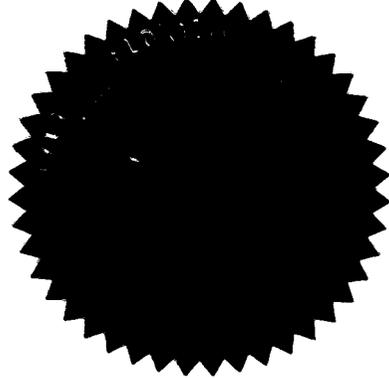


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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of : DOCKET NO. 991779-EI
:
REVIEW OF THE APPROPRIATE :
APPLICATION OF INCENTIVES TO :
WHOLESALE POWER SALES BY :
INVESTOR-OWNED ELECTRIC :
UTILITIES. :



VOLUME 1
PAGES 1 THROUGH 171

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PROCEEDINGS: HEARING

BEFORE: CHAIRMAN JOE GARCIA
COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER E. LEON JACOBS, JR.
COMMISSIONER LILA A. JABER

DATE: Wednesday, May 10, 2000

TIME: Commenced at 9:30 a.m.
Concluded at 4:05 p.m.

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

REPORTED BY: JANE FAUROT, RPR
FPSC Division of Records & Reporting
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25

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P R O C E E D I N G S

1
2 CHAIRMAN GARCIA: Good morning.

3 Counsel, did you have something?

4 MR. KEATING: Yes. Jim McGee, the attorney for
5 Florida Power Corporation and Florida Power Corporation's
6 witness had a 7:00 a.m. flight this morning from Tampa
7 that was ultimately canceled. The flight -- apparently
8 they got on another flight to take off at 9:00 o'clock
9 from Tampa so they will not be here until probably 10:30
10 this morning. Mr. Wieland, Florida Power Corporation's
11 witness, is the first witness listed. We could reconvene
12 when --

13 CHAIRMAN GARCIA: The problem is we are having
14 some time constraints because two Commissioners have to
15 travel.

16 Now, I don't want to have a trial without them,
17 but does anybody have any suggestions for me here?

18 MR. KEATING: We could take the witnesses out of
19 order.

20 CHAIRMAN GARCIA: I think that would be the way
21 to go. Let's do that. I was expecting a postponement or
22 something. I don't have my witness list, but if you
23 could -- we could begin with Mr. Stepenovitch.

24 MR. BURGESS: Mr. Chairman, I'm Steve Burgess
25 with Public Counsel's Office representing the citizens of

1 Florida.

2 CHAIRMAN GARCIA: Yes, sir.

3 MR. BURGESS: I was hoping to have the
4 Commission's indulgence to give a very brief three or four
5 minute opening statement, if you would indulge me.

6 CHAIRMAN GARCIA: We are going to do all of
7 that. I just wanted to get a feel to make sure we were
8 all right taking Mr. Stepenovitch first. If not, I was
9 just going to --

10 MR. BURGESS: I see. I apologize. I thought
11 you were calling him to the stand at this point.

12 CHAIRMAN GARCIA: No, no. I just wanted to make
13 sure Mr. Stepenovitch is here and we can do that.

14 MR. BURGESS: Okay.

15 CHAIRMAN GARCIA: Counsel, why don't you read
16 the notice.

17 MR. KEATING: Pursuant to notice issued March
18 7th, 2000, this time and place have been set for a hearing
19 in Docket Number 991779-EI, review of the appropriate
20 application of incentives to wholesale power sales by
21 investor-owned electric utilities.

22 CHAIRMAN GARCIA: Very well. We will take
23 appearances.

24 MR. BEASLEY: Commissioners, I'm James D.
25 Beasley of the law firm of Ausley and McMullen, P.O. Box

1 391, Tallahassee, Florida 32302, and I'm representing
2 Tampa Electric Company.

3 MR. STONE: Commissioners, I'm Jeffrey A. Stone
4 of the law firm Beggs and Lane in Pensacola, Florida. The
5 address is as listed in the prehearing statement, and I'm
6 representing Gulf Power Company.

7 CHAIRMAN GARCIA: Very good.

8 MR. CHILDS: My name is Matthew M. Childs of
9 Steel, Hector and Davis appearing on behalf of Florida
10 Power and Light Company.

11 MR. BURGESS: I'm Steve Burgess, address 111
12 West Madison Street, here for the Public Counsel's Office
13 representing the citizens of the State of Florida.

14 CHAIRMAN GARCIA: Thank you, Mr. Burgess.

15 MS. KAUFMAN: Vicki Gordon Kaufman of the
16 McWhirter Reeves law firm, 117 South Gadsden Street,
17 Tallahassee, 32301. I'm appearing on behalf of the
18 Florida Industrial Power Users Group.

19 CHAIRMAN GARCIA: Very good. Counsel, did we
20 agree on -- I'm sorry, go ahead.

21 MR. KEATING: I'm Cochran Keating appearing on
22 behalf of Commission staff.

23 CHAIRMAN GARCIA: Did we agree on opening
24 statements or not on this?

25 MR. KEATING: There are a few other preliminary

1 matters, as well, we might want to go through before that.

2 CHAIRMAN GARCIA: Go ahead.

3 MR. KEATING: First, Office of Public Counsel
4 filed a motion to strike certain parts of TECO's
5 testimony. That motion is moot, I believe. TECO agreed
6 to withdraw the testimony in dispute.

7 CHAIRMAN GARCIA: Okay.

8 MR. BEASLEY: Commissioners, we withdrew that
9 out of the spirit of moving this thing along and not
10 because we didn't believe that the information was
11 relevant and useful to the Commission. But we didn't want
12 to have a long argument over it.

13 CHAIRMAN GARCIA: Well, we are very happy that
14 the spirit moved you.

15 MR. KEATING: In addition, I believe in the
16 prehearing order the section entitled pending
17 confidentiality matters denotes that TECO has filed a
18 notice of intent to request confidential classification of
19 its response to a staff interrogatory. That is moot at
20 this point now because staff has returned that document to
21 TECO.

22 Also, I understand that Tampa Electric would
23 like to have the order of its witnesses changed as they
24 appear in the prehearing statement so that W. Lynn Brown
25 appears before Witness Deirdre Brown.

1 CHAIRMAN GARCIA: Okay. I don't think there is
2 any objection there. That's fine. You will remind me
3 when we get there, Counsel.

4 MR. KEATING: One last thing before we get to
5 the possibility of any opening statements. The staff has
6 prepared a list of Florida Commission orders, FERC orders,
7 a Louisiana Commission order, and the Federal Energy
8 Policy Act that we requested the Commission take official
9 recognition of. The parties were provided a copy of this
10 list Monday of this week to review. We would request that
11 it be marked for identification as Exhibit 1.

12 CHAIRMAN GARCIA: Very well.

13 MR. KEATING: And if there is no objection,
14 moved into the record.

15 CHAIRMAN GARCIA: Okay. Is there an objection?

16 MR. CHILDS: I object.

17 CHAIRMAN GARCIA: Okay.

18 MR. CHILDS: I think that it may be permissible
19 for the Commission to take administrative notice of
20 various orders of other agencies. Two of the orders that
21 have been identified by the staff are extremely lengthy,
22 Order 2000 and Order 888. I don't think it is appropriate
23 to have them admitted into the record. I think that if
24 the -- as evidence. I think that it is potentially proper
25 for them to be briefed and called to the Commission's

1 attention, but I don't want to admit that what is in that
2 order is true or necessarily proves anything.

3 I think the appropriate -- and this is
4 unfortunately rather last minute. And I don't have an
5 opportunity and would really not like to go read Order 888
6 again. I have no idea what it is offered for, either.

7 MR. BEASLEY: Commissioners, we join in that.
8 We have not reviewed these documents and this is the first
9 time I have seen this list of orders.

10 CHAIRMAN GARCIA: Mr. Keating.

11 MR. KEATING: Commissioners, I think it has been
12 fairly common practice to take recognition of Commission
13 orders and FERC orders or FCC orders. I mean, the records
14 say what they say, and it is my understanding that we
15 would like the FERC orders recognized simply to support
16 the proposition that there is a federal policy aimed at --
17 I'm sorry, the word is not coming to me -- aimed at
18 promoting wholesale sales.

19 COMMISSIONER DEASON: Are there particular
20 sections in those orders instead of having the whole order
21 being admitted?

22 MR. KEATING: In Order 888, I believe we
23 identified Pages 1 through 11 only for official
24 recognition. On Order 2000 we did not identify specific
25 pages.

1 CHAIRMAN GARCIA: Mr. Childs, you won't have to
2 read 888 then.

3 MR. CHILDS: That is good news. I think my
4 reaction, Commissioners, so that you understand, is that
5 they not only ask that you take official recognition of
6 it, he asked that it be admitted into the record. And I
7 think it is appropriate to take recognition of it. By the
8 way, I think we would stipulate there is a policy to
9 encourage wholesale sales.

10 CHAIRMAN GARCIA: Okay.

11 MR. KEATING: And I don't think what we intend
12 to do is to move those orders into the record. We are
13 simply asking that that exhibit listing the orders be
14 identified so it is clear what we have taken official
15 recognition of.

16 CHAIRMAN GARCIA: Okay.

17 MR. STONE: Commissioner, if I may weigh in on
18 this subject. My concern is particularly directed to the
19 Louisiana Commission order, which I was handed for the
20 first time today. It is not an order that I am familiar
21 with. I'm not familiar with the context in which it was
22 issued by the Louisiana Public Service Commission, and
23 therefore I have some concerns about the relevancy of the
24 order and whether or not it is germane to this proceeding
25 and whether or not it could be placed in a proper context

1 with regard to other regulatory policies in that
2 jurisdiction.

3 CHAIRMAN GARCIA: Mr. Keating.

4 COMMISSIONER CLARK: Let me just ask a question.
5 I didn't think they were being offered for proof of any
6 assertions or findings made therein, it is simply to
7 recognize that they have acted and this is what they have
8 done. But I didn't know that giving something official
9 recognition meant you incorporate as true everything that
10 is stated in the order. It is not evidence in the sense
11 of evidence of an expert witness or proof of a fact.

12 MR. CHILDS: Commissioner, that was the point I
13 was attempting to make. What I understood him to move is
14 to ask that you take official recognition and that you
15 admit it into the record. And to me there is a difference
16 there.

17 COMMISSIONER CLARK: What is the difference? I
18 don't know what the difference is.

19 MR. CHILDS: Well, I took it to mean this, that
20 if it is an exhibit without objection that it is proof of
21 whatever facts are addressed in Order 888 or 2000. And I
22 don't want it to be proof of any of those facts.

23 COMMISSIONER CLARK: Well, see, I thought
24 specifically you couldn't do that, and that is sort of
25 covered in the organic law on that subject.

1 MR. CHILDS: I thought it was covered if he had
2 asked that you take official recognition of it.

3 COMMISSIONER CLARK: Okay.

4 MR. CHILDS: But he went the next step, as I
5 understood it. Perhaps I'm mistaken, to say that you take
6 official recognition and you admit it into the report.

7 COMMISSIONER DEASON: I think the only thing we
8 are moving into the record is the exhibit, this Number 1,
9 but it is just the listing of it. So it is just for
10 administrative ease as opposed to actually admitting the
11 orders themselves into the record. That's my
12 understanding.

13 MR. CHILDS: Then I have no objection to that.

14 CHAIRMAN GARCIA: Very good.

15 MR. KEATING: And if I could just briefly
16 respond to Mr. Stone's concern about the Louisiana order.
17 We are specifically looking at Paragraph E on Page 12 of
18 that order, but we felt that the whole order should be
19 recognized so nothing is taken out of context.

20 CHAIRMAN GARCIA: Okay. All right. We have
21 identified Exhibit Number 1.

22 (Exhibit 1 marked for identification
23 and admitted into the record.)

24 MR. KEATING: And I believe at this point it
25 would be proper to determine whether we are going to hear

1 opening statements.

2 CHAIRMAN GARCIA: All right. Did we discuss
3 this at all? Did you discuss this with the parties at
4 all?

5 MR. KEATING: I believe that Public Counsel may
6 have discussed this with the parties.

7 CHAIRMAN GARCIA: Mr. Burgess.

8 MR. BURGESS: Yes, Mr. Chairman, I have
9 discussed this with each of the parties, and received
10 agreement from Florida Power and Light and from Florida
11 Power Corp that they don't have any objection to it. My
12 understanding is FIPUG and staff neither do not have any
13 objection to it, either. Gulf Power and TECO did not give
14 me any indication one way or another as to whether they
15 had a problem with it.

16 CHAIRMAN GARCIA: Mr. Burgess, you said you
17 needed three to five minutes?

18 MR. BURGESS: Yes, sir.

19 MR. BEASLEY: Mr. Chairman, if Mr. Burgess
20 presents an opening statement, we would like to reserve
21 the opportunity to also make an opening statement.

22 CHAIRMAN GARCIA: Very good. Mr. Stone.

23 MR. STONE: I would have preferred that it had
24 been brought up at the prehearing conference. It is not
25 normal to give an opening statement without requesting

1 that at the prehearing conference, and so it was fairly
2 late in the game, but I have no objection.

3 CHAIRMAN GARCIA: Will you need three to five
4 minutes?

5 MR. STONE: I will probably make a brief opening
6 statement.

7 CHAIRMAN GARCIA: Mr. Childs.

8 MR. CHILDS: I may need to, but I may waive it.

9 CHAIRMAN GARCIA: Okay. Ms. Kaufman.

10 MS. KAUFMAN: Yes, Chairman, I would like to
11 make some brief remarks.

12 CHAIRMAN GARCIA: Very good. All right. Mr.
13 Burgess.

14 MR. BURGESS: May I proceed, Mr. Chairman?

15 CHAIRMAN GARCIA: Yes, sir.

16 MR. BURGESS: Thank you very much. There will
17 be a number of pieces of testimony that will be offered on
18 this issue, and I think the best place to start for trying
19 to derive a framework for the issue is actually in base
20 rates, and that is because in base rates -- for the sales
21 that are in question in base rates the customers pay a
22 rate of return on the entirety of the assets that are used
23 to generate the sales that are in question.

24 And this is important because this is the
25 fundamental regulatory quid pro quo for reasonable service

1 at reasonable price. So the customers have already,
2 without any incentive have already paid for a reasonable
3 effort on the part of the utilities to make these sales.
4 In other words, they have provided without any additional
5 20 percent, they have provided the incentive and purchased
6 the expectation that the companies will make a reasonable
7 effort to maximize these off-system sales.

8 Now, 15 years ago when the Commission decided
9 that they weren't going to attempt to separate the assets
10 and expenses associated with these sales, it decided that
11 as an additional incentive, in addition to the incentive
12 that the customers are already paying, that they would add
13 20 percent.

14 We believed at the time and continue to believe
15 that this is unfair. It is unfair for two reasons.
16 First, the customers shouldn't have to pay twice for the
17 same service. They shouldn't have to pay for it as a
18 return in base rates and then pay an additional incentive.
19 You wouldn't hire somebody at full compensatory salary and
20 then give them a commission in addition to that.

21 I'm having my house painted. I'm not going to
22 pay that house painter the full compensatory rate for
23 painting my house and then pay him a dollar a board just
24 as an incentive to make sure he paints all the boards.
25 And this is our concern as one factor of the unfairness,

1 that you are requiring the customers to pay twice for the
2 same proposition for the same service.

3 And it is also unfair because it
4 institutionalizes a reward for substandard performance.
5 Because this requires the customers to pay for the very
6 first gain that is obtained from these sales, a utility
7 could perform below what a reasonable standard would be
8 expected to be and still receive a positive monetary
9 reward. And this is offensive as well to any type of
10 notion of fairness in the regulatory process.

11 Now, the utilities say in the fuel adjustment
12 hearing and in the prefiled testimony in this case that,
13 well, this has been an effective incentive. And I think
14 that is debatable because we don't have the information as
15 to what the sales would have been without this particular
16 incentive. But it misses the point. Because a proper
17 incentive should be effective and fair. And that is the
18 problem where this incentive, it is unfair. Just like the
19 painter. The painter who says give me the full price for
20 painting the house and a dollar a board to make sure I do
21 which you have already paid me to do.

22 I can think of a number of other incentives that
23 would be very effective, but they wouldn't be fair. I can
24 think of negative-only or penalty-only incentives that
25 could be applied for this very measure, but it might not

1 be fair. I know that my colleagues representing the
2 utilities, if you were to be entertaining a penalty-only,
3 no opportunity for a reward, but penalty-only incentive
4 for these types of sales, it would be effective, but they
5 would be clamoring because it would be unfair. And that
6 is what I'm asking the Commission to consider as it
7 considers whether to withdraw approval for using this
8 particular incentive. And whether, in fact, it should
9 consider this incentive for even being broadened for
10 purposes as the utilities are asking.

11 Now, the reason that it has come up at this
12 particular time for this particular set of hearings -- it
13 was originally raised, as I recall, by your staff who
14 wanted the Commission to look at it and see whether it is
15 still necessary. And I would submit that not only has it
16 always been unfair, but that I would agree with the
17 inference in staff's proposition that it is now
18 unnecessary, as well.

19 What we will have is testimony presented that in
20 a nutshell will demonstrate that at this point you see a
21 monopolistic enterprise that is positioning itself and
22 preparing itself for the potential of broadened
23 competition. And in order to do that, they have to have
24 an efficient use of their system. They have to have an
25 experienced, active, well-connected wholesale marketing

1 department in order to efficiently use their systems so
2 that they will be positioned and able to hit the ground
3 running if competition broadens as it applies to them.

4 So, what I would ask you to do at this point is
5 recognize that these utilities, and you will see testimony
6 these utilities are going full bore at this point.

7 Without any outside artificial incentive, they are already
8 going ahead full steam with these sales mechanisms and
9 with their efforts to expand these sales as efficiently as
10 they can without any additional incentive. Now, make no
11 mistake, if you add something to it, if you make the
12 retail ratepayers pay an incentive to get these companies
13 to do something that they are already doing, well, the
14 companies will take the money, but the point is it is not
15 necessary. It is unnecessary, it has always been unfair,
16 and we ask you to discontinue it. Thank you.

17 CHAIRMAN GARCIA: Ms. Kaufman.

18 MS. KAUFMAN: Thank you, Commissioners. My
19 position, not surprisingly, is very similar to Mr.
20 Burgess'. We think that the investor-owned utilities that
21 you all regulate have entered into a regulatory bargain
22 with you and their captive ratepayers. And as Mr. Burgess
23 said, it is the captive retail ratepayers that support the
24 assets that are being used to make these wholesale sales.
25 And as such, the utilities in return for the rate of

1 return that is provided by you, by virtue of the fact that
2 they have a captive customer base, are already being
3 incented to make the most effective and efficient use of
4 their system.

5 I think that one of the witnesses told you in
6 his prefiled testimony, I believe it was Gulf's
7 Mr. Howell, that everyone agrees that these incentives
8 have been effective. And I am here to tell you that
9 everyone does not agree with that. And, in fact, at least
10 the ratepayers that I represent see this, what we call an
11 added kicker, as totally unnecessary and essentially money
12 that should be flowing back to the retail ratepayers to
13 reduce their fuel costs.

14 We certainly don't think that the incentive
15 should be in any way broadened as I believe all of the
16 utilities seem to suggest, perhaps with the exception of
17 Florida Power Corporation. So we believe that this
18 regulatory bargain requires the utilities to use their
19 best efforts to make sales that would benefit the
20 ratepayer. And we would suggest to you that to the extent
21 you believe they are not doing that and that they need
22 some additional incentive to do what they ought to be
23 doing, that perhaps you would want to take a look at it
24 from that perspective rather than from the perspective of
25 giving them what we view as an additional reward to do

1 what they already should be doing.

2 And so we agree that the incentive should be
3 eliminated in its entirety. It certainly should not be
4 expanded beyond where it is now. We have been having this
5 debate -- this isn't the first time that this issue has
6 come before you, and we have been having this debate for
7 some time, and we have continued to maintain that you are
8 sending the wrong signal by essentially paying the
9 utilities additional money to do what our regulatory
10 bargain already requires them to do. Thank you.

11 CHAIRMAN GARCIA: Mr. Beasley.

12 MR. BEASLEY: Commissioners, thank you. We are
13 talking here about ratepayer benefits. This Commission's
14 current policy recognizes that ratepayer benefits are
15 enhanced by a positive incentive mechanism that provides
16 investor-owned electric utilities a very modest share of
17 the gains they are able to achieve for making
18 nonseparated, nonfirm wholesale sales.

19 This Commission's decision to adopt and later
20 its decision to reaffirm the incentive mechanism were
21 deliberate and well-reasoned. Retail customers of the
22 investor-owned electric utilities have received
23 significant benefits in the form of 80 percent of the
24 gains from these wholesale transactions and electric
25 utility customers throughout Florida have benefitted

1 through lower electric bills as a result.

2 The vast majority of these wholesale sales in
3 the past have been in the form of broker sales with
4 savings approaching a billion dollars according to the
5 Commission's own statistics. Tampa Electric's testimony
6 today will describe recent changes in the wholesale market
7 that have shifted the focus of these nonseparated nonfirm
8 sales from economy or split-the-savings type sales to a
9 more negotiated-oriented type of sale. This shift will
10 require even greater creativity and resourcefulness on the
11 part of utility management if they are able to retain and
12 hopefully increase the gains on these types of sales.

13 In considering the issues before you, it is
14 important to recognize that all nonseparated nonfirm
15 wholesale sales perform the same function whether they are
16 economy split-the-savings type sales or whether they are
17 the negotiated type sales that the shift is now turning
18 to. That function is to help optimize the available
19 nonfirm use of our generating resources and thereby
20 provide economic benefits to all retail customers in this
21 state. This underscores the need to apply the shareholder
22 incentives to all forms of nonseparated nonfirm wholesale
23 sales to give electric customers in this state the
24 opportunity to achieve the greatest savings possible.

25 Now, Office of Public Counsel joined by Florida

1 Industrial Power Users Group oppose outright the notion of
2 any shared savings or incentive. They claim they are not
3 needed. You need to put this in context, Commissioners.
4 Those parties traditionally have opposed utility
5 incentives even when you have found them to be beneficial
6 to both residential and industrial customers.

7 Public Counsel claimed that shareholder
8 incentives were unnecessary in the very proceeding in
9 which the Commission approved them in 1984. This is an
10 important point. This opposition does not have its
11 genesis in any recent market developments or industry
12 changes. Instead this is traditional or institutional
13 opposition to the concept of incentives, and I think Mr.
14 Burgess will not dispute me on that point.

15 As Tampa Electric's rebuttal testimony will
16 demonstrate, OPC's witness, who is the only witness who is
17 advocating any removal of the shareholder incentive, fails
18 to present any plausible or accurate basis for such a
19 drastic shift in the Commission's existing policy. Our
20 rebuttal testimony will also identify the deficiencies
21 inherent in the alternative mechanism discussed in OPC's
22 witness' testimony.

23 Commissioners, our evidence will demonstrate
24 that nonseparated nonfirm wholesale sales are becoming
25 more involved in the development, are becoming harder to

1 come by, more difficult to achieve than when the
2 Commission first adopted the 20 percent incentive back in
3 1984.

4 Clearly this is not the context in which to even
5 consider removing the existing policy of incenting
6 utilities to make these sales. Instead, we urge you to
7 approve Tampa Electric's reaffirmation of and proposed
8 improvements in the existing incentive mechanism. They
9 include, number one, confirming that the concept of an
10 incentive should apply to all nonseparated nonfirm
11 wholesale sales; and, secondly, approving Tampa Electric's
12 proposal to weigh the incentive to favor -- or to weight
13 the incentive to favor sales to utilities within Florida
14 and thereby maximize the benefit to electric utility
15 customers in this state.

16 We urge you not to send a disincentive to the
17 investor-owned utilities under your jurisdiction. Thank
18 you.

19 MR. STONE: Very briefly, Commissioners. With
20 all due respect to Mr. Burgess, I believe the place to
21 start is with the Commission's decision in Order Number
22 12923, and that is where the Commission made the decision
23 to remove the treatment or to deal with the treatment of
24 gain on economy energy sales when it removed those sales
25 from base rates and placed them in the fuel clause, and it

1 adopted what is currently the 80 percent/20 percent split
2 on that gain giving 80 percent of that gain to ratepayers
3 and 20 percent being allowed to be retained by the
4 utilities' shareholders.

5 That is the appropriate starting point, and the
6 question that has to be asked is whether or not there has
7 been any change in circumstance to justify a change in
8 policy. In fact, a change in policy to the very policy
9 that the Office of Public Counsel advocated back in 1983
10 and '84. They didn't believe the incentive then, they
11 don't believe it now. And yet the Commission determined
12 that its staff witness was correct in stating that a
13 positive incentive would preserve current levels of
14 economy sales and may result in increased sales, and that
15 the proposed incentive was appropriate to maximize the
16 amount of economy sales, provide a net benefit to the
17 ratepayer. There will be no evidence presented to you
18 today to justify a change in that policy.

19 CHAIRMAN GARCIA: Mr. Childs.

20 MR. CHILDS: First of all, we disagree with the
21 suggestion that because ratepayers pay a rate of return on
22 an asset that that makes the asset the asset of the
23 ratepayers. And I think this fits into the analogy that
24 Mr. Burgess has offered you where he used the painter and
25 said certainly you should not pay the painter twice.

1 Let's make the analogy a little more close to what we have
2 here. Under Mr. Burgess' approach, if he hired a painter
3 and that painter went out and had another contract, then
4 the first customer would want to get the profit paid to
5 them that the painter earned on the second contract. That
6 is the point. What we are talking here about is not
7 having the customer pay anything in addition. What we are
8 talking about is charging a whole separate set of
9 customers, wholesale customers, for service, and whether
10 the utility is permitted to retain a portion of the gain
11 on that sale, flowing most of it back to the retail
12 customer. So I think Mr. Burgess' analogy is wrong.

13 I also would suggest that that analogy and the
14 argument of FIPUG about what utilities are obligated to do
15 overlooks a very important point. I think utilities are
16 universally expected to take all efforts that they can to
17 reduce their costs of operation consistent with providing
18 reliable and adequate service. If a utility was
19 successful in reducing its costs of operation, I don't
20 think that the contention would be reasonably that there
21 is an automatic pass-through of all of those savings,
22 because where is the incentive to do that? Where is the
23 incentive to improve the efficiency of your operation if
24 as soon as you do so it is immediately returned?

25 We are also in a situation where I think the

1 point has been made to you that this matter was looked at
2 before, and it was, and I think that that goes directly to
3 the contention that you need a framework for your review.
4 And that under that framework you have to conclude that
5 all of the gain should go to the retail customers.

6 I would suggest to you respectfully that this
7 Commission has already made that decision about how the
8 framework should apply. I think the question may be here
9 as to whether you are going to extend this to additional
10 sales. But I don't think it is a novel principle that
11 this Commission hasn't ruled upon.

12 So for those reasons, it seems to us that you
13 have evidence before you that shows that the retail
14 customers have and will continue to receive substantial
15 benefits from off-system sales by all of the regulated
16 utilities. The point that you are being asked to consider
17 is whether as an incentive to continue those sales, to
18 promote those sales, and to increase those sales the
19 utilities should be permitted to retain some of the profit
20 for making those sales. Thank you.

21 CHAIRMAN GARCIA: We were going to start on the
22 first witness, who was --

23 MR. CHILDS: Mr. Stepenovitch.

24 CHAIRMAN GARCIA: What I'm going to ask is that
25 all of those of you who are here to testify if you could

1 please rise and we will swear the witnesses as one.

2 Raise your right hand.

3 (Witnesses sworn collectively.)

4 Whereupon,

5 JOSEPH STEPENOVITCH

6 was called as a witness on behalf of Florida Power and
7 Light Corporation, Inc., and having been duly sworn, was
8 examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. CHILDS:

11 Q Would you state your full name and address,
12 please.

13 A My name is Joseph Stepenovitch. My business
14 address is 11770 U.S. Highway 1, North Palm Beach, Florida
15 33408.

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

17 A I am employed by Florida Power and Light, and I
18 am the Director of Wholesale Operations.

19 Q Do you have before you a document entitled
20 revised prepared direct testimony of Joseph P.
21 Stepenovitch?

22 A Yes, I do.

23 Q Was that prepared by you as your testimony for
24 this proceeding?

25 A Yes, it was.

1 Q Do you have any changes or corrections to make
2 to it?

3 A No, I don't.

4 Q Do you adopt this as your testimony?

5 A Yes, I do.

6 MR. CHILDS: Commissioners, we would ask that
7 this prepared testimony of Mr. Stepenovitch consisting of
8 seven pages be inserted into the record as though read.

9 CHAIRMAN GARCIA: Very well.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of the appropriate application of incentives to wholesale power sales by investor-owned electric utilities.)))))	DOCKET NO. 991779-EI FILED: March 17, 2000
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**REVISED PREPARED DIRECT TESTIMONY
OF
JOSEPH P. STEPENOVITCH**

1 **Q. Please state your name and business address.**

2 A. My name is Joseph P. Stepenovitch. My business address is 11770
3 U.S. Highway One, North Palm Beach, Florida 33408.

4 **Q. Please state your position and the nature of your
5 responsibilities at FPL.**

6 A. I am the Director of Wholesale Operations in FPL's Energy
7 Marketing & Trading Division. My primary function in that position is
8 to oversee the overall generation asset optimization. This function
9 oversees fuel purchases/sales, power purchase/sales, and
10 transportation for fuel and power.

11 **Q. Please describe your educational background, and work
12 experience.**

13 A. I received a Bachelor of Science degree in Business Administration
14 in 1989 from Barry University in Miami, Florida. I have been

1 employed by FPL since 1980. In that time, I have held various
2 positions within FPL's Power Supply Department; (1) System
3 Operation Senior Specialist from October 1980 through February
4 1982; (2) Interchange Coordinator from February 1982 through
5 February 1986; (3) Operational Planning Supervisor from February
6 1986 through May 1991; (4) Manager of Interchange Operations
7 from May 1991 through April 1997; and (5) my current position since
8 April 1997. Prior to my employment with FPL, I worked for New
9 England Power Service Company for twelve years in a variety of
10 positions in power delivery and systems operations areas.

11 **Q. In addition to your position at FPL, do you participate in any**
12 **related organizations?**

13 **A.** Yes. I am currently FPL's representative to the Florida Energy
14 Broker Network, Inc., FRCC Market Interface Committee, and the
15 Board of Directors for NESAs (National Energy Services Association).

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

17 **A.** The purpose of my testimony is to describe why incentives are
18 appropriate and how incentives benefit both the customers and the
19 stockholders. I will describe the dramatic changes which have taken
20 place in the wholesale energy market over the past several years
21 and also describe how FPL's wholesale operations are changing in

1 order to be a well equipped participant in this new and evolving
2 market.

3 **Q. Why should the Commission approve a stockholder incentive?**

4 A. In Order 12923, the objective of establishing the incentive was to
5 maximize economy sales and provide a net benefit to customers.
6 This objective to maximize economy sales, which could provide
7 significant benefits to customers, continues to be valid today.
8 However, due to the changes in the market, as described later in my
9 testimony, the economy sales which were the subject of Order
10 12923 are practically non-existent.

11 Utilities are now making more opportunity sales outside of the broker
12 network, particularly outside of the state. This increases FPL's
13 costs. Therefore, the shareholder incentive should be extended to
14 all opportunity sales to provide adequate incentive for utilities to
15 maximize these off-system sales which will benefit customers to a
16 greater extent. FPL believes incentives would also apply to capacity
17 sales made with a utility's "temporary" excess generating capability.
18 These opportunity sales allow Florida utilities to reduce overall costs
19 through greater asset utilization. The more efficient use of capacity
20 will help minimize retail rates for all Florida customers. Applying
21 incentives to all opportunity sales also will protect against

1 disincentives such as increased O & M costs, which includes the
2 wear and tear on generation assets required to make these sales.

3 To maximize opportunity sales, additional effort is required on the
4 part of the utility to utilize additional manpower and equipment.
5 Therefore, a sharing of non-fuel revenues between retail customers
6 and stockholders is fair, and would provide an incentive for utilities
7 to pursue these sales even further. This will allow the retail
8 customers to more fully realize the benefits of existing generating
9 resources in Florida. Structured properly, incentives will motivate a
10 utility to pursue the maximum amount of savings possible.
11 Incentives will serve to promote management's willingness to
12 allocate additional resources and funds to its energy marketing and
13 trading functions. This in turn will serve to increase the frequency
14 and duration of FPL's opportunity sales, that will ultimately benefit its
15 customers as well as our shareholders.

16 **Q. Describe how the wholesale market has changed since the**
17 **incentive was initiated.**

18 **A.** Up until about 1994, FPL mainly traded with other in-state utilities in
19 broker economy transactions. Power that was traded outside the
20 state was transacted almost exclusively with Southern Company.
21 Further, FPL was mainly a net purchaser of power. Today the
22 transactions are quite different. FPL trades almost exclusively in

1 opportunity (off-broker) transactions. FPL has become a net seller of
2 power (almost two to one in recent years), and transactions for
3 wholesale power with non-utility entities have become prevalent. To
4 keep up with the market, FPL has had to enter into contracts with
5 power marketers as well as other utilities. FPL has increased the
6 number of contracts from approximately 63 to over 400 in the past
7 three years. This does not come without additional costs to FPL.
8 FPL now is keenly aware of power prices and electric markets
9 outside of Florida, and regularly sells and buys power with parties
10 located several transmission systems away. For example, FPL has
11 sold power as far away as the Pennsylvania, New Jersey, Maryland
12 Power Pool and Commonwealth Edison in Chicago. Furthermore,
13 the power market has become more complex as evidenced with the
14 creation of power exchanges and "trading hubs" as well as
15 developing forwards market (i.e., futures contracts have been
16 established in several trading venues throughout the United States).
17 Products often have to be customized and expanded to include, for
18 example, options, calls and puts (types of options), and tolling
19 arrangements (gas for electricity transactions) to name a few. In
20 addition, the State of Florida has seen a significant number of
21 independent non-regulated power companies announce the
22 intention of building merchant plants in the State of Florida. In fact,

1 Orlando Utilities Commission has sold several units to one of these
2 companies. This means more excess generating capacity in Florida
3 and thus more effort to make sales. All these facts evidence how
4 the wholesale market has become more complex over the past few
5 years, making wholesale sales transactions more competitive,
6 difficult, and challenging to make.

7 **Q. As of today, what changes has FPL made to effectively**
8 **compete with other marketing and trading organizations.**

9 A. FPL's Energy Marketing and Trading organization has had to grow
10 in order to remain competitive. We have hired new employees
11 whose skill sets were needed to help us operate in the changing
12 marketplace. FPL has merged its fuel and power activity all within
13 one group. This has enhanced our ability to arbitrage between
14 commodities and reduce price volatility to our customers. We have
15 significantly enhanced our trading and support systems, which
16 requires more information and management support. There have
17 been significant upgrades to our computer infrastructure. For
18 example, we have added a new risk management system called
19 Nucleus. We have had to gain access to all the new OASIS sites
20 and tagging systems. We have purchased software to assist us with
21 transaction evaluations. We have had to purchase weather services
22 and market publications. In order to transact in different regions and

1 with new parties, we have had to become members of various
2 power pools. FPL also added a new phone system to handle the
3 increased volume of transactions and expanded its trading floor. All
4 of these changes have added to FPL's cost structure. However,
5 customers have received a more than commensurate benefit from
6 these investments as gains on off-system sales have increased from
7 \$5.5 million in 1996 to approximately \$59.1 million in 1999.

8 **Q. Please summarize your testimony.**

9 A. The Commission's objective of establishing the incentive was to
10 maximize economy sales and provide a net benefit to customers.
11 This objective continues to be valid today. Utilities are now making
12 more opportunity sales outside of the broker network, particularly
13 outside of the state. The wholesale market has become more
14 complex, making wholesale sales transactions more competitive,
15 difficult, and challenging to make. Therefore, the shareholder
16 incentive should be extended to all opportunity sales to provide an
17 incentive for utilities to maximize these off-system sales which will
18 benefit customers.

19 **Q. Does that conclude your testimony?**

20 A. Yes it does.

21

1 BY MR. CHILDS:

2 Q And would you please summarize your testimony.

3 A Yes, I will. Good morning. The purpose of my
4 testimony today is to request Commission approval to
5 expand the application of the stockholder incentive
6 originally granted by the Commission in Order 12923 issued
7 January 24th, 1984, for economy energy broker sales to all
8 wholesale sales made by an investor-owned utility.

9 The Commission's objective then was to establish
10 an incentive to maximize economy sales and provide a net
11 benefit to the utility customers. The Florida Energy
12 Broker System worked well for many, many years. It has
13 saved FPL's customers millions and millions of dollars.
14 Plus, FPL has also benefitted because of the disincentives
15 inherent in the sale of excess megawatts.

16 But the market has changed, as all markets do.
17 Today the Florida Energy Broker System is for all
18 practical purposes no longer in use. Therefore, FPL is
19 not recovering any benefits from excess energy sales. As
20 we all know, the opening of the transmission system has
21 changed the wholesale business. These changes explained
22 more fully in my prefiled testimony, include the
23 opportunity to sell electric power into many markets that
24 were previously not available. The introduction of new
25 and more complicated products, the highly competitive

1 nature of the market today, and a more marked-based
2 approach, all of which make today's market more
3 competitive and complicated to be a participant.

4 The wholesale market today is an immature
5 commodity market. What will it be like tomorrow? I don't
6 know. What I do know is it is unlikely going to go back
7 to a cost-based split-the-savings computerized market.

8 Utilities need to have the incentive to prepare
9 themselves for the fast-moving market of the future by
10 keeping a small portion of the profits on economy type
11 sales. To be a successful participant in this new
12 competitive market, expensive investments must be made.
13 These include the addition of staff with new skill sets,
14 sophisticated and expensive trading systems, software to
15 assist in the analysis of new opportunities, expanded
16 office space, communication devices, and access to new
17 OASIS sites and tagging systems to name a few. It is also
18 necessary to become members of various power pools to have
19 access to all potential markets.

20 All the effort and investment into the new
21 market has resulted in a significant benefit to FPL's
22 customers. As a result of keeping up with the competitive
23 market, FPL's customers have received the benefits of the
24 net gains from our trading activities which have increased
25 to approximately 62 million in 1998 and \$59 million in

1 1999 from \$5.5 million just four years ago.

2 It is FPL's position that the incentive is fair
3 and equitable as it will offset such disincentives borne
4 by the stockholders, such as increased O&M costs which
5 includes wear and tear on generation assets required to
6 make these sales. FPL believes that the shareholder
7 incentive should be extended to all opportunity sales to
8 encourage utilities to invest in the new competitive
9 market and maximize wholesale sales, which will allow the
10 stockholders to recoup some of the disincentives, as
11 well -- some of these disincentives, as well as earn
12 additional benefits for FPL's customers.

13 As I said in the beginning, the staff and the
14 Commission had the insight that the incentives were good
15 in 1984. FPL continues to agree that this remains to be
16 the same today, but the wholesale world has changed and
17 incentives are needed but in a different way. Thank you.

18 MR. CHILDS: We tender the witness.

19 MR. BURGESS: Mr. Chairman, in what order did
20 you want to proceed on cross-examination? Did you want to
21 just start with us and move on around to staff or did you
22 intend to begin with staff?

23 CHAIRMAN GARCIA: I'm going to begin with you
24 and we will end with staff. I assume that none of the
25 companies have any questions.

1 MR. STONE: No questions.

2 MR. BEASLEY: No questions.

3 CHAIRMAN GARCIA: And we will assume that from
4 now on.

5 COMMISSIONER DEASON: Mr. Chairman, before the
6 cross-examination, I have just a couple of quick hopefully
7 clarifying questions and maybe now would be the
8 appropriate time.

9 CHAIRMAN GARCIA: Absolutely.

10 COMMISSIONER DEASON: Mr. Stepenovitch, did you
11 read the testimony of Mr. Wieland?

12 THE WITNESS: Yes, I did.

13 COMMISSIONER DEASON: I know he has not
14 testified yet, but he will be shortly. He made -- he also
15 testified that the incentives should be expanded to all
16 wholesale sales, nonseparated nonfirm, but he made a
17 couple of exceptions. I think one was emergency. Do you
18 agree with that concept or do you make -- do you agree or
19 disagree with that?

20 THE WITNESS: I agree with that concept. In
21 fact, Ms. Dubin has it in her testimony that we do not
22 expect incentives on Schedule A and Schedule B and
23 Schedule D.

24 COMMISSIONER DEASON: Okay. And the other
25 question, in your summary you mentioned the costs, which I

1 understand in your position can be substantial, the costs
2 of effectively participating in this changing wholesale
3 market. And that you believe that the current incentive
4 provides you the ability to recover those costs and also
5 an incentive to continue to effectively participate, is
6 that correct?

7 THE WITNESS: That is correct. We feel that the
8 incentive mechanism today, and again in Ms. Dubin's
9 testimony there is a scale-up approach, but we do agree
10 that the incentive would cover those types of additional
11 costs to prepare us for not only for today's market, but
12 for future markets.

13 COMMISSIONER DEASON: Okay. If there is ever
14 another rate case, and I don't know if there will or will
15 not be, but if there is and we get into a rate proceeding,
16 the costs which you have just described, which allows you
17 to participate in these wholesale markets, should they be
18 excluded from rate base consideration and just be allowed
19 to be recovered through an incentive mechanism?

20 THE WITNESS: I'm not sure quite how to answer
21 that. That is not really my area of expertise.

22 COMMISSIONER DEASON: I can defer the question
23 to someone else if you like.

24 THE WITNESS: I think that would probably be in
25 Ms. Dubin's area for sure.

1 COMMISSIONER DEASON: Okay. That will be fine.

2 CHAIRMAN GARCIA: Mr. Burgess.

3 MR. BURGESS: Thank you, Mr. Chairman.

4 CROSS EXAMINATION

5 BY MR. BURGESS:

6 Q Mr. Stepenovitch, do you understand that
7 different -- the different IOUs in the State of Florida
8 treat or apply the 80/20 split differently?

9 A My understanding is that is true.

10 Q Am I correct that Florida Power and Light has
11 historically applied the 80/20 incentive split to economy
12 broker network sales only?

13 A That is correct. Only Schedule C type
14 transactions. That could be on or off the broker.

15 Q I see. Can you tell me what the level of sales
16 to which the 80/20 incentive has been applied have done
17 from the period of 1996 through 1999, have you put that
18 together?

19 A We have an interrogatory response that pertains
20 to that. I'm not sure exactly about the numbers that you
21 are asking for, but there is an interrogatory that answers
22 that.

23 Q Do you recall ballpark numbers or at least the
24 direction of these particular sales?

25 A The direction both in dollars and in megawatts

1 has increased drastically.

2 Q And that is for the economy broker sales?

3 A That is for all opportunity economy type sales.

4 Q For all economy type sales. Are those the sales
5 to which Florida Power and Light has applied the 80/20
6 split?

7 A Florida Power and Light has only applied it to
8 the Schedule C type transactions.

9 Q What have those sales done since 1996?

10 A As I just stated in my opening remarks is that
11 the Florida Broker System is -- the split-the-savings
12 Florida Broker System is not operating today, so those
13 type of transactions, Schedule C type transactions are
14 practically nil.

15 Q So they have decreased precipitously in the last
16 four years?

17 A That is correct.

18 Q And yet from your testimony the economy sales
19 generally in total have increased significantly over the
20 last four years?

21 A The economy type sales have increased
22 tremendously. There are different -- just because the
23 market has changed, the market from split-the-savings
24 cost-based mechanisms, those type of transactions have
25 decreased. The market has not pursued those any more and

1 they have changed to more negotiated type of contracts.

2 Q So those sales to which you do not apply the 20
3 percent incentive split have increased significantly?

4 A That is correct.

5 MR. BURGESS: Thank you, Mr. Stepenovitch. That
6 is all we have.

7 CROSS EXAMINATION

8 BY MS. KAUFMAN:

9 Q Hello, Mr. Stepenovitch. I have a procedural
10 question for you first if that is appropriate. The
11 testimony that you just summarized is your revised
12 testimony that was filed on March 17th, is that correct?

13 A That is correct.

14 Q And you filed your original testimony on March
15 1, is that correct?

16 A I'm not sure if it was March 1.

17 Q Subject to check?

18 A I think it was right around that date.

19 Q Okay. What is the difference between your
20 original testimony and your revised testimony?

21 MR. CHILDS: Excuse me a minute. For the
22 record, I have a letter of transmittal where we filed it
23 dated April 17, 2000, where we filed the revised testimony
24 to reflect that the original testimony was filed with
25 incorrect margins, so we reformatted it.

1 MS. KAUFMAN: I was just trying to figure out
2 what the difference was, Mr. Childs.

3 MR. CHILDS: Well, I thought since there was a
4 question that you had forgotten the letter to you.

5 BY MS. KAUFMAN:

6 Q Is that your understanding, Mr. Stepenovitch,
7 that the only change is the margins, there is no change in
8 the substance between the two filings?

9 A There is no change in the substance. My
10 understanding is that the margins were incorrect, so it
11 has effectively renumbered the lines. But no change in
12 substance.

13 Q Thank you. You gave some numbers in your
14 summary, and if I wrote them down correctly, I think you
15 said that in 1998 what you characterized as economy sales,
16 you gave the number 62 million. Was that the total
17 revenue that you received from those sales?

18 A The numbers were 62 million in 1998 and 59
19 million in 1999, and that was gain on economy type sales
20 and no 80/20 split.

21 Q So that those numbers represent only the gain?

22 A Only the gain, that is correct.

23 Q And 100 percent of that gain was returned to the
24 ratepayers, is that correct?

25 A There may be very little Schedule C type

1 transactions in there. But, again, practically nil. No,
2 most of this -- I would say 99 percent of these dollars
3 flowed directly through 100 percent to the ratepayer.

4 Q Now, you are the Director of Energy Marketing
5 and Trading, is that correct?

6 A The exact title is Director of Wholesale
7 Operations in the Energy Marketing and Trading Division.

8 Q Thank you. How many people work for you or
9 under your direction and supervision?

10 A For the utility regulated division it is, I
11 believe, 12 or 14. I'm not exactly sure that report
12 directly to me. I have forgotten right at the moment.

13 Q So somewhere in the nature of 12 to 14 people
14 directly report to you?

15 A That is correct.

16 Q And these 12 to 14 people are involved in the
17 transactions that FPL makes on the wholesale market?

18 A They are involved in all the purchases, sales
19 and transportation components of both fuel and power.

20 Q Now, as the supervisor of these folks, do you
21 think that they are doing their utmost to engage in
22 transactions that are beneficial and profitable?

23 A Most definitely.

24 Q You also mention in your testimony Page 5, Line
25 6 that you have entered into some -- more than, I guess,

1 400 wholesale contracts in the past three years, is that
2 correct?

3 A That is correct. Due to the fact that the
4 market has changed considerably, and with transmission and
5 open access, the opportunity to deal with a number of
6 different counterparties is readily available to us now,
7 so that is the reason for the increase in contractual
8 counterparties.

9 Q And putting aside the miniscule amount of the
10 Schedule C sales that you deal with, these 400 sales or
11 these 400 contracts have been executed without the benefit
12 of any incentive to Florida Power and Light, is that
13 right, any additional incentive?

14 A Yes. The contracts, or the counterparties they
15 are additional entities that we can do business with with
16 these type of sales.

17 Q But my point is in directing your staff and in
18 evaluating whether or not these transactions are a good
19 idea, you have gone forward and entered into some 400
20 contracts without the additional incentive that you are
21 seeking here, is that correct?

22 A That is true. It is truly just to have enough
23 counterparties to be able to maximize either profits or
24 savings for FPL's customers.

25 Q If the Commission does not endorse the proposal

1 that Florida Power & Light has put forth in this
2 proceeding, are you intending to direct your staff to act
3 any differently than they have acted in the past in regard
4 to these sort of transactions?

5 A No, ma'am. Our job is to, again, provide
6 reliable economic energy to our customers.

7 MS. KAUFMAN: Thank you. That is all I have.

8 CHAIRMAN GARCIA: Mr. Keating.

9 CROSS EXAMINATION

10 BY MR. KEATING:

11 Q Good morning, Mr. Stepenovitch.

12 A Good morning.

13 Q I'm going to have staff hand out -- I'm going to
14 have them go ahead and hand out all three exhibits that I
15 am going to be referring to for purposes of efficiency.
16 Before I go any further I will let them hand those out.

17 All right. Now that things are settled down a
18 bit, can I get you to refer to the large packet that was
19 first handed to you. It is identified as a composite
20 exhibit consisting of a deposition transcript from your
21 deposition taken April 20th, 2000, and responses to Staff
22 Interrogatories 1 through 22, 24 through 26, 30, 33 to 36,
23 38 to 43, and 45 to 47.

24 A I have that in front of me.

25 Q Are you familiar with these documents?

1 A I'm familiar with my deposition.

2 Q Would you like to take a minute to look through
3 the documents to verify that they are what they purport to
4 be, or what I have purported them to be?

5 A Yes, I have either reviewed or seen these in the
6 past.

7 Q Okay. With regard to your deposition
8 transcript, have you had the opportunity to read the
9 transcript and make any corrections to it?

10 A I have not made the corrections yet,
11 unfortunately, but they were very minor. There was a few
12 words that were incorrect, but I have reviewed it.

13 Q And with regard to the interrogatory responses
14 in this exhibit, were those responses prepared by you or
15 under your supervision?

16 A There are a few of them here that were prepared
17 by me or under my supervision. Others are by Ms. Dubin.

18 Q Perhaps if you could -- perhaps if you could go
19 through these and let me know which ones were not prepared
20 by you. It was my understanding these were all sponsored
21 by you, and that is why we have included them in this
22 exhibit.

23 MR. CHILDS: I'm going to interpose an objection
24 at this stage. I assume that counsel for the staff
25 intends to offer these deposition -- excuse me, these

1 interrogatory responses, but I'm not sure for what purpose
2 they may be offered. And I think that is relevant to
3 proceeding with it any further. First of all, it is
4 appropriate to attempt to impeach a witness, but I don't
5 think these are being offered for that purpose.

6 If they are not, it seems to me we are awfully
7 late in the process of having exhibits offered into
8 evidence and to have them offered through someone else's
9 witness. So, first of all, maybe before we get into the
10 questions of the identification of which ones this witness
11 may have prepared or is familiar with, I am stating my
12 objection now because I'm hoping it will save some time.

13 CHAIRMAN GARCIA: Mr. Keating.

14 MR. KEATING: Commissioners, staff attempted
15 with all the parties to reach a stipulation to move
16 deposition transcripts and interrogatory responses into
17 the record of this proceeding in the interest of
18 efficiency and establishing the record.

19 We believe that all the discovery in this
20 exhibit that we seek to introduce is relevant to the
21 matters at issue in the proceeding. The deposition of Mr.
22 Stepenovitch included only questions related to the
23 matters at issue in this proceeding, and likewise the
24 interrogatories only dealt with matters relevant to this
25 proceeding.

1 We believe that there is nothing any more or
2 less relevant than any other thing in that exhibit. If
3 the Commission feels that any part of the exhibit is less
4 relevant than any other part, it may in rendering its
5 decision give that part of the exhibit the weight that it
6 believes is due.

7 MR. CHILDS: Commissioners, I am not -- I have
8 discussed this with Mr. Keating. He asked me about it,
9 and I told him that I have some objections to the
10 technical nature of it, but also that the difficulty is
11 that staff is asking --

12 CHAIRMAN GARCIA: Let's go back for a second,
13 Mr. Childs. These are responses prepared by FPL?

14 MR. CHILDS: Right.

15 CHAIRMAN GARCIA: And which staff is trying to
16 get Mr. Stepenovitch to respond to. And I don't
17 understand your objection. He didn't prepare these?

18 MR. CHILDS: Some of them he didn't. My
19 objection is this, as to the answers to interrogatories.
20 First of all, as I have told counsel for the staff who
21 called me about it yesterday, I haven't had an opportunity
22 to review them all. I have tentatively some that I think
23 may be totally irrelevant. However, I noted to him that
24 the difficulty I was having about it was that it was a
25 staff request, and I normally want to comply with a staff

1 request.

2 Technically, however, I think the staff, as any
3 other party, is required to identify their exhibits in
4 advance of the hearing. This is not being offered to
5 impeach the witness. This is being offered as part of a
6 direct case, and they weren't identified. So I am saying
7 that if we are going to proceed this way I am raising that
8 objection. We have to comply with those rules and I think
9 they should, too.

10 CHAIRMAN GARCIA: Mr. Keating, do you want to
11 respond?

12 MR. KEATING: I think we have identified the
13 exhibits to the parties, and admittedly some of the
14 parties -- we may not have let that be known to some of
15 the parties until early this week that we wished to have
16 those exhibits moved into the record. But these are
17 responses that were prepared by Florida Power and Light,
18 were given by Florida Power and Light. I guess I'm sort
19 of at a loss as to how this is not something that could
20 have been foreseen as something that would come up at the
21 hearing.

22 COMMISSIONER JABER: Mr. Chairman, may I weigh
23 in on this?

24 CHAIRMAN GARCIA: Yes.

25 COMMISSIONER JABER: I think we should cross the

1 bridge of whether he knows the responses to the questions
2 when we get to the questions. That is one way of handling
3 it. If you have questions related to the deposition and
4 the interrogatories, why don't we let him ask it. And if
5 the witness doesn't know the answer, he doesn't know the
6 answer.

7 But, generally speaking, I agree with the
8 parties with respect to staff giving parties adequate
9 notice as it relates to exhibits, judicial notice. It is
10 something I have noticed lately in the couple of hearings
11 I have had. I think that we are under the same obligation
12 to let parties know what we may be relying on. It makes
13 for a better hearing, and it would get rid of some of this
14 argument that we have.

15 COMMISSIONER DEASON: Let me -- I agree that the
16 parties need, to the extent possible, be put on notice
17 about exhibits. But at the same time, what we are
18 conducting now is cross-examination. And I don't know
19 that there is any obligation to produce an exhibit or
20 whatever is going to be covered in cross-examination.

21 What we could do, Mr. Childs, is staff could ask
22 every one of these questions which were asked at
23 deposition as cross-examination, and we could sit and
24 listen to all of that. And certainly it would be subject
25 to your objection to relevancy with it going into the

1 record, but I'm not so sure that is a time-effective way
2 to proceed at this point.

3 MR. CHILDS: Well, Commissioner, it wouldn't be,
4 but that is my point. And this is the -- I am not
5 objecting. In fact, I am making the statement that I
6 assume that these are not being offered as
7 cross-examination to impeach the witness' testimony at
8 this point. That instead they are being offered as
9 additional direct evidence through this witness. And I
10 object to that.

11 And that is why I said staff has not stated what
12 the purpose is. But rather than going through the
13 laborious process of asking the witness did he prepare
14 them and who prepared them, et cetera, that maybe we ought
15 to address that first. I have also told the staff that as
16 to answers to interrogatories, that I had preliminarily
17 reviewed them, I had some of the questions that I thought
18 that I would object to because I didn't think they were
19 appropriate, some of the interrogatories, but that I was
20 going to need more time.

21 But counsel then went ahead and is going to
22 offer them anyway. And under those circumstances I felt I
23 had to object. I have discussed with him additionally the
24 use of the deposition transcript. Technically, my view is
25 that under these circumstances, if he makes that

1 deposition part of the record he has just adopted this
2 witness' testimony as his own, and he is bound by it.

3 However, I have told him that I am willing to
4 admit all or part of that deposition transcript if it is
5 intended to be in substitution for cross-examination, but
6 I don't think you get both. And since that had not been
7 resolved, I felt that I had no alternative but to object.

8 CHAIRMAN GARCIA: Maybe I'm missing something
9 here, but it seems irregular to me. I mean, how can you
10 not accept his deposition and interrogatories that were
11 prepared by your company? I understand that he may have
12 to ask some of them again, but I don't -- Mr. Childs, I
13 don't understand what you are trying to get at. Something
14 prepared for by your company --

15 MR. CHILDS: I am objecting to the
16 interrogatories and the deposition transcript on different
17 grounds. I am objecting to the interrogatories to the
18 extent they are intended to be affirmative evidence, not
19 to impeach the witness because they are out of time.
20 Everybody in these cases is directed to identify their
21 exhibits in advance, and we did, and these weren't
22 identified.

23 Now, if they are going to offer a direct case, a
24 direct case themselves, we are entitled to be prepared to
25 respond to that. And I don't know what it is until at the

1 last minute he says I'm going to put these interrogatories
2 in. If I had known he was going to do that in advance, I
3 theoretically would have been able to say, aha, he is
4 going to pursue this point, we ought to prepare and
5 explain them or do something about them.

6 As to the deposition, just as a comment, you
7 know, when depositions are taken, depositions are taken
8 not for the purpose of an issue necessarily that is going
9 to be addressed at the hearing, but potentially relevant
10 at the hearing. And your objections are limited only as
11 to form, the form of the question. And I'm relying upon
12 the rules of procedure when I say that I think -- and I
13 told counsel I'm willing to work with him on this, if it
14 is intended to save time on cross-examination, but that
15 technically when he offers the deposition this way, that
16 is as additional proof, he has adopted this witness'
17 testimony as his own.

18 MS. KAUFMAN: Mr. Chairman, could I be heard on
19 this, if you are so inclined?

20 CHAIRMAN GARCIA: Go right ahead.

21 MS. KAUFMAN: I hardly know where to start, but
22 I think as Mr. Deason pointed out, we can sit here and we
23 can ask this witness every single question that is in his
24 deposition. And to the extent his answer differs, then
25 Mr. Childs would have his impeachment. I'm assuming that

1 probably it won't. As to the interrogatories, it is sort
2 of the same thing. These have been prepared by Florida
3 Power and Light. Now, staff or any of the parties that
4 are interested in any of these interrogatories could take
5 this witness through every single interrogatory
6 line-by-line. I think that this is a customary practice
7 at the Commission to simply save us some time.

8 And this is Mr. Childs' witness. If he is not
9 familiar with the responses in the deposition or the
10 interrogatory answers that have been provided, then that
11 is unfortunate. But this gentleman is proffered on behalf
12 of Florida Power and Light. This is his deposition. And
13 these are matters that the company has sworn under oath
14 that these interrogatory answers are true and correct. So
15 I'm puzzled by the objections.

16 CHAIRMAN GARCIA: Mr. Childs, I have to admit I
17 feel the same way. I don't understand where we are
18 varying from how we always conduct business here.

19 MR. CHILDS: Well, you shouldn't. And I don't
20 mean to try to be pedantic about it, but everybody is told
21 that they are supposed to identify their exhibits in
22 advance of the hearing. That is so there is not trial by
23 ambush, all right? Everyone is supposed to prefile their
24 testimony. That is also so there isn't trial by ambush.

25 Now, I'm saying to you that to the extent that

1 these are being offered or to be used to impeach the
2 witness, I don't think you impeach the witness -- first of
3 all, it has not be been addressed that that is their
4 purpose. Secondly, I don't think you impeach a witness by
5 saying I have got a lot of documents I want to put in the
6 record. You have to ask the question.

7 This is not the proposition that was proposed to
8 me. It was not proposed to me by Mr. Keating when he
9 asked for me to address it with him, that he was going to
10 offer these to impeach the witness. He was offering them
11 as additional direct testimony. And I object to that. We
12 are all supposed to prepare in advance. And as to the
13 argument that these are our answers, of course they are
14 our answers. But it is not necessarily, you know, an
15 issue of whether the information was prepared by you, but
16 how it is being used and whether you have an opportunity
17 to fairly present your case and respond to the case of
18 someone else.

19 And I have said repeatedly I have told counsel
20 that I'm ready to work with him on this. But if he is
21 going to just offer them all into the record this way at
22 this time, I have no alternative but to object.

23 MR. BEASLEY: Commissioners, we have the same
24 concerns, particularly as to deposition or interrogatory
25 answers. Discovery is a wide open scope. It is not

1 necessarily admissible evidence. The utilities share
2 information with the staff that is not necessarily
3 admissible. When we were approached yesterday, the day
4 before the hearing, we offered our witnesses to answer any
5 questions about any interrogatory answers that were
6 supplied. But not to just admit them as evidence without
7 being able to explain or respond to questions that are
8 specific as to the interrogatory answers. That is simply
9 inappropriate.

10 CHAIRMAN GARCIA: Mr. Keating.

11 MR. KEATING: Well, just to clarify something,
12 and I don't want to get into a massive he said/she said,
13 but we contacted -- just to clarify, we contacted most of
14 the utilities regarding the depositions last week. The
15 interrogatories admittedly we did not contact them about
16 until this week. And I just wanted that to be clear
17 before I went on.

18 Staff, in our view, was simply following the
19 procedures that have been used by the Commission before.
20 And I know Mr. Childs had asked me about this, we have
21 talked about this, but at this point in the proceedings
22 I'm not sure, you know, what time I have to work this out
23 with Mr. Childs and what procedure I can --

24 CHAIRMAN GARCIA: That is precisely where I find
25 myself, Mr. Childs. If we are going to go through all his

1 interrogatories and his entire question and answers of his
2 deposition because we haven't done this, we may have to
3 cancel this hearing. I mean, this is the first witness
4 that we have gotten to, and I know you are not being
5 pedantic, you have a point you are making. Ms. Jaber has
6 said that it should be part of the practice here. I don't
7 disagree with it.

8 If that is what you want, we can cancel this
9 hearing. We have tons of time to take this up again. But
10 what this Commission doesn't have time is to go through
11 all of this on this witness. And I understand your
12 argument. I know you are not going to fix it today.

13 Commissioners, do any of you want to add to
14 this?

15 COMMISSIONER DEASON: Well, I guess I'm -- if I
16 understand Mr. Childs correctly, basically he is saying
17 that matters such as depositions and interrogatories
18 should be presented for purposes of impeaching the
19 witness, it should not be presented for purposes of staff
20 making a direct case.

21 If staff wants to make a direct case, they
22 should file a witness and they should prepare their
23 exhibits and file them according to the procedural order
24 and the dates contained therein. So, I guess my question
25 to staff, is this part of your direct case, and is this

1 the way you are addressing your direct case; or do you
2 intend to impeach the witness with the information
3 contained in this yet unnumbered exhibit?

4 MR. KEATING: Commissioners, I feel that staff
5 is sort of in a unique position as sort of a party without
6 an interest in this matter in that we don't -- we have to
7 get the information that we seek, the utilities are the
8 only ones with possession of that information. And our
9 job is to make the record as complete as possible. And
10 what we are trying to do here today is to more efficiently
11 move through this hearing by making this information part
12 of the record.

13 MR. BURGESS: Mr. Chairman -- I'm sorry.

14 COMMISSIONER JACOBS: If I may, that is
15 consistent with the view I thought I had, is that staff
16 has the opportunity to make a direct case. But in this
17 instance this is testimony that is being presented for the
18 record, and it is my understanding that this is the
19 opportunity to cross-examine the witness.

20 If he wants to impeach him on his testimony
21 regarding the subject matter he has that opportunity. But
22 in terms of proving the interrogatories for a direct case,
23 that can be irrelevant or not. I mean, we can depend on
24 these numbers or not. But I think in terms of the
25 concepts, the testimony covers that.

1 CHAIRMAN GARCIA: Do you want to add something?

2 COMMISSIONER CLARK: I have some concern. While
3 I am sympathetic to the notion that everybody ought to put
4 on their direct case following the same rules, you do have
5 the Southern Natural Gas or whatever case it is that
6 indicates it is the responsibility of the staff to explore
7 and act as our agent, if you will, in developing issues.

8 And to that extent, I don't think there is a
9 bright line between what you can say is direct and what is
10 sort of further exploration of the concepts that are
11 advanced. And I am concerned about holding staff to the
12 same process that we hold the parties to because they
13 really aren't a party.

14 It seems to me, though, it is appropriate to
15 give some advance indication that these things are going
16 to be taken up, but I don't think it is -- you know, you
17 treat them wholly as a party, because that is not what
18 they are.

19 CHAIRMAN GARCIA: Mr. Beasley.

20 MR. BEASLEY: Commissioners, perhaps if the
21 staff has any questions about the interrogatory answers,
22 our witnesses are certainly -- the ones who prepared the
23 answers are certainly ready, willing, and able to respond
24 to specific questions about the interrogatories.

25 CHAIRMAN GARCIA: Let me do this.

1 MR. BEASLEY: We offered to do that.

2 CHAIRMAN GARCIA: Let me do this, and that will
3 make it easier. We have got two Commissioners that have
4 to leave today, and it is that simple. I expected this to
5 work as all the hearings here, apparently someone hasn't
6 seen it that way. That's fine. You guys get together.
7 If you can't find an agreement to this, we will simply
8 continue this hearing. I've got more than enough calendar
9 time to do this.

10 You are looking for an additional incentive of
11 20 percent. If you want to drag this through
12 procedurally, well, that's fine. We have got weeks of
13 time. We have got all the merchant plant hearing dates
14 all out there in the future, we can take all the time we
15 want.

16 MR. CHILDS: Commissioner --

17 CHAIRMAN GARCIA: I'm not trying to disparage
18 the position you are putting us in, Mr. Childs, but I have
19 to understand -- I have to take my legal guidance from my
20 staff and they are giving me one position, you are giving
21 me another.

22 And I understand, Mr. Childs, you want to make
23 sure that this case is presented properly. Perhaps our
24 staff didn't go by the book on this, that's fine, I'm
25 neither here nor there. If you can't get together -- I

1 will give you until 11:00 o'clock. If you can't, that is
2 fine, I don't think any Commissioner here is offended. I
3 certainly don't expect our staff to be offended. I feel
4 it is unfortunate for some of you who have spent time and
5 money getting here, that we are going to continue this,
6 and then we will get it right the next time. We have got
7 time on the calendar.

8 And so let's do this, we are going to take a
9 recess until 11:00. We will be back -- Mr. Keating, you
10 give me your recommendation then.

11 (Brief recess.)

12 CHAIRMAN GARCIA: Okay. We are going to -- yes,
13 Mr. Keating.

14 MR. KEATING: Well, we have conferred and I'm
15 not sure how far we have gotten. Tampa Electric has
16 agreed with regard to its interrogatories that those can
17 be moved into the record, but I believe they would want an
18 indication on the record that that is not a decision that
19 would have any precedential value. After conferring with
20 staff, we believe that there is no need or no reason to
21 change the existing procedures that we have in place or
22 that we have followed.

23 CHAIRMAN GARCIA: Okay. Well, then let me
24 return to my earlier suggestion. Let us then postpone
25 this hearing until we have the proper time to go through

1 it, where you meet with Mr. Childs and work your way
2 through this as well as Mr. Beasley and everyone else to
3 make sure we are on the same page.

4 I don't think we need to change the procedure.
5 But apparently they feel that you have an unfair
6 advantage. This is one of those rare instances where even
7 someone like me can understand most of what is before them
8 and what has been filed here. So it allows us for a
9 little bit more exploration of this. If they think there
10 is some precedential value here by pushing forward, then
11 let's just go ahead and -- I've got, I think, a week
12 sometime in June. We'll take it up then. We have got all
13 the time in the world.

14 MR. CHILDS: Commissioner, if you are doing that
15 for Florida Power and Light, I would ask you not to.
16 Because what I have told the staff is, and I thought we
17 were to the point where it was possible to proceed. In
18 fact, I thought we were there before. I had told them
19 that I had two questions about the deposition, actually
20 three.

21 I said I assume you are offering this to cut
22 down on your cross-examination; that is, you are offering
23 the deposition transcript. That is okay. There is a
24 question and a series of questions and answers in one area
25 that I question the relevance. I want to address that.

1 And, third, there is some additional examination by Mr.
2 Burgess, and I don't think you intended to offer that. I
3 am willing to proceed that way and let you rule.

4 As to the interrogatories, I said -- when I got
5 the word on this yesterday preliminarily, I had reviewed
6 them quickly. I haven't had a chance to talk to my
7 client, but I have yellow stickies on about five questions
8 that I would like for you to look at and see do you really
9 need them. And tell me whether you really need them.
10 Because if you don't, then we will remove the argument.
11 If you do, then I will reconsider and we can go forward.

12 CHAIRMAN GARCIA: Okay. But Mr. Beasley still
13 has questions with --

14 MR. BEASLEY: No, I don't, sir. We agree to
15 allow the depositions to be made a part of the record.
16 And Mr. Keating has indicated that we are agreeable
17 reluctantly to allow the interrogatory answers in with the
18 caveat that it shouldn't stand as precedent in future
19 proceedings.

20 CHAIRMAN GARCIA: Mr. Keating, you know where I
21 am. Tell me how you feel most comfortable.

22 MR. KEATING: Well, it wasn't necessarily our
23 recommendation that we not proceed. If it appears that we
24 can proceed, I think we should.

25 CHAIRMAN GARCIA: Okay. Let's get -- where did

1 we leave off? We were objecting to a series of questions.
2 What we are going to do then is wait until you ask those
3 questions, is that what we are doing?

4 MR. KEATING: Well, what I would propose, I am
5 going to -- I'm going to ask certain of the
6 interrogatories that Mr. Childs had a question about on
7 cross-examination and remove those from the exhibit. That
8 will limit us to me asking just a handful of questions.

9 CHAIRMAN GARCIA: Great.

10 MR. BURGESS: With regard to what is in the
11 deposition, perhaps when we seek to move that deposition
12 into the record there can be an argument on what is
13 objectionable in that exhibit.

14 MR. CHILDS: I can do that.

15 CHAIRMAN GARCIA: Okay. Very good. Which
16 questions do you want to -- well, we can do that at the
17 end and just move it at the end. We will identify it now
18 for purposes of your questioning. That is Exhibit Number
19 2, if I'm not mistaken.

20 MR. KEATING: Correct. I'm not sure exactly
21 where I left off. Let me go back and have him verify the
22 exhibit.

23 CHAIRMAN GARCIA: I'm sorry?

24 MR. KEATING: I feel I should go back and have
25 him verify the exhibit. I don't think I completed that.

1 BY MR. KEATING:

2 Q Mr. Stepenovitch, I believe I had asked you
3 previously if you were familiar with the exhibit that is
4 identified as a composite exhibit consisting of your
5 deposition taken April 20th and responses to certain staff
6 interrogatories?

7 A Yes, I am familiar with that.

8 Q And you have verified that those documents are
9 what they are purported to be?

10 A Yes, I have.

11 Q And with regard to the deposition transcript,
12 have you had the opportunity to read the transcript and
13 make any corrections to it?

14 A I have read the deposition. And there are a few
15 wording changes, but they are very minor and I have not
16 corrected those yet.

17 Q And I think this is where we left off. I would
18 ask if the responses to the interrogatories listed in this
19 exhibit were prepared by you or under your supervision? I
20 believe you indicated that some of these may have been
21 prepared by Ms. Dubin?

22 A The correct answer, what I should have said they
23 were co-sponsored. And some areas of these questions were
24 prepared by her.

25 Q And I believe that may have been what led to

1 some of the confusion is that we had identified them as
2 being prepared by you, although they were technically
3 co-sponsored by you?

4 A Yes. There was a few of them co-sponsored, that
5 is correct.

6 Q Are these responses true and correct to the best
7 of your knowledge and belief?

8 A Yes, they are.

9 MR. BURGESS: And have we marked this exhibit
10 for identification?

11 CHAIRMAN GARCIA: I don't think we did, but it
12 is Exhibit 2 if we didn't.

13 (Exhibit 2 marked for identification.)

14 MR. KEATING: I'm making sure that I cover
15 everything that I have agreed to.

16 CHAIRMAN GARCIA: Okay.

17 BY MR. BURGESS:

18 Q Mr. Stepenovitch, has Florida Power and Light
19 ever sold nonseparated wholesale energy on a firm basis
20 with a recallable provision?

21 MR. CHILDS: I think we are now into one of the
22 interrogatories that I object because it relates to firm.
23 That is the basis for my objection. I didn't think it is
24 relevant to this proceeding.

25 CHAIRMAN GARCIA: Hang on for a second. We

1 identified the exhibit, now you are going into the
2 interrogatories. Now, weren't there a series of them that
3 you were just going to -- or you will move them in at the
4 end?

5 MR. KEATING: This is one of the interrogatories
6 that I said I would ask the question rather than attempt
7 to move the response.

8 CHAIRMAN GARCIA: All right. And, I'm sorry, my
9 concentration lapsed. What was the question you just
10 asked, which one was it?

11 MR. KEATING: The question was -- it is
12 Interrogatory Number 35. Has Florida Power and Light ever
13 sold nonseparated wholesale energy on a firm basis that
14 had a recallable provision?

15 CHAIRMAN GARCIA: Okay. And, Mr. Childs, could
16 you restate your objection.

17 MR. CHILDS: I am objecting because I think it
18 covers transactions that go beyond what I thought we were
19 talking about in this case, which was the sales that are
20 subject to -- potentially subject to there being an
21 incentive. That is how I understood the question as being
22 that broad.

23 MR. KEATING: We see it as relevant to Issue 2,
24 which asks that if the incentive is continued or expanded
25 what sales should it be applied to, and we have received

1 testimony from at least one witness that I recall that --

2 CHAIRMAN GARCIA: I will allow it.

3 MR. BURGESS: -- suggests firm sales as well as
4 nonfirm.

5 BY MR. BURGESS:

6 Q Should I repeat the question?

7 A No. The answer is no.

8 Q Could you look at the exhibit that was handed
9 out with the title, "Summary of current and proposed
10 incentive treatment"?

11 A Yes, I have that in front of me.

12 Q Would you look at the column labelled Florida
13 Power and Light. If you could briefly look through that
14 and tell me if the information in that column is correct
15 or should be clarified?

16 A Yes. Under current treatment of incentives it
17 says 20 percent on split-the-savings broker sales. It
18 could be also off-broker Schedule C sales. The applicable
19 schedule is current, it is only Schedule C. Schedule X
20 was eliminated and discontinued by FPL. I don't remember
21 exactly what date, it was either late '94 or the beginning
22 of '95. Employee compensation linked to sales, the answer
23 is no. Proposed treatment of incentives, if I remember
24 Ms. Dubin's testimony correctly that is correct. And,
25 again, applicable schedules, the last one, X needs to be

1 eliminated.

2 Q Let me ask you about the row entitled, "Employee
3 compensation linked to sales." You said that that answer
4 should be no?

5 A That is exactly right. There is no commission
6 for sales in our group.

7 Q Now, in the deposition, in your deposition --

8 CHAIRMAN GARCIA: I'm curious, why? You are
9 sort of coming in here asking for a commission on your
10 sales so that you incentivize your company, why is it your
11 sales wouldn't be incentivized in a similar manner?

12 THE WITNESS: The way I read this, sir, is that
13 it is only sales that it is linked to. We have a number
14 of different goals and objectives within our group, one of
15 them is purchases, one of them is sales, economics; there
16 is a number of different things that we have to perform
17 for our compensation package in a year's time, and it is
18 not linked directly to sales.

19 CHAIRMAN GARCIA: Okay.

20 BY MR. KEATING:

21 Q Do you recall in your deposition staff had asked
22 some questions about if employee compensation was linked
23 to wholesale sales?

24 A Yes, I do.

25 Q Could you refer to Page 12 and 14 of your

1 deposition?

2 A Starting on any line specifically?

3 Q On Page 12, beginning at Line 8, staff asked the
4 question, and in that response you indicate how those
5 employees are compensated, referring to an interrogatory
6 response, and asked you to elaborate on the compensation
7 or how those employees are compensated?

8 A I have it in front of me.

9 Q To get directly to it, I believe at Page 13 on
10 Line 11.

11 A I see where you asked me the question on
12 wholesale sales. And, again, my answer is -- my
13 interpretation of my answer is just what I told the
14 Commissioner, is that it is a piece of a number of
15 different goals and objectives in our department.

16 Q So there is not an individual incentive, but a
17 company incentive?

18 A There is no commission excluded or exclusively
19 just for sales. As I said, it is a compensation package
20 that is reviewed annually and that you are compensated on
21 how you do all of your key responsibility areas. And
22 there is a number of different things in there, i.e.,
23 again, purchases, sales, transportation, contractual
24 mechanisms, how well you follow your procedures, your risk
25 management policies, your credit checks, all of those

1 things associated with that then you are rated accordingly
2 by your supervisor.

3 Q Now, wouldn't Florida Power and Light's power
4 marketing department marketers, they are referred to key
5 responsibility areas, be fairly limited to sales?

6 A Fairly what?

7 Q Fairly limited to sales. That is, they are --
8 you told me, I believe, that the employees are evaluated
9 based on the performance with respect to key
10 responsibility areas, is that correct?

11 A Again, the key responsibility areas, there are
12 numerous key responsibility areas. And if you are asking
13 any of the employees that work for me or in the power
14 marketing group, they are strictly -- they have one job,
15 it is to produce sales for the utility, and that is
16 incorrect. We do not specifically do that. We do a
17 number of different opportunities.

18 You know, as I said, the market has changed
19 considerably. And there is a number of different things
20 that we have to take into place. And I don't want to
21 repeat myself; but it is sales, purchases, transportation,
22 tariffs, making sure that they understand all the tariffs,
23 making sure they follow their credit policies, making sure
24 that they follow their risk management procedures.

25 Again, it is a very complex situation of where

1 the market is today and it is not strictly designed for
2 sales.

3 Q So are sales given any more weight than any
4 other factor?

5 A No, they are not.

6 Q Would you agree that sales is part of the
7 factor, is a factor in determining whether an employee has
8 met his key responsibility or exceeded the expectations in
9 his key responsibility areas?

10 A That was a long question. I want to make sure I
11 understood it.

12 Q Would you agree that the level of sales an
13 employee makes is a factor in determining whether he has,
14 I guess, succeeded in whatever goals were set or whatever
15 key responsibility areas are assigned to him?

16 A Again, the level of sales -- the answer is -- if
17 I understood that question, the answer is yes. The level
18 of sales is a component of a number of people in our
19 organization on how they go through their daily duties.
20 And their daily duties, again, consist of buying, selling,
21 making sure we have the transport, making sure that they
22 could put their OASIS tags in, making sure they
23 communicated with all the counterparties, and making sure
24 that the credit policies have fallen in place.

25 Again, it is a very, very complex system that we

1 have to go through today versus five years ago when it was
2 strictly just a cost-based split-the-savings type system.
3 It was all done for you then. Now it is a different
4 market. And, again, it is -- I feel like I'm repeating
5 myself -- it is very complicating and complex to be a
6 participant in this market.

7 COMMISSIONER JACOBS: At this level, and we are
8 speaking about incentives now, and that is what this
9 docket is about, aren't the driving forces about how you
10 maximize delivery of your ultimate product -- and let me
11 digress for a moment. Aren't you in a mode, isn't your
12 corporate mind-set in a mode to maximize the use of your
13 assets simply by the virtue that you have a power
14 marketing arm?

15 THE WITNESS: That's correct, sir. As I stated
16 in the beginning, is that our job is to reliably and
17 economically provide power to our customers. And we do
18 that by participating in the market.

19 COMMISSIONER JACOBS: And wouldn't you assume
20 that that affiliate is going to do its job?

21 THE WITNESS: It is a division. It's not an
22 affiliate, it is a division in our company. And, yes, the
23 answer is yes, we are going to maximize our assets to the
24 best of our abilities. And that is where the incentive
25 comes in. The incentive comes in that we are doing great

1 today, we could be doing even better with the incentive by
2 being a larger, more sophisticated participant in the
3 market.

4 COMMISSIONER JACOBS: Okay. I can accept that,
5 and that should be your objective. No problem. When we
6 look at the public policy reasons why we would want as a
7 matter of public policy to join with you in that venture,
8 shouldn't we also have some benefits that we should be
9 looking to that accrue back to the public?

10 THE WITNESS: And that is why we are saying,
11 sir, that -- first of all, the answer is yes. What we are
12 saying is that we are only asking for a piece of an
13 incentive, or a piece of the profit, a piece of the gains.
14 Where I think what we have got to look at, there are many,
15 many, many other entities that are doing business in the
16 southeast United States today. They are keeping 100
17 percent of the profits. Now we are only asking for a
18 piece, and to continue on to become better to be able to
19 compete for the future.

20 COMMISSIONER JACOBS: There was one other point
21 that you brought up in your testimony that the implication
22 was that this activity increases your overall cost burden.
23 Wouldn't you expect that at a minimum, if you are going to
24 engage in this area, that you are going to recover the
25 essence -- at least your marginal costs and probably more

1 than that?

2 THE WITNESS: I'm not sure if I understood that,
3 sir. But are you asking is the 20/40, the sliding scale
4 that we have proposed, is that going to cover our costs?

5 COMMISSIONER JACOBS: No. The implication was
6 that one of the rationales that we might want to apply to
7 give you further incentives to engage in these opportunity
8 sales is that your efforts to engage in these sales
9 exposes you to additional cost burdens.

10 THE WITNESS: Oh, most definitely. As things
11 increase, as complexities increases, everything that I
12 just repeated a few minutes ago, as we get involved in all
13 of those things, yes, the costs are going to increase.

14 COMMISSIONER JACOBS: And I can accept that.
15 Wouldn't it be a fundamental component of your analysis to
16 engage in this area that it should cover its marginal
17 cost?

18 THE WITNESS: Yes, it should cover its marginal
19 cost.

20 COMMISSIONER JACOBS: Okay. And wouldn't recent
21 experience suggest that it would more than cover and
22 perhaps exceed its marginal cost?

23 THE WITNESS: Well, sir, it is not only our
24 costs of being involved in the market, it is also
25 additional cost. In my testimony I have also said there

1 is really wear and tear on the units. And as we have
2 discussed -- again, I'm not a mechanical engineer, but
3 every piece of machinery, the more you run it, the more
4 maintenance it has, the more opportunities for it to
5 break. And to run that as economically and as efficient
6 as possible, it is going to take more dollars. And I
7 don't know what those dollars are, but is it more than
8 going to cover? I would think over time that probably the
9 answer is it is either going to equal or be at that same
10 mark. I don't think it is going to exceed.

11 COMMISSIONER JACOBS: Okay. Thank you.

12 BY MR. KEATING:

13 Q And I just wanted to wrap up on my previous
14 questions. Just to be clear, your marketers are
15 compensated -- well, sales are a factor in the
16 compensation of your marketing employees, your marketers,
17 but you are telling me that it is one of several factors?

18 A Yes. Correct, it is one of several factors.

19 MR. KEATING: With the clarifications made, I
20 would like to have the exhibit entitled summary of current
21 proposed treatment marked for identification. I believe
22 that would be Exhibit 3.

23 (Exhibit 3 marked for identification.)

24 BY MR. KEATING:

25 Q Now, you said that FPL currently applies the 20

1 percent shareholder incentive to only Schedule C sales, is
2 that correct?

3 A That is correct.

4 Q And what is the term of these sales, the length
5 of these types of sales?

6 A Normally, the Schedule C type sales are, I would
7 say very short-term in nature, from one hour to possibly
8 if they were an off-broker Type C transaction, we have
9 done those up to a week. The contractual mechanism in
10 place today under Schedule C, if I remember correctly, the
11 term of it could go to a year.

12 Q And you stated, it is correct that Florida Power
13 and Light's proposal is to apply the 20 percent
14 shareholder incentive or to apply an incentive not only to
15 Schedule C sales, but to sales made under FPL's Tariff
16 Number 1 and its market-based tariff?

17 A That is correct. Schedule C, Tariff Number 1,
18 and our market-based rates tariff. At this point in time
19 it is three.

20 Q When did Florida Power and Light receive
21 authority from FERC to charge market-based rates?

22 A Just a point of clarification, it is charge
23 market-based rates outside the State of Florida only. And
24 that -- I believe it was about year and a half or two
25 years ago, and I don't remember the exact date. But,

1 again, it is only outside the State of Florida. Inside
2 the State of Florida under Tariff 1 it is cost-based.

3 Q Is it correct that your proposal includes sales
4 that may have a capacity component?

5 A Both tariffs have the provision to have a
6 capacity component, yes.

7 Q Is Florida Power and Light in presenting its
8 proposal relying on any evidence that it has found that
9 increasing the shareholder incentive will encourage
10 nonseparated wholesale energy sales to such a degree that
11 their ratepayers will receive a net benefit?

12 A As part of an analysis, no. But what I can tell
13 you is that the numbers that I have quoted \$5.5 million
14 four years ago, \$62 million in 1998, \$59 million in 1999,
15 the incentive is there for us to do that. We are looking
16 to do -- as I said before, we definitely do a great job.
17 We even look to do a better job. And that is where the
18 incentive comes in. The incentive comes in -- if there is
19 an incentive, we are going to plan on even doing better
20 than what we have the last two years.

21 Q Would you agree that those types of sales would
22 have to increase by 20 percent or greater in order for the
23 ratepayers to see a net benefit under your proposal? I'm
24 sorry, the gains from those sales.

25 A Well, if you look at the numbers that we have

1 today, yes, we are going to have to do better for it to
2 net out, if I understand your answer correctly. But,
3 again, today look at from the past four years on how many
4 dollars that have gone into -- the \$120 million that have
5 gone to the ratepayer today, and there has been no
6 incentive in place.

7 Q I believe at Page 18 of your deposition you
8 discuss some other factors other than stockholder
9 incentives that may have influenced the level of these
10 sales?

11 A Do you have a specific line?

12 Q Starting on your answer at Line 12. And would
13 you agree that there are other factors that influence the
14 level of wholesale sales, specifically the nonseparated
15 wholesale sales at issue in this docket?

16 A Could I have a second to review it?

17 Q Sure.

18 A Yes. I have reviewed this. And, yes, you are
19 right. There are many other incentives that would come
20 into play.

21 Q What are those other factors?

22 A When you say create -- your question is what are
23 the other incentives that create a net benefit for
24 ratepayers?

25 Q What other factors besides the shareholder

1 incentive would incent Florida Power and Light to continue
2 to make and to increase the level of their nonseparated
3 wholesale sales?

4 A Most definitely to provide reliable economic
5 power to our customers. And that is the major incentive
6 is to do just that, is to continue on providing
7 electricity as reasonable as possible. The other major
8 incentive is to run the asset as economically and as
9 efficiently as possible. As we all know, again, we have
10 talked about the wear and tear of a unit, if you run that
11 unit at a reliable steady state it is going to run more
12 efficiently, which provides economics to our customers,
13 again. So those are just two of the factors.

14 Q Okay. Are there any other factors?

15 A Again, economic power, reliable power, running
16 the units efficiently, those are the ones that really come
17 to mind right now as the biggest factors.

18 Q Well, let me move on. You have also stated and
19 I believe it may have been mentioned in your deposition,
20 but in your testimony and here today that gains on
21 off-system sales have increased from 5.5 million in 1996
22 to approximately 59.1 million in 1999, is that correct?

23 A That's correct.

24 Q Okay. And I believe in your deposition I asked
25 what are the primary factors that have caused this

1 increase in the gains. Do you recall your response?

2 A The primary factors that caused the gain? I
3 think I remember that in my deposition, yes.

4 Q That is on Page 19, beginning at Line 14.

5 A Yes.

6 Q I believe in your response you stated that there
7 has been a more aggressive approach to enter the wholesale
8 market, is that correct, by Florida Power and Light?

9 A That is correct, that is exactly what I said.

10 Q And that Florida Power and Light has built up a
11 larger marketing and trading division to help compete in
12 that market?

13 A That is exactly what I said.

14 Q Was the majority of the increase in gains from
15 '96 to 1999 associated with sales on which Florida Power
16 and Light did not apply the stockholder incentive?

17 A Yes. There was only a very small portion, if I
18 remember the numbers correctly, a very small portion of
19 Schedule C type transaction that it was applied to.
20 Everything else was applied to -- everything else, the
21 transactions went under Tariff 1, or the market-based
22 rates tariff, and there was not an incentive applied to
23 those.

24 Q And if I could get you to refer to the third
25 exhibit that was handed out, and it is a one-page exhibit

1 entitled, "Application of current and proposed stockholder
2 incentive." Do you have that in front of you?

3 A I have that in front of me.

4 Q If you could refer to, I guess, the third and
5 fourth columns that are titled FPL actual and FPL
6 proposed?

7 A I have that.

8 Q The source of the data that is in that table is
9 listed below the table. Would you agree that that data is
10 correct?

11 A I have no reason to disbelieve that it is
12 incorrect.

13 MR. CHILDS: Well, wait a minute. I think you
14 want to say you have no reason to believe that it is
15 incorrect.

16 THE WITNESS: Believe that it is incorrect, I'm
17 sorry. It appears to be correct, I'm sorry.

18 BY MR. KEATING:

19 Q Looking at this table, at the line for 1999,
20 last year's sales, under your proposal FPL's stockholders
21 would have received -- I'm sorry, looking at the total for
22 1994 through 1999, the bottom of the table, under FPL's
23 proposal FPL's stockholders would have received almost \$50
24 million more over that five-year period shown if FPL's
25 proposed incentive was in place, correct? And that is

1 assuming that sales did not change as a result of that
2 incentive.

3 A It appears to be correct, yes.

4 Q Instead that amount over that period was
5 returned to ratepayers, correct?

6 A Again, I would have to just clarify that if the
7 Schedule C type transactions are taken out of here, then
8 this number is right. And you are right, all of these
9 dollars at this point in time flow through to the
10 ratepayer.

11 Q And I'm not sure I understood, if the Schedule C
12 transactions are taken out?

13 A Again, I keep clarifying that the Schedule Cs
14 have an 80/20 piece, and I'm assuming that they were taken
15 out of these numbers. That is the only clarification I
16 want to make.

17 Q Correct. And I believe that I had asked you to
18 verify if you believed that that data was correct and the
19 column, "FPL actual," that was what we received from
20 Florida Power and Light to indicate the 20 percent
21 stockholder incentive, the amount of the incentive that
22 was actually taken on sales during that period.

23 So according to your testimony, that incentive
24 is based solely on Schedule C sales that you applied the
25 incentive to?

1 A Correct.

2 Q In looking at the trends in those two columns,
3 if the FPL actual column is the incentive that was applied
4 to Schedule C sales, and the FPL proposed column, as we
5 have said, is the incentive that would have been applied
6 to all the types of sales under the incentive structure
7 that FPL has recommended, the sales, the Schedule C sales
8 have decreased dramatically, is that correct?

9 A That's correct.

10 Q And the other types of sales that FPL is
11 proposing to take an incentive on have increased
12 dramatically?

13 A That's correct. I guess I would like to also --
14 and not only have those increased, but our costs have
15 increased, also. Costs to do these types of transactions
16 has increased.

17 Q Doesn't this brief history indicate to you that
18 market incentives are stronger than an artificial
19 incentive supplied by the Commission?

20 A Repeat that again, please.

21 Q Well, let me take a step back. The types of
22 sales that you have told us that FPL has proposed to take
23 the incentive on include market-based sales, correct?

24 A Including market-based rate sales, yes, that
25 tariff.

1 Q Would you say that the majority of the sales
2 that FPL proposes to take the incentive on are
3 market-based sales?

4 A I believe that is correct. I don't have the
5 numbers in front of me, but I believe that the answer
6 would be correct that most of our sales have gone out of
7 the State of Florida, quite a few of our sales.

8 Q So looking at the trends established or that
9 appear pretty evidently from this table that I have handed
10 out and that you have noted, doesn't that indicate to you
11 that market incentives to make these market-based sales
12 are stronger than artificial incentives supplied by the
13 Commission?

14 A I'm not completely sure I understand that
15 question. But the market incentives to me would be that
16 our utility is going to do what is best for the utility
17 and the customer. And in the wholesale market instance,
18 we are going to go where the highest -- where we can get
19 the most benefit for our customer. And during the last
20 year or so that benefit in the wholesale market has been
21 outside the State of Florida.

22 COMMISSIONER JABER: Can I ask a question,
23 staff, here? How much of your sales go outside the State
24 of Florida, do you know?

25 THE WITNESS: I believe last year the nonfirm

1 economy type sales was in the 75 to 80 percent range went
2 outside the State of Florida.

3 COMMISSIONER JABER: Thank you.

4 BY MR. KEATING:

5 Q It just appears to me from looking at this
6 table, from looking at the data that was provided, that
7 Florida Power and Light is already exhibiting the type of
8 behavior that your proposed incentive seeks to induce.
9 Would you agree with that?

10 A I agree. As you can see through the drastic
11 increase in the sales that we have made under all of our
12 tariffs that, yes, we have taken the stance of doing what
13 is best for our customer, and that is how we achieved \$120
14 million in the last two years.

15 MR. KEATING: If I haven't already, I would like
16 to get that table marked as, I believe, Exhibit 4.

17 (Exhibit 4 marked for identification.)

18 BY MR. KEATING:

19 Q Does Florida Power and Light have an incentive
20 to maximize the savings it derives from purchasing
21 wholesale energy?

22 A Yes, we maximize both savings and gains for the
23 customer. Whatever, what units we have on dictates
24 whether we purchase, whether we sell. However we can
25 economically provide electricity to our customer, then

1 whether it is a buy or a sale, we do both as aggressively
2 as we can.

3 Q So that incentive is to basically keep the rates
4 low for the customer?

5 A Our incentive is to provide the most economical
6 power to our customer.

7 Q Now, Florida Power and Light uses its marketing
8 department not only to make sales, but also to make
9 purchases, is that correct?

10 A That is correct.

11 Q So the expenses for that department cannot be
12 fairly characterized as being entirely dedicated to sales,
13 correct?

14 A Yes. The expenses that we have stated in the
15 interrogatory is for the power marketing group. And it
16 was difficult for us to split it out between purchases and
17 sales.

18 Q But what is in your interrogatory response that
19 was provided should indicate to us what portion of those
20 expenses is properly allocated to sales?

21 A No, what I said was it was a total.

22 Q Okay. You said it would be difficult to
23 determine how to break those out, how to break those
24 expenses out into allocating them to purchases or sales?

25 A We don't allocate time to any one of us whether

1 it is a purchase or a sale, or a transportation, or fuel,
2 or anything of that nature. It is all done by the same
3 group.

4 Q Does Florida Power and Light account for its
5 incentives below-the-line? That is, does Florida Power
6 and Light account for the 20 percent incentive amount
7 below-the-line?

8 A I think you better clarify with Ms. Dubin. But
9 I have been told that that is correct, it is
10 below-the-line.

11 Q I will follow up with Ms. Dubin. Let's see.

12 Mr. Stepenovitch, in your deposition I asked if
13 you believed it was appropriate for an IOU to sell
14 nonseparated wholesale energy while it is simultaneously
15 interrupting or curtailing nonfirm retail customers. I
16 believe this is one of the questions or portions of the
17 deposition that Mr. Childs may have an objection to.

18 MR. CHILDS: It is. And it was starting on
19 Page 28, Line 17 of the deposition, and it continued
20 through Page 29, Line 19.

21 And the basis of my objection would be that I
22 question its relevance for the hearing which is addressing
23 incentives for the sales. This goes to how another tariff
24 is administered. And I didn't see the relevancy of it.

25 MR. KEATING: Well, what we were doing with

1 these particular questions was looking at the possibility
2 that extending the incentive would have the perverse
3 effect of incenting nonseparated sales at the expense of
4 interrupting customers or implementing load management.

5 MR. CHILDS: I wouldn't object to that question.

6 CHAIRMAN GARCIA: Will you ask the question?

7 MR. KEATING: Certainly.

8 BY MR. KEATING:

9 Q Mr. Stepenovitch, do you believe that extending
10 the shareholder incentive to additional types of sales
11 would have the perverse effect of incenting nonseparated
12 sales at the expense of interrupting customers or
13 implementing load management?

14 A We do not make sales or it is a policy of ours
15 to not make sales while we are interrupting nonfirm
16 customers.

17 Q Has Florida Power and Light done so in the past?

18 A To the best of my knowledge, no.

19 MR. KEATING: Thank you. I believe that that is
20 all the questions I have.

21 CHAIRMAN GARCIA: I just had a question. I
22 guess it begs the question. Maybe I will follow up where
23 he left off. It is sort of a policy of yours not to do
24 it. If we incentivize you, in other words, if we give you
25 a return on those sales, doesn't it call for a change of

1 that policy?

2 THE WITNESS: Sir, it possibly could. Right now
3 management in our company has given me the order not to do
4 that.

5 CHAIRMAN GARCIA: I understand. But obviously I
6 hope your company is in the business of making money. If
7 not, you wouldn't be doing what you are doing and we
8 wouldn't be here. But it worries me, because it sort of
9 begs the question. Should staff take a position on that?
10 In other words, should we have a corollary rule somewhere
11 if clearly your policy doesn't necessarily make it the
12 rule. And clearly if we give you a financial incentive to
13 make these sales at the cost of interruptible customers it
14 could put interruptible customers in an uncomfortable
15 position. You would agree with me?

16 THE WITNESS: I would agree with that.

17 CHAIRMAN GARCIA: Because they are on the bad
18 side of the incentive on that one. All right.

19 Mr. Childs.

20 MR. CHILDS: I have no redirect.

21 CHAIRMAN GARCIA: Very good.

22 MR. KEATING: We would move for the introduction
23 of Exhibits, I believe it is 2, 3, and 4.

24 MR. MCGEE: Mr. Chairman, 3 and 4 have
25 information that is pertinent to Florida Power Corporation

1 as well as some other utilities. I wonder if we might
2 have that admission reserved.

3 MR. KEATING: That's my mistake. We can hold
4 off on that.

5 CHAIRMAN GARCIA: We will keep them identified
6 and we will hold off.

7 MR. CHILDS: As to Exhibit Number 2, I think
8 that is still intended to include the responses to
9 interrogatories, all of them?

10 MR. KEATING: Yes, it is.

11 MR. CHILDS: Then I'm going to object to
12 including Interrogatory Number 20, which asks for a
13 listing of instances of interruption of non-firm
14 nonresidential customers and then provide information on
15 that. That is historic information. I don't think it
16 relates to this docket, and I would object to it as not
17 relevant.

18 CHAIRMAN GARCIA: Okay.

19 MR. KEATING: I think we felt it was relevant
20 for the reason we stated a few minutes ago with regard to
21 the deposition questions that we wanted to --

22 CHAIRMAN GARCIA: I agree.

23 MR. KEATING: -- whether the incentive would
24 have a perverse effect.

25 CHAIRMAN GARCIA: I agree. So we are going to

1 keep it in.

2 Is that it, Mr. Childs? You had an objection to
3 20, correct?

4 MR. CHILDS: I did.

5 CHAIRMAN GARCIA: Okay. And we are going to
6 allow it. So that being said, we will move in Exhibit 2.
7 All right. We are going to take a 40-minute break. Yes,
8 let's take a 40-minute break. We will then meet at -- now.
9 I'm going to higher math -- at 12:35 and reconvene the
10 hearing.

11 I also will let you know that Leon will be
12 leaving a little bit earlier if we run late. If I see,
13 however, that each witness takes this kind of time, then
14 what we may do is we are going to have to conclude this
15 hearing at another time, and what we will do is we will
16 break early enough so that Leon can be here and then we
17 will just continue the hearing next time. All right.
18 Thank you.

19 (Exhibit 2 received in evidence.)

20 (Lunch recess.)

21 CHAIRMAN GARCIA: We are going to reconvene.
22 The next witness is?

23 MR. CHILDS: I would like to call Ms. Dubin. I
24 would propose that we finish both FP&L witnesses before we
25 break?

1 CHAIRMAN GARCIA: I think it is a good
2 suggestion.

3 MR. CHILDS: All right. I call Ms. Dubin.

4 CHAIRMAN GARCIA: Ms. Dubin, you have been sworn
5 in, correct?

6 THE WITNESS: Yes, I have.
7 Whereupon,

8 KOREL M. DUBIN

9 was called as a witness on behalf of Florida Power and
10 Light Company, having first been duly sworn, was examined
11 and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. CHILDS:

14 Q Would you state your full name and address,
15 please.

16 A My name is Korel Dubin. My business address is
17 9250 West Flagler Street, Miami, Florida.

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

19 A I am employed by Florida Power and Light Company
20 as Manager of Regulatory Issues in the Rates and Tariff
21 Department.

22 Q Do you have before you a document entitled
23 Florida Power and Light Company, testimony of Korel M.
24 Dubin, Docket Number 991779-EI?

25 A Yes, I do.

1 Q Was that prepared by you as your direct
2 testimony for this proceeding?

3 A Yes, it was.

4 Q Do you have any changes or corrections to make
5 to it?

6 A No, I do not.

7 Q Do you adopt it as your testimony?

8 A Yes, I do.

9 MR. CHILDS: We ask that the prepared testimony
10 of Ms. Dubin be inserted into the record as though read.

11 CHAIRMAN GARCIA: Very well.

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1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **FLORIDA POWER & LIGHT COMPANY**

3 **TESTIMONY OF KOREL M. DUBIN**

4 **DOCKET NO. 991779-EI**

5 **March 1, 2000**

6

7 **Q. Please state your name, business address, employer and position.**

8 A. My name is Korel M. Dubin, and my business address is 9250 West Flagler
9 Street, Miami, Florida, 33174. I am employed by Florida Power & Light
10 Company (FPL) as Manager of Regulatory Issues in the Rates and Tariffs
11 Department.

12

13 **Q. Have you previously testified in this docket or a related docket?**

14 A. Yes, I have testified in Docket No. 990001-EI, the Fuel and Purchase Power
15 Cost Recovery Docket. Docket No. 991779-EI is a spin off from the Fuel
16 Docket.

17

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

19 A. The purpose of my testimony is to request Commission approval to extend
20 the shareholder incentive set forth in Order No. 12923, issued January 24,
21 1984 in Docket No. 830001-EU-B to other opportunity sales. Additionally, my
22 testimony requests that consideration be given to increasing the percentage

1 for shareholder incentives to provide further encouragement to utilities.

2

3 **Q. Please describe the 20 percent shareholder incentive set forth in Order**
4 **No. 12923, issued January 24, 1984, in Docket No. 830001-EU-B?**

5 A. In Order 12923 the Commission established an incentive to share the gains
6 on broker sales between the retail customers and the utility shareholders.
7 The objective of establishing this incentive was to maximize economy sales
8 and provide a net benefit to customers.

9

10 **Q. Should the Commission eliminate the 20 percent shareholder incentive**
11 **set forth in Order No. 12923?**

12 A. No. The objective of this order to maximize economy sales and provide a net
13 benefit to customers continues to be and may even be more valid today. As
14 stated in the testimony of FPL witness J. Stepenovitch, the market has
15 changed significantly since 1984; there is more competition. And, since there
16 is more competition, on the surface it may appear that incentives are no
17 longer needed but just the opposite is true. Competition affects each end of
18 the transaction in different ways. It may be easier to buy if there is more
19 competition but it is also harder to sell. In this more competitive environment,
20 when it is harder to make sales, it does not make sense to eliminate
21 shareholder incentives. On the contrary, when it is harder to make sales,
22 utilities should be encouraged to make them. Although utilities are motivated

1 to make these sales to keep rates as low as possible, a shareholder incentive
2 compensates the utility for the disincentives (such as increased O & M and
3 wear and tear on the generating assets) associated with making these sales.
4

5 **Q. Should the Commission extend the 20 percent shareholder incentive set**
6 **forth in Order No. 12923, issued January 24, 1984, in Docket No. 830001-**
7 **EU-B to other types of sales?**

8
9 A. Yes. As described in the testimony of FPL witness J. Stepenovitch, the broker
10 system is being used much less than in the past and utilities are now making
11 the majority of sales outside of the broker network, particularly outside of the
12 state. Therefore, the shareholder incentive should be extended to these non-
13 broker opportunity sales to provide an incentive for utilities to maximize these
14 off system sales, which will benefit customers even more. Consideration
15 should also be given to increasing the percentage for shareholder incentives
16 to provide further encouragement to the utilities and to compensate for the
17 associated disincentives.
18

19 **Q. What types of economy energy sales should be eligible for a**
20 **shareholder incentive?**

21

22 A. In addition to the current treatment of Schedule C, Broker Sales, FPL

1 believes that sales transactions made pursuant to Tariff No. 1 and the Market
2 Based Rates Tariff should also be eligible for a shareholder incentive. Both
3 of these types of transactions are commonly referred to as opportunity sales.
4 Although FPL recommends that the shareholder incentive should be
5 extended to other opportunity sales, FPL believes that the shareholder
6 incentive should not be applied to Emergency Sales such as Schedules AF
7 and DF.

8

9 **Q. How should the incentive be structured?**

10 A. FPL believes that consideration should be given to increasing the percentage
11 for shareholder incentives. For example, a sliding scale could be used where
12 the shareholder incentive on the first \$20 million in gains on sales could be
13 shared 80% to retail customers and 20% to shareholders. The next \$20
14 million could be shared 60% to retail customers and 40% to shareholders,
15 and any gains over \$40 million could be shared 50%/50%. By using a sliding
16 scale, the utility is compensated and the customer benefits by a lower fuel
17 charge.

18

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

20 A. Yes, it does.

1 BY MR. CHILDS:

2 Q And would you please summarize your testimony.

3 A Yes. The purpose of my testimony is to request
4 Commission approval to extend the shareholder incentives
5 set forth in Order 12923 to other economy type sales. In
6 1984 when the Commission established the incentive, the
7 objective was to maximize economy sales and provide a net
8 benefit to customers. This objective continues to be
9 valid today. FPL believes that sale transactions made
10 pursuant to the cost-based Tariff Number 1 and the
11 market-based rates tariff should be eligible for a
12 shareholder incentive.

13 Although FPL recommends that the shareholder
14 incentive should be applied to these economy type sales,
15 FPL believes that shareholder incentives should not be
16 applied to emergency sales, such as Schedules AF and DF.
17 This shareholder incentive should be extended to other
18 economy type sales to provide an incentive for utilities
19 to maximize these off-system sales which will benefit
20 customers even more.

21 Thank you.

22 MR. CHILDS: We tender Ms. Dubin for
23 cross-examination.

24 CHAIRMAN GARCIA: I'm assuming no questions from
25 the companies. Mr. Burgess.

1 MR. BURGESS: Thank you, Mr. Chairman.

2 CROSS EXAMINATION

3 BY MR. BURGESS:

4 Q Ms. Dubin, you heard the testimony of Mr.
5 Stepenovitch?

6 A Yes, I did.

7 Q You heard him answering questions of
8 Commissioner Jacobs regarding costs?

9 A Yes.

10 Q Do you recall that he qualified some of his
11 answers in recognition or acknowledgement that perhaps you
12 might be a more appropriate witness to answer some of the
13 questions on cross?

14 A Yes.

15 Q And you are the more appropriate witness to
16 answer questions on cost?

17 A Yes.

18 Q Are any of the assets that are used to generate
19 the sales for which you are seeking this incentive, are
20 any of these assets removed from the retail rate base by
21 virtue of a separation factor?

22 A No.

23 Q Are any of the expenses associated with
24 maintaining or operating any of these plants excluded from
25 the calculation of retail rates for purposes of

1 surveillance reports?

2 A No.

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

4 CHAIRMAN GARCIA: Ms. Kaufman.

5 MS. KAUFMAN: Ms. Dubin, I just have one or two
6 questions.

7 CROSS EXAMINATION

8 BY MS. KAUFMAN:

9 Q On Page 2, bottom of Page 2, top of Page 3, you
10 discuss, and you would agree, wouldn't you, that FPL is
11 motivated to keep its rates as low as possible?

12 A Yes.

13 Q And I think that beginning on Page 4 you
14 customer the incentive structure that FPL is suggesting
15 which, as I understand it, is -- I call it sort of a
16 sliding scale?

17 A Yes.

18 Q The more sales you make the more gain you get to
19 retain?

20 A Yes.

21 Q Have you reviewed Mr. Wieland's testimony from
22 Florida Power Corporation?

23 A I have read it, yes.

24 Q Okay. And you are aware, as I understand it,
25 that Florida Power Corporation suggests that to the extent

1 revenues are less than incremental costs there would be
2 what I would term a penalty applied to the utility?

3 A I don't believe that that instant occurs. It is
4 not something -- you mean when you have a sale that would
5 end in a loss, is that what you are saying?

6 Q Exactly.

7 A That is not something that is -- sales aren't
8 made for that reason. You are there to make a gain. And
9 if those instances did occur, they would be few and far
10 between.

11 Q But it is certainly possible that you could
12 engage in a sale that ultimately results in a loss, isn't
13 it, because your sales are based on projections?

14 A Yes.

15 Q So it is possible that you could have that
16 circumstance arise?

17 A Yes. And you could have the opposite arise,
18 that you would have more gain than you had projected,
19 also.

20 Q Okay. Well, if the circumstance did arise where
21 you had a loss, would FPL be willing to accept some sort
22 of a penalty mechanism in that instance?

23 A A penalty mechanism, I'm not quite sure --

24 Q In other words, similar to what Mr. Wieland
25 suggested in his testimony?

1 A I think it would be included in the calculation
2 of the gain.

3 Q So was that a yes? You wouldn't have a gain.
4 By definition you would have a loss because your revenues
5 would be less than your incremental cost?

6 A I guess if that instance occurred, yes.

7 MS. KAUFMAN: Thank you. That's all I have.

8 CHAIRMAN GARCIA: Staff.

9 CROSS EXAMINATION

10 BY MR. KEATING:

11 Q Mr. Dubin, staff is going to hand out two
12 exhibits for you. As soon as those get around I will have
13 a few questions for you. Not too many.

14 A Okay.

15 Q Could you take a look at the exhibit entitled --
16 I would describe as a composite exhibit consisting of your
17 deposition taken April 20th, 2000, and responses to staff
18 Interrogatories 23, 28, 29, 31, 32, 37 and 44?

19 A Yes.

20 Q Are you familiar with these documents?

21 A Yes, I am.

22 Q From looking at them, would you say that they
23 are what they purport to be?

24 A Yes.

25 Q With regard to your deposition transcript, have

1 you had the opportunity to read that transcript to make
2 any corrections to it?

3 A Yes.

4 Q Okay. With regard to the interrogatory
5 responses in the exhibit, were those responses prepared by
6 you or under your supervision?

7 A Yes, or cosponsored with Mr. Stepenovitch.

8 Q Are they true and correct to the best of your
9 knowledge and belief?

10 A Yes.

11 MR. KEATING: Staff would ask that that exhibit
12 be identified, I believe, as Exhibit 5.

13 CHAIRMAN GARCIA: Yes.

14 (Exhibit 5 marked for identification.)

15 BY MR. KEATING:

16 Q Ms. Dubin, I believe -- and this is a question I
17 asked in Interrogatory Number 28, for each state other
18 than Florida in which Florida Power and Light or an
19 affiliate of Florida Power and Light is a participant in
20 the wholesale energy market, would you indicate whether
21 that state's public utility commission provides a
22 shareholder incentive to encourage nonseparated wholesale
23 energy sales?

24 A I'm not aware of how the other commissions
25 handle those.

1 MR. KEATING: And I brought this question up to
2 start, this is one that I spoke with Mr. Childs about that
3 I felt there may be an objection to.

4 CHAIRMAN GARCIA: I'm sorry, since she doesn't
5 know, I don't know why he would object to it.

6 MR. CHILDS: I'm not objecting to you asking the
7 witness the question.

8 MR. KEATING: I understand. I'm sorry, I must
9 have assumed that the objection on the interrogatory was
10 to relevance.

11 CHAIRMAN GARCIA: That's all right. There was
12 no answer.

13 BY MR. KEATING:

14 Q Ms. Dubin, FPL's proposal includes an incentive
15 on market-priced sales, is that correct?

16 A An incentive -- I'm sorry.

17 Q On market-priced sales?

18 A Yes, pursuant to our market-based rates tariff.

19 Q Florida Power and Light currently is not
20 applying the 20 percent shareholder incentive to those
21 types of sales, is that correct?

22 A That is correct. We have been crediting 100
23 percent of those sales back through the fuel clause.

24 Q Why hasn't FPL applied the incentive to those
25 sales?

1 A The order that came out in 1984, we have been
2 following that order, and I believe at the time it
3 addressed economy type sales. And at that time the only
4 types of sales we had were the Schedule C broker sales.

5 Q And when there were other types of sales that
6 Florida Power and Light could make, it did not apply the
7 20 percent incentive to those sales?

8 A We were following that 1984 order.

9 Q Okay. In your testimony you have proposed a
10 sliding scale for incentives in which the incentives would
11 increase as the gains on sales increased, is that correct?

12 A Yes.

13 Q Could you describe that sliding scale?

14 A FPL believes that a correct incentive would be
15 one where there would be a sharing. And we had looked at
16 some various things and thought that perhaps that
17 consideration would be given to increasing the incentive
18 and increasing it as your gains increased.

19 So the way we captured it as a suggestion was
20 the first \$20 million in gains would be at 20 percent, the
21 second million dollars in gains would be at 40 percent,
22 and anything above that would be at 50/50. To summarize
23 that, basically there would be a sharing of the gains
24 where the majority of the gains would be flowed back to
25 the customers.

1 Q How was that scale developed?

2 A It is a subjective; there is no scientific
3 approach to it. It is a subjective approach.

4 Q That may answer my next question, but is there
5 any evidence to support -- that you are aware of to
6 support the idea that that scale will yield enough gains
7 to create a net ratepayer benefit?

8 A FPL believes that incentives are good things,
9 they work in various industries and business. And we just
10 believe that with incentives we would be able to make more
11 sales than we otherwise would to a net benefit of the
12 customer.

13 Q Do you believe that the -- I guess the 20
14 million and \$40 million threshold levels in your sliding
15 scale should be modified depending on what utility is
16 making the sale? In other words, modified based on the
17 size of the utility?

18 A I believe that could be done. We were just
19 looking at perhaps consideration given to increasing the
20 scale. That is basically what our proposal is.

21 Q Does FPL account for the amount that it keeps,
22 that it retains in shareholder incentives below-the-line?

23 A Yes.

24 Q And FPL's marketing expenses are reported
25 above-the-line in its surveillance reports, correct?

1 A Yes.

2 MR. KEATING: Thank you. That is all the
3 questions I have.

4 CHAIRMAN GARCIA: Okay.

5 COMMISSIONER DEASON: I had a question that was
6 deferred to you, and I think staff has asked the question
7 perhaps in a different form. But my question was how do
8 we account for the costs of maintaining a marketing
9 department? You indicate that you already account for
10 those above-the-line?

11 THE WITNESS: Yes.

12 COMMISSIONER DEASON: But I thought part of your
13 rationale was that the incentive is needed because of
14 these costs, but you account for that above-the-line. Is
15 the incentive needed to account for these between rate
16 cases until you have a rate case, is that the rationale?

17 THE WITNESS: Well, I think FPL's position is
18 that we are always going to take reasonable care to keep
19 our costs down. And as Mr. Stepenovitch noted, that in
20 1998 and 1999 we had more than \$120 million worth of gains
21 that flowed back to the customers. There is a certain
22 level of effort that goes into those. And we just believe
23 that with an incentive it will help to promote
24 management's willingness to dedicate the resources needed
25 to make those kinds of sales.

1 COMMISSIONER DEASON: So rate base recovery, or
2 rate proceeding recovery of those costs is not sufficient,
3 then, correct?

4 THE WITNESS: No. We think they are sufficient,
5 but that we believe that there is costs as a level of sale
6 grows that the incentive would help to promote their
7 willingness to spend the additional resources on making
8 those sales.

9 MR. KEATING: Chairman Garcia -- I'm sorry, I
10 don't want to interrupt.

11 COMMISSIONER JACOBS: Are you familiar with Mr.
12 Dismukes' testimony where he indicates that it is more of
13 a prudent decision for you to explore that because other
14 market participants are prepared to go after those same
15 sales. So if your management were not to go after those
16 sales, it would pretty much be an imprudent management
17 decision. What is your view of that?

18 THE WITNESS: I think our view of it is just
19 that our track record over the last two years that we have
20 aggressively gone after those sales. In 1998, \$60 million
21 in gains went back to the customer. In 1999, another \$60
22 million in gains went back to the customers. We just
23 believe that incentives are good things and that with an
24 incentive we could make more sales than we otherwise
25 would.

1 COMMISSIONER JACOBS: Thank you.

2 COMMISSIONER JABER: But asked a different way,
3 why isn't the marketplace your incentive? If you were
4 attempting to compete at the wholesale market, then isn't
5 the marketplace your incentive to make those sales?

6 THE WITNESS: That is part of it. That is part
7 of it. And that is what we have been doing. And we are
8 just saying that above that with this incentive we believe
9 we can make more sales than we otherwise would and be even
10 more of a benefit to the customer.

11 COMMISSIONER JABER: Okay.

12 CHAIRMAN GARCIA: Go ahead and finish up.

13 COMMISSIONER JABER: Doesn't that defeat the
14 purpose of deregulating that market? If you are asking
15 this regulatory body to provide you an artificial
16 incentive, doesn't that defeat the purpose of
17 deregulation?

18 THE WITNESS: I don't think so. I think this is
19 a sharing mechanism where you share this incentive with
20 the customer. And I think that it is a win for everyone.
21 It is a win for the customer of the selling utility that
22 they get the benefit of the gains. It is a win for the
23 shareholder, and it is also a win for the customer of the
24 purchasing utility whereby those customers get energy at a
25 lower cost.

1 COMMISSIONER JABER: Isn't it a win for the
2 company if you give those benefits back to the ratepayers
3 without our telling you to?

4 THE WITNESS: Yes. And that is what we have
5 been doing. But our position is that above that we
6 believe that with the incentive we could make more sales
7 than we otherwise would.

8 COMMISSIONER JABER: Okay. How does your
9 testimony change in light of the Duke decision last week,
10 or week before, or whenever it was, or does your testimony
11 change?

12 THE WITNESS: No, it does not.

13 CHAIRMAN GARCIA: That sort of begs the
14 question. You say this gives you more incentive. Should
15 we be punishing you for not being as effective and
16 efficient on that wholesale market as you should be?

17 THE WITNESS: Well, punishing us, we have given
18 back \$120 million. We have done --

19 CHAIRMAN GARCIA: Yes, but you are saying you
20 can be even more efficient. If I give you more money you
21 can be more efficient.

22 THE WITNESS: I don't know about more efficient,
23 I think that it helps to promote management's willingness
24 to dedicate more resources to promote those sales.

25 CHAIRMAN GARCIA: Should we have a rate case?

1 Should we just have a rate case and then -- we open up a
2 rate case and figure out what it costs for you to have
3 those people there to make your system most efficient
4 possible so that ratepayers will benefit just like you
5 will benefit as these sales are made?

6 THE WITNESS: No. I just believe that
7 incentives work, that it worked in 1984 when we had the
8 Schedule C sales. And we just believe as the market
9 changed that perhaps it would be time to change the
10 incentive to apply to those other types of sales.

11 CHAIRMAN GARCIA: Okay.

12 MR. KEATING: I had overlooked one of the
13 exhibits that I handed out that I simply would like to ask
14 Ms. Dubin to take a look at and ask if she can verify
15 that --

16 CHAIRMAN GARCIA: This is the late-filed
17 exhibit?

18 MR. KEATING: This is the late-filed deposition
19 exhibit.

20 CHAIRMAN GARCIA: And this would be numbered
21 Exhibit Number 6.

22 (Exhibit 6 marked for identification.)

23 BY MR. KEATING:

24 Q Are you familiar with this exhibit, Ms. Dubin?

25 A Yes, I am.

1 Q Did you prepare this?

2 A Yes, I did.

3 Q And is the information in the exhibit true and
4 correct to the best of your knowledge and belief?

5 A Yes, it is.

6 MR. KEATING: Thank you.

7 CHAIRMAN GARCIA: Okay.

8 MR. CHILDS: I have a few questions on redirect.

9 CHAIRMAN GARCIA: Okay.

10 REDIRECT EXAMINATION

11 BY MR. CHILDS:

12 Q Ms. Dubin, you were asked a question about FPL
13 not applying the incentive since 1984 to sales other than
14 I believe it was Schedule C economy sales?

15 A Yes.

16 Q Are you aware that this Commission disagrees
17 with your interpretation?

18 A No, I think that -- I'm sorry, Mr. Childs.

19 Q Do you know whether this Commission disagrees
20 with the interpretation that has been applied by FPL in
21 recovering the 20 percent only for Schedule C economy
22 sales?

23 A No, I don't. I understand that varying parties
24 are doing different things.

25 Q Do you know whether there has been any advice to

1 this Commission as to whether your interpretation is too
2 narrow?

3 A No.

4 Q Okay. Then you were asked a question about
5 competing in the wholesale market by Commissioner Jaber.
6 Let me pursue that for a minute. When Florida Power and
7 Light sells off-system, the transactions that we are
8 talking about here, that is a sale in the wholesale
9 market, is it not?

10 A Yes, it is.

11 Q And in terms of being competitive in the
12 wholesale market, is there anything that FPL is retaining
13 from making that sale other than the cost?

14 A No.

15 Q And if it sells at a market rate for
16 transactions outside of the State of Florida, then all of
17 the revenue in excess of cost is refunded currently to
18 retail customers, is that right?

19 A Yes. About 85 percent of the gains have been
20 coming from out-of-state.

21 Q Okay. To the extent that you are competing in
22 the wholesale market, you are making transactions but you
23 are not recovering a separate return, are you, from those
24 wholesale transactions?

25 A No.

1 MR. CHILDS: All right. That's all I have.

2 CHAIRMAN GARCIA: Okay. Very good.

3 MR. KEATING: Staff would move for the admission
4 of Exhibit 5 with the exception of the deposition
5 transcript in that exhibit, and Exhibit Number 6.

6 CHAIRMAN GARCIA: Okay. No objection. Show
7 them admitted.

8 (Exhibit 5 and 6 received in
9 evidence.)

10 CHAIRMAN GARCIA: Thank you, Ms. Dubin.

11 We go to FPC's witness now?

12 MR. MCGEE: Florida Power would call Mr.
13 Wieland.

14 MR. CHILDS: Could I ask that FPL's witnesses be
15 excused? One of them may have to catch a plane, and if
16 that is possible, then she will do that.

17 CHAIRMAN GARCIA: As long as they are going back
18 to Miami, that is fine.

19 MR. CHILDS: I don't know.

20 CHAIRMAN GARCIA: I'm just kidding.

21 MR. MCGEE: Mr. Chairman, unfortunately I was
22 not here when appearances were taken earlier. If you
23 would like me to give that for the record, I would be
24 happy to.

25 James McGee, Post Office Box 14042, St.

1 Petersburg 33733, appearing on behalf of Florida Power
2 Corporation.

3 CHAIRMAN GARCIA: And if I'm not mistaken, Mr.
4 Wieland came in with you, so we haven't sworn you in.

5 MR. WIELAND: That's right.

6 (Witness sworn.)

7 Whereupon,

8 KARL H. WIELAND

9 was called as a witness on behalf of Florida Power
10 Corporation, having first been duly sworn, was examined
11 and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. MCGEE:

14 Q Would you give us your name and business address
15 for the record, please?

16 A Karl H. Wieland, business address is Post
17 Office Box 14042, St. Petersburg, Florida 33733.

18 Q And what is your position with Florida Power
19 Corporation?

20 A I am the Manager of Financial Analysis.

21 Q Mr. Wieland, do you have before you a document
22 entitled, Florida Power Corporation, Docket Number
23 991779-EI, direct testimony of Karl Wieland consisting of
24 eight pages?

25 A Yes, I do.

1 Q Was that testimony prepared by you for purposes
2 of testifying in this proceeding today?

3 A It was.

4 Q If you were asked the questions that are
5 contained -- let me back up. Do you have any additions or
6 corrections that you need to make?

7 A No, I don't.

8 Q If you were asked the questions that are
9 contained in that prepared testimony, would your answers
10 be the same today?

11 A Yes, they would.

12 MR. McGEE: Mr. Chairman, we would ask that Mr.
13 Wieland's prepared testimony be inserted into the record
14 as though read.

15 COMMISSIONER GARCIA: Okay.

16

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25

FLORIDA POWER CORPORATION**DOCKET No. 991779-EI****DIRECT TESTIMONY OF
KARL H. WIELAND**

1 **Q. Please state your name and business address.**

2 A. My name is Karl H. Wieland. My business address is Post Office Box
3 14042, St. Petersburg, Florida 33733.

4

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

6 A. I am employed by Florida Power Corporation as Manager of Financial
7 Analysis.

8

9 **Q. Please state your educational background and professional**
10 **experience.**

11 A. I received a Bachelor of Science degree in Electrical Engineering from the
12 University of South Florida in 1968 and a Master's Degree in Engineering
13 Administration, also from the University of South Florida, in 1975. I have
14 also attended the Management Development Program at Georgia State
15 University and the Public Utility Financial Seminar sponsored by the Irving
16 Trust Company in New York. I am a registered Professional Engineer in
17 the state of Florida and I have been employed by Florida Power
18 Corporation on a full time basis since 1972. During the first seven years
19 of my career, I worked as a Transmission Planning Engineer in the System

1 Planning Department and as an Economic Research Analyst in the
2 Economic Research Department. I became Manager of Generation
3 Planning in 1979, Manager of Economic Research in 1983, and Director of
4 Business Planning in 1990. I assumed my present position in 1998.

5 My current responsibilities include financial planning and forecasting,
6 financial analysis of projects and proposals, cost benefit analyses, fuel
7 adjustment filings and other fuel-related regulatory activities. I have
8 testified before this Commission on numerous occasions regarding a
9 variety of regulatory policy issues, including the role of utility incentives as
10 a ratemaking tool -- most recently at the fuel adjustment hearings in
11 November 1999 which led to the establishment of this "spin-off" docket.

12
13 **Q. What is the purpose of your testimony?**

14 **A.** The purpose of my testimony is to urge that the Commission update its long
15 standing practice of providing utilities with an incentive for short-term
16 economy sales made on the Florida energy broker by applying the
17 incentive to short-term (non-separated) off-broker sales as well, in
18 recognition of current market conditions that have led to a drastic reduction
19 in the use of the broker as the vehicle for conducting the beneficial sales.

20
21 **Q. Do the reasons for the Commission's initial establishment of a**
22 **shareholder incentive in 1984 remain valid today?**

23 **A.** Yes. In Order No. 12923 issued January 24, 1984, the Commission
24 acknowledged that, in moving the treatment of economy sales out of base
25 rates where utilities retained 100% of the gain, establishment of an

1 incentive through the fuel adjustment clause was desirable to preserve the
2 then-current level of economy sales and that such an incentive would
3 provide a net benefit to ratepayers. Faced with the current level of
4 competition in the wholesale power market, the case for positive incentives
5 is stronger today than in 1984, when the Commission instituted the 80/20
6 sharing of gains on economy sales.

7
8 **Q. Why do you believe there is a greater need for incentives today than**
9 **there was in 1984 despite the fact that the industry has become more**
10 **competitive?**

11 **A.** The need for incentives is greater today than it was 10 to 20 years ago
12 *because of the fact that the industry has become more competitive.* During
13 the early 1980s, wholesale markets for economy sales were simple. The
14 Florida broker system was the market, and the participants were the Florida
15 utilities. Each utility entered its hourly incremental and decremental
16 production costs into a computer that matched offers, notified buyers and
17 seller, and established transaction prices.

18 Today's markets are much more complex and take significantly more
19 effort and resources in order to participate successfully. Transmission
20 paths and payments must be arranged by the seller in accordance with
21 complex FERC rules. Sales are no longer limited to hourly split-the-
22 savings transactions, rather, the transactions can span days, weeks, or
23 even months. Pricing is at the market and all deals are negotiated rather
24 than determined by set formula. The seller must manage additional risks
25 associated with transactions that take place at future times when costs are

1 not known with certainty. Finally, participants are more numerous and
2 sophisticated. They compete for a significant share of the market value
3 that historically has stayed within Florida, to the benefit of the retail
4 customer.

5 For all these reasons, today's marketing operations have grown from
6 a part-time activity for dispatchers to departments staffed with experienced
7 traders, risk managers, and sophisticated computer equipment. Current
8 marketing operations take significantly more effort and resources in order
9 to participate successfully. Incentives provide the Commission with the
10 most effective and efficient tool for ensuring that utilities extract the
11 maximum value from the market for the benefit of the customer.

12
13 **Q. Florida Power has significantly reduced the level of sales made**
14 **through the Florida broker, for which a shareholder incentive is**
15 **provided, and instead makes most of its non-separated sales through**
16 **tariffs that do not provide an incentive. Doesn't that indicate that**
17 **incentives are no longer needed to encourage these sales?**

18 **A. No. One reason that Florida Power participates in the non-broker market**
19 **is to help reduce rates to its customers. That clearly is the obligation of**
20 **any utility. It is also true, however, that while 100% of the generation-**
21 **related gains on sales have been returned to customers through the fuel**
22 **or Capacity Cost Recovery (CCR) clauses, Florida Power has been**
23 **retaining 100% of transmission revenues from such sales. Except for sales**
24 **made through the broker, a separate transmission charge based on the**
25 **Company's open access tariff is added to the sales transaction. For the**

1 current year, Florida Power projects \$2.7 million in additional transmission
2 revenues for non-separated sales. By comparison, 20% of projected
3 generation-related gains would yield an additional \$2.1 million. Prior to
4 January 2000, transmission revenues were credited to other operating
5 revenues in surveillance reports, thus benefiting customers in the long
6 term, but providing a strong shareholder incentive to increase sales in the
7 short term. At the November 1999 fuel adjustment hearings, however, the
8 Commission ordered 100% of these revenues to be flowed back to
9 customers via the CCR clause, thereby eliminating this incentive.
10 Therefore, like the situation in 1984 when the Commission eliminated the
11 base rate incentive for economy sales, a replacement incentive is needed
12 to encourage these sales for the benefit of ratepayers.

13
14 **Q. If the Commission approves an incentive, how should it be**
15 **structured?**

16 **A.** I recommend that the Commission apply the existing 80/20 sharing to all
17 non-separated economy transactions. Doing so would continue to apply
18 the incentive provision in the manner intended by Order 12923 which
19 stated "...economy energy sales profits are to be divided between
20 ratepayers and the shareholders on a 80% - 20% basis, respectively."

21
22 **Q. How you would define economy sales for purposes of applying an**
23 **incentive?**

24 **A.** In order to qualify for an incentive, a sale should meet three simple tests:

- 1 1. The sale is not separated, *i.e.*, less than one year in duration.
- 2 2. The sale is profitable (revenues exceed incremental fuel costs), *i.e.*,
- 3 provides a net benefit to ratepayers.
- 4 3. The seller must be able to influence whether or not the sale takes
- 5 place and the transaction price.

6

7 **Q. How would your proposed incentive mechanism treat "unprofitable"**

8 **sales?**

9 A. An unprofitable sale, *i.e.*, when incremental fuel costs exceed revenues,

10 can arise in many ways. A sale during the peak or off-peak hours of a day

11 could show a loss for an hour or two, or a sale for a week could contain one

12 or more unprofitable days. The risk of a sale turning out to be unprofitable

13 is inherent in any transaction whose profitability is based on estimates of

14 future costs.

15 Florida Power proposes a symmetrical treatment for both profitable

16 and unprofitable sales. In the same way that shareholders receive 20% of

17 the gain when sales are profitable, they would absorb 20% of the loss when

18 sales are unprofitable. For example, if incremental fuel costs exceed

19 revenues by \$10 per MWH during 2 hours of an 8-hour sale for 50 MWs,

20 the loss over this two-hour period would be \$1,000 and result in

21 recoverable fuel costs being reduced by \$200. In this manner, utilities

22 would be encouraged to aggressively seek out sales that produce the

23 greatest benefit to ratepayers by providing shareholders with a reward

24 commensurate with a sale's profit and a penalty commensurate with a

25 sale's loss.

1 **Q. Which of Florida Power's interchange schedules would qualify under**
2 **your definition of economy sales?**

3 A. With the exception of Schedule A (emergency), and Schedule B (short-term
4 firm), all sales reported on Fuel Adjustment Schedule A-6 should qualify.
5 Schedules A and B meet criteria 1 and 2 above, but are made upon request
6 by a buyer, not marketed by the seller.

7

8 **Q. Could your definition include firm sales?**

9 A. Yes, it could. The vast majority of non-separated sales Florida Power
10 makes are as-available or recallable. By including all sales, the
11 Commission eliminates having to define exactly what a firm sale is or risk
12 inconsistent interpretation and application. As long as a utility expects to
13 have adequate reserves over the period of the sale and the criteria
14 advocated above are met, there is no reason to exclude a sale from an
15 incentive provision simply because it is firm. Since firm sales generally
16 have more value and thus a higher price than non-firm sales, excluding
17 such sales would encourage a utility to engage in transactions that brings
18 less value to customers only because they qualify for an incentive.

19

20 **Q. How should the shareholder incentive be treated for regulatory**
21 **accounting purposes?**

22 A. The incentive should continue to be recorded below-the-line for ratemaking
23 and surveillance purposes, as it is today.

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

2 **A. Yes.**

1 BY MR. MCGEE:

2 Q Mr. Wieland, would you give us a summary of your
3 testimony, please.

4 A Certainly. Commissioners, my testimony covers a
5 couple of points. First of all, we believe that the 80/20
6 mechanism on power marketing sales that was put in place
7 in early 1984 makes as much sense today as it did back
8 then.

9 Second of all, we don't believe there are any
10 reasons to limit the incentive to the kinds of sales that
11 took place in 1984. I think they ought to be broadened
12 and include all the kinds of sales that are being made in
13 today's markets.

14 Thirdly, I am proposing a very simple rule as to
15 which types of sales ought to be included in the
16 incentive, and they should simply be nonseparated sales
17 that bring a benefit to the customers and meet the simple
18 test that a utility ought to have some influence as to
19 whether those sales take place or not. And for that
20 reason we exclude Schedules A and B, which is similar to
21 what FPL, I think, proposes simply because those are not
22 sales that are actively marketed.

23 And then fourth, I don't believe that incentives
24 are put in place to take money from the customer and give
25 it to the shareholder. I think incentives, if they are

1 properly structured, and I believe our proposal is, are
2 such that the overall benefit increases to the point where
3 customers are better off as a result of the incentive, not
4 worse off, and I think our proposal accomplishes that.

5 MR. MCGEE: We tender Mr. Wieland.

6 CHAIRMAN GARCIA: Questions from the companies.

7 CROSS EXAMINATION

8 BY MR. BURGESS:

9 Q Mr. Wieland, isn't it true that for some sales
10 Florida Power Corporation for some period of time had been
11 reporting the transmission revenues in base rates or
12 crediting the transmission revenues into base rates that
13 it had been collecting on some certain sales?

14 A That is right. We have been crediting
15 transmission revenues from those sales where we actually
16 charge new transmission revenues under our open access
17 tariff, we have been crediting those revenues to operating
18 income above-the-line.

19 Q And that had been an incentive for some period
20 of time for Power Corp, had it not?

21 A Yes, it has.

22 Q In that you collected it dollar-for-dollar, but
23 you simply credit it back to base revenues which wouldn't
24 have an effect until the next rate case, is that correct?

25 A Exactly.

1 Q And that has been discontinued because of
2 Commission order, is that correct?

3 A Yes. The Commission order required that those
4 sales, those transmission revenues be flowed back to
5 the -- I believe it is the capacity clause.

6 Q And at what point was that discontinuance
7 effected?

8 A Well, the flow back is effective January this
9 year, so it was discontinued at the end of last year.

10 Q Has Florida Power Corporation reduced its
11 aggressiveness with which it pursues these particular
12 types of sales as a result of the Commission action?

13 A Not that I am aware of.

14 Q Does Florida Power Corporation intend to scale
15 back or reduce its aggressiveness in pursuing these sales?

16 A There is certainly no plan to do that. But I
17 think as a matter of opinion, and I think that is really
18 why we are basing our arguments on incentive, that in the
19 long-term Florida Power or another company for that
20 matter, could.

21 Q Do you know how the costs of your power
22 marketing department are treated?

23 A They are reported in the surveillance report as
24 an operating expense above-the-line.

25 Q Above-the-line expense. Is that the entirety of

1 the marketing costs?

2 A As far as I know, yes.

3 MR. BURGESS: Thank you. That's all we have.

4 COMMISSIONER CLARK: Mr. Wieland, I want to ask
5 a question along those lines. If we wanted to, I guess we
6 could evaluate how well you are doing -- let me back up.

7 It seems to me there may be two ways to assure
8 ourselves that you are doing everything you can to make
9 off-system sales to the benefit of the ratepayers. One
10 way is to provide incentives so you can to some extent
11 increase your profits, and that would be one incentive,
12 and one way to assure that you are, in fact, being
13 aggressive. The other thing would be to monitor what you
14 are doing and evaluate it thoroughly, maybe compare it to
15 other entities that are making similar sales.

16 And I guess in my mind it would be an analysis
17 that we would go through similar to what we do in rate
18 proceedings to judge the level of expense and what kind of
19 income is being generated and whether or not you have
20 pursued every sale that you could have possibly made.

21 Do you have a feel of the relative costs of
22 those two approaches?

23 THE WITNESS: Commissioner, I'm not sure I have
24 a feel for the cost, but I think I have a very definite
25 opinion about their practicality. I mean, as a practical

1 matter, you know, the question is do you use the stick
2 approach or do you use the carrot approach. And I
3 would -- it is my opinion that the stick approach, which
4 is doing a prudence kind of review, would be an extremely
5 difficult task for the Commission to undertake.

6 I mean, everyone who has been through a prudence
7 review knows how difficult it is to show imprudence on
8 something that has actually taken place. Now you are
9 talking about having the staff and the Commission try to
10 find imprudence on something that has not taken place. In
11 other words, saying you should have done something that
12 you didn't do, which is much more difficult than saying
13 you should have done this thing that you did better.

14 Comparisons, I think even within one utility
15 from year-to-year would be difficult. I think comparisons
16 or benchmarks to other utilities are almost impossible.
17 Every utility has a different ability to engage the market
18 in terms of how much reserves they have, what kind of
19 units they have.

20 COMMISSIONER CLARK: So are you saying that it
21 would be far too subjective to be practical to do it?

22 THE WITNESS: I think it would. I personally
23 think that the stick approach, if I may use that phrase,
24 would be impractical for the Commission. If I were
25 sitting in your chair I wouldn't even attempt that.

1 In many ways the incentive gets you to the same
2 place. And so from that standpoint, I think it would be a
3 much better regulatory mechanism. Because, you know, the
4 idea to establish a proper level, I think, would be very,
5 very difficult.

6 COMMISSIONER CLARK: Would establishing that
7 proper level be more difficult in the current market than
8 it was, say, when we initially established it?

9 THE WITNESS: Yes, absolutely. And recall that
10 the reason that we initially changed the incentive from
11 one where we had an amount built into base rates to what
12 we have today is because even at that point in time it was
13 very difficult to try to establish what the right number
14 was for each utility.

15 And so the Commission essentially said, you
16 know, threw up its hands and said, we just can't continue
17 this. You have a rate case and the utilities, needless to
18 say, would at least be accused of going in and trying to
19 set the bar very low, you know, building a low level of
20 credits. And other people would have different opinions.
21 They might set the bar very high. And you would go around
22 and around and argue what the right number was for each
23 utility.

24 And that was a very, very tedious task back
25 then. But the Commission recognized that the old

1 mechanism had a very, very strong incentive built in,
2 namely that once you gave the money away and built it into
3 base rates, the utility got to keep 100 percent of every
4 dollar it earned. And so the Commission said, we don't
5 necessarily believe that if we make the companies give
6 everything back, 100 percent of it, that they are not
7 necessarily going to do the best job regardless of what
8 their -- you know, what their call is and what the right
9 thing to do is. They just may not do as good a job as
10 they are doing today where they have the 100 percent
11 incentive. So they felt it important to maintain an
12 incentive structure of some sort. And that is really how
13 the 20 percent arose.

14 And so you are absolutely right, if it was a
15 difficult thing to do back then, it would be a much more
16 difficult thing to do today.

17 COMMISSIONER CLARK: And why would it be more
18 difficult today?

19 THE WITNESS: Because the markets are much more
20 complex than they were back then. And the trading
21 activities are much more difficult, so you have a lot more
22 variability in how much trading can take place from
23 year-to-year and from month-to-month.

24 COMMISSIONER CLARK: Tell me about your ability
25 to track personnel to do that. Is that becoming more

1 difficult?

2 THE WITNESS: I'm sorry, to track what?

3 COMMISSIONER CLARK: Well, is the pool of people
4 who would be able to do that becoming less because there
5 are more -- as I understand it, more players who would
6 hire that kind of individual?

7 A Oh, absolutely. Traders are a hot commodity or
8 hot employment sector these days. And we have lost a
9 number of them. And they are difficult to come by because
10 there are so many players in the market.

11 COMMISSIONER CLARK: Okay.

12 CHAIRMAN GARCIA: Ms. Kaufman, did you have any?

13 MS. KAUFMAN: Yes, I do have a few questions.

14 CROSS EXAMINATION

15 BY MS. KAUFMAN:

16 Q Mr. Wieland, it is correct, isn't that, Florida
17 Power Corporation has significantly reduced the amount or
18 number of sales that it makes on the broker system, is
19 that right?

20 A Yes.

21 Q And it is also true that most of these economy
22 transactions today do not occur on the broker system, is
23 that right?

24 A That's right.

25 Q And you are aware, are you not, of the

1 activities of the employees in your -- I will call it your
2 wholesale marketing department?

3 A Generally.

4 Q Do you know how many people you have employed
5 there?

6 A I don't recall offhand. We may have an
7 interrogatory that spoke to that. If you want me to look
8 that up, I can.

9 Q Yes, if you could do that.

10 A In Interrogatory 12 we had a total count, number
11 of employees including -- this is not just traders, but
12 this is the whole department, of 17 people.

13 Q So 17 people includes your traders and, I guess,
14 support personnel?

15 A Right.

16 Q In your opinion, Mr. Wieland, are these
17 employees doing a satisfactory job?

18 A As far as I know, yes.

19 Q And are they engaging in transactions that
20 benefit the ratepayers as far as you are aware?

21 A Yes, they are. In fact, they have an incentive
22 plan that incentivizes them to do that.

23 Q Would you say that they have an incentive plan
24 that is tied to their ultimate compensation?

25 A Yes, there is an incentive plan in place for

1 these employees that is specifically a function of the
2 goals of that department which relate to bringing total
3 value of that group to the company and its customers.

4 Q So just to speak generally, the more -- either
5 the number, I guess, or the amount of the beneficial, if
6 you will, transactions they engage in effects their
7 ultimate compensation?

8 A Yes. It is not as simple as one individual
9 employee getting like a commission on what they sell, they
10 are more departmental in nature. But the department in
11 general is incentivized to maximize what they can do.

12 Q You discussed a little bit with Mr. Burgess the
13 change in Florida Power Corp's treatment of your
14 transmission revenues. Do you recall that?

15 A Yes.

16 Q And beginning in, I guess, January 1 of this
17 year, you are no longer crediting that to base rates, is
18 that correct?

19 A That's right.

20 Q You are flowing it back to the ratepayers?

21 A Uh-huh.

22 Q And on Page 5, beginning at Line 10 of your
23 testimony, I took that answer to mean that the incentive
24 that you are recommending the Commission impose or
25 continue in this case is intended to be a replacement

1 incentive due to the change in treatment of your
2 transmission revenues?

3 A I think in a sense that is true. When this
4 issue first came up, I think our position was that we felt
5 we had an incentive with the transmission, and we were
6 okay with that and we were willing to leave that in place
7 as is without getting 20 percent. Because overall the
8 numbers it produces for the shareholder are about the
9 same. But since the Commission wanted to unilaterally do
10 away with and flow all of those back, then I think putting
11 a substitute incentive in place is appropriate.

12 Q Isn't it correct, Mr. Wieland, that Florida
13 Power Corporation was the only utility that was treating
14 their transmission revenues in that way prior to the
15 change at the last fuel adjustment?

16 A I am not certain of that.

17 Q Would you agree with me that there were
18 certainly some utilities that were flowing all the
19 transmission revenue back?

20 A My understanding is that FPL was flowing the
21 transmission revenues back. I don't really know the
22 situation for Tampa Electric and Gulf. I would rather let
23 them speak for themselves, I guess.

24 Q Now, on Page 6, beginning at Line 15, you talk
25 about a symmetrical approach for profitable and

1 unprofitable sales, is that correct?

2 A Yes.

3 Q And I guess you would agree, wouldn't you, that
4 transactions can occur where the revenues you receive are
5 less than your costs to make the transaction?

6 A Yes, they can.

7 Q Mr. Wieland, during the time that Florida Power
8 Corporation engages in these economy sales, has it ever
9 had to interrupt its interruptible customers to make one
10 of these sales?

11 A To the best of my knowledge, no. And, in fact,
12 I think that is how we answered an interrogatory to that
13 effect. We have looked back and we have not had that
14 happen.

15 Q Is it Florida Power Corporation's policy not to
16 interrupt interruptible customers to make an off-system
17 wholesale sale?

18 A I believe that the IS tariff actually precludes
19 that. I think the way the tariff is structured it only
20 allows interruptions for certain types of system
21 emergencies. That is my understanding of it.

22 Q If you were in a situation where you had to make
23 a choice between your retail interruptible customer and
24 your wholesale commitment, who would have priority in that
25 situation?

1 A I don't really know. Because if there were some
2 other system emergency that came up that required
3 interruptions, I think our first goal would be to try to
4 recall or pull back wholesale sales. And I think that is
5 what we have done in the past.

6 I don't know exactly, you know, in any
7 particular circumstance what the legal requirements of the
8 tariff are, quite honestly. All I know is that so far we
9 have had these situations before, and we have not
10 interrupted interruptible customers.

11 Q And would it be correct that you have not
12 interrupted interruptible customers because you have been
13 able to recall the wholesale or the power you committed to
14 your wholesale customer?

15 A Either recall it or get it -- purchase it and
16 get it to them some other way.

17 MS. KAUFMAN: Thank you, Mr. Wieland.

18 CHAIRMAN GARCIA: Okay. Staff.

19 MR. KEATING: Mr. Wieland, staff is going to
20 hand around a couple of exhibits. I believe Mr. McGee
21 with Florida Power Corporation has agreed to stipulate
22 these into the record.

23 MR. MCGEE: That's correct.

24 MR. KEATING: The first exhibit consists of --
25 it is a composite exhibit including the deposition

CROSS EXAMINATION

1
2 BY MR. KEATING:

3 Q Mr. Wieland, I believe staff has handed you, as
4 well, a copy of what has previously been identified as
5 Exhibit Number 3, a one-page table titled summary of
6 current and proposed incentive treatment. Has that been
7 provided?

8 A Yes, that is -- let me see. Yes.

9 Q And copies were made available of that to the
10 other parties earlier. If you could refer to that
11 exhibit, in particular the column titled Florida Power
12 Corporation, or FPC. I would like for you to briefly go
13 through that and verify that the information contained in
14 that exhibit is correct, or indicate if there needs to be
15 some clarification.

16 A I think with regard to employee compensation
17 linked to sales, I might add some of the same caveats that
18 the Florida Power and Light witness had. It is not
19 exclusively tied to sales, rather it is tied to the
20 overall market -- power marketing activity, which includes
21 things like purchases, for example.

22 And under the last row, applicable schedules, I
23 mean, our proposal essentially says they should -- all
24 nonseparated sales, exclusive of A and B, should be
25 included. I know one right offhand that we sell under

1 which is not on here is OS. But our whole position is
2 don't limit it to a list of schedules, because they may be
3 supplanted by different ones the next day, and it just
4 becomes an administrative nightmare to try to figure out
5 which ones count and which ones don't. Our proposal
6 really is to not limit it to certain specific schedules.

7 Q Okay. So Florida Power Corporation's proposal
8 is to the more general types of sales that you have
9 listed. And if I am correct, any sales made under future
10 FERC schedules of this -- sales of this variety made under
11 future FERC-approved schedules?

12 A Yes. We just believe administratively it is
13 easier to talk about a type of sale that ought to be
14 qualified rather than have a list of schedules that change
15 over time.

16 Q The sales that Florida Power Corporation is
17 currently applying the incentive to are all nonfirm sales,
18 is that correct?

19 A Yes, that is right. There would be the Schedule
20 C and X broker sales which have, for practical purposes,
21 vanished.

22 Q Under your proposal the incentive would be
23 extended to apply to sales that last up to one year, is
24 that correct?

25 A Yes. Because that is the break point at which

1 sales are separated.

2 Q And the current types of sales that you are
3 applying the shareholder incentive to, what are the length
4 or the term of those sales?

5 A The ones that we are applying it to or proposing
6 to apply it to?

7 Q The types of sales that you are currently
8 applying the incentive to?

9 A Well, Schedule C and X. I mean, as far as I
10 know, Schedule C at least was. I mean, it doesn't really
11 exist any more, at least in the old broker form. It is
12 basically an hour-by-hour type transaction. Schedule X, I
13 think, went further than that, but I'm not really sure
14 what it is limited to. But certainly all within less than
15 a year, I would think.

16 Q Your proposal would expand application of the
17 incentive to nonseparated sales made with market-based
18 rates as well, correct?

19 A Yes.

20 Q Is that the Schedule MR-1 that is listed?

21 A MR is the market-based rate schedule, yes.

22 Q What percentage of Florida Power Corporation's
23 nonseparated sales are made under market-based rates?

24 A I don't know that we were actually able to
25 separate those. I know the question was asked, but I

1 don't know that we had an answer for it.

2 Q Florida Power Corporation has not previously and
3 it does not apply the 20 percent shareholder incentive to
4 nonseparated wholesale sales other than Schedule C and X
5 sales, correct?

6 A That's right.

7 Q And it hasn't applied that incentive to
8 market-based rates, market-based sales up to this point?

9 A That's correct.

10 Q Why hasn't Florida Power Corporation applied the
11 incentive to those types of sales?

12 A Well, we believe that that is what the
13 Commission ordered us to do. In the 1984 order, the
14 Commission essentially talked about economy sales without
15 necessarily defining exactly what those are. I think they
16 refer to split-the-savings because that is the only thing
17 that existed at the time.

18 But in a subsequent hearing, in fact, I think
19 you passed out an order where the company asked to expand
20 the sales to things other than C and X. I think as a
21 result of that order it specifically said no, Schedule C
22 and X only. And that may have applied specifically to
23 Florida Power because we were the only ones asking at the
24 time. So, at any rate, that order was, we thought, quite
25 specific in saying that only Schedule C and X are eligible

1 for the 80/20 sharing and nothing else is.

2 Q Let me go ahead and ask you about that order. I
3 believe we have handed that out. That is Order Number
4 20271 issued in 1988. Do you have that in front of you?

5 A Yes.

6 Q Are you familiar with that proceeding, the
7 proceeding that led up to that order?

8 A Yes. In fact, I recall participating in it.

9 Q And in that proceeding Florida Power Corporation
10 requested that the 20 percent incentive be extended to
11 Schedule -- to its Schedule D, F and J sales, is that
12 correct?

13 A That's right.

14 Q And what types of sales are the Schedule D, F
15 and J sales?

16 A Well, they were schedules that just had
17 different names. D tended to be more a firm sale; F was
18 nonfirm sales; J, I think, could be either one. But I
19 think the point at the time was that there were other
20 things going on in the markets even back then that were
21 the kind of sales that still bring benefits to the
22 customers and that utilities should be encouraged to make
23 them and, therefore, apply the incentive to them.

24 Q Florida Power Corporation doesn't currently make
25 Schedule D, F, and J sales, is that correct?

1 A To the best of my knowledge, no. But, again, we
2 make sales of that same nature, and I think my earlier
3 caution about not getting too hung up about letters points
4 out that things do change over time. So we make sales
5 that are similar in nature, but don't carry the same
6 labels.

7 Q And I don't want to get hung up on the labels,
8 as well, I just want to verify that those are the same
9 types of sales that you are proposing the incentive be
10 applied to today.

11 A They are similar in nature I would say with the
12 possible exception of Schedule D. Schedule D tended to be
13 firm sales that sometimes stretched over longer time
14 periods, like more than a year. But our proposal at the
15 time -- and, of course, recall too at that time the one
16 year distinction for separating versus nonseparating was
17 really not in place.

18 So what I would say today if there were a
19 Schedule D that is short term, less than a year, then,
20 yes, that would be included in our proposal today.

21 Q Does your proposal today include an incentive
22 for both nonfirm and firm sales?

23 A Yes, it does.

24 Q And I believe you stated in your deposition that
25 it is appropriate to apply a stockholder incentive to both

1 firm and nonfirm sales because it is impossible to
2 distinguish between the two types of sales in today's
3 market, is that correct?

4 A Yes. But I might go a little bit further than
5 that. But, first of all, the definition of firm is
6 difficult to establish these days. There are so many
7 different products on the market. They have things like
8 subordinate firm; you can have firm with liquidated
9 damages; you can have some not so firm. And, again, just
10 for ease of administration, I would suggest there is no
11 reason to get into trying to carve out exactly what, you
12 know, what definitions qualify and which definitions
13 don't.

14 Second of all, as perhaps a more practical
15 matter, I don't know why the Commission would want to
16 exclude firm sales. And, first of all, you have to assume
17 that the utility has the capacity in order to make the
18 sale to begin with, that is kind of a given.

19 But assuming that it does, furthermore if you
20 understand that the market typically pays more the firmer
21 the product is, why would you want to incentivize a
22 company to perhaps pass on a sale that is firm but can be
23 sold for \$100 a megawatt hour and instead incentivize it
24 to go make a nonfirm sale which may only carry a \$50 gain.

25 If you want to truly maximize the value that you

1 bring to your customers, I don't think you want to start
2 carving out and saying, only these things qualify for the
3 incentive and these things don't. Because you may be
4 putting the utility in a position where it is incentivized
5 to maybe not maximize the value that it can bring to its
6 customers.

7 Q Would you agree that the longer the term of a
8 particular nonseparated wholesale sale the more difficult
9 it is for FPC to correctly forecast the cost associated
10 with that sale?

11 A It is two things really that make the prediction
12 difficult. One is the length of the sale or, two, even if
13 it is a short sale, but it is some distant time in the
14 future. For example, we could have a one-week sale that
15 we would make today, but the call option is for August, I
16 would say that has certainly more risk than a one month
17 sale starting tomorrow.

18 Q So are you agreeing with my statement?

19 A I'm agreeing with it, and I think I'm just
20 expanding it. It is not necessarily the length of the
21 sale, it is when it takes place in regards to when you are
22 making the commitment. And the further out that time is
23 the more risky it becomes in a sense, even if the sale is
24 short.

25 Q So then would you also agree that the longer the

1 term of the sale the greater the risk to Florida Power
2 that it will suffer a loss on the sale?

3 A To Florida Power or its customers depending on
4 how it is treated, yes.

5 Q Do you have in front of you what was previously
6 identified as Exhibit Number 4? Again, this is a one-page
7 exhibit with the table entitled, application of current
8 and proposed stockholder incentive?

9 A Yes, I do.

10 Q Could you review the figures in Columns 1 and 2
11 entitled, FPC actual and FPC proposed?

12 A Okay.

13 Q To the best of your knowledge, are those figures
14 accurate?

15 A Yes. I think these are the figures that we
16 submitted in our interrogatory. I would add only one
17 comment. If you look at 1999, for example, the proposal
18 for the stockholder incentive of 2.7 or 2.8 million is
19 correct. The actual is only the 20 percent on Schedules C
20 and X. And you will recall, as I have testified before,
21 we had an additional incentive, or at least we viewed it
22 as an incentive in 1999, where we retained the
23 transmission revenues. And those, in fact, were in excess
24 of 2.7 million, they were in excess of 3 million. And
25 that was not in that particular interrogatory response,

1 because it wasn't asked. But I think that is an important
2 point to consider.

3 Q So do these numbers fairly portray solely the 20
4 percent incentive that was retained by Florida Power
5 Corporation or would be under its proposal?

6 A Yes, they actually represent the 20 percent,
7 they just don't include the transmission revenues we spoke
8 to earlier.

9 MS. KAUFMAN: Could you say that again, please.

10 THE WITNESS: Yes. The numbers on this exhibit
11 only reflect the 20 percent gain that was earned by the
12 company on an actual basis, which is 57,620, or would have
13 been earned under the current proposal, 20 percent of all
14 of its systems, which is 2.7 million.

15 But if you were to say, well, what did the
16 company actually retain for its shareholders in 1999, it
17 is the 57,000, which is the 20 percent on Schedule C
18 sales. But we also retained the transmission revenues,
19 which in this year we are flowing back. And that amount
20 was in excess of \$3 million in 1999.

21 COMMISSIONER JABER: You know, staff, that
22 brings up a question I have in my mind and maybe you can
23 verify it for me later. Are these charts comparable? If
24 I looked at Florida Power Corps' two lines here, am I
25 looking at the same elements that went into those numbers

1 that went into Florida Power and Light's numbers and
2 Gulf's and --

3 MR. KEATING: What we have done in the actual
4 column is portrayed what actual amount that they collected
5 as the 20 percent shareholder incentive on specific types
6 of sales that they applied that incentive to for 1994
7 through 1999. The proposed column indicates what amounts
8 would have been retained as a 20 percent share -- I'm
9 sorry, not necessarily 20 percent shareholder incentive,
10 but under their particular proposal in this docket what
11 amounts would have been retained given the same level of
12 sales for that period.

13 COMMISSIONER JABER: Okay.

14 MR. KEATING: And it will be a little different.
15 Florida Power Corporation's proposal is that it extend --
16 that the 20 percent incentive extend to all nonseparated
17 wholesale sales. Other utilities, as we have seen with
18 Florida Power and Light, have proposed a slightly
19 different modified scale where 20 percent would apply to a
20 certain level of profits and 40 percent and 50 percent.
21 The proposed column indicates simply what each utility's
22 proposal, what effect that would have had on that time
23 period.

24 COMMISSIONER JABER: All right.

25 CHAIRMAN GARCIA: I wanted to ask you a

1 question, and maybe -- I didn't find it in here, but why
2 20 percent? What is the magic number? I mean, you know,
3 we have heard about added cost to maximize your work, why
4 20 percent, what is magic about that? And obviously it
5 must have been magic to us at some point or to the
6 Commission back when we did that.

7 THE WITNESS: You're right, Commissioner, that
8 is probably the only answer I can give. I mean, there was
9 no scientific basis for that. That was a discussion. And
10 I guess at that point in time the Commission felt that
11 that was a reasonable number. There is no one that could
12 say that 10 percent is a better number or 30 percent is a
13 better number. I mean, I think we know that zero is
14 probably not the right answer and that is certainly what
15 the Commission felt at the time. 100 percent is not the
16 right answer.

17 CHAIRMAN GARCIA: Let me ask you, though, and
18 you may not have an answer to this, but give me a
19 ballpark. It seems to me 20 percent in terms of brokering
20 a deal or making a sale seems rather high to me. If my
21 broker took 20 percent, I wouldn't use my broker anymore.
22 In this particular case, for that efficiency, in other
23 words, for paying for you to find a market, an efficiency
24 you should find on your own, but we are trying to
25 incentivize you, giving you 20 percent seems a bit high,

1 doesn't it?

2 THE WITNESS: Commissioner, you know, look at
3 the 20 percent is high, perhaps, for a cost-based number.
4 But that is really not what the incentive is about. The
5 incentive is, you know, will that level of incentive wind
6 up getting a customer more than not having that incentive.
7 Now, you know, I can't tell you that 20 percent is the
8 right number. It seems to have worked so far. We don't
9 have a better one. But it ought to be viewed with, you
10 know, is it the right incentive, not is it the right cost
11 or the right cut to take.

12 COMMISSIONER JACOBS: That is an interesting
13 approach, because if you buy off on that, what I -- and I
14 would like your thoughts on this, what I would venture to
15 say is that by having -- giving the incentive, let's say
16 just the incentive alone of you keeping the transmission
17 revenues, that would have given you the opportunity and
18 the time to develop your organization, your marketing
19 organization, your practices, and your approaches to
20 developing this market, i.e., this excess capacity
21 opportunity sales market.

22 And so having done that and having achieved that
23 structure, you would now be in a prime position to
24 understand how to go after that market, how to make the
25 best of those sales, and how not to go after that market.

1 And so it would be an appropriate thing not only to now
2 say you now can stand on your own and be on your own
3 footing to go after that market, but let's look at now the
4 fact that those costs are going to flow from the retail
5 side and make sure that we are doing all the good to make
6 the residential customers whole.

7 You differ in that, tell me how your approach
8 differs?

9 THE WITNESS: Well, Commissioner, I guess you
10 are saying that to the extent that we have been collecting
11 these transmission revenues we have paid for the
12 development costs and therefore that ought to be enough,
13 if I understand you right. But I would say, first of all,
14 the costs do go on, they don't stop. And I don't know
15 that just the fact that we have gotten to the point where
16 we are and have engaged in the market as much as we have
17 necessarily assures that a company, and I'm not talking
18 about Florida Power specifically, we will continue to do
19 that, to maximize the going forward, because you do have a
20 lot of on-going costs.

21 I mean, clearly if -- you know, times have been
22 pretty well for utilities in the last few years, everyone
23 is earning a reasonably good rate. But, you know, think
24 about what if times get a little tougher. And all of a
25 sudden their obligation to do everything for the

1 shareholder and everything for the ratepayer, and it gets
2 in a bit of a conflict and they say where can we cut back
3 a little bit. Well, where are we not making any money?
4 Those are the kinds of things that you need to think about
5 as a Commission.

6 Now, are they going to just totally do away with
7 the marketing group? Probably not. That will be too
8 blatant. Could they scale back, could they maybe not
9 expand it like maybe they have thought about doing. Those
10 are the things that you will never know. And I think the
11 reason that you would want to look at an incentive is
12 because that sort of says, well, we are going to keep
13 giving them this little extra and even though they are
14 supposed to do the right thing, maybe they will do a
15 little bit better. And, again, the whole objective of the
16 incentive mechanism from your view should be to have an
17 incentive that is going to wind up doing more for the
18 customer, not less.

19 COMMISSIONER JACOBS: Thank you.

20 COMMISSIONER JABER: At what point is an
21 incentive program no longer necessary, in your mind?

22 THE WITNESS: I don't know that there is such a
23 point, Commissioner. I mean, we have incentive mechanisms
24 in place for all of our employees. I doubt if we will
25 ever do away with those. I mean, incentive is as much of

1 a philosophy as anything else. And I don't know that the
2 reason that you do any kind of incentive, whether it is
3 incentive pay or incentive regulation, I don't know that
4 those reasons ever go away. I think they have always
5 existed and they always will.

6 COMMISSIONER JABER: Okay.

7 BY MR. KEATING:

8 Q I just want to go back to the table that I was
9 referring to previously, the application of current and
10 proposed stockholder incentive. Just looking at the last
11 row with the totals for that period, under your proposal
12 Florida Power Corporation's shareholders would have
13 received approximately \$6.2 million more over the period
14 shown if your proposal had been in effect, is that
15 correct?

16 A Yes.

17 Q Without the proposal in effect that \$6.2 million
18 was returned to the ratepayers, correct?

19 A Yes. Again, with the same caveat we talked
20 about earlier about the transmission not being a piece of
21 this.

22 Q In your deposition you made the statement that
23 the PSC needs to believe that there will a net benefit to
24 ratepayers or they shouldn't approve the incentive. Do
25 you still hold that opinion?

1 A Yes, I do. In fact, I think I expressed that
2 again.

3 Q Has Florida Power Corporation performed any
4 analysis which would show that ratepayers will receive a
5 net benefit from expanding the incentive as you have
6 proposed?

7 A No, we haven't. And I don't believe that you
8 could.

9 Q Would you agree that the gains on sales that the
10 incentive would apply to would have to increase by more
11 than 20 percent for ratepayers to receive a net benefit
12 from your proposed incentive?

13 A Yes, I would agree with that.

14 Q If the Commission does expand the incentive as
15 you have proposed, is there a possibility that the credit
16 to ratepayers through the fuel clause could be reduced?

17 A There is a possibility it could be reduced. But
18 our belief is that it is going to increase.

19 Q Are you familiar with the generating performance
20 incentive factor?

21 A Somewhat, yes.

22 Q Is it your understanding that the generating
23 performance incentive factor offers an incentive for
24 utilities to operate certain units efficiently?

25 A Yes.

1 Q And is it your understanding that the efficiency
2 savings to ratepayers are in the form of fuel savings?

3 A Yes, they are.

4 Q Would you agree that a utility that is operating
5 its units more efficiently would have more excess energy
6 available to sell into the wholesale market?

7 A Yes, I think that is generally true. Although
8 by efficiency, I think if you used the word availability I
9 would probably agree with you more. If units are more
10 available, and that is one of the measures in GPIF, then
11 certainly there would be more ability to sell.

12 Q And perhaps I should have added the phrase all
13 other things being equal?

14 A Right.

15 Q Considering that the Commission has provided the
16 utilities an incentive through the generating performance
17 incentive factor to encourage efficiency, which in turn,
18 generally speaking, would make more energy for sale in the
19 wholesale market available for sale, is it appropriate for
20 the Commission to provide another incentive for utilities
21 to sell that energy?

22 A Yes, I believe so. Because having the ability
23 to engage in the market doesn't necessarily incentivize
24 you to do that.

25 Q If a utility makes a firm sale, is it correct

1 that that sale cannot be recalled?

2 A Not necessarily. For example, we have products
3 in the market these days that are called firm LD, meaning
4 firm with liquidated damages. And in that case you don't
5 recall it, but you have to pay the buyer or the purchaser
6 for whatever expenses he has to replace it to buy from
7 somewhere else.

8 So, you know, it is recallable in that sense to
9 where, you know, Florida Power in that case would not
10 necessarily be delivering the power, because we don't have
11 it. But we would have to pay the purchaser to buy that
12 power somewhere else at whatever that price is. And,
13 again, those are the kind of things that make the
14 definition of what is firm or not firm a little bit
15 difficult.

16 Q Would the sales that Florida Power is proposing
17 the Commission apply the 20 percent incentive to include
18 any sales that did not have a recallable provision or that
19 did not have that liquidated damages provision?

20 A Well, I don't know that any such sales even
21 exist, but I think under our approach I would have to say,
22 yes, we would include those, although I can't really
23 envision a product that would be of that nature. I mean,
24 you get to the point where if you can't deliver it, then
25 you don't deliver it. Certainly one thing that the

1 company -- and I don't think any company will do is
2 curtail its retail customers in order to make one of these
3 sales. That is just not going to happen.

4 Now, what happens as a result of not delivery, I
5 don't know. It depends on the nature of the contract.
6 And that's why I'm saying they are probably all to some
7 extent recallable because we just wouldn't be delivering
8 it.

9 COMMISSIONER JABER: Let me make sure I
10 understand. Staff asked you if firm sales were
11 recallable, and you said some are. And I interpreted your
12 statement to mean that contractually there can be
13 provisions that allow you to recall sales, even if they
14 are firm sales, because of the liquidated damages clause.
15 Basically, there is a penalty to recalling that kind of a
16 sale.

17 THE WITNESS: That's right.

18 COMMISSIONER JABER: Okay. So then staff asked
19 you if you would apply your incentive proposal to those
20 sales. Does Florida Power Corp have contracts for firm
21 sales that have liquidated damages provisions in them?

22 THE WITNESS: Yes, we do. And I would propose
23 -- our proposal would include those. Perhaps I
24 misunderstood the question. I thought the question was do
25 you have any sales that are just firm, period, and don't

1 have any recallable provisions.

2 MR. KEATING: I think Mr. Wieland correctly
3 understood the question. I was only asking if they had
4 any firm sales other than those -- other than sales that
5 were recallable, or that had a liquidated damages
6 provision that they would apply the incentive to.

7 COMMISSIONER JABER: And your answer is, yes,
8 you would apply the incentive proposal to those?

9 THE WITNESS: Yes. And, furthermore, as I said,
10 I'm not really sure such a sale even exists. Because even
11 if the contract says that it is not recallable, I mean, if
12 we don't deliver it -- and, again, we would not curtail
13 our retail customers, our firm customers in order to
14 deliver a sale to some marketer.

15 I think the attorneys would have to figure out
16 what happens after that. So in that sense I'm not sure
17 that there is an entirely firm sale.

18 COMMISSIONER JABER: All right.

19 THE WITNESS: I mean, there are sales that are,
20 in some cases have a recallable provision where it says,
21 you know, it is firm except for such and such and such and
22 such. There are others that say it is firm but there is a
23 liquidated damages provision. But they would all have
24 some caveat that says, here is what happens if you don't
25 deliver. So, in that sense one might argue they are all

1 recallable to some extent.

2 MR. KEATING: I just have two follow-up
3 questions.

4 BY MR. KEATING:

5 Q Would Florida Power Corporation interrupt an
6 interruptible customer if it had a firm sale with a
7 recallable provision? Would it make the sale if it had an
8 interruptible customer?

9 A Well, I can tell you that we have not done that
10 to date. I don't know exactly what the legal provisions
11 are of the tariffs, whether that would be allowable or
12 not. So I don't know that I could give you a good answer
13 for that.

14 Q And you may have the same answer, but what if
15 Florida Power had a firm contract with an LD provision
16 rather than a recallable provision?

17 A If you are talking about the interruptible
18 customers in the IS tariff only or interruptible
19 customers, for example, such as load management. Because
20 I think my answer would be different for those two.

21 Q Well, what would your answer be with respect to
22 the interruptible customers?

23 A I think we would be much more limited, and I
24 believe we would pay liquidated damages. But I am not 100
25 percent certain of that.

1 Q Okay. And you said your answer may be different
2 with respect to load management?

3 A There are no restrictions on load management
4 customers. So, you know, from a tariff perspective and
5 from a practical perspective I think the utility should,
6 when appropriate, engage in order to bring some additional
7 value to customers as a whole.

8 MR. KEATING: Thank you. That's all the
9 questions I have.

10 CHAIRMAN GARCIA: Commissioners.

11 COMMISSIONER DEASON: I have a question.
12 Mr. Wieland, all things being equal, a utility that has a
13 higher reserve margin would be more likely to engage in
14 wholesale sales, would you agree with that, or is that not
15 correct?

16 THE WITNESS: Well, they would certainly have
17 more of an ability to engage. Whether they actually do or
18 not may not be a function of reserve margins, but
19 generally you would think, yes. But certainly they have
20 more of an ability to engage in that market than a utility
21 that has small margins. But how much they engage in the
22 market is subject to a lot of other factors.

23 COMMISSIONER DEASON: So you are drawing the
24 distinction between the ability to do something and
25 actually doing it?

1 THE WITNESS: Yes.

2 COMMISSIONER DEASON: So if we go to a 20
3 percent reserve margin, which appears to be the target
4 now, even though that may result in greater ability, it is
5 your opinion that the incentive is still necessary for
6 that ability to be acted upon?

7 THE WITNESS: Yes, sir, I believe so. In fact,
8 perhaps more so because having more of an ability to
9 engage in the market and more megawatts to sell, in other
10 words, just opens the possibilities. and you want to make
11 sure that a utility maximizes that.

12 COMMISSIONER DEASON: Is 20 percent still the
13 correct incentive factors to be utilized if you have
14 greater ability to make a sale?

15 THE WITNESS: Well, again, Commissioner, I don't
16 have a better number. Is that the absolutely best number?
17 I don't know. But, you know, I can't offer a better one
18 for you. I see no reason to really change the number just
19 because there are more megawatts available.

20 And I might say, particularly in Florida Power's
21 case, I know one of the issues that we wrestled with with
22 the reserve margin is the idea that we have an awful lot
23 of nonfirm or interruptible load management type customers
24 that get us to that margin.

25 So it is hard to say how much that, you know,

1 how many more megawatts that that liberates. But I don't
2 know that the level of the incentive is necessarily tied
3 to having more or less reserves.

4 COMMISSIONER DEASON: Should the level of
5 incentive be tied to the amount of transactions that you
6 engage in? It is your testimony that we should expand the
7 incentive to cover more types of transactions, which there
8 is a greater pool of megawatts out there that is going to
9 be incentivized. Is 20 percent still the correct factor
10 to use even though you are applying it to a much larger
11 factor?

12 THE WITNESS: Well, Commissioners, it appears
13 that we are going to a much larger number. But keep in
14 mind that back when all there was was the broker, the pool
15 was actually fairly large, and I don't recall what the
16 megawatts hours were, but they were fairly sizable
17 transactions that we got 20 percent on.

18 What we are saying is that that part of the
19 market has shrunk and gone away. And there is another
20 part of the market that has taken its place for which the
21 utilities are not being incentivized at all. You know, so
22 even if the size of the market hadn't changed at all since
23 '84 or '85, just the way the factor has been applied has
24 changed dramatically. And what we're saying is there is
25 no reason for that to happen.

1 Now is the market today or tomorrow bigger than
2 it was in the early '80s? I would have to go look at some
3 of our exhibits. I would think so, but not so much bigger
4 that the 20 percent is necessarily invalid.

5 CHAIRMAN GARCIA: Sort of a follow-up, and maybe
6 you answered it for Terry. Because we are going to a 20
7 percent reserve, it would strike me that it would be in
8 the best interest of this Commission to incentivize you to
9 play in that market much more aggressively because clearly
10 the costs of running such a large margin would be to some
11 degree more absorbed, would it not?

12 THE WITNESS: Yes, I would agree with that. You
13 know, as a general rule, I think utilities, and it has
14 been said before, should try to maximize the value that
15 they have given the assets they have. And if they have
16 more assets there is more value that can be created. And
17 I think the incentive is intended to do that.

18 CHAIRMAN GARCIA: Mr. McGee.

19 MR. MCGEE: Just one question.

20 REDIRECT EXAMINATION

21 BY MR. MCGEE:

22 Q Mr. Wieland, Chairman Garcia asked you about
23 whether the 20 percent might seem like a fairly high
24 incentive for what is essentially a brokering function,
25 especially if you compare it to the percentages that might

1 be expected -- paid to a stockbroker. Is the 20 percent
2 that is earned under the current incentive, or the one
3 that you have proposed, on the full transaction price of
4 the economy sale?

5 A No, it is strictly on the paying.

6 Q So if it were expressed as a percentage of the
7 full transaction price, it would be something lower?

8 A Much smaller, yes.

9 MR. MCGEE: Thank you. That's all I had.

10 COMMISSIONER DEASON: If my broker earned those
11 commissions, he would owe me money if it were based upon
12 the gain.

13 MR. KEATING: Staff would move Exhibit 7.

14 CHAIRMAN GARCIA: Show it admitted.

15 MR. MCGEE: Mr. Keating, did you want Exhibit 8,
16 as well?

17 MR. KEATING: Have we identified an 8?

18 MR. MCGEE: There was a second handout, the
19 late-filed exhibit.

20 CHAIRMAN GARCIA: Yes, it is a composite
21 exhibit. We are going to treat them as a composite
22 exhibit. We are going to attach that one to 7.

23 MR. MCGEE: Excuse me, okay.

24 CHAIRMAN GARCIA: So 7 continued, I guess.

25 (Exhibit 7 admitted into evidence.)

1 MR. STONE: Mr. Chairman, might this be an
2 appropriate time to take a short break?

3 CHAIRMAN GARCIA: Sure. Let's take 15 minutes.

4 (Brief recess.)
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1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

4

I, JANE FAUROT, RPR, Chief, FPSC Bureau of Reporting
5 FPSC Commission Reporter, do hereby certify that the
6 hearing in Docket No. 991779-TP was heard by the Florida
Public Service Commission at the time and place herein
7 stated.

7

8 It is further certified that I stenographically
9 reported the said proceedings; that the same has been
10 transcribed under my direct supervision; and that this
transcript, consisting of Pages 1 through 170, Volume 1,
11 constitutes a true transcription of my notes of said
12 proceedings and the insertion of the prescribed prefiled
13 testimony of the witness(s).

11

12 I FURTHER CERTIFY that I am not a relative, employee,
13 attorney or counsel of any of the parties, nor am I a
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14 counsel connected with the action, nor am I financially
interested in the action.

14

DATED this THIS 17TH DAY OF MAY, 2000.

15

16



17

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