California,
16 Connecticut, Florida, Hawaii, Kentucky, Michigan, Nevada, Texas and Virginia.
17 I have participated in one form or another in over 100 utility cases.

18 Q. What is the purpose of your rebuttal testimony?

19 A. The purpose of my rebuttal testimony is to rebut certain presumptions and
20 statements proffered in the direct testimony of FPL witness Mr. H. A. Gower with
21 respect to the appropriate ratemaking for nuclear decommissioning accruals and
22 with regard to premiums paid and costs incurred to reacquire and refinance debt.

1 Q. In his testimony, FPL witness Gower discusses the traditional utility argument
2 that the current recognition of the so-called nuclear decommissioning reserve
3 deficiency will benefit ratepayers in the long-run. Do you agree with that
4 argument?

5 A. No. The telecommunications industry is a good example of why this theorem is
6 not always correct. Today the telecommunications companies in Florida are
7 largely deregulated. To the extent that depreciation reserve deficiencies were
8 written off as immediate charges to depreciation expense and thus reduced
9 overearnings or increased revenue requirements, the benefit has been reaped by
10 the shareholder's of the now deregulated telecommunication companies. In other
11 words, the reduced future expense will never benefit ratepayers if competition in
12 the future results in deregulated services rather than rates determined in a
13 traditional cost of service manner. Ratepayers would be far better off if rates had
14 been reduced or rate increases, if applicable, had been reduced. While there is no
15 guarantee that the electric utilities will be deregulated, that seems to be the trend
16 throughout the country. Moreover, there is no indication that FPL would have
17 reason to seek a base rate increase in the foreseeable future. Therefore, if any
18 alleged decommissioning reserve deficiency is allowed to be charged against what
19 appears to be overearnings, ratepayers may never benefit in that rates will remain
20 at the current levels.

21 Q. If the Company writes off the alleged decommissioning reserve deficiency as a
22 one time charge, is the Commission obligated to follow the same accounting
23 treatment for ratemaking purposes?

1 A. Definitely not. Financial reporting and regulatory accounting are often at odds.
2 As a financial officer, a CPA, and a regulatory accountant, I am aware that there
3 often are contradictions between accounting practices acceptable to industry and
4 those which are appropriate in a regulatory environment.

5 Q. Do you have an example where financial reporting differs from regulatory
6 accounting?

7 A. Yes, SFAS 106 ("OPEB") required a different accounting for health care costs
8 after retirement than had previously been in place. Some companies, and in
9 particular utilities, provide for continued health care after retirement. In other
10 words, when an employee retires, their medical coverage is continued. Prior to
11 1993, companies accounted for this cost on the pay as you go method. In other
12 words, as claims were submitted, the cost was recognized. The accounting
13 profession deemed this methodology was no longer appropriate and required
14 companies to recognize the cost of providing this coverage over the working lives
15 of the employees. When SFAS 106 first became effective, as you can imagine,
16 there was a substantial liability for employees who had already retired and
17 associated with the years current employees had already worked but no accrual
18 was being recognized. Thus a substantial obligation was recognized when SFAS
19 106 first became effective. This obligation was known as the Transition Benefit
20 Obligation ("TBO"). Companies were given the option of recognizing this "past"
21 cost as a one time charge or amortizing the cost over a period of years. Some
22 companies, such as General Motors, took a tremendous one time charge against
23 earnings.

1 Q. Did the establishment of the reserve require any estimates?

2 A. Yes, there were numerous estimates involved. Perhaps the estimate which had the
3 greatest impact was the estimate of the escalation of the cost of health care. As
4 you will recall, the cost of health care was escalating dramatically in the early part
5 of 1990s. Thus estimates were required of the rate at which health care costs
6 would escalate well into the future. It was not uncommon to see estimates for the
7 immediate future in the range of 15% to 17% annually and then declining
8 thereafter. It is easy to envision the tremendous estimates of the cost of
9 providing health care for a 25 year old employee with planned retirement at age
10 65. For instance if the estimate included a 15% to 17% annual compounded
11 increase declining to say 5% in future years, with the future amount discounted at
12 7%, the liability was enormous. Other estimates included discount rates and
13 earnings on investments should there be any funding of costs. Of course, many
14 companies opted not to fund the liability but merely to provide a reserve. Another
15 estimate involved what share of future costs would be covered by Medicare.
16 Recently, there has been some dramatic changes in the annual increases in the cost
17 of health care. Annual increases are under 10%. Had this been known at the time
18 the original estimate of the Transition Benefit Obligation was determined, the
19 results could be dramatically different. General Motors one time charge would
20 have been less. The cost of service for utility companies would have been lower.
21 Those utilities who sought rate relief would have required a smaller increase or
22 the reduction would have been greater in overearnings cases because of more
23 realistic estimates.

1 Q. Is the estimate of costs associated with health care costs similar to the estimates
2 of future decommissioning of nuclear plants?

3 A. To some extent; however, there are important distinctions particularly as it is
4 applied to this case. The estimates of SFAS 106 costs generally are made by
5 actuaries. They are experts at determining trends but they do make errors in the
6 estimates of future costs. In making these estimates, I assume an actuary relies on
7 prior trends to determine future costs. This makes sense. This is a major
8 difference in estimating the cost of decommissioning nuclear facilities. There
9 have been few decommissionings to date. Thus, there is little actual experience
10 that could be used for estimating future decommissioning costs. The estimates of
11 future decommissioning costs is highly uncertain for other reasons as well.
12 Changes in technology, escalation rates, and revisions to the useful lives can all
13 affect the estimates of future costs.

14 Q. Didn't the Financial Standards Board establish some guidelines relating to the
15 determination of SFAS 106 costs?

16 A. Yes, these standards were detailed in SFAS 106.

17 Q. Were utilities bound by SFAS 106 for financial reporting purposes?

18 A. Yes. However, some commissions deviated from SFAS 106 for ratemaking
19 purposes. Some commissions required utilities to continue to recognize costs on
20 the pay as you go method for ratemaking purposes. Some commissions required
21 that the expense be funded or the additional expense over the pay as you go would
22 not be allowed. Some commissions extended the amortization period. As I stated
23 earlier, some companies, particularly telecommunication companies, wrote off the

1 TBO as a one time charge, arguing that future recovery was not guaranteed
2 because of the current environment, namely deregulation. However, in the few
3 instances these same utilities were before commissions, they argued for full
4 recovery of all the costs recorded so they could be made whole.

5 Q. Do you agree with Mr. Gower that a theoretical deficiency in the funding of
6 nuclear decommissioning expenses should be charged to expense in the years
7 1998 and 1999?

8 A. No. FPL's nuclear units each have an operating life of 40 years under their
9 licenses issued by the Nuclear Regulatory Commission. There has long been
10 considerable controversy in rate cases over the appropriate accrual for
11 decommissioning expense because, as I noted above, to date the industry has had
12 relatively little experience in actual decommissioning, and forecasts of future
13 expenses must be made for many years into the future. Consequently, the
14 accepted ratemaking for nuclear decommissioning is to spread the cost of funding
15 those activities evenly over the license life of the assets. To account for changes
16 in the various estimates and inputs used in calculating the reserve needed for
17 decommissioning costs, regulatory commissions, including the Florida Public
18 Service Commission, typically require periodically updated studies of nuclear
19 decommissioning costs. In Florida, for example, such studies must be filed every
20 five years. Where reserve deficiencies are identified, the appropriate response is
21 to adjust the annual accrual for decommissioning to ensure that the deficiency is
22 remedied over time.

1 Q. Is the current PSC practice consistent with that approach?

2 A. Yes. In Order No. PSC-95-1531-FOF-EI issued in December 1995, after
3 reviewing comprehensive site-specific studies by FPL, the Commission approved
4 an increase in FPL's annual accrual from \$38 million to more than \$84 million.

5 In that order, the Commission concluded:

6 Based on the current dollar cost to decommission each
7 nuclear plant, the plant-specific contingency allowances,
8 the plant-specific escalation rates, the cost of extended
9 storage for spent fuel, and a fund earnings rate of 4.90%,
10 we have determined the appropriate jurisdictional annual
11 accrual amounts necessary to recover future
12 decommissioning costs over the remaining life of each
13 nuclear power plant.

14 Order PSC-95-1531-FOF-EI at p. 15).

15 This action was consistent with the Commission's long-standing order that
16 decommissioning costs should be accrued evenly over the life of the plants. And,
17 as quoted above, the revised annual accruals were designed to provide for full
18 ^{recovery} funding of decommissioning costs over that time frame, including correction of
19 any reserve deficiencies that were identified at the time. FPL will file its next
20 comprehensive studies in late 1998. Upon completing its review of those studies,
21 the Commission should determine if any further adjustment in the annual accrual
22 is warranted. There is no need for additional "corrections" unless the next set of

1 decommissioning studies demonstrate that the accrual levels established in 1995
2 are insufficient.

3 Q. Mr. Gower states that the future comprehensive studies "... will only remeasure
4 the amount of the deficiencies." (Gower Direct, p. 10). Do you agree with that
5 statement?

6 A. No. Assuming there will always be a need to decommission nuclear plants in
7 some manner, a provision for decommissioning expense is appropriate. Given the
8 unknowns, potential technology changes, and the potential for changes in
9 decommissioning requirements, there is no guarantee that the perceived
10 deficiency at any particular point could not turn into an excess in the future.
11 Charging the full amount of a perceived deficiency at any one time, particularly
12 one as large as \$484 million to customers in one or two years assigns those
13 customers a hugely disproportionate share of the future cost of decommissioning.
14 This is an unreasonable approach to the accounting and ratemaking of these future
15 costs. Further, these customers would now bear the full risk that future studies
16 might lessen or eliminate that perceived deficiency altogether.

17 Q. Mr. Gower claims that "... In the current dynamic environment it is not
18 reasonable to suspend the plan for correction of these substantial underrecoveries
19 begun in Docket No. 950359-EI until new studies are filed." (Gower Direct p.10).
20 Do you agree?

21 A. No. By adjusting the annual accrual in 1995, the Commission has provided for
22 correction of any previously identified under-recovery. Absent a complete review
23 of any findings from the new studies, no further Commission action is needed to

1 correct any prior under-recoveries. Second, to the extent that "the current
2 dynamic environment" refers to growing competition in the electric industry, I am
3 aware of no Commission policy or rule addressing competition concerns as the
4 basis for changing established accounting or rate treatments. I am aware of
5 restructuring activities in some other states, but do not believe that any state has
6 failed to provide for rate treatment to assure continued funding of future
7 decommissioning costs. Mr. Gower's vaguely described concerns are
8 unwarranted and premature, particularly given the lack of any current legislature
9 or regulatory action in Florida to factor competition in retail electric markets.

10 Q. Q. Given the uncertainty of future costs, as evidenced by the inaccurate estimates
11 involved in determining the TBO under SFAS 106 and the current uncertainty in
12 the estimates of the cost of decommissioning nuclear facilities, does the
13 continuation of the plan proposed in this docket adequately balance the interests
14 of FPL and the ratepayer?

15 A. Absolutely not. The benefits of the Plan all flow to FPL. There are no safeguards
16 for the utility ratepayer. In particular, the accelerated recovery of the nuclear
17 decommissioning reserve deficiency and the accelerated recovery of the premium
18 paid to reacquire debt over a two year period benefits FPL to the detriment of
19 current ratepayers. There is no balance. Not only does the extension of the Plan
20 to allow the rapid amortization of these costs deviate from the last Commission
21 order where new decommissioning rates were designed to recover the projected
22 cost of decommissioning equally over the remaining lives of the units, it

1 represents single issue ratemaking which focuses only on the negatives presented
2 by FPL.

3 The Plan fails to address any of the reasons FPL may currently be in an excess
4 earnings condition. The Commission should look at all of the factors
5 contributing to this circumstance in order to protect ratepayer interests

6 If the Company is currently overearning, ratepayers should not be deprived of the
7 opportunity for a full rate review instead of allowing the FPL to reduce earnings
8 by the rapid amortization of selected items as envisioned in the Plan.

9 Q. The Plan permits FPL to write off the premium paid to reacquire debt over a two
10 year period if earnings are sufficient. Do you agree that this is appropriate for
11 ratemaking purposes?

12 A. No. Generally accepted accounting principles allow for losses on reacquired debt
13 to be written off in the year of acquisition, but here we again have an area where
14 accepted ratemaking treatment diverges from GAAP. For ratemaking purposes,
15 as described in the Uniform System of Accounts, such costs are generally
16 amortized over the remaining life of the debt that has been paid off or over the life
17 of the debt issued to pay off the old debt. This makes sense because the benefits
18 of reducing debt costs are realized by ratepayers over time as well. Of course, this
19 must be tempered to ensure that the capital structure is appropriate for ratemaking
20 purposes and that the debt/equity ratio is appropriate. In FPL's case, I see no
21 reason to accelerate recovery of the premiums paid and costs incurred to reacquire
22 and refinance debt, and neither the PAA nor Mr. Gower's testimony address the
23 appropriateness of FPL's capital structure or debt/ equity ratio.

1 Q. Does this conclude your rebuttal testimony?

2 A. Yes, it does.

CROSS EXAMINATION

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BY MR. CHILDS:

Q Good afternoon, Mr. deWard.

A Good afternoon, Mr. Childs.

Q Would you reference page 2 of your testimony, and would you give me a definition of nuclear decommissioning reserve deficiency?

A You're talking of a specific line here, or just in general terms?

Q Well, that's where you talk about that subject and I want to know how you define that term.

A Well, I think your witness talked about the nuclear decommissioning reserve deficiency and it's basically, I believe he described it as comparing what had been booked to what should have been booked going back to day one, determining what the appropriate annual accrual is based on a new study compared to what was booked and determining a deficiency at a specific date.

Q Well, the accrual doesn't have anything to do -- determining the new accrual doesn't have anything to do with the determining the deficiency, does it?

A Well, you determine where you want to be and where you are at that point, and that determines the deficiency.

Q So do you agree with Mr. Gower's description of decommissioning reserve deficiency?

1 A I won't dispute that.

2 Q Okay. Would you agree that, when you have
3 quantified a reserve deficiency, that the costs that should
4 have been recognized in fact have not been, and that's what
5 the deficiency means?

6 A Well, you have a new set of facts and
7 circumstances, so the facts continually change. Had you
8 known back then what you know now, there would be a
9 deficiency.

10 Q So, if the customers, for instance -- or if in the
11 prior years the company had had an accrual at a higher
12 level than it in fact had, its deficiency would be lower,
13 would it not?

14 A Had a higher accrual --

15 Q Yes.

16 A -- than was needed? No, it would be a surplus at
17 that point.

18 Q Let's try this again.

19 I said, if there is a deficiency right now, you
20 agree that there is a deficiency in the nuclear
21 decommissioning reserve?

22 A I'm not disputing the decommissioning study.

23 Q Let's just assume that there is a deficiency in
24 the reserve, would you agree that, had the accrual in prior
25 years been larger, that the amount of the deficiency would

1 necessarily be lower?

2 A That would follow.

3 Q Okay. Would you look at lines 10 through 13 of
4 your testimony on page 2?

5 A Yes.

6 Q And is it your position in this case that the
7 future benefit to customers of the current recognition of
8 decommissioning reserve deficiency costs will not be reaped
9 by customers because of future competition?

10 A The benefits, if at all, will not be reaped by
11 anyone unless there is a rate case to adjust rates. So if
12 there in fact is a benefit to recognizing additional costs
13 at this point in time, if there is not a rate case and not
14 an opportunity for a full cost-of-service hearing, the rate
15 payers will never benefit from this write-off.

16 Q If there is competition and the rates are not
17 based upon cost-of-service principles?

18 A Even if there isn't competition and there is never
19 a rate case, you can write off all your unamortized debt
20 cost. You can write off all your deficiencies, you can
21 continually catch up on nuclear decommissioning, you can
22 have over-earnings in '95, '96, '97, '98, '99. You can
23 mask all of those over-earnings with any amortizations you
24 want, but until you have a rate case to set rates based on
25 a proper cost of service, rate payers will not benefit.

1 Now, whether there's competition or not, if you do
2 not have a rate case, the rate payer will not benefit from
3 any of this accounting.

4 Q Similarly, the -- well, let me pursue that for a
5 minute. I asked you specifically about your testimony, do
6 you recall that?

7 A Yes.

8 Q And do you recall --

9 A I think you quoted lines 10 through 13.

10 Q And do you recall that your testimony speaks to
11 competition? Would you look at it and tell me whether
12 that's the case?

13 A I discuss competition there, yes.

14 Q Well, you said --

15 A I think my testimony is much broader than just
16 competition, though. I'm opposing the plan per se, and I'm
17 rebutting Mr. Gower, who is the only witness who supports
18 the plan. Therefore, my testimony, my rebuttal testimony
19 is much broader than that, Mr. Childs. It's opposed to the
20 plan per se, not just one little element of competition.
21 It's against the entire plan because, without proper rates,
22 rate payers will never benefit.

23 CHAIRMAN JOHNSON: Mr. deWard, we're going to --
24 for purposes of the court reporter and to have an orderly
25 process here, you're going to have to allow the attorney to

1 get his question out and complete before you begin your
2 answer, and when you begin your answer, if you could start
3 with a yes/no to his original question, and then I'll allow
4 to you follow up with any rationale to support the yes or
5 no answer, but you do need to give Mr. Childs an
6 opportunity to complete his questions.

7 THE WITNESS: Certainly, Chairman. I apologize.

8 Q (By Mr. Childs) Do you recall me asking you about
9 this subject in your deposition by telephone?

10 A This particular topic, I don't recall it. If it
11 was in there, I don't recall it.

12 Q Well, let me ask you if you would help me a little
13 bit.

14 A Sure.

15 Q I'm trying to -- I've read your testimony and your
16 testimony has been offered to this commission to support
17 your point of view, and I'm sure you have lots of thoughts
18 and lots of ideas and lots of positions, but all I can deal
19 with is what you've put down in your testimony in terms of
20 cross-examining you. So I'm asking you about this
21 testimony, lines 10 through 13, where you refer
22 specifically to future benefits not being available to
23 customers if competition in the future results in
24 deregulated services. Would you agree that that's what you
25 talk about there specifically?

1 A Yes.

2 Q And you don't talk about any of these other
3 potential reasons that you might oppose the plan?

4 A On these particular lines, no.

5 Q That's right.

6 A No.

7 Q And this is all I'm talking about right now.

8 A Fine.

9 Q Okay. Now you, therefore, I assume, based upon
10 these lines only, accept that current recognition of the
11 decommissioning reserve deficiency expense would benefit
12 rate payers in the future if rates continue to be set on
13 the basis of cost of service?

14 A No, I wouldn't agree with that.

15 Q And that's where your other qualifications come in
16 that, until rates are changed, there's no benefit?

17 A Well, there's many principles to rate-making, and
18 one's the matching principle. And the matching principle
19 is -- I'll give you an example. We've talked about the
20 unamortized debt costs. The matching principle would
21 dictate that if they had -- if there -- the reacquisition
22 of debt resulted in interest savings, that the rate payers
23 should not benefit exclusively from those savings,
24 therefore, the match comes in. You amortize those losses
25 that you incurred to acquire that debt against those

1 savings, and in a rate-case setting, there is a matching of
2 revenue and expense.

3 BY MR. CHILDS: I'm going to object. I'm not
4 going to move to strike, but I'm going to ask again that
5 the witness be responsive to the question.

6 I'm asking about his testimony here, where I went
7 through what he had testified to on his prefiled testimony
8 about the effect of competition, and I'm now asking him
9 about the effect if we assume that there's not going to be
10 competition in the context of his testimony, and I am
11 simply don't -- I mean, I think it's unfair to treat it as
12 an explanation for the witness to be able to say whatever
13 he thinks or comes to mind when a question is asked.

14 MR. BREW: I think in that case he was trying to
15 qualify his answer directly in response to the question
16 that was asked.

17 MR. CHILDS: Well, I don't -- and I don't intend
18 to be argumentative about it, but I didn't take it that
19 way. I took it that it was I never got an answer to the
20 question of, if we assume that there is no competition and
21 if we assume, therefore, that rates continue to be set on
22 cost-of-service principles, that the benefit that you say
23 wouldn't exist if there is competition would necessarily
24 exist.

25 CHAIRMAN JOHNSON: Mr. deWard, if you could, try

1 to be responsive to the direct question that's asked, and
2 I'm sure that your attorney on redirect will allow you the
3 opportunity to further clarify some of your answers, but
4 when I said you can answer yes or no, that's fine, and even
5 some explanation of the yes or no, but try not to go off
6 into other subject matters.

7 THE WITNESS: Could I have the question again, Mr.
8 Childs?

9 Q (By Mr. Childs) Yes. Let me try again with the
10 explanation.

11 We have discussed the circumstances, as you have
12 testified, about the effects of the competition that you
13 postulate on lines 10 through 13 of page 2 on the
14 recognition of the benefit by customers, and I'm asking
15 you, therefore, if the competition does not occur and rates
16 continue to be set on the basis of cost of service,
17 wouldn't you agree that there is a benefit to the
18 customer?

19 A Rates -- you've said if rates continue to be set
20 on cost of service, and I would think that would presume
21 that we're going to have a rate setting, and in a rate
22 setting, all the factors would be considered; but if what
23 you're saying is we continue with the existing rates and
24 then somewhere in the future we have a rate case, would
25 rate payers benefit from this write-off right now? I would

1 say no. I think let's have the rate reductions right now.
2 Let the rate payers benefit today from lower rates.

3 Q Well, let's you answer your own question. It may
4 be your preference to have the rates set now, but answer
5 the question, will there be a benefit to customers in the
6 future?

7 A I have no way of knowing whether there will be any
8 benefit to rate payers in the future.

9 Q So your bottom line point then is, if rates are
10 not changed, there's no benefit to be passed on to
11 customers?

12 A I think that's a good summary.

13 Q Would you agree then that, if rates are not
14 changed, that there's no detriment to be passed on to
15 customers?

16 A No, not at all, because rates today should be
17 reduced so, therefore, there is a detriment to customers
18 because, absent these amortizations and ways to mask the
19 over-earnings, rates should be reduced today. Perhaps they
20 should have been reduced in '95 or '96 or '97, but
21 certainly today they should be reduced.

22 Q Are you supposing, with respect to your testimony
23 at page 2, lines 10 to 13, that if future competition
24 arrives, that FPL would not be responsible for the cost of
25 decommissioning its nuclear units?

1 A I don't see any reference to that in that -- in
2 lines 10 to 13. They certainly will be responsible for
3 decommissioning their nuclear units, unless, of course,
4 they sell them, which is highly improbable.

5 Q If the competition does arrive before the
6 decommissioning reserve deficiency has been eliminated, who
7 will the company look to for the make-up of the reserve
8 deficiency?

9 A Right now they're looking at -- who will they look
10 to?

11 Q Sure, if competition arrives, as you postulate, so
12 there will be no benefit. I'm saying that, if we don't
13 address the reserve deficiency and competition arrives, how
14 is the reserve deficiency going to be addressed?

15 A The same way it's been addressed in every one of
16 the Commission orders that's come out on nuclear
17 decommissioning. It's the write-off of whatever the needed
18 costs are ratably over the remaining service life of the
19 unit, and that's what the Commission has done in every one
20 of its decommissioning orders. They have said, let's take
21 whatever we'll need and ratably accrue it over the
22 remaining lives of the units. And we've already got 85
23 million in rates right now. The company didn't need a rate
24 increase because they were presumably over-earning at that
25 point. So the 85 -- let's just assume that the next study

1 which comes out in 1998 says 85 is a good number. We've
2 got in rates enough to recover our deficiency over the
3 remaining lives of the units.

4 Q Do you recall my question?

5 A I answered it. Yes, I recall it. I answered it.

6 Q No, I don't think you did. Let me try again.

7 A You asked me who would be responsible, whether the
8 company or someone else would be responsible for this
9 nuclear decommissioning deficiency, and I said right now
10 it's perfect the way it is because the 85 million recovers
11 that ratably over the life.

12 Q I asked you -- well, let's try again. I don't
13 need to argue about it.

14 I am assuming from your testimony about the effect
15 of competition that, if competition arrives in the state of
16 Florida for the electric utility industry, that you are
17 assuming that rates will not, as you say on lines 12
18 through 13, be determined in a traditional cost-of-service
19 manner. Did I misunderstand your testimony?

20 A I guess I'm not -- I think the sentence is as --
21 in other words, the reduced future expense will never
22 benefit rate payers if competition in the future results in
23 deregulated service, rather than rates determined in a
24 traditional cost-of-service manner. I think it speaks for
25 itself.

1 Q And I'm simply asking you, isn't it correct that
2 your assumption of what would occur under competition is
3 that rates would not continue to be set in a traditional
4 cost-of-service manner?

5 A I would presume that would be true, right.

6 Q Now, let's take that presumption, that rates are
7 not set in the traditional cost-of-service manner --

8 A Okay.

9 Q -- and assume that there is not only the
10 responsibility for decommissioning, but there's a
11 decommissioning reserve deficiency, okay? Can you make
12 that assumption?

13 A Assumption.

14 Q And there's competition, and my question is, if
15 that happens, who will the company look to to pay for the
16 reserve deficiency?

17 A As it's always looked to, the customers, and the
18 85 million is built into the current rates.

19 Now, if those rates are too high and everyone
20 leaves the system, then they won't have anyone to look to,
21 but I guess my proposal would actually -- would actually
22 help the company because you would reduce your rates,
23 therefore, you could fend off competition if you had lower
24 rates.

25 Q I see. That's helpful.

1 COMMISSIONER DEASON: Would you be fending off
2 competition if you lowered rates now only to raise them
3 later because you had to make up past deficiencies later?

4 THE WITNESS: Commissioner Deason, I don't
5 believe you have to make up any past deficiencies and if
6 there are -- and if I can expand a little bit without being
7 -- okay.

8 There are numerous items on the company's balance
9 sheet that go the other way. The company has a pension
10 fund that has \$734 million in assets above its vested
11 benefit obligation. It's got a transition benefit asset of
12 \$170 million. The transitional benefit obligation on SFAS
13 106 is only around 50 million. So you've got 120 million
14 there. You've got deferred tax reserves where you collect
15 the taxes anywhere from 46 to 48 to 52.8 percent, where the
16 IRS says you can't flow those back immediately, you have to
17 flow them back over the lifetime.

18 So we're -- as I put in my testimony, we're
19 talking about the negatives here. There are a lot of
20 positives. So it's just not going to be, would you have to
21 raise rates to recover a deficiency? Number one, the 85
22 million already recovers any deficiencies over the remaining
23 life.

24 Now, if someone came up and said in a
25 decommissioning study that it should have been 110 million,

1 or maybe it should have been 50 million, you deal with
2 those situations in the next filing which is in 1998. You
3 don't deal with them right now. You don't just give the
4 company carte blanche to write off these perceived
5 deficiencies of some 484 million, which is violative of
6 your own policy where you said it was appropriate to
7 recover these costs over the life.

8 Q (By Mr. Childs) When was the 85 million to which
9 you're referring included in FPL's rates?

10 A Well, you had two rate cases that I'm aware of.
11 1984, and then in 1990 your rates were reduced because of
12 the Tax Reform Act of 1986. So per se there was not a rate
13 case, a rate case to include those. So in effect, when
14 those rates went into effect, it just reduced the
15 over-earnings. So did rates change? No. Was it included
16 in rates the minute it was determined by the Commission? I
17 would say so.

18 Q When was it determined by the Commission, the 85
19 million?

20 A I believe that was the 1995 order.

21 Q And at the time it was determined, in your view.
22 Of rate-making, when the 95 -- excuse me -- the 85 million
23 annual accrual was quantified by the Commission, that
24 included it in FPL's rates?

25 A It just took care of some of the over-earnings, so

1 in effect it was fully recovered in rates. Whether it was
2 put in as a separate line item, no, obviously not. Was it
3 recovered in rates? Yes.

4 Q When the decommissioning accrual was increased the
5 time before it was increased to 85 million, was that
6 included in FPL's rates by a rate order?

7 A I think by definition, no, because I believe -- I
8 don't think it was in the 1990 case where rates were
9 reduced. So I don't believe it was included as part of any
10 rate order.

11 Q But you do believe 85, for the 85 million was?

12 A Oh, I'm sorry. The same would have been true if
13 -- conceptually, if the company needed additional revenues
14 because that decommissioning reserve in -- on a pure
15 cost-of-service basis, resulted in a need to increase
16 rates, then the company could have come immediately before
17 this commission and asked for a rate increase.

18 Q Sure.

19 A So if they didn't, they're either happy with what
20 they were getting or it merely took care of some
21 over-earnings, so they were willing to accept a little
22 less.

23 Q Well, I'm asking specifically not what your
24 conclusion might be about whether they were happy to accept
25 a little less or a little more. I'm asking specifically,

1 were those amounts included in rates charged customers?

2 A And my response would be, at the point they were
3 placed into effect, yes.

4 Q Without there being a change in rates charged to
5 customers?

6 A Right.

7 Q Okay. Now, I want to continue to ask the question
8 about your testimony on lines 10 through 13 about
9 competition. I do take it that a basic premise of your
10 testimony is that, because of the potential of competition,
11 pricing to customers in the future may be different than it
12 is now. Is that correct? That is, it could be deregulated
13 and not on a traditional cost-of-service method.

14 A I would say that would be a proper assumption.

15 Q Would you agree that, therefore, cost
16 responsibility might change as the potential accounting
17 treatment selected in the future changes as a result of
18 competition?

19 A I guess I'm unclear as to what you mean by -- you
20 used the term "cost responsibility"?

21 Q Sure. Let's give an example. There were some
22 questions about utilities selling their generating plant
23 that were posed to Mr. Gower. Do you recall those?

24 A Yes, I do.

25 Q And I think you talked about the telephone

1 industry in Florida being deregulated?

2 A Yes.

3 Q And when there is deregulation of the industry,
4 isn't it generally accepted that at some point rates or
5 charges will be made on some basis other than traditional
6 cost of service?

7 A I would say so.

8 Q And so, for instance, if Florida Power & Light
9 Company had \$5 billion invested in plant and service, and
10 competition came along, it would not be looking to charging
11 its customers to recover its revenue requirements on that
12 \$5 billion, would it, because pricing would be on some
13 other basis?

14 A Well, I think it would still be looking to recover
15 its costs.

16 Q Oh, sure.

17 A I mean, competition doesn't mean that we're going
18 to give away everything. The goal would be to recover --
19 not only recover costs, but to recover whatever the market
20 will bear.

21 Q Maybe more.

22 A Right, exactly.

23 Q But the point is, you couldn't look to this
24 commission to set rates that would be charged that were set
25 on the basis of cost of service, would you?

1 A That would be correct.

2 Q Now, would you agree that, as we change these cost
3 responsibilities, that we also ought to look to the rate
4 design that companies -- utilities offer their customers in
5 order to recognize competition?

6 A Well, in a traditional -- do you mean under --
7 we're no longer regulated, competition has come in?

8 Q Sure.

9 A Well, I think everything is open game once
10 competition comes in and there's no regulation.

11 Q Therefore, what would your reaction be here that,
12 when a utility offers a rate to a customer that is a
13 discount rate with the expectation that the discount today
14 will save the future cost of building power plants, if we
15 postulate that competition comes along, shouldn't that rate
16 be eliminated currently?

17 A I actually think, you know, I speak to
18 competition.

19 Q Sure.

20 A I'm not talking -- and one of the elements would
21 be rate design, but I'm not a rate design expert, and I
22 don't know what would happen. I don't even know what types
23 of rates FPL offers. Whether there's discount rates,
24 interruptible rates, time-of-day rates, I'm not really
25 familiar. So I guess my answer would be, you know, I don't

1 know.

2 Q Okay. Well, let me give you an example then with
3 some specifics. Florida Power & Light offers a commercial
4 industrial load control rate, and that rate has a provision
5 where the charge for demand is lower than is charged
6 customers who have firm service because the customer can
7 interrupt, and the amount of the reduction in the charge is
8 based upon the postulated estimate of future savings from
9 avoiding the construction of power plants in the future,
10 okay?

11 A Well, I don't know --

12 Q I'm just asking you if you understand that.

13 A I don't understand it because I have not looked at
14 the rate, and for you to suggest what the rate is designed
15 to do -- I don't believe I'm the person to answer that
16 question because I haven't looked at the rates. I haven't
17 looked at the rate design and I am not a rate design
18 expert. I am an accounting revenue requirement expert.

19 Q You're not a decommissioning reserve expert
20 either, are you?

21 A As far as determining the amount of
22 decommissioning we've determined, that's correct, right.

23 Q Let me finish the hypothetical.

24 Now, the amount of the reduction in the charge to
25 that customer that takes commercial industrial load control

1 is then passed on to all of the other customers in an
2 actual rate, and the justification is that the rate charged
3 the customer today will avoid the construction of a power
4 plant in the future.

5 Simply in the general context of what you're
6 talking about here in your testimony at page 2, lines 10 to
7 13, wouldn't you agree that, if competition might come
8 along, that the expectation of realizing the benefit from
9 that rate schedule would be similarly unreliable?

10 MR. BREW: Objection. The witness has already
11 stated twice that he's not a rate design expert and he's
12 offering no opinion on how rates might be designed. Mr.
13 Childs is simply repeating himself in the hopes of getting
14 an answer in an area the witness says he's not an expert,
15 and --

16 MR. CHILDS: I'd like to get an answer in any
17 areas.

18 MR. BREW: Pardon?

19 MR. CHILDS: I'll move on.

20 Q (By Mr. Childs) On page 3 of your testimony you
21 talked about SFAS 106. Do you consider yourself to be an
22 expert in that area?

23 A To the extent for the accounting treatment for
24 SFAS 106, yes.

25 Q Okay. One of your observations is that -- in your

1 testimony is that General Motors took a tremendous one-time
2 charge against earnings for the transition benefit
3 obligation. That's at your testimony page 3, lines 19
4 through 13. Then you point out in your testimony that it
5 was not uncommon to see estimates for the escalation in the
6 cost of health care in the range of 15 to 17 percent in the
7 early 1990s, and that's over on page 4, lines 1 to 8.
8 Subsequently, you point out that there are dramatic changes
9 in the annual increases in the cost of health care, and
10 that those increases are now under 10 percent, and that's
11 at your testimony, page 4, lines 16 through 17. And your
12 conclusion is that, had this been known at the time of the
13 original estimate of the transition benefit obligation, the
14 results would have been dramatically different, and you
15 point out that the General Motors one-time charge would
16 have been less and the cost of service for utility
17 companies would have been lower, and that's at page 4,
18 lines 19 to 20.

19 But I want to ask you these questions: At the
20 time you prepared your testimony, you did not know what
21 trend rate for medical expense escalation General Motors
22 had used, did you?

23 A That's correct.

24 Q And you didn't know whether they used the 17
25 percent escalation rate or any particular escalation rate?

1 A That's correct, and, Mr. Childs, could I say that
2 I put this in merely as an example from my experience in
3 other jurisdictions. I don't know the case specifics in
4 Florida. This was put in as an example to show how some
5 forward-looking estimates could be inaccurate, and that's
6 the only purpose of putting it in, and it -- if you want to
7 go through and point out all the specifics that I really
8 didn't know, this is from general knowledge from my
9 rate-making experience in other jurisdictions, from reading
10 a General Motors Shareholders' Report, realizing what they
11 did. So we can go on, that's fine, but it was put in as an
12 example to show that forward-looking estimates can be
13 inaccurate.

14 Q And you don't know the escalation rate that
15 General -- the escalation rate that General Motors in fact
16 used was wrong, do you?

17 A Per se, that's correct.

18 Q Nor do you know that the transition benefit
19 obligation amount charged off for General Motors as a
20 one-time charge was wrong?

21 A Again, based on my experience, that would be my
22 best guess. Do I know for a fact? No, you're correct.

23 Q And you don't know what utilities in Florida used
24 a 15 to 17 percent estimate of medical expense for the
25 immediate future?

1 A That's correct.

2 Q And you don't know what the actual escalation in
3 medical expense in the early 1990s was?

4 A That's correct.

5 Q Nor have you undertaken any review of any kind to
6 determine what those actual expense escalations might be?

7 A That's correct.

8 Q You don't know the number of years that was
9 typical in the industry for the assumed escalation rate in
10 medical expense to drop or decline to six percent?

11 A Correct.

12 Q And you've reviewed no information about the
13 calculation of the transition benefit obligation under SFAS
14 106 for the telecommunication industry in Florida or for
15 the electric industry in Florida?

16 A In Florida specific, no.

17 Q And you do not know the specifics or the
18 generalities as to whether the cost to service for utility
19 companies would have been lower, as you testify on page 4,
20 line 20 of your testimony, as that assertion relates to
21 Florida utilities?

22 A Per se, that's correct.

23 Q Would you refer to page 2 of your testimony again,
24 beginning at line 5?

25 A Yes.

1 Q There you address the telecommunication industries
2 -- industry and telecommunication companies in Florida and
3 assert that, to the extent that depreciation reserve
4 deficiencies were written off as immediate charges to the
5 depreciation expense and thus reduced over-earnings,
6 increased revenue requirements, the benefit has been reaped
7 by the shareholders of the now deregulated
8 telecommunication companies. But we've established that in
9 fact it is not the telecommunication industry that supports
10 your observations, isn't that correct?

11 A It was basically GTE Florida.

12 Q And that's all?

13 A That was my primary -- that was my experience,
14 yes, GTE Florida.

15 Q And as to General Telephone of Florida, you really
16 don't know whether their actions on their depreciation
17 reserve deficiency reduced over-earnings or reduced
18 increased revenue requirements, do you?

19 A One or the other.

20 Q But you don't know?

21 A Right. I don't know which one.

22 Q Okay.

23 A But it was one or the other, which is what it says
24 here.

25 Q You reference SFAS 106 as an example of where

1 financial reporting differs from regulatory accounting.
2 That's at page 3, line 5 to 7.

3 Would you agree that the Florida Public Service
4 Commission has adopted a rule and implemented SFAS 106 in
5 Florida for accounting purposes?

6 A I believe that was perhaps the document you passed
7 out. I don't have any first-hand knowledge of it.

8 Q In fact, when we took your deposition, you did not
9 know that; is that correct?

10 A Correct, that's correct.

11 Q And the document I passed out, would you agree
12 that that was an excerpt from a General Telephone case in
13 which you testified as a witness?

14 A The document you passed out being General
15 Telephone --

16 Q I'm sorry, it was United Telephone. Did you
17 testify in that case on the implementation of SFAS 106?

18 A I don't know. I've testified in some United Tel
19 cases, also the Florida Public Counsel who -- on whose
20 behalf I testified would sometimes address SFAS 106 with
21 one of their witnesses. So, number one, I don't know if --
22 I don't recall specifically in a United Tel case,
23 particularly in a generic document -- in a generic docket
24 testifying on SFAS 106.

25 Q Page 5 of your testimony at lines 1 and 2, you

1 state, "As I stated earlier, some companies, particularly
2 telecommunication companies, wrote off a TBO as a one-time
3 charge, arguing that future recovery was not guaranteed
4 because of the future environment, namely deregulation."
5 And you continue by stating that, "In the few instances
6 where the same companies were before commissions, they
7 argued for full recovery of all the costs recorded so that
8 they could be made whole."

9 Now, I take it that the first part of your
10 testimony is that the companies wrote off the transition
11 benefit and then argued that SFAS 71 would permit them to
12 defer the expense to a future period?

13 A I didn't specifically argue that. The transition
14 benefit obligation in GTE was written off at the corporate
15 level, and for some amazing reason that never filtered back
16 down to the individual operating telephone company. So we
17 took the charge-off up at the corporate level, and when an
18 individual telephone company came in, they treated it as
19 business as usual as though it had never been written off
20 and asked for normal recovery.

21 Q Do you recall me asking you in your deposition
22 whether the GTE companies argued about the implementation
23 or the adoption of SFAS 71 to permit them to defer the
24 expense?

25 A No, I don't. I don't believe you asked me that

1 question, and certainly in the dockets I was in, the only
2 way I discovered it was getting the corporate annual report
3 because in the filings they made it was business as usual
4 as though the TBO had not been written off up at the
5 corporate level but that it still existed at the individual
6 telephone operating company.

7 So they didn't argue for SFAS-71 treatment. They
8 just did it one way for corporate purposes and another way
9 down at the operating company.

10 MR. CHILDS: I want to pass out at this time a
11 copy of a Notice of Adoption of Rule. It's Order Number
12 PSC 93-1040-FOF-PU, and ask that it be marked for
13 identification, please.

14 (Exhibit No. 10 marked for identification.)

15 CHAIRMAN JOHNSON: Mr. Childs, how much more do
16 you have for this witness?

17 MR. CHILDS: A little bit more than I already have
18 asked.

19 CHAIRMAN JOHNSON: Okay. Is this a convenient
20 breaking point? We're going to go ahead and take 15-minute
21 break.

22 (Whereupon, a recess was had in the proceeding.)

23 CHAIRMAN JOHNSON: We're going to go back on the
24 record.

25 MR. CHILDS: I've distributed what was marked for

1 identification as Exhibit 10, which is the PSC --

2 CHAIRMAN JOHNSON: I'm sorry.

3 Q (By Mr. Childs) I had distributed before the
4 break, and you marked it as Exhibit 10, and it's an order,
5 PSC 93-1040-FOF-PU, and before I get to that, Mr. deWard, I
6 want to go back again. I asked you about your testimony on
7 line 22 of page 5 where you state, "As I stated earlier."
8 Would you refer to that?

9 A Yes.

10 Q "Some companies, particularly telecommunication
11 companies, wrote off the TBO as a one-time charge." When
12 you say they wrote it off as a one-time charge, do you mean
13 they wrote it off for rate-making, for accounting, or for
14 financial reporting purposes, or all of those?

15 A For accounting and financial reporting purposes.

16 Q Did they write it off for purposes then of
17 rate-making if they wrote it off for accounting purposes?

18 A No.

19 Q No?

20 A No.

21 Q Okay. Now, the companies that we're talking about
22 then, in fact, turn out to be General Telephone; is that
23 correct?

24 A I know they did it. I believe Centel also did it,
25 that I believe I mentioned to you in the deposition. I

1 think there were some other utilities that did it, perhaps
2 Bell Atlantic, but I'm not positive.

3 Q Okay.

4 A For sure GTE did it.

5 Q All right. Then you continue to say they were
6 arguing that future recovery was not guaranteed because of
7 the current environment, namely deregulation. So let me be
8 sure I understand.

9 The point is is that they wrote it off for
10 financial reporting purposes but did not seek -- as a
11 one-time charge, is that correct, for financial reporting
12 purposes?

13 A You said "but did not seek"?

14 Q I'm sorry. Let me start over again.

15 That General Telephone Company wrote off the
16 transition benefit obligation as a one-time charge for
17 financial reporting purposes?

18 A At the corporate level, that's correct.

19 Q But they did not then seek to have the effect of
20 that recognized through rates at the State regulatory
21 level?

22 A No, because they ignored the one-time charge-off
23 at the corporate level on the state level, as though
24 business was as usual at the state level.

25 Q Then what's the point of your testimony here?

1 What is the point of the testimony about the effect of
2 competition as it relates to this docket? How does it
3 relate?

4 A Well, the whole concept of SFAS 106 I think I said
5 was an example of, where you're talking about future costs,
6 you're also talking about the possibility of one-time
7 charges versus amortization --

8 Q Okay.

9 A -- and I'm talking about the differences in
10 financial reporting purposes versus rate-making.

11 For instance, if the company's auditors agreed
12 with the company that we should write off this nuclear
13 decommissioning reserve because it may not be recoverable,
14 they could possibly take it for -- if everyone's in
15 agreement, the company and the auditors, take it as a
16 one-time charge for financial reporting purposes. It's
17 gone for financial reporting purposes. There's no more
18 worry about it in the future. But for rate-making, they
19 would present a different face. They would still like to
20 recover that for rate-making purposes.

21 Q Okay. Now, would you refer to what's been marked
22 for identification as Exhibit 10?

23 A I have it, sir.

24 Q And turn to the page Rule 25-14.012. Would you
25 accept that this rule adopts SFAS 106 for accounting in

1 Florida?

2 A I would say it does, yes.

3 Q And would you agree that under SFAS 106 the
4 utilities are permitted to reflect, for accounting
5 purposes, the transition benefit as a one-time charge?

6 A Because they're adopting SFAS 106, I would say so,
7 because that was one of the options.

8 Q Sure. So in Florida it's permissible for
9 utilities to account, for SFAS 106, transition benefit
10 obligation as a one-time charge on their books and records?

11 A I would say so, yes.

12 Q Okay. And in addition, would you agree that the
13 deferral accounting is addressed under Subsection 2 of that
14 rule and requires prior authorization from the Commission?

15 A Yes.

16 MR. CHILDS: I want to show you another document
17 and, Commissioners, there are two documents together. One
18 is a June 24, 1993, staff recommendation concerning the
19 adoption of this rule, and attached to that is an order by
20 the Florida Division of Administrative Hearings concerning
21 a rule challenge to the adoption of this rule that is Order
22 No. 95-5717-RP, and I'd like to have that marked, please.

23 CHAIRMAN JOHNSON: It will be marked as Exhibit
24 11.

25 (Exhibit No. 11 marked for identification.)

1 Q (By Mr. Childs) And would you turn to the -- at
2 the bottom it's marked as page 009, Mr. deWard.

3 A Right.

4 Q And that's the first page of the final order.

5 A I have that.

6 Q Attachment 2 to the staff recommendation.

7 A I'm sorry. I don't see any reference to
8 attachment. I'm on 009, though.

9 Q It's at the very top of that page in the upper
10 right-hand corner.

11 A I see it now.

12 Q All right. Now, if we turn to page 16 of that
13 order, 16 at the bottom, and look at paragraph 9, would you
14 look at that?

15 A I see it.

16 Q Would you agree that this statement about the
17 basic tenet of SFAS 106 in the reliability of estimates is
18 directly applicable to your criticism of the estimates
19 associated with the decommissioning reserve deficiency?

20 A No.

21 Q It recognizes specifically, does it not, that the
22 SFAS 106 accruals are based upon estimates, estimates and
23 variables that are difficult to measure?

24 A It talks about that, certainly, but my opposition
25 to the plan is, as I guess they say -- well, my opposition

1 to the plan per se is, there's no rate reduction. So this
2 talks about estimates. That's fine, and my testimony
3 talked about estimates.

4 Q I know you'd like to talk about rate reductions,
5 perhaps. I'm talking about your criticism of the plan as
6 it relates to the decommissioning expense, because you
7 state that it's based upon estimates and estimates may
8 change. Isn't it equally true with SFAS 106 costs,
9 estimates may change?

10 A I make a comparison in my testimony of SFAS 106
11 and decommissioning and say there are some similarities,
12 but there are also some differences. For instance, in SFAS
13 106, you have history to look at, where in decommissioning
14 there is not a whole lot of history to look at to determine
15 future costs. So it's not strictly that it involves
16 estimates. Yes, they both involve estimates, but I think I
17 make it clear in my testimony that, while there are some
18 changes, there are some differences, too. While there are
19 some similarities, there are also some differences.

20 Q Oh, I'm not suggesting that at any point in your
21 testimony that you suggest that the SFAS 106 costs are
22 similar to decommissioning costs. To the contrary, I think
23 you submit reliance on SFAS 106 for the principle that
24 financial reporting can be different than regulatory
25 accounting. And then if I looked at page 8 of your

1 testimony, line 7 -- would you look at that?

2 A Page 8, line 7?

3 Q Yes.

4 A Yes.

5 Q You talk about, given the unknowns, potential
6 technology changes and the potential for changes in
7 decommissioning requirements, there's no guarantee that the
8 perceived deficiency at any particular point could not turn
9 into an excess in the future. Do you have that?

10 A Yes, I see that.

11 Q Now, my point is not that your direct testimony
12 links SFAS 106 to your criticism of deficiency costs, but
13 that in fact when you look at what SFAS 106 deals with,
14 that it was explicitly recognized that using this accrual
15 would require the use of estimates and that estimates could
16 be inaccurate; wouldn't you agree?

17 A I have no problem with the statement that SFAS 106
18 relies on estimates and they could be inaccurate.

19 Q Right. And it concluded that the use of estimates
20 is superior in the bottom of that paragraph 9, than failure
21 to accrue.

22 A I'm sorry, but I kind of lost your page. I was --

23 Q Page 16.

24 A Okay.

25 Q I'm just saying that it says that the use of

1 estimates, as it called for by SFAS 106, it was concluded
2 in this order as superior to implying by failure to accrue
3 that no cost or obligation exists prior to the actual cash
4 payment of benefits to retirees.

5 A Well, that's what it says. I don't know the whole
6 background. I don't even know what attachment is --
7 Attachment 2 is, but, yes, that's what it says there.
8 Yeah.

9 Q Okay. Now if you'd turn to page 21 of that order
10 and look at paragraph 20, please.

11 A Yes.

12 Q Now, the sentence in -- sort of halfway through
13 which says, "A utility recovers accrued OPEB." First of
14 all, what does OPEB expenses mean?

15 A Well, I always get this one wrong, but I think
16 it's other post employment benefits, and "other" meaning
17 other than pensions.

18 Q Okay. Now, would you read the sentence? I don't
19 mean aloud, but just read the sentence.

20 A Which sentence?

21 Q This sentence about a utility -- in paragraph
22 number 20 that says, "A utility recovers accrued OPBE
23 expenses through rates only when the Commission takes
24 action to change rates."

25 A I've read the sentence.

1 Q Okay. And would you agree that this order dealt
2 with the implementation of SFAS 106?

3 A I'll take your representation.

4 Would I agree with it by what I've seen? I can't
5 really do that, but I'm happy to take your representation
6 that it does.

7 Q Well, maybe to help you, if you'd look at page 10,
8 the paragraph at the bottom of the page which says,
9 "Through the Office of the Public Counsel," and then read
10 that paragraph over through the three points on the next
11 page. I mean --

12 A I've read it.

13 Q Okay. This order in effect says that it is
14 addressing a challenge to the validity of the rule, I
15 believe, that we just looked at, which is marked as Exhibit
16 10.

17 A That's what it would appear to do.

18 Q Sure. Now, would you go back to page 21 of the
19 order and look at the sentence again that says, "A utility
20 recovers accrues OPBE expenses through rates."

21 A (Witness complies.)

22 Q Now, my point is, with that sentence in mind, is
23 the adoption of SFAS 106 by the Florida Commission in this
24 rule resulted in the recognition of an annual accrual for
25 the post retirement benefits other than pension, didn't

1 it?

2 A I'm sorry, could you give me that once again?

3 Q The result of the adoption of the rule which has
4 -- is in Exhibit 10, Rule 25-14.012, is that utilities in
5 Florida would recognize the annual accrual for other post
6 retirement benefits, or post retirement benefits other than
7 pension as an expense on an accrual basis?

8 A I would agree with that.

9 Q And under the rule, they could also recognize the
10 transition benefit obligation as a one-time charge?

11 A That was part of SFAS 106, so I think one could
12 conclude that, although it doesn't say that, but it says,
13 thou shalt follow SFAS 106, and that was one of the
14 provisions.

15 Q Okay. And this sentence concludes that the
16 accrued OPBE expenses are recovered through rates only when
17 the Commission takes action to change rates, and that's
18 what you disagree with; is it not?

19 A Yes, and I don't know the full context, but I
20 would see what the Public Counsel objections were to OPBE,
21 and therefore perhaps what this is saying here is, you can
22 go ahead and accrue for OPBE, but until there's a rate
23 case, and until this commission can look at all the facts
24 and circumstances that go into the determination of the
25 SFAS 106 expense, per se we're not going to allow you

1 increase or decrease rates until we get a chance to look at
2 it.

3 So again, I don't know the context, but based on
4 what Public Counsel's objections to it and what this says
5 is, don't worry, Public Counsel, we won't do anything to
6 rates until we've had a chance to look at it in a rate case
7 setting. So I would think that's the context, and maybe
8 I'm wrong.

9 Q Well, let's go back to page 11 to your point about
10 perhaps it said that the Commission could look at these
11 expenses at a later time, and I asked you to read that
12 paragraph starting on page 10. Would you turn over to page
13 11 to see that the first challenge of the validity of the
14 rule by the Office of Public Counsel is that through the
15 rule the Commission advocates its statutory duty to set
16 fair, just, compensable and non-discriminatory rates to the
17 financial accounting standards boards.

18 A I'm sorry. Was that a question or --

19 Q Yeah. Do you see that?

20 A Oh.

21 Q And if you do, wouldn't that suggest to you that
22 your conclusion that perhaps the Commission didn't intend
23 to really include it in rates is wrong?

24 A I see it as supporting my conclusion.

25 Q Okay. How about the quotation from the United

1 Telephone case that was passed out earlier to Mr. Gower,
2 have you read that before?

3 A No.

4 Q Did you read it when I passed it out to Mr.
5 Gower?

6 A I looked at one document that was passed out. I'm
7 not sure that was the one or not.

8 Q I'm going to ask you to refer to what's been
9 already marked for identification as Exhibit 9. In the
10 second page of that document, Mr. deWard, in the first full
11 paragraph is the discussion that I have reference to. All
12 right?

13 A All right.

14 Q And specifically, starting with the words
15 somewhere in the middle of that paragraph that says, "OPC
16 states that for a cost to be included in rates it must be
17 certain." Would you read that and the next several
18 sentences?

19 A Out loud or --

20 Q No, just so you know what they say.

21 A (Witness complies.)

22 Yes, I see that.

23 Q All right. Now, are you aware that this is --
24 this page is an order relating to a rate increase
25 application by United Telephone Company? In fact, if you

1 turn to page 1, I think you might see that.

2 A I see in the caption, yes.

3 Q All right. Now, this language that I asked you to
4 refer to on page 35 reflects clearly, does it not, the
5 Commission is fully aware about the argument as to the
6 uncertainty, the lack of verifiability of the accrual of
7 SFAS 106 costs; wouldn't you agree?

8 A I can read that. They are concerned about it,
9 sure.

10 Q They're not concerned about it --

11 A Sure, I've seen --

12 Q They nevertheless -- they included it in the
13 computation of rates, did they not?

14 MR. BREW: Could I ask that he allow the witness
15 to finish his sentence, please?

16 CHAIRMAN JOHNSON: Yes.

17 Q (By Mr. Childs) Sure.

18 A They talk about the uncertainty, and again, I
19 would presume that they allowed a certain level of SFAS 106
20 to be incorporated as part of rates.

21 Q Okay. Now --

22 A However, I guess going back to page 21, it seems
23 to me this kind of reaffirms my thought here about, back on
24 21, that, don't worry, Public Counsel, we'll look at SFAS
25 106 costs in the context of a rate setting, and the order

1 you just gave me was a rate setting. So don't worry about
2 it, we won't just let whatever the company says SFAS 106
3 expense should be. We'll look at it in the context of a
4 rate setting. So I think it confirms what I said on my
5 interpretation of page 21.

6 Q You made no inquiry as to the adoption of the SFAS
7 106 by this Florida Commission, did you? You made no
8 inquiry in the preparation of your testimony as to the
9 adoption of SFAS 106 by this commission, did you?

10 A No, I didn't, but you handed me some documents,
11 and I'm interpreting those selected line items on the
12 document that you handed me.

13 Q And that's my point. You made no inquiry, but you
14 testified to it in your testimony that it is a good example
15 of utilities or -- may be bound to it for reporting
16 purposes, but not for accounting.

17 A Again, when we first got into SFAS 106, I said
18 this is but a mere example of where we have forward-looking
19 costs and we have forward-looking costs in
20 decommissioning. This is just a mere example. It's based
21 on my prior regulatory experience, primarily in other
22 jurisdictions dealing with SFAS 106, in Nevada, in
23 Kentucky, in those jurisdictions.

24 Q But they don't set rates for Florida Power & Light
25 -- strike that.

1 Would you go back to what's been marked for
2 identification as Exhibit 10, which is the rule itself, and
3 tell me where in there you say that implementation of the
4 rule provisions having to do with SFAS 106 will be in the
5 context of a rate case?

6 A In the rule itself?

7 Q Sure.

8 A I don't see that.

9 Q It's not there, is it?

10 A Right. You asked me to look at this document,
11 which addressed the Public Counsel's concerns, and I said,
12 gee, it looks like that's where they talk about in a rate
13 setting.

14 Q Do you know what a rate -- a rule is and the
15 effect of a rule before this commission?

16 MR. BREW: Calls for a conclusion of law. Object
17 to the question.

18 MR. CHILDS: I guess I respond that we could
19 strike a lot of testimony on that basis. I mean, he talks
20 about SFAS 106 -- if he knows and to the extent he knows, I
21 think he can answer the question.

22 MR. BREW: He's already answered the question
23 several times that he wasn't offering it is as an example
24 of how SFAS 106 has been dealt with in Florida, and he's
25 explained that several times. What you're asking him to do

1 is testify on the basis of documents he hasn't seen.

2 MR. CHILDS: I think the witness has explained
3 that is he not testifying as to Florida when it's found out
4 that his testimony is not supported by what happened in
5 Florida, so I take exception to the characterization of the
6 testimony.

7 CHAIRMAN JOHNSON: I'm going to allow the
8 question, and to the extent, if you don't know the answer,
9 you can state that you don't know the answer, but I will
10 allow the question.

11 THE WITNESS: Could you repeat it, please?

12 Q (By Mr. Childs) Do you know the effect of a rule
13 in Florida, specifically this rule, 25-14.012?

14 A It would set particular parameters for dealing
15 with a particular issue.

16 Q Do you know whether rule -- or utilities are
17 required as a matter -- and this is as a matter of law,
18 whether you're a lawyer or not, you may know it -- to
19 comply with the rules of this commission?

20 A I would presume they are.

21 Q All right. Now, back to page 21 and this
22 particular paragraph 20.

23 A Page 20?

24 Q Excuse me. It's page 21, paragraph 20.

25 Would you agree that this observation is

1 similarly applicable to the treatment of decommissioning
2 reserve deficiency expenses, if you know?

3 A Talking about page 21?

4 Q Yes.

5 A Paragraph 20?

6 Q Right. That a utility recovers decommissioning
7 expenses through rates only when the Commission takes
8 action to change rates. Would you assume that that
9 observation is valid?

10 A Well, I don't agree with that statement per se.

11 Q Okay.

12 A So I certainly don't agree with it in this
13 context.

14 Q Okay. Now, if you'd look down to paragraph 22 on
15 that page 21 of the document, Exhibit 11, where it notes
16 that the proposed rule is a policy decision by the
17 Commission, would you agree that the proposal in this
18 docket represents a policy decision by the Commission?

19 A Actually I think it's violative of what the
20 Commission policy had been for amortizing nuclear
21 decommissioning costs over the remaining lives of the
22 units, so this is a proposed rule. I don't believe it's a
23 policy. It's a PAA, a proposed agency action, I believe is
24 what it stands for. So I don't think I would agree with
25 you, no.

1 Q Would you feel better -- well, the Commission did
2 in fact take a vote to take action as a notice of proposed
3 action, did it not?

4 A Well, I think you asked me if it was a rulemaking
5 or whatever. I don't know what the legal ramifications of
6 a proposed agency action, but I see it different than
7 rulemaking.

8 Q No, sir. I asked you whether it was policy. I
9 didn't even ask about whether it was a rule.

10 Would you agree that the action this commission
11 proposes to take -- and I think I said that, too -- in this
12 docket is policy?

13 A I look at policy as something that's
14 all-encompassing, that's going to be done generically
15 throughout, and, therefore, I would say no. It looks to me
16 like it's a specific action to -- instead of -- basically
17 to allow some write-offs against some over-earnings. So
18 it's specific to this case, and it really is not -- I can't
19 see this being a policy that the Florida Public Counsel
20 would come in and say, "Look, you've established policy.
21 We want to take these write-offs to hide our
22 over-earnings." So I think it's specific action and not a
23 policy.

24 Q Is that a legal conclusion? And I don't mean to
25 be argumentative, but the Commission said it's a policy,

1 didn't they?

2 MR. BREW: It is being argumentative. The witness
3 has answered exactly what it is.

4 MR. CHILDS: The witness can't reach a legal
5 conclusion except when he chooses to, apparently. I mean,
6 he told me what he thinks a rule is and what policy is, and
7 I'm trying follow up on it.

8 MR. BREW: Well, you're still asking for a legal
9 distinction. He's not offering a legal opinion on that
10 difference.

11 CHAIRMAN JOHNSON: Is there a question?

12 MR. CHILDS: No. If there is, it will be
13 withdrawn.

14 CHAIRMAN JOHNSON: Okay.

15 Q (By Mr. Childs) Now, we've talked about the
16 General Telephone Company case which is the basis for some
17 of your observations and your testimony, is that correct?

18 A Which General Telephone case?

19 Q The one in which you testified in Docket No.
20 920188.

21 A That one talks about a depreciation reserve
22 deficiency, yes, and then not being beneficial to rate
23 payers in the future. That's the one type --

24 Q And it also talks about SFAS 106 costs, does it
25 not?

1 A I don't think I specifically related that, but
2 yes, the GTE case did deal with SFAS 106, and as I believe
3 I told you in my deposition, I thought in that case the
4 Commission made a special exception and actually took what
5 GTE said was their SFAS 106 cost and reduced it by \$10
6 million. Now, that's from memory, from their order, and I
7 didn't re-look at the order.

8 Q They reduced it by \$10 million?

9 A That was my understanding.

10 Q Do you know why they did that?

11 A I don't recall the logic.

12 Q Would you agree that it's because you testified
13 that it was appropriate to defer it to the next year
14 because there were earnings in the year after that test
15 year?

16 A I've never really taken credit for that in the
17 past, but I would be happy to.

18 Q That you testified that, since they had certain
19 SFAS costs, 106 costs, that this commission said don't
20 recognize all of them in the test year. In the next year
21 where there are sufficient earnings, that's where they
22 should be recognized. You would be happy to take credit
23 for that?

24 A I don't specifically recall saying that, but it
25 sounds like a good theory to me right now.

1 MR. CHILDS: I'm going to show -- have a document
2 shown to the witness. It's Order No. PSC 930818-FOF-TL,
3 and will you please mark this for identification?

4 CHAIRMAN JOHNSON: It will be marked as Exhibit
5 12.

6 (Exhibit No. 12 marked for identification.)

7 Q (By Mr. Childs) Twelve? This has a copy of the
8 cover page, page 9, and page 11. Would you turn to page 11
9 and look at the first full paragraph?

10 A Page 11?

11 Q Yes, sir.

12 A And by the first full, do you mean at the
13 hearing?

14 Q Yes. And doesn't this reflect that in that case
15 you agreed that the deferral of the cost was appropriate in
16 1994 if there were increased earnings?

17 A That's what it says, and I guess probably I can't
18 take credit for it because it was probably in response, as
19 I recall now, to a Staff cross-examination question, so --

20 Q Sure. You didn't prefile testimony on this --

21 A No. I think, now that I read it, I can't claim
22 credit for it. It was in response to a Staff cross
23 question.

24 MR. CHILDS: Thank you. That's all I have.

25 CHAIRMAN JOHNSON: Staff?

1 MR. CRUZ-BUSTILLO: No, Staff has no questions,
2 Chairman Johnson.

3 CHAIRMAN JOHNSON: Commissioners? Redirect, oh,
4 I'm sorry.

5 COMMISSIONER DEASON: I do have one question. Mr.
6 deWard, you indicated that it was in response to Staff
7 questioning, but what was your -- did you have a position
8 even as a result of the cross-examination? Did you have a
9 position?

10 THE WITNESS: Commissioner Deason, we went through
11 this in my deposition. My memory's a little unclear
12 whether the Florida Public Counsel witness was the person
13 who testified on SFAS 106, and I believe -- this is from
14 memory, I believe that there was no cross for her, but then
15 the Staff had some questions and wanted to know whether I
16 would adopt the Public Counsel position of the other
17 witness, and I agreed to. So that's my memory, that it
18 wasn't my testimony per se, but then I adopted Public
19 Counsel testimony and that -- at that point the Staff asked
20 me some questions on it.

21 COMMISSIONER DEASON: And what was the position
22 that you adopted?

23 THE WITNESS: Well, we probably had a totally
24 different position than this, so I adopted probably that
25 you should continue pay as you go, I'm not sure, just from

1 memory. I don't agree with the concept of SFAS 106 myself
2 in total. So that was probably Public Counsel's position
3 that pay as you go is fine, let's keep it up, we actually
4 know what we're paying out, and let's keep it up. So that
5 would have been what I adopted, or whatever was written.

6 COMMISSIONER CLARK: Mr. deWard, I have a
7 question. On page 6 of your testimony you talk about you
8 should spread the cost of funding decommissioning
9 activities evenly over the licensed life of the assets. By
10 that, do you mean if we are at 50 percent of the useful
11 life of the nuclear units, we should also be at 50 percent
12 of decommissioning costs?

13 THE WITNESS: No. It -- what it basically means
14 is we have to be at a certain point in time -- we have to
15 be at a certain level by the date of the decommissioning.
16 Here's where we are now. So whether that be 50 percent or
17 30 percent or whatever, here's where we are now. The
18 licensed life remaining is 20 years. We'll take that
19 difference, considering, of course, what the fund earns and
20 those factors evenly over the remaining life.

21 COMMISSIONER CLARK: That is not what it says. It
22 says, "Consequently --" on page 6, line 13, it says,
23 "Consequently, the accepted rate-making for nuclear
24 decommissioning is to spread the cost of funding those
25 activities evenly over the licensed life of the assets."

1 So I took that to mean, if you're at 50 percent of
2 the licensed life, you ought to be at 50 percent of the
3 decommissioning costs.

4 THE WITNESS: It's not what it meant. Perhaps it
5 is not appropriately worded, but it actually is, once the
6 Commission has all the facts before it, what it has done in
7 the past is say where we should be, where we are, amortize
8 that over the remaining licensed life. So this was not
9 artfully worded.

10 COMMISSIONER CLARK: Well, let me ask you a
11 question about that. Wouldn't the ideal way of doing it so
12 every customer pays his or her fair share, is that it is
13 done evenly over the life of the assets?

14 THE WITNESS: In a perfect world, if today you
15 knew what it was exactly going to cost, yes, to fund it
16 evenly over the life, in a perfect world, that would be
17 appropriate. Under this plan they're saying there is a
18 perceived deficiency. Let's take it in two years, if
19 earnings permit, which I don't agree with.

20 COMMISSIONER CLARK: Okay. And why is that
21 inappropriate?

22 THE WITNESS: Well, number one, I believe you're
23 masking the fact that there's over-earnings.

24 COMMISSIONER CLARK: Well, let me ask you about
25 that.

1 THE WITNESS: Okay.

2 COMMISSIONER CLARK: If you've under-accrued, why
3 is it over-earnings, and why isn't it that you haven't
4 appropriately recognized expenses? Why is it earnings and
5 not the fact that you haven't recognized expenses that have
6 in fact occurred?

7 THE WITNESS: Well, there is -- there's a whole
8 myriad of items -- obviously you're aware of this -- a
9 whole myriad of items that go into cost of service, this
10 being one of them which is selected. I mentioned items
11 that go in the other direction, the overfunding of the
12 pension plan, the deferred tax reserves, things of that
13 nature.

14 So if you want to isolate on one item, one could
15 say, yes, logically, everyone who is on the unit should pay
16 his fair share cost. It just doesn't work out. And what
17 the Commission has done every five-year period is say,
18 let's look where we should be, where we're at and take it
19 ratably over the future instead of having this huge jump at
20 this one time.

21 COMMISSIONER CLARK: Okay.

22 COMMISSIONER DEASON: Well, let me ask you a
23 question. You mentioned deferred taxes and things of that
24 nature. A few years ago there was a question of a change
25 in the corporate tax rate and the fact that perhaps

1 deferred taxes were in an excess position and that there
2 should be some type of a recognition of that and a
3 flow-through of that. Was that flow-through over a shorter
4 period of time than the life of the assets, or how was that
5 calculated?

6 THE WITNESS: No, the -- at the same time the Tax
7 Reform Act was passed, the IRS passed specific regulations
8 that said this excess had to be flowed back ratably over
9 the remaining life of the assets. So the IRS said, unless
10 you flow it back ratably, ratably, you can lose your
11 opportunity to take accelerated depreciation. So the IRS
12 dictated what had -- there were a number of cases in other
13 jurisdictions where the Commission said, to heck with it,
14 flow it back quicker. We want to give that benefit to rate
15 payers because, if we give it back immediately, those are
16 the rate payers that would have paid the higher rate.

17 COMMISSIONER DEASON: Was that your position?

18 THE WITNESS: I don't know if I ever testified
19 that. Once I knew the IRS requirement, I was bound by it.
20 I didn't want any utility to lose its accelerated
21 depreciation.

22 CHAIRMAN JOHNSON: Redirect?

23 REDIRECT EXAMINATION

24 BY MR. BREW:

25 Q Yes. Mr. deWard, there has been a lot of

1 discussion about the treatment of SFAS 106 in Florida and
2 with respect to the Commission policy. Is there a specific
3 policy of the Commission with respect to recovering
4 decommissioning costs?

5 A Yes, there is, and that's what I've been referring
6 to, and that's determine where you should be, where you're
7 at and the ratable amortization over the remaining life.

8 MR. BREW: Thank you. That's all I have, Your
9 Honor.

10 CHAIRMAN JOHNSON: Exhibits?

11 MR. CHILDS: I move Exhibits 10 through 12.

12 MR. CRUZ-BUSTILLO: Chairman Johnson? Chairman
13 Johnson, excuse me. With respect to the exhibit that's
14 been marked for identification No. 11, it's two parts.
15 It's a -- there's a recommendation and there's an order,
16 and on behalf of Staff I just want to note for the record
17 that, with respect to the recommendation that the Florida
18 Administrative Code requires that -- first I want to state
19 for the record that I view it as hearsay and that -- and I
20 just want to reflect that the Florida Administrative Code
21 says that out of court statements or hearsay cannot be used
22 to prove an element or a fact in and of itself but can be
23 used to corroborate. And on that basis, I just want to
24 note it for the record on behalf of Staff.

25 CHAIRMAN JOHNSON: Is that an objection?

1 MR. CRUZ-BUSTILLO: No, it is not.

2 CHAIRMAN JOHNSON: Okay. Then we'll show those
3 three exhibits admitted without objection, and there are
4 still -- we still have Composite Exhibit 8 that we've not
5 moved.

6 (Exhibit Nos. 10, 11, and 12 were received into
7 evidence.)

8 MR. CRUZ-BUSTILLO: I'm sorry, Chairman Johnson.
9 I didn't hear you.

10 CHAIRMAN JOHNSON: Composite Exhibit 8 has not
11 been moved into evidence.

12 MR. CRUZ-BUSTILLO: Yeah, that's correct. I'm
13 still aware of that. We're going to wait for the next
14 witness and at the conclusion of his testimony, we'll move
15 that into evidence.

16 CHAIRMAN JOHNSON: Okay. That will be fine.
17 Thank you, sir. You're excused. We're going to go off the
18 record for a couple of minutes.

19 (Whereupon, a recess was had in the proceeding.)

20

21 (Transcript continues in sequence in Volume III.)

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25