BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 030623-EI

In the Matter of

COMPLAINTS BY OCEAN PROPERTIES, LTD., J.C. PENNEY CORP., TARGET STORES, INC., AND DILLARD'S DEPARTMENT STORES, INC. AGAINST FLORIDA POWER & LIGHT COMPANY CONCERNING THERMAL DEMAND METER ERROR.
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VOLUME 1

Pages 1 through 216

PROCEEDINGS:	HEARING
BEFORE:	COMMISSIONER J. TERRY DEASON COMMISSIONER RUDOLPH "RUDY" BRADLEY COMMISSIONER CHARLES M. DAVIDSON
DATE:	Thursday, November 4, 2004
TIME:	Commenced at 9:35 a.m. Concluded at 4:45 p.m.
PLACE:	Betty Easley Conference Center Room 148 4075 Esplanade Way Tallahassee, Florida
REPORTED BY:	LINDA BOLES, RPR Official FPSC Reporter (850) 413-6734

APPEARANCES:

JON MOYLE, JR., ESQUIRE, and BILL HOLLIMON, ESQUIRE, Moyle, Flanigan Law Firm, The Perkins House, 118 North Gadsden Street, Tallahassee, Florida 32301, appearing on behalf of Ocean Properties, J.C. Penney, Dillard's and Target.

KENNETH HOFFMAN, ESQUIRE, and J. STEPHEN MENTON, ESQUIRE, Rutledge, Ecenia, Purnell & Hoffman, Post Office Box 551, Tallahassee, Florida 32302, appearing on behalf of Florida Power & Light Company.

COCHRAN KEATING, ESQUIRE, and MARY ANNE HELTON, ESQUIRE, FPSC General Counsel's Office, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, appearing on behalf of Commission Staff.

I N D E X

WITNESSES

EXHIBITS

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P R O C E E D I N G S

COMMISSIONER DEASON: Call the hearing to order. Could I have the notice read, please.

MR. KEATING: Pursuant to notice, this time and place have been set for a hearing in Docket Number 030623-EI, complaints by Ocean Properties, Ltd., J.C. Penney Corp., Target Stores and Dillard's Department Stores against Florida Power & Light Company concerning thermal demand meter error.

COMMISSIONER DEASON: Okay. Appearances.

MR. HOFFMAN: Good morning, Commissioner Deason. My name is Kenneth Hoffman; with me is Steve Menton. We are with the firm of Rutledge, Ecenia, Purnell & Hoffman, 215 South Monroe Street, Suite 420, Tallahassee, Florida 32301, appearing on behalf of Florida Power & Light Company.

MR. MOYLE: Jon Moyle, Jr., with the Moyle, Flanigan Law Firm. We're at 118 North Gadsden here in Tallahassee, Florida. Appearing with me is co-counsel Bill Hollimon. We are appearing on behalf of what I will term Customers in this case, which includes J.C. Penney, Dillard's, Ocean Properties and Target Department Stores.

MR. KEATING: Cochran Keating appearing on behalf of the Commission.

COMMISSIONER DEASON: Okay. Preliminary matters. There's a number of preliminary matters I want to discuss primarily dealing with time considerations, and I think

Commissioner Bradley also has a request to make in terms of that. If there are other things we need to discuss before we get to time considerations, now is the time.

Mr. Keating, do you have anything?

MR. KEATING: Yes, Commissioner. It's my understanding the parties have, have come to an agreement on how we can best spend our time today, and it's my understanding that this agreement would, would have us out of here by approximately 5:00 this afternoon. There's, there's seven and a half hours between now and then. **The parties have proposed** that they each be allowed no more than 15 minutes for an opening statement rather than the 20 minutes allowed in the prehearing order. They propose to allocate 15 minutes total for all cross-examination of the staff witness Sidney Matlock and approximately three hours per side to cross-examine the other's witnesses. And finally, I saved this for last because it may be the most controversial, they proposed a 30-minute lunch break.

COMMISSIONER DEASON: Okay. Commissioner Bradley, the floor is yours.

COMMISSIONER BRADLEY: Yes. And I can appreciate what the parties have agreed to, the parties have agreed to, but my, my request -- I was thinking more along the line of, along the lines of 3:00 today, and I'm just -- and this may or may not be possible, but I'm just wondering if there's a

possibility of us agreeing to a 3:00 deadline and maybe give the consideration to minimizing the redundancy of the testimony of the witnesses as well as the, the questioning of the attorneys.

COMMISSIONER DEASON: Okay. You've heard the Commissioner's request. What's the response? Mr. Hoffman?

MR. HOFFMAN: Thank you, Commissioner Deason. I think that FPL would be amenable to accommodating Commissioner Bradley. We would probably need five minutes to look at what we've prepared in terms of cross-examination questions to scale those down appropriately. And if it's agreeable with counsel for the Customers, I think then we could just do a reallocation of time, of time designed to meet that 3:00 deadline.

COMMISSIONER DEASON: Mr. Moyle, Mr. Hollimon.

MR. MOYLE: I'm being hit cold with this obviously. I mean, we -- I think we can commit to --

COMMISSIONER BRADLEY: Beg your pardon?

MR. MOYLE: I said I'm -- this is the first I've heard of this. I did hear through staff the other day that we were getting out at 5:00. I mean, we have seven witnesses, I think all of whom are going to be called. I can commit to you to work diligently to try to get out by 3:00. You know, we can cut lunch down to 15 minutes, run over and grab a sandwich and do that. And I'll do the best we can to try to, to try to get done by 3:00 if you have a commitment as to where you need to

be.

COMMISSIONER BRADLEY: Well, and my request is based upon just to see if we can reduce the redundancy of testimony and redundancy of the questioning by the respective parties. And --

MR. MOYLE: It's not my intention to have redundant questions. I mean, Mr. Hollimon and I have split up witnesses. We're going to ask witnesses questions, questions. You know, the direct should come in without much time, you know. In the cross I have, you know, some extensive cross of some of FPL's witnesses. I mean, this is an important case to the Customers, involves a significant amount of money, and, you know, I think it's important that the evidence be heard subject and tested by cross-examination. **But I'll work the best I can and try to get** it done by 3:00.

COMMISSIONER BRADLEY: And I agree that you, you may have -- and I wouldn't want to minimize the importance of your questioning and your testimony, but I'm -- that's what I would respectfully request.

COMMISSIONER DEASON: Very good, Commissioner. I'm glad you made the request.

Let me state that it's not the Commission's intention to deny anybody their proper due process, and if it takes longer, so be it. It may not -- it may be that the hearing has to be continued to another day. But I think we all have an

obligation and responsibility to try to work as diligently and as efficiently as we can to make sure that there is a thorough airing of the issues. I think the Commissioners, I think I can speak on Commissioner Davidson's behalf, that we will do our part to be as efficient as we can in our questioning and try to move this hearing along. I think staff will do the same. I think I can speak for Mr. Keating in that regard as well.

COMMISSIONER BRADLEY: And, Mr. Chairman, let me say this, if it takes until 5:00, I'm amenable to it. But that's just a respectful --

COMMISSIONER DEASON: There's nothing wrong with setting goals, Commissioner, and we've set a goal. It may be an aggressive one, but nevertheless it is a goal, and I've heard the parties indicate they're going to try to reach that. If we fail, we fail, but at least we've made the request and we have the goal set.

MR. HOFFMAN: Commissioner Deason, if, if where we're at right now is, is trying to complete this hearing by 3:00, then it may be appropriate to take a minute or two break and talk about -- let counsel discuss how we're going to divide the time. Because we've had some discussions to this point based on certain assumptions and we may need to redefine that.

COMMISSIONER DEASON: Are you referring -- I know that there's been an agreement to have three hours of cross per side. Are you talking about trying to get an agreement to

reduce that number, that amount of time further?

MR. HOFFMAN: Sure.

COMMISSIONER DEASON: Okay. Two minutes, and we're just going to stand here. And if you need to go to the back of the room or whatever, so be it. See if you can reach an agreement. If not, well, then we're just going to get this thing rolling and move it along as fast as we can.

MR. HOFFMAN: Right.

COMMISSIONER BRADLEY: And, Mr. Chairman, let me ask this question. Maybe -- are there any issues that you all maybe have thought about that, that might be stipulated that could accommodate the request for a 3:00 finish?

COMMISSIONER DEASON: Okay. Two minutes.

(Brief recess.)

COMMISSIONER DEASON: Okay. Mr. Hoffman.

MR. HOFFMAN: I don't know that we have an agreement, Commissioner. We, we certainly want to try to conclude this matter today. I think that Mr. Moyle has stated that, and he can speak for himself, but he'll work to try to finish this thing by 3:00. But all I can tell you, Commissioner, it seems that things are a little uncertain to me at this point other than, you know, we're going to try.

COMMISSIONER DEASON: But you're still willing to abide by your agreement of a three-hour limitation of cross-examination?

MR. HOFFMAN: Absolutely. Absolutely.

COMMISSIONER DEASON: Mr. Moyle.

MR. MOYLE: I'm willing to abide by that agreement that we made, and we'll work diligently to try to get this thing done on time.

COMMISSIONER DEASON: Very good. I appreciate that.

COMMISSIONER BRADLEY: You know, Mr. Chairman, I couldn't hear what Mr. Moyle said.

MR. MOYLE: I'm sorry. I said we made an agreement to divide time to three hours, that was the agreement we made. Obviously I'm still willing to stick to that agreement. To accommodate your request at 3:00 we'll do what we can. We'll work diligently to be done by 3:00. If we need to stop at 3:00 and reconvene the hearing at a later date, as the, as the Chair suggested, we're amenable to that. You know, it's hard to make a judgment not having witnesses up there, not knowing how they're going to answer questions, give you yes or no answers or go off on areas --

COMMISSIONER DEASON: But you're still willing to abide by your agreement of three hours total cross-examination.

MR. MOYLE: Yes, sir.

COMMISSIONER DEASON: Very good. Okay.

COMMISSIONER BRADLEY: And let me -- Mr. Chairman, let me, let me be clear.

COMMISSIONER DAVIDSON: We're running out of time.

COMMISSIONER BRADLEY: Yeah. We're using the time p.

(Laughter.)

That is just a request, and I understand what Mr. Moyle's concerns would be. And let me clearly state for he record that by no means will I -- do I want to give the mpression that, that I do not want to give either side an mple opportunity to adequately and effectively and efficiently present their case.

COMMISSIONER DEASON: Thank you, Commissioner. I hink we understand that and I appreciate you clarifying that.

Okay. Any other preliminary matters or can we proceed to opening statements? Mr. Keating, do you have anything?

MR. KEATING: Nothing from staff.

COMMISSIONER DEASON: Mr. Hoffman, do you have any preliminary matters before we get to opening statements?

MR. HOFFMAN: No, sir.

COMMISSIONER DEASON: Mr. Moyle?

MR. MOYLE: No, sir.

COMMISSIONER DEASON: Okay. It's the Customers' complaint; therefore -- have we discussed who's going to be presenting witnesses? I guess, what is the order of witnesses? Who needs to go first, I guess, is my question?

MR. MOYLE: We're happy to go first with respect to

pening statement. The prehearing order sets forth an order of itnesses. We've agreed to just take them in that, in that rder. It's no real rhyme or reason to one side going first. hey're kind of -- Mr. Bromley goes first and we'll abide by hat.

COMMISSIONER DEASON: Very well. And you've agreed o a 15-minute limitation on opening statement?

MR. MOYLE: Yes, sir.

COMMISSIONER DEASON: Okay. Mr. Moyle, you're up and ou're on the clock.

MR. MOYLE: Thank you. And I'm going to introduce ou again to Mr. Bill Hollimon, my co-counsel in this case. He as worked on this case extensively and is appearing, I think, n front of the Commission in a formal hearing proceeding for he first time. He has prepared an opening statement, and if ou would allow him to give it, I'd appreciate it.

COMMISSIONER DEASON: Mr. Hollimon.

MR. HOLLIMON: Good morning, Commissioners. Again, Bill Hollimon with the Moyle, Flanigan firm. In this docket he Customers seek to be fully compensated for overcharges that ave resulted from FP&L's out-of-calibration electric meters. And to do this several things have to happen.

First, the Commission must determine the appropriate method for testing the accuracy of the thermal demand meters in this docket. The Customers assert that the evidence will show

that the thermal demand meters are most accurate on the high end of scale, that means at or above 50 percent of their scale, and that therefore they should be tested at that part of their scale.

The Customers further submit that the evidence will show that meter error is dependent upon the point of full scale at which a meter is tested, and that the intent of the performance requirements that are specified in Rule 25-6.052(4) is that thermal demand meters must meet the performance requirement at all points between 25 and 100 percent of full scale. Also that Rule 25-6.052 does not specify a test requirement. And the evidence will show that both the ANSI standard applicable to thermal demand meters and the meter manufacturer recommend that the meters be tested at or above 50 percent of full scale.

The evidence will also show that the performance requirements of this rule, 25-6.052, is best met by testing thermal demand meters at the highest practicable percentage of full scale.

The Commission must also determine what's the appropriate method for calculating customer refunds. Customers agree that the process that's sponsored by the testimony of FP&L witness Rosemary Morley is correct. However, Customers believe that the evidence will show that a critical input to Ms. Morley's calculation is incorrect, and that as a result the

refund calculated by Ms. Morley is guaranteed to produce an unfair result and leave these Customers undercompensated.

The evidence will show that the best way to determine the refund necessary to fully compensate for meter error is to determine the actual change in demand registration that has occurred following meter replacement or to use the test point error as opposed to the full-scale error that Ms. Morley used in her testimony.

Next, the Commission must determine if these Customers should be treated in the same manner as other similarly situated FP&L customers that are not currently before this Commission. The Customers submit that the requirements of Section 366.03, Florida Statute, require this result.

The Commission must also decide what the appropriate refund period is, whether the refund should extend longer than the 12 months that FP&L proposes, and Customers submit that the only credible evidence before you regarding this issue was filed by Customer's witness Bill Gilmore.

Mr. Gilmore is prepared to present a statistical analysis that demonstrates that the replacement of the meters resulted in a statistically significant change in demand registration, and this change extends for the duration of time these meters were installed, and that, therefore, the appropriate refund period is the installed period of these meters.

The evidence will show that FP&L undertook little or any -- or no investigation to determine what the appropriate refund period is.

The evidence will also show that FP&L's test procedures deviate from the recommendations of the meter manufacturer and from ANSI. Also the evidence will show that FPL's calibration procedures for its meters deviate from the requirements of the meter manufacturer.

And the evidence will show that, contrary to FP&L's position that these meters gradually over time began to overregister, these meters have been overregistering since installation. In fact, the evidence is that FP&L's chief meter engineer, Jim DeMars, is unaware of anything that would cause these meters to go gradually -- to gradually over time come to overregister demand.

Finally, the Commission must determine the appropriate interest rate to apply to refunds. The Customers contend that the interest rate specified by Florida Statute controls in this situation.

In conclusion of this opening, Customers simply seek a process that is fair and equitable. Customers believe that any process that is structured such that refunds are guaranteed to undercompensate the Customers is inherently unfair and inequitable. The goal of the refund process should be exactly what FP&L witness Rosemary Morley has testified to, and that is

this process should put these customers in the place they would have been in had the meter error not occurred. Thank you.

COMMISSIONER DEASON: Thank you, Mr. Hollimon.

Mr. Hoffman.

MR. HOFFMAN: Thank you, Commissioner Deason. Good morning, Commissioners. This case involves claims for refunds made by Mr. Brown and his consulting company along with four FPL customers involving 14 meters. The meters are known as 1V thermal demand meters. And although you'll hear some technical jargon during the hearing today, the issues in the case are really quite straightforward.

The first issue in the case concerns how many of these 14 meters are eligible for a refund. Under the Commission's rules, if a meter is tested and overregisters more than 4 percent for kW demand, it is then eligible for a refund. These meters have a reversible faceplate with two different scales. On one side is a scale of 3.5 and on the other is a scale of 7.0. Typically a commercial customer with a relatively larger level of kW demand would use the meter with the kW demand registered under that 7.0 scale.

The Commission's rules and FPL's Commission-approved meter test plan authorize FPL to test these meters at any point between 25 percent and 100 percent of that 3.5 or 7 scale. So if a meter tests at 80 percent on a 3.5 scale, that would then translate to 40 percent on a 7.0 scale. Either is permissible

under the Commission's rules and under FPL's approved test plan. So the debate in the testimony about whether meters should be tested at 40 percent or 80 percent is really secondary to the issue of whether these meters are eligible for a refund.

Although we were not required to do so, FPL did use the 80 percent scale test result for these meters to determine whether they were eligible for refunds, and the undisputed results of these tests are that 11 of these meters registered demand above the permissible 4 percent level and one registered kWh above the permissible 2 percent level. So we're talking about refunds, potential refunds for 12 out of 14 meters.

We then take those 12 meters and we move to the next issue. The next issue is how FPL is required to develop the amount of the error for each meter in calculating a refund. FPL's position is that the Commission's rules require the use of the results of each meter test. You then take that percentage and you use it to calculate a refund.

The Customers, through Mr. Brown, advocate the use of a kW demand billing differential, which he inconsistently applies to calculate an average difference between the demand consumed by that Customer for 12 months before the meter was replaced versus the kW demand consumed by that customer for as many as 22 months after that meter was replaced with an electronic meter. There's simply no basis or authority to

.nject that methodology into the refund calculation under the Commission's rules.

The Customers also complain in this case that FPL applied this before and after kW demand billing differential to calculate refunds for other meters that are not at issue in this docket. The facts are that FPL provided that kW demand billing differential as part of a settlement mechanism that included a one-year refund for all 1V meter customers. That very same offer was provided to Mr. Brown on behalf of the Customers and meters in this docket, and he chose to reject it and litigate this case.

The Customers also complain that FPL is not applying the rules fairly. We would say, Commissioner, that the Commission has rules and FPL applies them. We apply them on an equal and nondiscriminatory basis for all of our customers, whether they have underregistering meters or overregistering meters.

You might recall that FPL decided not to backbill these 1V customers even though it was legally permissible to do so. And I'm talking about customers not in the docket because that 1V meter population had failed a sample test. Indeed, there were many more underregistering 1V meters than overregistering 1V meters.

Just remember, Commissioners, this case presents one side of the equation: Refunds. We would ask in hearing the

case, interpreting your rules, applying your rules that you be mindful that there is the other side to these metering issues, which is the backbilling part of this for underregistering meters.

So at this point, Commissioner, we have 12 meters eligible for refunds and we have the Commission's rules which call for the use of the results of the meter test error as the figure to be used when you calculate the refund.

The next issue then is how long; what's the appropriate period of time for the refund under your rules? The refund period is governed by Rule 25-6.103(1). It addresses refunds for fast meters and it states that, "The refund shall not exceed one year unless it can be shown that the error was due to some cause, the date of which can be fixed." And in that case you can have a multilevel year fund based upon available records.

So the Commission's rules set up a presumption of a refund period of up to one year, unless it can be shown that the error was due to some cause and the date of that cause can be established. And if both of those things can be shown, then a refund can date back to the date of the cause if you have the available records.

Under the law, Commissioners, it is the Customers that bear the burden of demonstrating by competent evidence that they are entitled to more than one-year refunds under your

rule. That principle of law was confirmed over 20 years ago in Florida Department of Transportation versus JWC Company, a 1981 1st District Court of Appeal decision, where the court held that the burden of proof is on the party asserting the affirmative of an issue before an administrative tribunal.

As you will see, Commissioners, the Customers' case falls far short of meeting this burden. Their witnesses, Mr. Brown and Mr. Smith, offer their own default theory. That theory, which has no evidentiary support, is to use the date these meters were last tested in the early-to-mid, in the early-to-mid '90s, 1990s, and then speculate that they were simply all miscalibrated and that this supposed miscalibration is the cause of the overregistration seen some ten years later.

Their direct testimony contains general allegations that certain FPL meter testers calibrate thermal demand meters in a manner inconsistent with the manufacturer's recommendations.

You will hear the rebuttal testimony of FPL witness Ed Malemezian, who is an expert in thermal demand meter accuracy, stability and meter testing processes and procedures, and he confirms the appropriateness of FPL's meter testing procedures.

The Customers have offered no evidence that any of these alleged defective practices that are discussed in their testimony were perpetrated on any of these 14 meters in this

docket, nor have they offered any evidence as to the impact that this supposed miscalibration had on any of these meters. They simply throw out a variety of unsupported general conclusory allegations, but in terms of direct evidence on these meters, nothing demonstrating that any of these meters were miscalibrated by FPL.

Mr. Brown's theory is essentially an end result theory, and it's developed -- it was developed by Mr. Brown well before discovery started in this case. **It's a theory** looking for support. Their direct testimony offered by Mr. Brown and Mr. Smith allege that nothing except miscalibration could cause these meters to overregister, yet the Customers have admitted in request for admissions that many component parts of these meters can change, and Mr. Smith has confirmed that in his deposition.

I would point out that Mr. Brown's theory would, would secure substantial dollars in refunds and put more money in his pocket since he has contingency fee arrangements with, with his clients, the FPL customers, who gave him a percentage stake in the outcome of this case. But I would remind you that the rebuttal testimony that Mr. Bromley and Mr. Malemezian -- shut the door on this miscalibration theory by confirming that six of these 14 meters were manufactured in the year just prior to or the year of when FPL did its acceptance testing and that these six meters tested accurate by FPL, confirming the

manufacturer's tests, and that calibration adjustments on these six meters were never made. And they were not tested again, I'm talking about these six meters, until late 2002 or early 2003. So there was no intervening calibration by FPL, and the first time these meters ever registered out of tolerance was during the testing of the entire 1V population in late 2002 and early 2003. So the undisputed testimony is that six of these meters were never calibrated by FPL, so they could not have been miscalibrated.

Mr. Malemezian explains that these meters can overregister due to changes in the characteristics of the many components, and, as I stated before, the Customers recognize this. And I would add that that's precisely why the manufacturer's manual provides detailed explanations for repairs of these component parts, and it's also why the meters have the adjustment screws to adjust for overregistration that can occur over time with these meters.

The Customers have raised -- they have also raised a general contention that the sun or heat affects these meters in general. In his testimony, Mr. Brown has recognized that he cannot identify if the sun or the heat had any effect on any of these meters. In addition, tests performed by FPL indicate that the simulation of the high degree of heat on thermal meters has either no effect or causes the meters to actually underregister, not to overregister.

There is testimony before you, Commissioners, on the percentage of full scale that should be used for future testing purposes. You'll hear that testimony. We, we believe that the appropriate testing point is at a percentage of full scale commensurate with the customer's actual kW demand history, so FPL has proposed in its testimony a methodology that would test at the average kW demand experienced over the prior 24-month period.

Commissioners, I'll wrap it up by stating that FPL believes that the evidence demonstrates and will support a Commission determination that 12 of the 14 meters are eligible for refunds, that FPL has correctly calculated the refund amounts, and that the refund period should be one year under the Commission's rule, together with interest calculated under the Commission's refund rule that does include provisions for the calculation of interest. Thank you.

COMMISSIONER DEASON: Thank you, Mr. Hoffman.

All witnesses that are present in the room and will be testifying today, please stand and raise your right hand.

(Witnesses collectively sworn.)

COMMISSIONER DEASON: Thank you. Please be seated.

Mr. Hoffman, you may call your first witness.

MR. HOFFMAN: Thank you, Commissioner Deason. FPL calls David Bromley.

COMMISSIONER DEASON: We're going to do direct and

rebuttal; correct?

MR. HOFFMAN: Yes, sir.

DAVID BROMLEY

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

DIRECT EXAMINATION

BY MR. HOFFMAN:

Q Would you please state your name and business address?

A My name is David Bromley, 9250 West Flagler Street, Miami, Florida.

Q And by whom are you employed?

A Florida Power & Light Company.

Q And what is your position with FPL?

A I'm manager of Power Systems Regulatory.

Q Mr. Bromley, have you prepared and caused to be filed 21 pages of prefiled direct testimony in this proceeding?

A Yes, I have.

Q Do you have any changes or revisions to your prefiled direct testimony?

A Yes, I do.

Q Would you outline those, please?

A On Page 3 of my testimony, Lines 8 and 9, there's reference made to "five documents." That should be "four documents."

On Page 11 of my testimony, Line 21, there's a reference where it takes approximately "two" hours to test. That should be "three."

Q Mr. Bromley, any other changes?

A Not in my testimony.

Q With those changes, if I asked you the questions contained in your prefiled direct testimony, would your answers be the same?

A Yes.

MR. HOFFMAN: Mr. Chairman, I would ask that Mr. Bromley's prefiled direct testimony be inserted into the record as though read.

COMMISSIONER DEASON: Without objection, it shall be so inserted.

THE WITNESS: Excuse me. There, there is one change to my exhibit. I --

COMMISSIONER DEASON: Yeah. We're going to get to the exhibit in just a moment.

THE WITNESS: Okay. Sorry.

BY MR. HOFFMAN:

Q Mr. Bromley, have you prepared any exhibits to your testimony?

A Yes, I have.

Q And those exhibits consist of Document Numbers DB-1 through DB-4?

A That's correct.

Q Do you have any revisions to the documents contained in your exhibit?

A Yes. The last document in my testimony, Document Number DB-4, under the Target Stores, the Sarasota store down towards the bottom under the column labeled "Scale" currently says "3.5." That should say "7." And the last store, Bonita Springs, which currently has a blank, there should be a "7" there.

MR. HOFFMAN: Mr. Chairman, I would ask that, that Mr. Bromley's documents DB-1 through DB-4 be marked for identification as a composite exhibit.

COMMISSIONER DEASON: They will be identified as Exhibit, Composite Exhibit 1.

MR. HOFFMAN: Thank you.

(Exhibit 1 marked for identification.)

BY MR. HOFFMAN:

Q Mr. Bromley, have you also prepared and caused to be filed five pages of prefiled rebuttal testimony in this proceeding?

A Yes, I have.

Q Do you have any changes to your prefiled rebuttal testimony?

A No, I do not.

Q If I asked you the questions contained in your

prefiled rebuttal, would your answers be the same?

A Yes.

MR. HOFFMAN: Mr. Chairman, I would ask that Mr. Bromley's prefiled rebuttal testimony be inserted into the record as though read.

COMMISSIONER DEASON: Without objection, it shall be so inserted.

MR. HOFFMAN: Thank you.

BY MR. HOFFMAN:

Q Have you prepared any exhibits to your rebuttal testimony?

A Yes, I have.

Q And that exhibit consists of Document Numbers DB-5 and DB-6?

A That's correct.

MR. HOFFMAN: Mr. Chairman, I would ask that documents DB-5 and DB-6 be marked as a composite exhibit.

COMMISSIONER DEASON: Composite Exhibit 2.

MR. HOFFMAN: Thank you.

(Exhibit 2 marked for identification.)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

FLORIDA POWER & LIGHT COMPANY

DIRECT TESTIMONY OF DAVID BROMLEY

DOCKET NO. 030623-EI

JULY 12, 2004

Q. Please state your name and address.

A. My name is David Bromley and my business address is 9250 West Flagler Street, Miami, Florida 33174.

Q. By whom are you employed and what position do you hold?

A. I am employed by Florida Power and Light Company (FPL) as Manager, Power Systems Regulatory.

Q. Please describe your duties and responsibilities in that position.

A. I manage the Power Systems Regulatory Department which is responsible for coordinating Power Systems' (transmission and distribution) regulatory activities, primarily associated with the Florida Public Service Commission (FPSC), the Federal Communications Commission, the Florida Department of Transportation, as well as issues that arise at the local government level.

Q. Please describe your education and professional experience.

A. I graduated from Otterbein College in 1976 with a Bachelor of Arts degree in Business Administration with Concentration in Accounting. From 1976 until 1978, I was a staff accountant for Borden, Inc. In 1978, I joined Aristar, Inc., where I was employed as a staff accountant until 1980. In 1980, I was employed by the Deltona Corporation, where I was a Senior Accountant for two years and then became the Comptroller for their Utility Division until 1983.

In 1983, I joined FPL's Analytical Accounting Department and prepared accounting schedules for various FPSC and Federal Energy Regulatory Commission (FERC) dockets. Later in 1983, I joined FPL's Regulatory Affairs Department where I was responsible for coordinating financial and accounting matters before the FPSC and the FERC. From 1983 to 1997, I remained in Regulatory Affairs eventually becoming a Supervisor and finally Manager, primarily overseeing financial and accounting matters before the FPSC and FERC. In 1997, I attended an executive program for utility managers at the University of Michigan. In mid-1997, I then became the Manager of Cost of Service in FPL's Rate Department. In December 1997, I was appointed to my current position.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to provide an overview of the 1V thermal demand meter issues, describe the testing process and method for determining the

accuracy of the 1V thermal demand meters, describe a modification that was recently implemented for testing thermal demand meters, describe FPL's method of determining the meter error used for calculating refunds for those meters that tested outside of prescribed tolerance levels, and to provide the time period to which refunds should apply.

Q. Are you sponsoring an exhibit in this proceeding?

A. Yes. I am sponsoring a Composite Exhibit consisting of ~~5~~ 4 documents attached to my direct testimony. Those 5 documents are:

- Document No. DB-1, 1V meter removal authorization letter from the FPSC's General Counsel
- Document No. DB-2, front view picture of a 1V meter
- Document No. DB-3, FPL's approved test procedures (4 pages)
- Document No. DB-4, meter test results (14 accounts)

I. Overview

Q. What is a thermal demand meter?

A. A thermal demand meter looks similar to many meters found on homes and commercial establishments. It has a device that measures watthour usage (in kWh) and another device that measures demand (in kWd). The watthour/kWh measuring device is similar to what is seen on many other meters – dials that measure and record the revolutions of a spinning disc. What distinguishes a

thermal demand meter from other types of demand meters is the way it measures demand/kWd. In a thermal demand meter, the demand/kWd measuring device uses the heat generated by the voltage and the current flowing through the meter in order to display the measured demand/kWd.

Q. Please provide an overview of the 1V thermal demand meter issue.

A. In early 2002, a customer and its consultant brought to FPL's attention a 1V thermal meter that allegedly was over-registering demand. Additionally, it was alleged that the sun was contributing to the over-registration. FPL personnel responsible for metering issues investigated this allegation and observed something that they had never seen before – the heating and cooling of the meter from being in and out of the sun appeared to be affecting the demand reading. The registration appeared to decrease in the direct sunlight and then increase when the meter was in the shade.

Q. Was FPL concerned with this phenomenon?

A. Yes, FPL metering representatives had not previously observed such a phenomenon and were concerned with the potential impact on customers' bills.

Q. What did FPL do?

A. FPL removed this customer's meter in order to perform testing at FPL's meter test facility. FPL decided to perform a test on this meter that would simulate the heating and cooling effects experienced in the field. In order to simulate the heat

generated from the sun, three 500-watt halogen lights were used to generate a temperature of 110 – 115 degrees around the meter. To simulate the cooling effect, FPL turned the lights off, and allowed the meter to return to room temperature. Three different tests were performed. The first test was performed at room temperature, the second test was performed after applying heat from the halogen lights for one hour, and the third test was performed after the meter had cooled off to room temperature.

Q. What were the results of these tests?

A. The test results on the one meter described above essentially duplicated what FPL employees had observed in the field. When heat was applied to the meter, the demand registration decreased below the point where it was tested at room temperature. When the meter was allowed to cool to room temperature, the registration was greater than when it was originally tested at room temperature, i.e., after the meter cooled to room temperature it registered higher than it should.

Q. What did FPL then decide to do?

A. After resolving this one customer's issue, FPL needed to determine whether this phenomenon was a widespread problem within its thermal demand meter population. FPL determined that two statistically valid random samples needed to be taken. The first sample would include 50 1V meters, the same type of thermal demand meter that showed sensitivity to the heating and cooling. The second sample would include 100 meters taken from FPL's eight other thermal demand

classification types. Once these samples were drawn, FPL would then test these meters in the same manner that it tested the original 1V meter that was affected by the heating and cooling tests.

Q. What were the results of the two samples?

A. Similar to the first 1V meter tested, all but a few of the test results indicated the meters under-registered when heat was applied. However, not one single meter, of the 150 meters sampled, registered higher than it should when the meter was allowed to cool to room temperature. This provided FPL with some assurance that we did not have a widespread over-registration problem with the heating/cooling condition. However, the results of the first statistically valid sample, the 50 1V meter sample, indicated that the demand portion of this sample exceeded the allowed level of percent defective. This was the first time that anyone at FPL could recall a population of meters failing a sampling test. The second statistically valid sample, the 100 meter sample for the eight other thermal demand meter classification types, did not register higher due to the heating/cooling condition and registered within the allowed level of percent defective.

Q. What actions did FPL take as a result of the 1V meter sample failing?

A. First, we notified the FPSC Staff of the results of our sample tests and informed them that we would be meeting with them in the near future once we had developed our plan to address this situation. We then began to formulate our plan.

Q. Were you involved in the development of FPL's plan to remove, test and address potential refunds for the 1V meter customers?

A. Yes. Meter product issues and meter testing fall under the responsibility of FPL's Power Systems Distribution business unit. Because of the unique nature and evolution of the 1V meter issue, I have been involved in this issue since its inception. I have participated in the development of FPL's plans to address this issue, including the removal and testing of meters, customer communications, as well as keeping the FPSC Staff informed of FPL's plans and actions.

Q. Please describe the plan developed by FPL to address this situation?

A. During the fall of 2002, FPL met with the FPSC Staff to discuss its plan. First, FPL proposed to remove and replace all of its approximately 3900 1V meters still in service. Next, FPL would test all of these meters, using FPL's approved meter test procedures, to determine each meter's accuracy and if refunds were due to customers as a result of meters over-registering above the four percent tolerance level outlined in Rule 25-6.052(2)(a). While Rule 25-6.103(2) allows for up to one year of back-billing for meters under-registering out of tolerance, FPL decided that any customer with a 1V meter that under-registered below the four percent tolerance level stated in Rule 25-6.052(2)(a) would not be back-billed. However, customers with multiple accounts that had meters that over-registered and under-registered out of tolerance would be "netted". For example, if a single customer had two accounts and one account over-registered requiring

a refund of $1000 and the other account under-registered requiring back-billing for $500, the customer would receive a "net" refund of $500. Under no condition would a customer with multiple accounts be "net" back-billed. Our communication plan called for all customers with 1V meters to be notified that we were replacing these meters, that their 1V meter would be tested and that they would be informed of the test results.

Q. Did FPL execute this plan?

A. Yes. By letter dated October 21, 2002, the Commission's General Counsel approved FPL's request to remove the approximate 3900 1V meters. A copy of that letter is attached to my testimony as Document No. DB-1. FPL provided written notice to all affected 1V meter customers, as I described above. FPL began removing its 1V thermal demand meters in November 2002 and completed removal of all 1V meters by January 2003. By the end of March 2003, all 1V meters had been tested. However, as FPL was finishing its testing of all 1V meters, an issue was raised regarding FPL testing some meters at 40% of full scale and others at 80% of full scale. As a result, FPL retested some of the meters that were originally tested at 40 % of full scale at 80% of full scale. This is discussed in more detail later in my testimony.

Q. Can you summarize the results of all the 1V thermal meter tests once all the tests were completed?

A. Out of the approximate 3900 1V thermal meters removed and tested, approximately 83% tested within tolerance, 11% under-registered out of tolerance and 6% over-registered out of tolerance.

Q. Have all accounts with a 1V meter that over-registered out of tolerance and qualified for a refund received a refund?

A. Yes, except for those accounts associated with this docket or that still have pending complaints, all qualifying customers have been provided a refund.

II. Testing Process / Meter Accuracy

Q. Explain the method of testing used by FPL to test the 1V thermal demand meters including the meters at issue in this docket.

A FPL utilized its test procedures filed with and approved by the FPSC as required by Rule 25-6.052 for testing the watthour and the demand portions of the 1V meters.

Q. How was the watthour portion of the 1V meter tested?

A. FPL's watthour test boards are located in its meter test facility. To test the 1V watthour meter, FPL ran three different tests – one at light load (approximately 10% rated test amperes), one at heavy load (approximately 100%

rated test amperes) with a 100% power factor, and a third at heavy load with a 50% lagging power factor. A weighted average of the errors for the light load test (weight of 1), the heavy load at 100% power factor (weight of 4) and the heavy load test with a 50% lagging power factor (weight of 2) determines the average meter error.

Q. Does FPL's watthour testing methodology comply with applicable FPSC rules?

A. Yes. FPL's watthour testing methodology is consistent with the requirements described in Rules 25-6.052 and 25-6.058.

Q. How was the demand portion of the 1V meter tested?

A. Demand testing for the 1V meters was performed on FPL's two thermal demand test boards located in FPL's meter test facility. Each of these test boards can test up to 18 meters at one time. The 1V meters were originally tested at 40% or 80% of full scale value, depending on whether the 1V meter had a low scale or high scale.

Q. What do you mean by low scale and high scale?

A. Every thermal meter has a reversible demand registration scale plate with two needles that move along this scale plate. One needle indicates the current demand reading and the other needle indicates the maximum demand reached by that customer. A 1V meter's demand registration scale has on one side of this scale

plate measurement markings that range from 0 - 3.5 (low scale) and on the other side, measurement markings that range from 0-7 (high scale). See my Document No. DB-2 to view a 1V high scale demand registration scale plate.

Q. Why does the 1V meter have two scales?

A. Two scales are provided to allow for optimal operating as well as billing purposes. Which scale to is used depends on the customer's usage. FPL tries to ensure that a customer's actual demand readings fall into the 40% - 80% of full scale range. For a low scale (0-3.5) 1V meter, that means actual demand readings in the 1.4 – 2.8 range. For a high scale (0-7) 1V meter, the optimal range for demand readings is in the 2.8 – 5.6 range. Customers with relatively smaller demands are usually on the low scale and customers with relatively larger demands are usually on the high scale.

Q. What percentage of full scale was used to test the 1V meters in question?

A. Originally, all low scale meters were tested at 80% of full scale and all high scale meters were tested at 40%.

Q. Why were the tests performed at two different levels of full scale?

A. As mentioned earlier, FPL's two thermal meter test boards are equipped with the ability to test 18 meters at a time. It takes approximately ~~two~~ three hours to test the demand component of a thermal meter. In order to be more efficient and productive when testing large quantities of thermal meters FPL tests its low and

high scale meters at the same time. This procedure was utilized in testing the approximate 3900 1V meters, as it has been utilized for years to conduct FPL's annual sampling plan.

Q. What is the effect on the percentage of full scale when you place a certain load on high scale and low scale meters at the same time?

A. An example using the 1V meter's two scales is helpful in understanding the effect. As mentioned earlier, 1V meters have a low scale range of 0-3.5 and a high scale range of 0-7. Let's assume a load is placed on these meters such that the reading is 2.8. The reading of 2.8 is then divided by the full scale, either 3.5 or 7, to arrive at the percentage of full scale. In this example, the low scale meter would be at 80% of full scale (2.8 / 3.5) and the high scale meter would be at 40% of full scale (2.8 / 7).

Q. Did FPL re-test any 1V meters that were originally tested at 40% of full scale?

A. Yes. FPL re-tested all high scale 1V meters that originally over-registered when tested at 40% of full scale. These meters were subsequently tested at 80%.

Q. Why were these meters re-tested?

A. An issue was raised that FPL may be unfairly treating those customers whose meters were tested at 40% of full scale instead of at 80% of full scale. While FPL did not agree with this assertion, we wanted to erase any such doubt or perception

from our customers. Therefore, high scale 1V meters that were originally tested at 40 % of full scale, and over-registered, were re-tested at 80% of full scale. This second test was performed even though the original test at 40% of full scale complied with Rule 25-6.052.

Q. Have the 1V meter demand tests performed by FPL been conducted in compliance with FPSC Rules?

A. Yes. FPL's testing was performed consistent with Rule 25-6.052 as well as FPL's approved meter test procedures. This includes the requirement that testing of the demand be performed at any point between 25% - 100% of full scale. See my Document No. DB-3.

III. Testing Modification

Q. Has FPL recently modified its process for testing customer requests for thermal demand meter tests?

A. Yes. In late 2003, FPL decided to perform customer requested meter tests at or very near to the customer's actual historical percentage of full scale rather than the 40% or 80% used by FPL to perform its annual sampling tests as well the testing performed on all 1V meters.

Q. What do you mean by the customer's actual historical percentage of full scale?

A. FPL is now using the specific customer's percentage of full scale reading as determined by the average of the customer's actual previous 24 months percentage of full scale readings. If there are multiple meter tests requested or there is an opportunity to test more than one meter at a time, FPL will group those meters that have 24 month average percentage of full scale loads within 5% of each other. In every case where meters are grouped for testing, no meter would be tested below its 24 month average. Additionally, no meter test would be performed at less than 40% of full scale.

Q. Can you provide an example of how this testing procedure would work?

A. Yes. Assume a customer with 6 different thermal demand meter accounts requests that the demand on each account be tested. The 24 month average percentage of full scale for the 6 accounts are 29%, 39%, 44%, 52%, 56%, and 72%. FPL would perform the meter tests using the following % of full scale:

1 test at 44% (3 meters – the 29%, 39% and 44% meters would be tested together)

1 test at 56% (2 meters – the 52% and 56% meters would be tested together)

1 test at 72%

Q. Why did FPL institute this change?

A. FPL believes that by placing a test load on the meter that more closely resembles the percentage of full scale actually experienced by that customer, the meter test results will more likely replicate and represent what the meter has actually experienced in the field. In the event that a meter tested out of tolerance, the registration error, whether it be under-registering or over-registering, would be more likely to represent the registration error actually experienced in the field and reflected in the customer's billings.

Q. Is the change in FPL's testing methodology consistent with FPL's approved test procedures and Rule 25-6.052?

A. Yes. Both, FPL's approved test procedures and Rule 25-6.052 state that testing demand at any point between 25% and 100% of full scale is appropriate.

IV. Meter Error for Calculating Refunds

Q. How did FPL determine refunds for those customers whose meters tested outside of allowed tolerance levels?

A. Consistent with Rule 26-6.103(1) and (3), refund amounts associated with meters over-registering out of tolerance are based on the meter error and the time period over which the meter error is applied. For the 14 accounts at issue in this docket, 12 had refunds due as a result of over-registration outside of the allowed tolerance levels. One account has a refund due attributable to the watthour/kWh

portion of the meter and eleven accounts have refunds due associated with the demand/kWd portion of the meters. All refunds associated with accounts in this docket were based on a one year time period. Actual refund calculations and the refund amounts for each of the accounts in this docket are contained in Rosemary Morley's direct testimony. Two accounts in this docket did not register out of tolerance for either kWh or kWd.

Q. How did FPL determine the error percentage for the watthour portion of the 1V meters?

A. For the watthour/kWh portion of each meter, FPL utilized the test results derived from the weighted average of the three meter tests described above, i.e., the one light load test (weight of 1) and the two heavy load tests (one with a weight of 4 and the other with a weight of 2). The weighted average of these test results was then compared to the standard meter in order to obtain the error value. Meter test results with readings greater than 102% (meters over-registering by more than 2%) were then eligible for refunds.

Q. Is the method used by FPL to calculate the error for the watthour/kWh portion of the meter consistent with FPSC rules?

A. Yes. Rule 25-6.052 (1) states that a watthour meter is acceptable when the average percentage registration is not more than 102% or less than 98%, when calculated in accordance with Rule 25-6.058. Rule 25-6.058 provides the methodology for calculating the average meter error for watthour meters.

Specifically, Rule 25-6.058(3)(a) provides the manner for calculating the average watthour meter error for polyphase metering installations with a varying load. 1V meters fall into this type of metering installation.

Q. Is the error calculated by FPL for the watthour/kWh portions of the meter also the appropriate error to be utilized for refund calculation purposes?

A. Yes. Rule 25-6.103(1) states that for fast meters (meters over-registering) the utility should refund the amount billed in error as determined by 25-6.058. For those meters that had watthour/kWh over-registering out of tolerance, FPL utilized the error percentage calculated consistent with Rule 25-6.058(3)(a). Additionally, Rule 25-6.103(3) states that the figure to be used for calculating the refund should be the error percentage as determined by the meter test.

Q. How did FPL determine the error percentage for the demand/kWd portion of the 1V meters?

A. For the demand/kWD portion of each meter, FPL utilized the test results for each meter. As described earlier, all tests were performed at either 40% or 80% of full scale. The test reading for each meter was then compared to the standard meter in order to obtain a difference. This difference was then stated in terms of full scale. For example, a test reading of 5.8 is compared to the standard reading of 5.6. The difference of .2 is then divided by the full scale value of the meter that is the subject of the test, in this example, 7. This would result in an error registration of +2.86%, in other words, this meter is over-registering by 2.86%.

Q. What about those instances where FPL performed two tests on the demand portion of the meter, i.e., meters that were originally tested at 40% of full scale that over-registered and were retested at 80% of full scale?

A. While the test performed at 40% of full scale meets the requirements of 25-6.052 (2)(a) as well as FPL's approved test plan, FPL utilized the test result that provided the customer with the greatest benefit. For some customers this meant they now qualified for a refund (as opposed to no refund) or a higher refund amount than they had before. By using the test result that provided for the best refund amount, FPL was attempting to resolve any possible customer concerns with this regard.

Q. Is the method used by FPL to calculate the error for the demand/kWh portion of the meter consistent with FPSC rules?

A. Yes. Rule 25-6.052 (2)(a) states that a "lagged demand meter" (like a 1V meter) is acceptable when the error of registration does not exceed 4% in terms of full scale value. This methodology is also consistent with FPL's approved meter test procedures.

Q. Is the error calculated by FPL for the demand/kWh portions of the meter also the appropriate error to be utilized for refund calculation purposes?

A. Yes. Since 25-6.103(1), which applies to fast (over-registering) meters, only addresses the watthour/kWh portion of the meter, we then look to Rule 25-6.103(3). This rule makes it clear that when a meter is found to be in error in

excess of described limits, the refund or the charge is to be based on the error as determined by the meter test. Therefore, the error of registration, calculated consistent with 25-6.052, is the appropriate error to use for both back-billing and refunds.

Q. Did FPL utilize a different error percentage than that obtained from the meter test in order to calculate refunds?

A. In some cases, yes. Again, FPL was attempting to remove any perceptions from affected customers that they were not being treated fairly. Therefore, to calculate refunds, FPL utilized the higher of: (1) the meter test error as determined and described above or (2) the actual percentage difference of the monthly demand readings of the newly installed meter, i.e., the one replacing the 1V, compared to the same months of the previous year's 1V meter readings. For example, a customer with a 1V meter demand test error of +4.3% and a difference in demand readings of +4.7% (new electronic meter vs. 1V meter) would have a refund calculated with a 4.7% error.

Q. For the customers in this docket who have meters over-registering out of tolerance, are you using the higher of the meter test error or the actual percentage difference, old vs. new meter, in order to calculate their refunds?

A. No. Since these customers have elected to utilize the Commission's process to resolve their complaints, FPL has utilized the meter test error as required by 25-6.058 and 26-6.103 to calculate their refunds.

Q. Do you have a document that provides the meter test results for the 14 meters in this proceeding?

A. Yes, the results are reflected in Document No. DB-4.

V. Refund Time Period

Q. What is the appropriate refund time period to be used for the 12 accounts over-registering out of tolerance in this proceeding?

A. One year.

Q. How did FPL determine that a one year refund period was appropriate for these meters?

A. FPL reviewed each account's historical demand readings, comparing the month to month readings as well as the year to year readings. As a result of this review, FPL was not able to distinguish, for any of these accounts, a point in time, when an over-registering error might have occurred. A significant factor in this determination is that other factors such as weather, seasonal trends, and the customer's equipment tend to have a greater impact on demand than the 4-5% error determined by the meter test. Additionally, there was no information brought to us by any customers or their representatives in this docket that demonstrated to us when a meter error might have occurred.

Q. Is the one year refund consistent with FPSC rules?

A. Yes. Rule 25-6.103(1) states that the refund period should be for one half the period since the last test and that the refund period should not exceed 12 months – unless it can be shown that the error was due to some cause, the date of which can be fixed. As mentioned before, FPL could not determine a fixed date for the meters that over-registered out of tolerance in this docket.

Q. Does this conclude your testimony?

A. Yes.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

FLORIDA POWER & LIGHT COMPANY

REBUTTAL TESTIMONY OF DAVID BROMLEY

DOCKET NO. 030623-EI

AUGUST 16, 2004

Q. Please state your name and address.

A. My name is David Bromley and my business address is 9250 West Flagler Street, Miami, Florida 33174.

Q. Did you submit prefiled direct testimony in this proceeding?

A. Yes.

Q. What is the purpose of your rebuttal testimony?

A. My rebuttal testimony addresses various aspects of the prefiled direct testimonies of Mr. George Brown and Mr. Bill Smith, filed on behalf of the Customers in this docket, as well as the prefiled testimony of Mr. Sid Matlock, filed on behalf of the Commission Staff. Specifically, I will address inaccuracies contained in their testimonies regarding the test results and test records for the meters in this proceeding. I will also rebut the claims of Messrs. Brown and Smith regarding FPL's calibration of meters. Additionally, I will indicate those issues that are generally raised by Mr. Brown and Mr. Smith but have not been

associated with any of the meters in this docket and are therefore not applicable to these meters.

Q. Please summarize the fatal deficiencies in the multi-year refund claims and raised by Mr. Brown and Mr. Smith in their prefiled direct testimonies.

A. In attempting to justify refunds for periods greater than one year as specified by applicable Commission rules, Mr. Brown and Mr. Smith have set forth unsubstantiated claims and misstatements and raised issues that are not associated with the specific meters in this docket. Additionally, they are attempting to increase refund amounts by ignoring the FPSC rules and creating their own proposed refund and interest methodologies. At the heart of their attempt to justify a refund for a period greater than one year is their claim that these meters have been miscalibrated by FPL. Rule 25-6.103(1), Florida Administrative Code, provides that to qualify for a refund for a period greater than one year, it must "be shown that the error was due to some cause, the date of which can be fixed". In their attempt to meet this burden, Mr. Brown and Mr. Smith propose what I will call their "default" miscalibration theory. This theory, which is really just general speculation, results from the fact that they are unable to present any evidence that the inaccuracy of the specific meters at issue, to quote Mr. Matlock, "can be traced to a specific cause and a specific time" as required by Rule 25-6.103(1). Having failed to present any such evidence, they resort to a generic "default" theory that assumes that all 1V meters that over-registered must have been miscalibrated on the date of the last meter test.

Their theory is essentially an all or nothing proposition. If it can be demonstrated that FPL has not even calibrated a meter and it over-registers, their theory must fail. Similarly, if it can be demonstrated that thermal demand components can fail and cause over-registration, then again, their theory must fail.

In my rebuttal testimony, I will demonstrate that there are meters in this docket that have not been calibrated at all by FPL and yet they have over-registered. Mr. Malemezian will demonstrate that there are components that can fail and cause these meters to over-register.

Q. Do you agree with the claim that FPL's test records reflect that all of the meters in this proceeding have over-registered and tested outside accuracy tolerances established by the FPSC?

A. No, I do not. The claim that all of the meters in this proceeding have over-registered and tested outside accuracy tolerances established by the FPSC is inaccurate. On pages 3 and 7 of Mr. Brown's prefiled direct testimony and in Exhibit SWM-1 of Mr. Matlock's prefiled direct testimony, there are tables that list the meters that they believe to be at issue in this proceeding. However, these tables include one meter that is not in this docket and fail to include one meter that is at issue. This can be confirmed by reviewing the Customers' request for hearing filed on December 10, 2003. Both Mr. Brown and Mr. Matlock have included Meter No. 5885 in their tables, a Target account located in Boca Raton, which was not included in the request for hearing. Additionally, they have omitted

a meter for the Target store located at 26831 South Tamiami Trail, Bonita Springs, that was included in the request for hearing. The test results for the meter associated with the omitted Target store show that this meter under-registered for both kWh and kW, as shown in Document No. DB-4 of my prefiled direct testimony. Additionally, Mr. Brown makes reference to a meter test error of 6.7% for Meter No. 5871D. There is no such test result for this meter. In fact, this meter was tested multiple times and did not over-register out of tolerance on any test.

Q. Do you agree with the claim that the time at which the fourteen meters began to over-register was when FPL last calibrated these meters?

A. No. The direct testimonies of Mr. Brown and Mr. Smith fail to establish that the time at which the meters at issue began to over-register is the time that FPL last calibrated the meters. Of the fourteen meters at issue in this proceeding, there are six that have never been calibrated by FPL. These six meters were tested in the early 1990s in connection with FPL's acceptance testing procedures for new meters received from the manufacturer. I have attached a document (Document No. DB-5 of the Composite Exhibit to my rebuttal testimony) provided by Landis and Gyr that provides the last serial numbers for the types of meters manufactured for a particular year. This document verifies that these six meters were manufactured in the year just prior to or the year of FPL's acceptance testing for these six meters. Because these new meters tested accurate, calibration adjustments were not required. I have attached the test records for these six meters in Document No. DB-6 included in the Composite Exhibit to my rebuttal

testimony. These six meters were never tested again until late 2002 and/or early 2003, when FPL tested its entire 1V meter population. It was then that these meters were tested and over-registered out of tolerance. Again, these six meters were never calibrated by FPL. Therefore, the inescapable conclusion is that Mr. Brown's and Mr. Smith's all or nothing "default" miscalibration theory must fail.

Q. Do you agree with Mr. Brown's and Mr. Smith's claims that FPL miscalibrated the meters and caused them to over-register?

A. No. As mentioned earlier, six of the meters have never been calibrated by FPL. Therefore, their claims regarding the failure to use a test cover, not allowing for the 45 minute stabilization period and not allowing for the "backlash effect", are not even theoretically possible for these meters. Additionally, their claims regarding the testing of these meters at less than half scale, tapping of the reference meter, readings of the standard reference meters, the effects of the sun and the disparity in independent test results compared to FPL test results are nothing more than general speculation. They have provided no information that these claims apply to any of the meters in this docket. Mr. Malemezian addresses these claims with specificity in his rebuttal testimony.

Q. Does this conclude your testimony?

A. Yes.

BY MR. HOFFMAN:

Q Mr. Bromley, have you prepared summaries of your direct testimony and your rebuttal testimony?

A Yes, I have.

Q Would you please provide those summaries to the Commission.

COMMISSIONER DEASON: Just for a second let me ask a question. I have reviewed the prehearing order; I do not see where summaries are contemplated by the witnesses. Now if that was the understanding of the prehearing officer and the parties, so be it, but it's not in the prehearing order. So let's get that clarified right now. Is it the parties' intent to have summaries?

MR. HOFFMAN: It was our understanding that we were going to provide summaries.

COMMISSIONER DEASON: Mr. Moyle.

MR. MOYLE: We had prepared that way as well.

COMMISSIONER DEASON: Okay. I would just request that the summaries be as brief as possible.

MR. HOFFMAN: Thank you, Commissioner Deason.

BY MR. HOFFMAN:

Q Would you please provide your summaries.

A Good morning, Commissioners. My direct testimony provides background information and an overview of the 1V thermal demand meter issue. This includes the steps that FPL

took to remove, replace and test the approximately 39 1V -- 3,900 1V meters and then provide refunds to the approximately 250 qualifying customers. I also describe a modification made in late 2003 to FPL's testing process.

Finally, my testimony demonstrates that FPL used the Commission's rules and FPL's Commission-approved meter test procedures to test the 14 meters at issue, determine which ones qualified for refunds, calculate the error used to compute the refund and provide a one-year refund.

This issue began in early 2002 when a customer represented by Mr. Brown claimed that their meter, a 1V thermal demand meter, was overregistering demand and that the sun was contributing to this overregistration. After observing and testing this meter in the field and again in FPL's meter shop, FPL did confirm the customer's allegations and then resolved this particular customer's refund claim.

Since FPL had not previously observed this overregistration problem, we thought it was necessary to determine whether it was widespread among the entire thermal meter population. FPL sampled its 1V meter population and its eight other thermal demand meter types and performed the same tests as those performed on the first 1V meter. Not one of the 150 meters tested in these two samples reacted in the same manner as the original 1V meter. However, the 1V sample did indicate that the demand portion exceeded the allowable sample

defective rate; that is, the sample failed, which we believe is a first-time occurrence for FPL.

FPL then notified the Commission staff of the 1V sample results and subsequently met with them in the fall of 2002 to inform them of our plans to remove, replace and test all 1V meters. Additionally, we explained that refunds would be provided for meters overregistering out of tolerance and that FPL would not backbill for any meters underregistering out of tolerance, even though by rule FPL could do so.

After removing, replacing and completing all testing, the test results indicated that 83 percent tested within tolerance, 11 percent underregistered out of tolerance, and 6 percent overregistered out of tolerance. The testing of all 1V meters was performed consistent with FPSC rules and FPL's Commission-approved test procedures.

For demand testing these rules and test procedures required demand testing to be performed between 25 and 100 percent of full scale. All but one of the demand tests for all 1V meters were performed at either approximately 40 or 80 percent of full scale. In fact, FPL retested some meters and used the test result that most benefited the customer to erase any doubt or perception that FPL was treating customers unfairly because certain meters were tested at 40 percent versus 80 percent of full scale.

In late 2003 FPL modified its testing process for

future thermal demand tests requested by a customer. Instead of using 40 percent or 80 percent of full scale points, FPL now uses a customer's own actual average historical percentage of full scale. FPL believes that this method produces test results that most likely replicate what the meter actually experiences in the field.

With respect to the 14 meters in this proceeding, 12 meters overregistered outside of allowed tolerances. The two remaining meters in this proceeding did not overregister outside of allowed tolerances.

With respect to the refund period for those 12 meters, Rule 25-6.103(1) states that "The refund period shall not exceed 12 months, unless it can be shown that the error was due to some cause, the date of which can be fixed." FPL's review of these accounts and the information provided by Mr. Brown's consulting firm did not establish the cause for the errors or a fixed date; therefore, consistent with the rule, FPL applied a one-year refund. That concludes my summary.

BY MR. HOFFMAN:

Q Mr. Bromley, do you have a brief summary of your rebuttal testimony?

A I do.

Q Would you please provide that?

A My rebuttal testimony explains that Mr. George Brown's and Mr. Sid Matlock's testimony include test results

and records that are not at issue in this proceeding. Mr. Brown also includes in his testimony a 6.7 percent test error for the Target Fruitville store. There is no such test record for this meter. In fact, this meter was tested multiple times and never overregistered. Therefore, statements claiming that all of the meters in this proceeding have overregistered are inaccurate.

Both Mr. Brown and Mr. Smith claim that these meters have been miscalibrated by FPL in attempting to secure multiyear refunds. I refer to this as their "default miscalibration theory." This theory, which is really just general speculation, results from the fact that they have presented no evidence that the inaccuracy of the meters at issue, to quote Mr. Matlock, can be traced to a specific cause in a specific time.

Having failed to produce any such evidence, they resort to this generic default theory that assumes all 1V meters that overregistered must have been miscalibrated on the date of their last meter test. My testimony demonstrates that there are meters in this proceeding that have never been calibrated by FPL, and yet they have overregistered.

Mr. Malemezian's testimony demonstrates that there are components that can fail and cause these meters to overregister. Of the 14 meters in this proceeding, six meters have never been calibrated by FPL. These six meters were

tested in the early 1990s as part of FPL's accepted testing procedures for new meters received from the manufacturer. Because these new meters tested accurate, calibration adjustments were not made.

These six meters were not tested again until late 2002, early 2003 when FPL tested its entire 1V meter population. Since these six meters were never calibrated by FPL and yet overregistered, Mr. Brown's and Mr. Smith's default miscalibration theory must fail. Since the six meters have never been calibrated by FPL, their various claims that FPL miscalibrated them are not even theoretically possible.

Additionally, their other claims are nothing more than general speculation as they have provided no information that any of these claims apply to any of the meters in this docket. That concludes my summary.

MR. HOFFMAN: Mr. Chairman, he's available for cross-examination.

COMMISSIONER DEASON: Mr. Moyle.

MR. MOYLE: Thank you, Mr. Chairman.

CROSS EXAMINATION

BY MR. MOYLE:

Q Mr. Bromley, you made a statement in your opening that referenced Mr. Matlock's testimony; is that right?

A That's correct.

Q And you weren't inferring or implying, were you, that

Mr. Matlock has provided any testimony about whether these meters should receive a refund for greater than one month, were you?

A No.

Q You were just indicating that he cites a rule that provides for a 12-month refund; correct?

A No.

Q What was the purpose of your, of your comment in your opening?

A He's included a meter that's not in this proceeding.

Q Okay. Just so I'm clear, the way I heard what you were describing, it seemed to suggest that Mr. Matlock had taken a position about refunds being available for more than 12 months. He has not; correct?

A I think that's correct, yes.

Q Mr. Bromley, I'm going to ask you a host of questions and explore a little bit more some of the areas that you described in your, in your opening statement.

Whose responsibility is it to ensure that accurate metering equipment is in place at a customer's residence or place of business?

MR. HOFFMAN: I'm going to object to that question, Commissioner Deason. I think that's outside the scope of his prefiled testimony.

COMMISSIONER DEASON: Objection, outside the scope.

MR. MOYLE: He talks about the rules, he talks about interpretation of the rules, he talks about --

COMMISSIONER DEASON: Objection overruled. You may answer the question.

THE WITNESS: Can you repeat the question?

BY MR. MOYLE:

Q Sure. Whose responsibility is it to ensure that accurate metering equipment is installed at a customer's business or residence?

A I'm not sure I can answer that, that question directly. I know there are departments involved with various responsibilities. We have a department involved that's responsible for metering issues and ensuring the purchase of meters. We have a department that tests meters and provides those test results.

Q Okay. And I was looking for a general answer of FP&L, not the customer. Is -- would you agree with me that FPL is responsible for ensuring that accurate meters are installed at a customer's place of business or his residence?

A We're, we're responsible for ensuring that -- yeah, I would agree with that. Yes.

Q Okay. Did you have a chance to review the prehearing order before you took the stand today?

A Yes.

Q And did you review the portion of the prehearing

order that instructs the witnesses to first make an effort to answer the question yes or no, and then, and then provide an explanation, if necessary?

A Yes.

Q Okay. Would you make every effort, if you could, to try to adhere to that provision of the prehearing order?

A Yes.

Q Okay. So with respect to responsibility for maintaining a meter, you would agree with me that that is FPL's responsibility to maintain the meter measuring equipment; correct?

A Yes.

Q Okay. And FPL owns the equipment; is that right?

A Yes.

Q Okay. It's not the customer's responsibility to ensure that FPL is using proper equipment to measure the electricity a customer uses, is it?

A I would agree with that, yes.

Q You made some reference, you know, to treating customers fairly and, and things like that in your testimony. Would you agree with me that, that FPL's goal or one of its goals in dealing with its customers is to make every effort to treat them fairly?

A Yes. And we try to do that by following the rules prescribed by the, by the Commission.

Q I understand that. I'm going to ask you questions about the rules too, but I'm kind of right now exploring with respect to sort of an overarching principle. FPL, I would presume, as an overarching principle that how it does business has as one of its goals to treat customers fairly; correct?

MR. HOFFMAN: I think he's answered that question. Objection. I think it's been asked and answered.

COMMISSIONER DEASON: It has been asked and answered. Please move on.

BY MR. MOYLE:

Q Does FPL make efforts to treat similarly situated customers in the same manner? Is that a goal of FP&L?

A Yes. We try not to discriminate in the way we treat customers.

Q Would it be a goal of FP&L that if a customer was overbilled due to meter error, to refund the customer the amount that the customer overpaid or was overbilled, not more, not less?

A Yes. We -- and we do that by following the rules prescribed by the Commission to effect refunds as well as underbillings.

Q All right. Your history of involvement with these thermal demand meter issues -- am I correct that you first became involved with the thermal demand meter issue, and when I say thermal demand meter issue, can we agree that that relates

to the 1V meters in this case? Is that fair, when I say thermal demand issues, that we're talking about the 1V meters in this case and the 1V meters as a whole in terms of the other customers who had 1V meters?

A Yes. I can agree to that.

Q So you first got involved in this, this thermal demand issue when Mr. Brown brought to your attention the fact that the sun was influencing a particular customer's thermal demand meter; isn't that correct?

A Yes.

Q All right. And you then went and investigated that situation; correct?

A No. I did not personally investigate that.

Q Did FPL go and investigate the situation with the sun impacting the thermal demand meter?

A Yes.

Q Okay. And what, what did FPL discover: That Mr. Brown was correct with his contention that the sun was affecting the meter?

A Ultimately, yes. We did go out and investigate the matter in the field and saw some unusual circumstances. We brought it in to the meter test shop, tested it by applying heat to it. And in this particular instance, this meter, when the heat was removed, it, it did rise to a point beyond where it should. So, yes, I would think it was confirmed.

Q And with respect to the impact of that, was it true that in the field that the thermal demand meter overregistered, the demand portion went up when there was shade placed over the meter?

A Well, my recollection of the people that were involved in that was that it was doing some strange -- it was acting strangely in a way that they hadn't seen it before. Because of the varying loads apparently that were taking place at the time it was difficult to see exactly what was going on, and that's why it was brought into the shop. But it did appear like it was being affected.

Q Okay. And you subsequently settled with Mr. Brown's client with respect to this particular meter; is that correct?

A Yes.

Q Tell me about the, the investigation that you undertook to determine the impacts of the sun, if any, on these thermal demand meters.

A Are you --

Q Can you give me some detail on that? Were you involved in that in terms of setting up the test to try to figure out whether the sun had any impact on the --

A I was not involved in that, no.

Q Do you have any information about it?

A I mean, I was told generally what, what was done, and I've seen documents that have been filed with the Commission

that explain the testing that took place.

Q Okay. Are you aware of any Commission rule that requires you to fully investigate a customer complaint?

A No. I know there's a, there is a rule dealing with customer complaints, but I, I couldn't cite that for you, what's actually required there. I know we have to respond, provide a response.

Q I'm going to have Mr. Hollimon give you a copy of the rules, if I can, and ask you to refer to 25-6.094(1).

MR. MOYLE: I tell you what, if I could approach the witness, it might --

COMMISSIONER DEASON: Yes.

BY MR. MOYLE:

Q For the record, if you would just read into the record the first sentence that's highlighted in that rule, please.

MR. HOFFMAN: Excuse me, Mr. Chairman. Before we move forward, could I get a copy of the document that he's handed my witness?

COMMISSIONER DEASON: Yes. Mr. Moyle, can you share that with Mr. Hoffman, please?

MR. MOYLE: Sure.

BY MR. MOYLE:

Q Okay. If you would just read the first sentence of Rule 25-6.094.

A Yes. "The utility shall make a full and prompt investigation of all customer complaints and other service requests."

Q Do you believe that a full investigation was done with respect to the impacts of the sun on thermal demand meters?

A My opinion on that would be yes.

Q Okay. And you brought in, you brought in a bunch of equipment, heat lamps, that kind of stuff, and did a number of tests on these samples of thermal demand meters; correct?

A Yes, along with the initial meter that, that failed also.

Q Right. And you contacted the manufacturer and did due diligence to try to figure out, hey, is the sun having an impact on these meters; correct?

A Yes, I think that's correct. I think Mr. DeMars made some contacts with the manufacturer.

Q Okay. Did you -- do you know, did you ever do a field test outside the lab with respect to the impacts of the sun on the meters? And I say you, I mean FPL, not you personally.

A No, I don't believe so, other than the, the testing that was done for the one specific 1V meter we're talking about.

Q Did you ever retain an expert or otherwise consult an

expert to help you set up conditions in the lab that would simulate conditions outside of the lab, if you know?

A I don't know.

Q Okay. Do you know if the lab testing was done in an air-conditioned building?

A Yes, it was.

Q Okay. Do you know if, if the test compensated for the air conditioning being on in the building while this test was done on these meters?

A Yes. My understanding was that the, that the heat lamps were -- we were trying to maintain a temperature somewhere in the 105 to 115 range.

Q Do you, do you know, was there any effort to suddenly shade the meters made as you observed in the field when you were doing these tests on the thermal meters related to the sun?

A Well, yes. If you want to say that turning the heat lamps off, I would say that's sudden shade, yes.

Q So your first contact with Mr. Brown was related to this impact of the sun; correct?

A My first contact, yes.

Q And then all of the sudden you get into a larger issue with respect to the, to the thermal demand meters; correct?

A Yes.

Q And that was because you did a statistical sampling of the thermal demand meters and discovered that the V meters failed as a class; is that correct?

A Yes. The sample, the 50 1V meter sample where we applied the heat test did show that when that sample was reviewed, the results showed the sample had failed.

Q Okay. Were you involved in, in this statistical sampling process?

A No.

Q Who was?

A Jim DeMars.

Q Okay. So you don't have any information about how the statistical sampling was, was determined or the decision as to the size of the sample was made?

A I know there, there are things that they follow, but other than that I don't have a specific knowledge of it.

Q Do you have any information about FPL removing outliers from the sample size prior to conducting a test?

A Yes. I know that there were some meters that were what I'll call broken that were removed from the sample.

Q Okay. So, so you would pull a sample of 50, which was a statistically sound sample, and then meters that for whatever reason overregistered by a certain amount were removed from the sample size; is that correct?

MR. HOFFMAN: Commissioner Deason, I'm going to

object to further line of inquiry on the sampling test. The sampling test was provided in Mr. Bromley's prefiled direct testimony for the purposes of background information. The Customers did attempt to raise issues concerning the statistical sampling test as a separate issue for resolution in this case. That issue was stricken. So there are no issues concerning the statistical sampling test that are before the Commission in this proceeding, so I don't think these questions are relevant.

COMMISSIONER DEASON: Objection, relevancy.

MR. MOYLE: I think it is relevant for this, for this purpose: During the course of the cross-examination I'm going to ask him questions about a series of decisions that FP&L made. I think the one theme that you will see consistently throughout the questions and the answers is that FPL took steps to minimize their financial exposure as a result of these meters having problems. And one of the ways they did that was when they tested the sample size, rather than taking a sample of 50 and saying, okay, this is our sample, they took the sample of 50, ones that were viewed to be extreme outliers were removed, so your sample size is then reduced, and then you do the analysis based on the sample size of 45 or --

COMMISSIONER DEASON: What specific issue, what specific issue in the prehearing order do these questions pertain?

MR. MOYLE: I think it goes to the overall theme of the case with respect to, you know, FP&L taking steps with respect to how they measured customer demand, how they calculate refunds, their failure to go back and provide any customer refund beyond 12 months, that their plan from going in day one was to minimize their financial exposure. And I think that piece with respect to the statistical sampling plan is evidence of that.

COMMISSIONER DEASON: Mr. Keating, Mr. Hoffman indicates that there was an issue stricken concerning statistical sampling. Could you tell me the history of that?

MR. HOFFMAN: Commissioner, before he does, if I could just read the issue into the record that was proposed by the Customers that was stricken.

COMMISSIONER DEASON: Yes, please do.

MR. HOFFMAN: Thank you. The Customers had proposed the following issue at the prehearing conference through their prehearing statement.

"Did FPL validly determine that other classes of thermal demand meters pass the PSC-approved statistical sampling test?" And that issue was stricken.

MR. KEATING: And I'm glad Mr. Hoffman --

COMMISSIONER DEASON: And why was it stricken?

MR. KEATING: I believe it was stricken because we felt it was outside the scope of, of the proceeding in terms of

limiting this proceeding to determining what refunds, if any, were due to the Customers in this case. And it's been, frankly, it's been a while since we held the prehearing. As you're aware --

COMMISSIONER DEASON: Was it stricken because it dealt with statistical sampling or was it stricken because it dealt with a class of meters that were outside the scope of this proceeding?

MR. KEATING: The latter.

COMMISSIONER DEASON: Okay. So it wasn't just the fact that it was statistical sampling was not the reason it was stricken?

MR. KEATING: That's correct.

COMMISSIONER DEASON: Okay. You may proceed with your question, Mr. Moyle.

MR. MOYLE: And I'll limit my questions to sampling with respect to the 1Vs.

BY MR. MOYLE:

Q But you heard the discussion we just had.

A Yes.

Q I'm correct, am I not, that the process FP&L used was as described with respect to removing outliers from the sampling plan?

A The process was correct. The insinuation that you made was not.

Q Okay. And that's left up to the trier of fact to draw whatever conclusion they, they will on that.

Let me ask you with respect to the decision to remove these outliers, do you have any information as to the authority that was used when you removed the outliers from the sampling plan for the 1V meters?

A Yes. I've, I've seen some -- I recall seeing a document that was presented back in 1997 when the Commission last took up meter issues, meter rules, and during that proceeding apparently there was an expert that provided testimony that talked about outliers and that there was some, you know, there was some indication of removing outliers from the, from the study.

Q Is that the only document you've seen --

A Yes.

Q -- some testing --

A It's the only one I recall.

Q It's not in any ANSI standard that you know of, is it?

A No. I'm not that familiar with ANSI standards.

Q Let's move on. We're time limited, and I've committed to the Commission to try to, try to wrap this up by 3:00.

You did the test, you say, uh-oh, we got the 1V problems, the class has failed sampling. What did you next

decide to do with the customers who had meters that were these V meters who failed the sampling?

A What did we do with the customers?

Q What was your next course of conduct? You all of the sudden have a sample that you take, the meters fail as a class. What did you decide to do? How did you decide to handle it?

A We decided that we were going to test all of the, all of the meters individually.

Q And did you do that?

A Yes.

Q Where did you test them on, on the percent of full scale?

A It varied depending on the, the scale of the meter. High scale meters would have been tested at 40 percent of full scale and low scale meters would have been tested at 80 percent of full scale consistent with our previous practices.

Q Did you notify the customers as to what was going on with these meters?

A We did eventually, yes.

Q Did you indicate to them that, that they had the opportunity to receive a refund beyond 12 months?

A I'm not sure. I don't recall exactly what was in the letter. I did see the letter. I do recall we, we notified them that there was a problem with, with the meter and that we were going to test them and notify them of the test results,

but I don't remember the, I don't remember all the specifics.

Q That was a pretty significant issue, was it not, for you?

A Yes. Yes. This was the first time that we could recall that a population had failed.

Q And you would agree with me, would you not, that with respect to FPL's liability, refunding meters that overregistered for periods longer than 12 months has a greater financial impact on FPL than refunding for only 12 months; correct?

MR. HOFFMAN: Commissioner Deason, I'm going to object. These questions go beyond the scope of his testimony and beyond the scope of whether any of the 14 meters at issue in this docket are eligible for refunds and, if so, how much. The issue in this docket concerns these 14 meters. So we object to the relevancy of this line of questioning.

COMMISSIONER DEASON: Objection, relevancy.

MR. MOYLE: I think it's relevant because what, what we're going to show is, is that they treated customers who had these 1V meters that did not come to the PSC differently from how they've treated Target and Dillard's and J.C. Penney and Ocean Properties with respect to how they calculated the amount of refund. So I think it's relevant along those lines.

COMMISSIONER DEASON: You may proceed.

MR. MOYLE: May I approach the witness, please?

COMMISSIONER DEASON: Yes. Give a copy to Mr. Hoffman, please.

BY MR. MOYLE:

Q I'm showing you a document that is a Bate stamp number 159, 160 and 161. Do you recognize this document?

A Yes.

Q Okay. And describe for the Commission what it is.

A The first page seems to be a listing of some issues associated with this particular 1V meter issue. That's 159.

Bate's number 160 appears to be a summary of the 1V, 1V issue, sort of a chronology of events.

And the Bate's number 161, this might have been a document that was prepared for a meeting with staff to go over issues at an earlier part of the 1V meter issue. Again, a summary of some issues and positions.

Q Let me refer you to the second page. There's reference there to, about the middle of the page, in 33 changes were made to the 1V meter refund process to ensure all customers are treated fairly. Do you see that?

A Yes.

Q All right. Wasn't that change a result of Mr. Brown complaining about meters being tested at 40 percent of full scale and arguing that a more accurate test should be done at 80 percent of full scale?

A No. I'm not sure I would quite agree with that.

Q Did Mr. Brown argue that the test ought to be done at 80 percent of full scale?

A Yes.

Q And did you reach an agreement with Mr. Brown that you would test the meters in which he was representing customers at 80 percent of full scale?

A Yes. We agreed that we were going to test all meters that had originally overregistered when tested at 40 percent at 80 percent, at full scale.

Q Okay. And have you read Mr. Matlock's testimony?

A Yes.

Q And doesn't Mr. Matlock indicate in his testimony that depending on where you test the meter at the point of scale it affects the percent of error?

A Yes, he has that in his testimony. I'm not sure we agree with that though.

Q Okay. But with respect to the results that were, that were borne out, the higher on the scale you test, the higher error percentage you have, correct, and the higher refund amount that customer would have?

A No, that's not correct. That is not correct. When we, when we retested these meters, these 700 meters that we retested, what we saw as a result of retesting these at higher 80 percent rather than 40 were that -- and, again, these were meters that had all overregistered -- 100 of these meters that

originally overregistered underregistered when tested at 80. There were some that had not qualified for refunds, when tested again now qualified for refunds, and then there was a -- the majority of them stayed within tolerance.

Q Okay. What about with respect to the meters in this docket? When they were tested at 80 percent, didn't you have a significant number of them that, that now were eligible for refund?

A My recollection is, yes, that's correct, those particular meters in the docket. But that was not representative of the population of 700 that were retested.

Q Okay. Down at the bottom of this page of document 160 there's reference to a swat team being formed to identify all impacts and make recommendations. Do you see that?

MR. HOFFMAN: I'm going to object to that line of questioning, Commissioner Deason. I think that's totally irrelevant to the testimony that's been presented by Mr. Bromley and to the issues in the case, and I think it's just an inflammatory question.

COMMISSIONER DEASON: Mr. Moyle.

MR. MOYLE: It's their document, it's part and parcel of what their response was to the discovery of a class of meters that overregistered. He indicates they formed a swat team to identify all impacts and make recommendations. I think it's highly relevant.

COMMISSIONER DEASON: To the extent the witness has knowledge, he may answer the question.

THE WITNESS: This is a term that was, that was given to this team. It actually was a team that was headed up as a result -- at the request of our attorney, Ken Hoffman.

BY MR. MOYLE:

Q Okay. Was, was in your knowledge a swat team ever, ever put in place before this meter issue arose?

A I've heard the term before.

Q Okay. Are you familiar with any other swat team that FP&L devised for any other issue other than this 1V issue?

MR. HOFFMAN: Same objection, Commissioner Deason. This is like discovery now. I mean, this is -- I think -- I'm going to object on grounds of relevancy about other swat teams.

COMMISSIONER DEASON: Objection noted and overruled. You may answer the question.

THE WITNESS: Can you repeat the question?

BY MR. MOYLE:

Q Are you aware of any other swat team being formed at FP&L other than the swat team formed for the purposes of responding to the 1V meter issue?

A No, I can't give you a specific team. I know that I've heard the term before.

Q Okay. And the swat team was, was formed to review the one (sic.) meter issue to prepare a response to assess the

situation; is that correct?

A It actually went beyond 1V. It was a look at all meters and looking at various aspects of the issue.

Q And do you have an understanding of what a swat team does typically in the everyday jargon in which it's used?

A I know it's a military term.

Q Do you know if it's to respond quickly, to take aggressive action, to minimize damage, that kind of thing?

A I don't know.

Q Okay. Did you do a financial analysis -- did the swat team do a financial analysis to ascertain its exposure financially with respect to all of the thermal meters if you had to refund monies going back to the date of installation?

MR. HOFFMAN: Objection on the grounds of relevancy.

COMMISSIONER DEASON: Objection noted. Overruled. You may answer the question.

THE WITNESS: Can you repeat the question?

BY MR. MOYLE:

Q Sure. Did you as part of the swat team or in any other way, did you have prepared a financial analysis that looked at the exposure of FP&L for the thermal demand meter issue if FP&L had to go back and refund to customers from the date that the meters were installed as compared to a 12-month time frame?

A Yes.

Q Okay. And was the, was the result a significant difference between the 12-month time frame and the date of installation for all the meters that you reviewed?

MR. HOFFMAN: Commissioner Deason, I'm sorry to keep interrupting, but I'm going to object to the relevancy, and also point out that that analysis was done at my request and it is a work product issue, it's a work product document, it's a work product figure.

COMMISSIONER DEASON: Are you now claiming privilege of this information?

MR. HOFFMAN: Yes, I am.

COMMISSIONER DEASON: Well, why was it provided? Under what circumstances was it provided?

MR. HOFFMAN: That request that I made was in anticipation of hearing, and I asked FPL to conduct the analysis that Mr. Moyle is inquiring on. And we went through this at the deposition and we objected and we, and we claimed our privilege. So I am, I am stating again today that we think that that issue is privileged, apart from the fact that we think that the entire subject matter is irrelevant to the 14 meters.

COMMISSIONER DEASON: Okay. We're going to take five minutes. I want y'all to discuss this. Mr. Keating, you discuss it as well, and then I'll be looking to you to make a recommendation and we'll get back on the record. Five minutes.

(Recess taken.)

COMMISSIONER DEASON: Go back on the record. Mr. Hoffman.

MR. HOFFMAN: Commissioner Deason, without waiving our work product privilege and our objections otherwise, I think Mr. Moyle and I have an agreement that Mr. Moyle will ask Mr. Bromley one more question on this topic.

COMMISSIONER DEASON: Very good. Mr. Moyle.

BY MR. MOYLE:

Q Mr. Bromley, with respect to the analysis that was done, you would agree, would you not, that there was a significant difference between providing refunds for 12 months as compared to providing them for the thermal meters back to the date the meters were installed? Would you agree with that?

A I don't know. I know there was a difference -- I don't know -- I don't recall how much it was.

Q Okay. But was it a significant sum in your opinion?

A I don't recall. There was many sensitivities done. I just don't remember.

Q Let me refer you to this 159 down at the bottom of the page, paragraph 7. The question was, "Have FPL disclose the purpose and process of changing 1U thermal demand meters." Read the next three sentences into the record, if you would please.

MR. HOFFMAN: Object to relevancy regarding 1U

meters, Commissioner Deason.

COMMISSIONER DEASON: Relevancy.

MR. MOYLE: Well, there's a reference to 1V meters in the first sentence.

COMMISSIONER DEASON: I'll allow the answer.

THE WITNESS: Read the first sentence?

BY MR. MOYLE:

Q The first three sentences starting with "Similar to the 4N" (phonetic).

A "Similar to the 4N (phonetic), we do not want the 1V meters to become a population that fails; therefore, we are removing approximately half this year and the remainder next year. We are planning to retain these meters for six months."

Q Do you know, removing half a meter's population at one point in time and half later, was that -- would that impact how the meters would be statistically sampled; do you know?

A **No.** I believe in the first line where it references 1Vs, that should have been 1Us, not 1Vs.

Q Okay.

A And we're not sampling the 1Us.

Q What efforts did you make, if any, to try to determine the cause of these 1V meters failing?

A We did not --

COMMISSIONER DEASON: I think he just indicated the answer dealt with that it should be 1U. So if you're still on

this same passage, I'm not so sure it's relevant anymore.

MR. MOYLE: I'll switch gears to another topic.

THE WITNESS: Can you repeat the question?

BY MR. MOYLE:

Q Yeah. Switching gears to another topic, you find out the class of 1V meters failed. What, what, if anything, did you do to investigate the cause of the failure of the 1V meters?

A Well, we, we did not take these meters, we did not disturb these meters because we knew they were going to be under litigation, and disturbing these meters could result or most likely would result in them being affected. And, therefore, if a customer or the Commission would want to do a retest, it would not be able to be done.

Q How about the meters outside this docket? Did you do anything to investigate the cause of, of any of the other 1V meters as to why they may have failed?

MR. HOFFMAN: Objection on relevancy.

COMMISSIONER DEASON: Objection noted and is sustained. Please move on with the -- keep the questions relevant to the meters in question, Mr. Moyle.

BY MR. MOYLE:

Q Down on Page 160 there's a statement, "FPL position error point cannot be determined since error point occurred gradually; therefore, refund should be for one year." Okay?

A I'm sorry. Where are you?

Q Document 160.

A Uh-huh.

Q Fourth paragraph from the bottom.

A Oh, okay.

Q Do you see the sentence I just read?

A Yes.

Q Okay. **What did you do to determine** that the meters -- that the error occurred gradually?

A Well, I believe this, this is referring to the fact that we, we could not pinpoint a point in time where these meters had failed, and I believe this is, this is what we believed to have actually happened, that it was gradual rather than sudden.

Q All right. But you didn't, you didn't hire any expert to go investigate the cause of the, of the meters failing; correct?

MR. HOFFMAN: Object to the relevancy, Commissioners, on the meters outside of this docket once again.

MR. MOYLE: I mean, the whole class failed. I would think that as part of that rule when they have an issue they have a duty to investigate it. I'm trying to find out generally --

COMMISSIONER DEASON: You're talking about the class of meters that are the subject of this docket?

MR. MOYLE: Right.

COMMISSIONER DEASON: Yes, you may answer the question.

MR. MOYLE: Okay.

BY MR. MOYLE:

Q Did you hire an expert to help you figure out why these meters failed?

A No. As I mentioned before, we did not want to disturb the meter because of the future tests that might be requested by the customer or the Commission.

Q Okay. FPL provided refunds to over 250 customers not in this docket because the 1V meters registered outside of tolerance; correct?

A It's around there, yes.

Q Okay. And none of these customers got a refund for longer than 12 months; correct?

A That's correct.

Q Did FPL -- what analysis did FPL perform to determine if the customers were entitled to refunds longer than 12 months?

A We had a group of individuals who typically look at billing issues for the company, particularly overbilling issues. These -- actually it was three individuals supervised by one. These people have extensive experience in looking at these type of accounts. It's something that they do on a daily

basis and it's something that they've done for many years. These people have been with the company 20 to 30 years. Each one of these accounts that overregistered were reviewed by these people and they were not able to determine a point in time where they failed because these particular accounts, these size of accounts, there are significant variations that take place from month to month, up near 30 to 40 percent variation in demand from month to month. So when you're --

Q So -- I'm sorry. Go ahead. Finish.

A When you're looking for errors ranging in the 4-to-5 percent range, which is where most of these meter errors occurred, you know, it's, it's very difficult to see them. We, we couldn't see them. Mr. Brown couldn't see them either.

BY MR. MOYLE:

Q Was any statistical analysis done?

A There was no statistical analysis done, no.

Q Was this the committee that Mr. Cain (phonetic) chaired that you're referring to?

A No. I'm not sure he chaired any committee.

Q Was Mr. Cain involved in this committee?

A No.

Q Okay. Was any objective criteria put together to help people determine when a refund might be longer than 12 months?

MR. HOFFMAN: Commissioner, again, I'm going to just

pose the same relevancy objection to all the detailed questions about the meters outside the docket.

COMMISSIONER DEASON: And the objection is noted. You may proceed, Mr. Moyle.

MR. MOYLE: It applies --

COMMISSIONER DEASON: You may proceed, Mr. Moyle.

MR. MOYLE: Okay. I'm sorry.

THE WITNESS: Can you repeat the question?

BY MR. MOYLE:

Q Did FPL put together any objective criteria to make a determination when a refund longer than 12 months would be provided?

A No. As it was explained to me, these, these individuals who are very familiar with, with reviewing these type of accounts, it's very difficult to put objective measures together. These accounts vary significantly one between the other based on the customer's usage, weather, equipment. So putting together an objective measure to look at these accounts they believe can't be done, and that's why they looked at them one at a time.

Q Okay. And what did they look at; do you know? Didn't they just look at the billing history?

A They looked at billing history month to month, year to year going back as far back as they had records. I've also been told that when there were things that looked strange to

them, they, they did ask business account managers if they might have an idea of what may have occurred or what might have happened that caused something to look unusual.

Q Did FPL do the same analysis for the meters in this docket that you just described?

A Yes.

Q Now with respect to customer usage, did FPL contact any of the customers that they'd settled with to determine if load increased or decreased?

MR. HOFFMAN: Excuse me. Same objection, Commissioner Deason, as to relevancy.

COMMISSIONER DAVIDSON: A point for Mr. Moyle. It might be -- I mean, all of your questions relate to just the meters in question in this docket. You're not -- I mean, it might be useful if you sort of just state that on the record so that folks know you're not talking about the other meters that were excluded from this docket. Because it is a little unclear as you're proceeding and sometimes you say the meters in this docket and then other times you're talking generally.

MR. MOYLE: Okay.

COMMISSIONER DEASON: Listen, let me explain something where I'm coming from. And, Mr. Hoffman, maybe it'll help you, and I understand the basis of your objection.

The meters in question clearly were contained in the complaint and contained, as discussed, in the prehearing order,

a very limited number of meters, and whatever outcome this Commission makes is going to be in relation to those specific meters.

I perceive these questions to be of a general nature concerning FPL's beliefs, actions, procedures, whatever, in relation to how we should perceive would be the proper action to take on the meters in question. None of this information is going to be used to make any determination by this Commission on meters other than those in question.

MR. HOFFMAN: Thank you, Commissioner.

COMMISSIONER BRADLEY: Mr. Chairman, I'm glad to, that we're having this discussion because I was also -- I was most certainly unclear as to which meters were being referenced, so I think this clears up quite a bit.

COMMISSIONER DEASON: But, Mr. Moyle, it may be helpful to indicate in your question exactly the --

MR. MOYLE: And part of what I am asking are general questions in setting up what I hope to be the ability to show how meters were treated differently for customers that were not on this docket as compared to customers in this docket.

BY MR. MOYLE:

Q Mr. Bromley, isn't it true that --

COMMISSIONER BRADLEY: Well, let me ask this question before we proceed, before we move on.

Is there any method or means that -- or question that

can be used in order to make sure that we are dealing specifically with the meters that are within the scope of our dealings here?

COMMISSIONER DEASON: I think the prehearing order pretty well describes that situation. But I'll defer to the prehearing officer if there's --

COMMISSIONER DAVIDSON: And I'll defer to the Chairman.

COMMISSIONER DEASON: Okay. Let's, let's proceed.

MR. MOYLE: Let me, let me move on.

BY MR. MOYLE:

Q Mr. Bromley, isn't it true that some of the Customers overregistered demand by more than 30, 40, 50 percent when you were doing this analysis that you described as to looking at the billing records?

MR. HOFFMAN: Excuse me, Commissioner Deason. I apologize. I just wanted to clear up that last discussion we've had per the prehearing order before you answer, Mr. Bromley.

The prehearing, the prehearing order does include an Issue 3 which does address "Should the Customers in this docket be treated the same way in which FPL treated other similarly situated customers?" And then it says, "For the purposes of determining the percentage of meter overregistration error." So that similarly situated issue is included, but for a very

limited purpose under the prehearing order, and that's on Page 16 of the prehearing order.

COMMISSIONER DEASON: Okay. That's noted.

BY MR. MOYLE:

Q You can answer my question. With respect to the meters, some of them registered over 30, 40, 50 percent, and you never went back and refunded those customers beyond 12 months; correct?

A No. I don't believe any meters overregistered that high.

Q And with respect to a before and after review, weren't there situations where the before and after review reflected a 30, 40, 50 percent difference?

A Yes, there were. And those were the ones that I was referencing that our group went back and checked with the account, the business account managers on. And for the most part what they found were extenuating circumstances and they were able to identify reasons for why that was occurring.

For instance, one that was around 45 percent, what they found out from the business account manager was that it was actually a sheriff's office that had closed and they were using that for storage. So the beginning -- you know, the usage after was much lower than what was before. In other cases there were, there were examples where the usage for a particular account had been decreasing 30 to 40 percent

annually.

So, yes, there were some, some cases where some customers as a result of our giving them the higher of benefited. It wasn't because it was mis, you know, misregistering though.

Q All right. Let me refer you to Document 161. There's a section down toward the end of the document that talks about FPL methodology. Is this the methodology that was used with respect to customers in determining how much of a refund they should get, the old and the new versus the meter error results? Do you see where I'm referring, FPL methodology?

A Yes. I was just going to read it.

Q Why don't you read it into the record, that paragraph. Go ahead and read it out loud, please, starting with "Compared new electronic demand readings."

A "Compared new electronic readings to similar months in previous years to determine if error could be identified. If not, was there a material consistent difference in the new and old demands? If so, offered refund back over that period. Used higher of meter test results or new versus old readings. Used average difference for effective years. If change in demand affected rate class, used appropriate rate class to compute rebillings."

Q Okay. So if I understand it, with respect to

customers not in this docket, you would give them -- you would use the higher of the meter test error or the high -- the new/old comparison; correct?

A Yes.

Q Okay. And that was a benefit to the customers, correct --

A Yes.

Q -- to use the higher of?

And in this docket here you're not, you're not doing that; correct? You're not allowing the use of the new versus old analysis that you did for these meters that were outside of the docket; correct?

A That's correct. We're not doing it at this time. However, the same offer was made to Mr. Brown and his customers and they rejected it.

Q Okay. And they, they wanted to get more than a 12-month refund; correct?

A At least, yes.

Q And the sole reason you're not doing that is because they're in front of the PSC Commission asking to have a hearing to get back beyond 12 months; correct?

A Yes. They, they chose not to accept the offer and to pursue additional refund amounts through the Commission.

Q And with respect to these meters that are outside of the docket, there was never any negotiations with the customers

who have these thermal 1V meters, were there?

A Which customers are you referring to?

Q Not in this docket; the ones outside of the docket. Didn't you all just look at the analysis and then provide a credit on their bill?

A Yes, I think that's correct.

Q You never negotiated with them, you never called them, you never signed a settlement agreement with them; correct?

A Yes, that's correct. Except for Mr. Brown's customers, yes.

Q Do you think, do you think it's -- do you think Dillard's, Target, J.C. Penney could have an issue with respect to fairness, seeing that you treated customers outside of this docket differently than you're treating them in this docket?

MR. HOFFMAN: Objection. Calls for speculation.

COMMISSIONER DEASON: Objection is sustained. You may proceed to a different line, Mr. Moyle.

BY MR. MOYLE:

Q The PSC rules that you referenced, the 12-month issue, that provides, as you understand it, that a refund is limited to 12 months unless it can be shown the cause of the, of the error; correct?

A Not quite. The cause and the fixed date.

Q Okay. And did you undertake any analysis with

respect to the meters in this docket to determine the cause and the fixed date?

A Did I personally?

Q FPL.

A Well, as I mentioned -- yes, I believe we did. As I mentioned before, we did take analysis of the billing accounts. I would say no as far as analysis into what, what the cause was because we, as I mentioned before, we did not want to disturb the meters.

Q All right. And in response to an interrogatory, Interrogatory Number 4 when asked about matters in the meter that could cause gradual failure, do you recall FPL answering that "FPL believes all components of a thermal demand meter are subject to gradual failure. Some of these are screws, springs, bimetal coils, heaters, bearings, solar connections and calibration change"?

MR. HOFFMAN: Excuse me, Commissioner. Could my witness have an opportunity to look at that question and answer before he answers Mr. Moyle's question?

COMMISSIONER DEASON: Yes, he may.

MR. HOFFMAN: Thank you.

BY MR. MOYLE:

Q Interrogatory 4.

A Yes.

Q Just read that question and answer into the record,

please.

A The question is, "Identify all components of 1V thermal demand meters, type TMT, form success, that are subject to gradual failure, and for each component identify the effect such failure has on the meter's demand accuracy."

FPL's response was, "FPL believes that essentially all components of a thermal demand meter are subject to gradual failure. Some of these are screws, springs, bimetal coils, heaters, bearings, soldered connections and calibration chains. Depending on the nature of the failure, a meter could overregister or underregister."

Q Okay. Did you do any inspection or review to determine whether any of the components listed in this answer to interrogatory failed as it relates to the meters in this docket?

A No. As it relates to the meters in this docket, no.

Q Okay. Did you -- when the customer sought to review these components to determine whether any of them failed, did you -- isn't it true you denied them access to the meters to, to do testing?

MR. HOFFMAN: Object to the relevancy of the question.

COMMISSIONER DEASON: Mr. Moyle, objection as to relevancy.

MR. MOYLE: I think, you know, FPL has said, wait a

minute, here's some things that could have happened to cause these meters to go bad over time. They didn't do an inspection. We sought to do an inspection; they didn't allow us access to the meters. I think it's, I think it's highly relevant. I mean, it's in their advantage to not fix the cause so they can rely on this rule and only refund monies for 12 months.

MR. HOFFMAN: Commissioner, the Customers did file a motion to examine and inspect these meters and that, that motion was denied. They sought reconsideration and the reconsideration request was denied.

COMMISSIONER DEASON: Okay. Objection sustained. You may proceed to a different line.

BY MR. MOYLE:

Q With respect to the rule and the 12-month refund, do you interpret that rule as applying to both customers and to, and to, say, FPL subsidiaries like FPL FiberNet, if they're, if they're purchasing power and they had an issue about a meter overregistering, would they be limited to 12 months as well as other customers?

A I would think the answer is yes to that, but I'm not sure how, how we handle intercompany billings and so forth. I'm not sure how that's handled.

Q Okay. Are you aware of a docket, a fuel docket that FPL is involved in currently?

A Yes. I'm aware there's a fuel docket that's always open.

Q Are you aware of contracts that have been negotiated with Southern Company that relate to buying and selling power?

MR. HOFFMAN: Object to the relevancy of the question.

COMMISSIONER DEASON: Mr. Moyle, you're going to have -- what is the relevancy of this?

MR. MOYLE: Well, here's the relevancy of it. They have these contracts in the Scherer contracts, the Harris contract where they have a provision related to meter errors and measuring meter errors. It's very similar to the rule, the PSC rule, except it doesn't have any provision limiting the recovery to 12 months. So I think it's relevant to show when FPL is, is buying power and negotiating, they don't, they don't want to have that 12-month provision in there. But when they're applying this rule to the customers, they stand by the 12-month provision because it's in their financial interest.

COMMISSIONER DEASON: Mr. Moyle, you're, you're, you're going way out on a fishing expedition here and it is clearly beyond the scope of this docket, and I'm going to sustain the objection.

MR. MOYLE: Okay. Could I just make a proffer of the, of the exhibit?

COMMISSIONER DEASON: Yes. What is the exhibit?

MR. MOYLE: It's, it's a cover page, Public Service Commission, a Certificate of Document Number 09882-04, cover page and Table of Contents of Exhibit TLH-1, Pages 36, 37 and 8 (sic.) of Exhibit TLH-1. It has information related to meter errors. And I also wanted to use it to show with respect to interest that when FPL is using buying power, that the interest that they would charge in the event of a billing dispute is not the, the rate set forth in the PSC rule but is a different rate that they negotiated.

COMMISSIONER DEASON: Okay. This is Exhibit TLH-1 in the fuel docket. What pages?

MR. MOYLE: 36, 37 and 82 of Exhibit TLH-1.

COMMISSIONER DEASON: Okay.

MR. HOFFMAN: And, Commissioner, we'd just note for the record again our objections based on the relevancy, outside the scope of the prefiled testimony of Mr. Bromley. And there's no showing that any of these documents fall within the scope of the rules at issue in this proceeding.

COMMISSIONER DEASON: Very well. It's noted for the record.

MR. HOFFMAN: Thank you.

BY MR. MOYLE:

Q We talked about fairness, Mr. Bromley. If you go to Publix and are overcharged by 4 percent, do you -- is that acceptable to you?

MR. HOFFMAN: Object to the relevancy of the question.

COMMISSIONER DEASON: Objection to relevancy, Mr. Moyle.

MR. MOYLE: You know, we're talking about fairness in he rules, how they should be applied and what not. I'm going o ask him questions about situations in which he's overcharged, you know, is it acceptable that you're overcharged by this amount, follow up with a question related to how these rules apply to customers and whether he views that as fair. I mean, I think we've already established that the rules ought to be interpreted in a way that they're fair to the customers.

MR. HOFFMAN: Commissioner Deason, I don't think --

COMMISSIONER DEASON: I'm going to limit your question as to his opinion as to the validity or the reasonableness of the rule, but comparing it to a purchase at Publix or something else, I'm not going to allow that. So within those confines, if you want to proceed with the questions, you may.

MR. MOYLE: Okay.

BY MR. MOYLE:

Q Mr. Bromley, let me ask you this. With respect to calibration, FPL would calibrate meters and test meters that they receive from manufacturers; correct?

A Yes.

Q Okay. And do you know manufacturers, before they ship meters, don't they test and calibrate the meters before they ship them to you for receipt?

A Yes, I think that's, that's correct.

MR. MOYLE: Okay. I have nothing further.

COMMISSIONER DEASON: Very well.

MR. KEATING: Staff has no questions.

COMMISSIONER DEASON: Commissioners, any questions? No questions?

Okay. Redirect.

MR. HOFFMAN: No redirect, Commissioner Deason.

COMMISSIONER DEASON: Very good.

MR. HOFFMAN: May Mr. Bromley be excused?

COMMISSIONER DEASON: Yes. Mr. Bromley, thank you for your testimony. You may be excused.

(Witness excused.)

COMMISSIONER DEASON: Mr. Moyle, just for your information, your cross-examination was one hour and three minutes.

MR. MOYLE: 1:03?

COMMISSIONER DEASON: Yes, 1:03.

MR. HOFFMAN: Commissioner, I would move composite Exhibits 1 and 2 into the record.

COMMISSIONER DEASON: Without objection, hearing no objection, show that composite Exhibits 1 and 2 are admitted.

(Exhibits 1 and 2 admitted into the record.)

COMMISSIONER DEASON: And, Mr. Hoffman, you may call your next witness.

MR. HOFFMAN: Rosemary Morley.

MR. MOYLE: Commissioner, as a housekeeping matter, that exhibit that I used with him, I'd like to have it introduced into the record, if I could.

COMMISSIONER DEASON: Okay. We never did even identify that. This is the three-page exhibit; is that correct?

MR. MOYLE: Yes, sir.

COMMISSIONER DEASON: Okay. We shall identify it as Exhibit Number 3, and it's been moved into the record. Any objection?

MR. HOFFMAN: Commissioners, we would only note for the record only the objections that we made to certain aspects of this document just for the record.

COMMISSIONER DEASON: Very well. With that understanding, show that Exhibit Number 3 is admitted.

(Exhibit Number 3 marked for identification and admitted into the record.)

ROSEMARY MORLEY

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

DIRECT EXAMINATION

BY MR. HOFFMAN:

Q Would you please state your name and your business address.

A Rosemary Morley, 9250 West Flagler, Miami, Florida.

Q And by whom are you employed, Ms. Morley?

A Florida Power & Light.

Q And your position with FP&L?

A Rate Development Manager.

Q Ms. Morley, have you prepared and caused to be filed nine pages of prefiled direct testimony in this proceeding?

A Yes, I have.

Q Do you have any changes or revisions to your prefiled direct testimony?

A No, I do not.

Q If I asked you the questions contained in your prefiled direct testimony, would your answers be the same?

A Yes, they would.

MR. HOFFMAN: Mr. Chairman, I would ask that Ms. Morley's prefiled direct testimony be inserted into the record as though read.

COMMISSIONER DEASON: Without objection, it shall be so inserted.

BY MR. MOYLE:

Q Have you prepared any exhibits to your testimony?

A Yes, I have.

Q And that, that exhibit consists of Document Numbers RM-1 through RM-3?

A Yes.

Q Were these documents prepared by you or under your direction and supervision?

A Yes.

MR. HOFFMAN: Mr. Chairman, I would ask that documents RM-1, RM-2 and RM-3 be marked for identification.

COMMISSIONER DEASON: Yes. That would be composite Exhibit 4.

MR. HOFFMAN: Thank you.

(Exhibit 4 marked for identification.)

BY MR. HOFFMAN:

Q Ms. Morley, have you also prepared and caused to be filed four pages of prefiled rebuttal testimony?

A Yes.

Q Do you have any changes to your prefiled rebuttal testimony?

A No, I do not.

Q If I asked you the questions contained in your prefiled rebuttal testimony, would your answers be the same?

A Yes.

MR. HOFFMAN: Mr. Chairman, I would ask that Ms. Morley's prefiled rebuttal testimony be inserted into the record as though read.

COMMISSIONER DEASON: Without objection, it shall be so inserted.

BY MR. HOFFMAN:

Q Have you prepared an exhibit to your rebuttal testimony?

A Yes, I have.

Q And that exhibit consists of Document RM-4?

A Yes.

MR. HOFFMAN: **Mr. Chairman, I would ask that** document RM-4 be marked for identification.

COMMISSIONER DEASON: Exhibit 5.

(Exhibit Number 5 marked for identification.)

BY MR. HOFFMAN:

Q Was document RM-4, now identified as Exhibit 5, prepared by you or under your direction and supervision?

A Yes, it was.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
FLORIDA POWER & LIGHT COMPANY
DIRECT TESTIMONY OF ROSEMARY MORLEY
DOCKET NO. 030623-EI
JULY 12, 2004

Q. Please state your name and address.

A. My name is Rosemary Morley. My business address is 9250 West Flagler Street, Miami, Florida, 33174.

Q. By whom are you employed and what is your position?

A. I am employed by Florida Power & Light Company ("FPL" or "Company") as the Rate Development Manager in the Rates & Tariffs department.

Q. Please state your education and business experience.

A. I hold a bachelor's degree in economics from the University of Maryland and a master's degree in economics from Northwestern University. I am currently pursuing a doctorate in business administration from Nova Southeastern University. Since joining FPL in 1983 I have held a variety of positions in the forecasting, planning, and regulatory areas. I joined the Rates and Tariff Department in 1987 as a Senior Cost of Service Analyst and was subsequently promoted to Supervisor of Cost of Service. I currently hold the position of Rate Development Manager with responsibilities for rate development and tariff administration.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to address how refunds should be calculated when a meter tests outside of the allowed plus tolerance levels. I also support the

specific refund calculations which should be applied to the accounts at issue in this docket.

Q. Can you summarize your testimony?

A. Yes. My testimony discusses the appropriate rate schedule that should be used in computing any refund amounts. Specifically, any refund amounts should be based on the applicable FPL rate schedule given the customer's kW demand, adjusted to remove the effects of any meter error. In addition, my testimony shows the specific refund amounts associated with the accounts at issue in this docket. In total, $30,623.10 is computed in refunds for these accounts. The billing detail for each of the affected accounts is also incorporated into my testimony.

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

Yes. I am sponsoring a Composite Exhibit which consists of the following documents:

- Document No. RM-1, Summary of Accounts Eligible for Refunds
- Document No. RM-2, Adjusted kW Demands and Refunds by Account
- Document No. RM-3, Derivation of Refunds by Account

Q. How should refunds be calculated when a meter tests in excess of the plus tolerance allowed by rule?

A. As stated in Florida Administrative Code Rule 25-6.103, whenever a meter is found to have an error in excess of the plus tolerance allowed by rule, refunds should be based on "the amount billed in error." Accordingly, any refund amount

should be based on the difference between the amount actually billed the customer less the amount which would have been billed if the meter had accurately measured the customer's kW demand and kWh usage. Using this method, the customer's electric bill, less any refunds, is made equal to the electric bill which would have been rendered had the meter error not existed.

Q. How should the amount which would have been billed if the meter had accurately measured the customer's kW demand and kWh usage be determined?

A. In computing the amount which would have been billed absent any meter error, two pieces of information are needed. The first item needed is a calculation of the customer's adjusted billing determinants, that is the kW demand and kWh usage adjusted to remove the effects of the meter error. The meter test results should be used to compute these values. Second, the rates and charges to be applied against those adjusted billing determinants must be established. Consistent with the goal of undoing the effects of any meter error, the rates and charges should be based on the applicable FPL tariff and the customer's adjusted billing determinants.

Q. Could the rate schedule applicable to the adjusted billing determinants differ from that used when the customer was originally billed?

A. In some cases, yes. FPL's general service demand rates are specific to certain sized loads. For example, a customer with a kW demand between 21-499 kW is billed under the GSD-1 rate schedule. A customer with a kW demand between 500-1,999 kW is billed under the GSLD-1 rate schedule, and so forth. As

administered by FPL, these load thresholds must be met at least once every 12 months. For example, assume that a customer's maximum kW demand, based on the current and the prior eleven billing months, is 489 kW. The customer's applicable rate schedule should be GSD-1. Now assume that a meter error causes the customer's kW demand to register 510 kW instead of 489 kW. Under this scenario, the customer is erroneously billed under the GSLD-1 rate schedule strictly as a result of the meter error. In order to undo the effects of the meter error, the GSD-1 rate schedule should be applied against the customer's adjusted billing determinants.

Q. Does this unfairly affect the customer?

A. Not at all. While it is true that the energy charges under the GSLD-1 are lower than those under the GSD-1 rate schedule (while the customer charge under the GSLD-1 rate schedule is higher than it is under GSD-1) the objective should be to hold the customer harmless from the effects of the meter error and return the customer to a correctly billed status quo. The purpose and goal of the billing adjustment should not be to create a financial gain for the affected customer. In the above scenario, the customer, in the absence of any meter error, would have been charged under the GSD-1 rate schedule. Therefore, in computing the refunds due this customer the GSD-1 rate schedule should be used.

Q. Would the same logic hold when backbilling an account with a meter testing below the allowed tolerance levels?

A. Absolutely. The Florida Administrative Code allows utilities to backbill in those instances where a meter is found to be slow, non-registering, or partially

registering. For illustrative purposes, assume a customer's maximum kW demand over the past 11 months is less than 500 kW. Now assume that a meter error causes the kW demand to register 489 kW for the current month when a properly functioning meter would have registered 510 kW. The customer's kW demand would be 21 kW less than it should be. In addition, the GSD-1 rate schedule would have been erroneously used to calculate the customer's bill instead of the GSLD-1 rate schedule. In rebilling the customer, the correctly adjusted kW demand and the applicable rate schedule for the adjusted kW demand should be used. In this case, the customer should be rebilled based on 510 kW and the GSLD-1 rate schedule.

Q. Could using the GSLD-1 instead of the GSD-1 rate schedule for backbilling reduce the amount the customer owes the Company in the scenario you just described?

A. Yes it could. Bear in mind, however, that absent the meter error the customer would have been billed for 510 kW demand under the GSLD-1. Rebilling should reflect the electric bill which would have been rendered had the meter error not existed.

Q. Have you calculated the refunds that should be applied to the accounts at issue in this docket?

A. Yes. As shown in Document No. RM-1, 12 accounts at issue in this docket are eligible for refunds. In total, these 12 accounts should be refunded $30,623.10.

Q. Can you describe the specific calculations you used to derive this figure?

A. As I stated previously, the refund calculation requires a calculation of the customer's adjusted billing determinants and application of the applicable rate schedule. In order to illustrate how each item is determined a specific example may be helpful. Ocean Properties' two meter tests indicated a plus tolerance of 5.78% and 6.00%, respectively. Based on the test with the higher error percentage, the meter was registering 106% of what it should have been registering. To convert this registration percentage into an adjusted kW demand, a correction factor is needed. The correction factor is determined using the following formula:

Correction Factor = 1/Registration Percentage

In the case of Ocean Properties,

Correction Factor = 1/1.06 = .943396

The customer's adjusted kW demand is now determined by the following formula:

Adjusted kW Demand = Original kW Demand * Correction Factor

Ocean Properties' original kW demand for service between 7/31/02 and 8/29/02 was 432 kW. Therefore, the adjusted kW demand for this month should be:

Adjusted kW Demand = 432 kW * .943396 = 407 kW

The same process is repeated for the other eleven months in the refund period. Document No. RM-2, page 1 shows the adjusted kW demand for Ocean Properties for each month of the refund period.

Q. Have the adjusted billing determinants for the other eleven accounts been computed in a similar manner?

A. Yes. For the other ten accounts with meter tests indicating that the kW demand was over-registering, the adjusted kW demand was computed using the same formulas described above. In the case of Dillard's account # 51180-46985, the kWh usage had to be adjusted. Virtually the same process was used in this case with one exception. During the last month of the refund period, the correction factor was applied only to the kWh recorded before the meter was changed.

Q. After calculating the adjusted billing determinants for each account, how is the appropriate rate schedule determined?

A. Again, this is best illustrated by considering a specific example. Continuing with the case of Ocean Properties, Document No. RM-2, page 1 shows that the customer was originally billed under the GSD-1 rate schedule for every month of the refund period. This is because the customer's maximum kW demand, based on the current and prior 11 months of billing, was always less than 500 kW, but greater than 20 kW. After computing the adjusted kW demand, the GSD-1 rate schedule is still the appropriate rate schedule to compute any refunds because the customer's maximum kW demand based on the current and prior eleven months is still less than 500 kW, but greater than 20 kW for every month of the refund period.

Q. Please describe the specific refund calculations for this customer.

A. I will again use the last month of the refund period to illustrate these calculations. Ocean Properties was originally billed $14,756.98 for service between 7/31/02 and 8/29/02. As shown in Document No. RM-3, part 1 of 12, page 1, this amount was based on 432 kW of demand, the application of the GSD-1 rate schedule, and

all of the otherwise applicable rates and charges. Document No. RM-3, part 1 of 12, page 2 shows the calculation of the customer bill based on the adjusted kW demand of 407 kW described earlier. Using the adjusted kW demand and the GSD-1 rate schedule, the customer's bill for the month, including all applicable rates and charges should be $14,501.79. Therefore, the customer's refund for that month is equal to $255.19.

Q. Does the refund amount computed in Document No. RM-3 include taxes?

A. Yes. As shown on Document No. RM-3, the gross receipts tax, franchise fee clause, utility tax, and sales tax as applicable are included in these bill calculations. The specific taxes applicable to this account have been retrieved from the Company's billing system.

Q. Have similar calculations been performed for the other accounts at issue in this docket?

A. Yes. For each account and for each month of the refund period I have developed workpapers showing the original billed amount, the billed amount based on the adjusted billing determinants, and the resulting refund amount. These are also provided in Document No. RM-3.

Q. In computing these refunds was a change in rate schedule applied to any of the accounts in this docket?

A. Yes. Based on the refund period FPL believes is appropriate, one account, J.C. Penney's account # 90964-37216, would be affected by a change in rate schedule. During the refund period, the customer was originally billed under the GSLD-1 rate schedule. After computing the adjusted kW demand, the customer would not

qualify for the GSLD-1 rate for the final month of service during the refund period. For service between 10/9/02 and 11/7/02, the GSD-1 rate schedule is applicable to the customer's adjusted kW demand. For that month, a negative refund of $300.94 is computed. Based on all twelve months of the refund period, a positive refund of $1,797.32 is calculated for this account.

Q. Does this conclude your testimony?

A. Yes.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
FLORIDA POWER & LIGHT COMPANY
REBUTTAL TESTIMONY OF ROSEMARY MORLEY
DOCKET NO. 030623-EI
AUGUST 16, 2004

Q. Please state your name and address.

A. My name is Rosemary Morley. My business address is 9250 West Flagler Street, Miami, Florida, 33174.

Q. Have you previously filed testimony in this docket?

A. Yes.

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

Yes. I am sponsoring an exhibit, Document No. RM-4, that provides the refund amounts plus interest for the accounts in this docket.

Q. What is the purpose of your rebuttal testimony?

A. The purpose of my rebuttal testimony is to address the appropriateness of using the change in kW demand following the meter replacement as a method of computing the refund amount. I also address how interest on any refund amount should be calculated.

Q. What is Mr. Brown's proposed method of computing refunds?

A. Mr. Brown proposes using the change in kW demand following the meter replacement, instead of the meter test results, as the method of determining any refund amounts.

Q. Is Mr. Brown's methodology supported by the applicable rules in the Florida Administrative Code?

A. No, it is not. The Florida Administrative Code clearly indicates that the meter test results should be used in determining any refund amounts. Florida Administrative Code Rule 25-6.103(1) states "Whenever a meter is found to have an error in excess of the plus tolerance allowed in Rule 25-6.052, the utility shall refund to the customer the amount billed in error as determined by Rule 25-6.058 for one half the period since the last test, said one half period shall not exceed twelve (12) months; except that if it can be shown that the error was due to some cause, the date of which can be fixed, the overcharges shall be computed back to but not beyond such date based upon available records." Florida Administrative Code Rules 25-6.058, in turn, describes the method that should be used to determine the average meter error from the meter test result. Rule 25-6.103(3) further states the figure to used in calculating refunds shall be "that percentage of error as determined by the test."

Q. Beyond the fact that it is not supported in the applicable rules, are there other problems with Mr. Brown's methodology?

A. Yes. Using the change in kW demand to compute refunds presupposes that, in the absence of a meter error, a customer's kW demand should be constant over time. Mr. Brown's own documents suggest this is not necessarily the case. For example, as provided in Exhibit 5 of his direct testimony, Mr. Brown's graph of the J. C. Penney's account in Bradenton shows that the kW demand for that account was already trending down before the meter replacement. In addition, Mr. Brown's

method of computing the change in kW demand is based on a comparison of the 12 months before the meter replacement with a post-replacement period which ranges anywhere from 16 to 22 months. In other words, Mr. Brown's method incorporates changes in demand recorded up to one and a half years (or more) after the meter replacement. Because of the inconsistency between the pre-replacement and post-replacement periods, the method also weights certain months more than others in computing the change in demand.

Q. Is the method of calculating refunds described in your direct testimony consistent with Florida Administrative Code Rule 25-6.103?

A. Yes. Consistent with Florida Administrative Code 25-6.103, my refund method is based on the meter test results. As shown in Document No. RM-1 of my direct testimony, the 12 accounts eligible for refunds in this docket should be refunded $30,623.10 based on all applicable rates and charges, including taxes.

Q. Should interest be added to any refund amounts?

A. Yes. I have computed the interest on the refund amounts due in this docket as $754.43. Thus, the total refund amount with interest is $31,377.53. The refunds with interest by account are outlined in Document No. RM-4.

Q. How have you computed the amount of interest?

A. Interest has been computed in accordance with Rule 25-6.109 of the Florida Administrative Code. With the exception of deposits and adjustment clauses, this rule governs how refunds should be computed unless otherwise ordered by the Commission. This rule has been cited in a number of Commission orders. More specifically, I am not aware of any cases where the Commission has ordered an

investor-owned electric utility to make refunds incorporating a method of computing interest different from that outlined in Rule 25-6.109.

Q. Does this conclude your testimony?

A. Yes.

BY MR. HOFFMAN:

Q Ms. Morley, have you prepared summaries of your direct and rebuttal testimonies?

A Yes, I have.

Q Please provide your summaries.

A Yes. My direct testimony addresses how a refund should be calculated when a meter tests outside of the allowed plus tolerance levels. More specifically I provide the refund calculations applicable to the accounts at issue in this docket based on the meter test result Mr. Bromley supports in his testimony.

The refund methodology I support is consistent with the Florida Administrative Code. My refund methodology quite simply relies on two pieces of information: The meter test results and FPL's approved retail tariff.

For each account where kW demand tested outside of the allowed tolerance level I computed an adjusted billing demand designed to remove the overregistration indicated by the meter test results. The adjusted billing demands I computed result directly and solely from the meter test result.

For example, if the meter test results indicated that the meter registered 106 percent of what it should have registered, then the adjusted billing demand I compute shows what the billing demand would have been absent that percentage error. The same process for computing an adjusted billing

demand is followed for each account at issue in this docket where kW demand tested outside of the allowed tolerance level.

For the single account where kilowatt hours tested outside the allowed tolerance levels an identical process was followed in order to derive an adjusted kilowatt hour figure.

I then computed refunds for each account by comparing the amount actually billed with the amount which would have been billed based on the adjusted billing demands or adjusted billing kilowatt hours.

In computing the amount which would have been billed based on the adjusted billing demands I relied on the FPL tariff to determine the appropriate rate schedule. This approach is entirely consistent with Florida Administrative Code Rule 25-6.103, which states that, "Whenever a meter is found to have an error in excess of the plus tolerance level allowed by rule, refunds should be based on the amount billed in error as determined by the meter test result."

The refund amount I computed for the accounts at issue in this docket is $30,623.10. This amount includes all applicable charges and taxes but does not include interest, which is the subject of my rebuttal testimony.

The purpose of my rebuttal testimony is to address the appropriateness of using the change in kW demand following the meter replacement as a method of computing the refund amount. I also address how interest on any refund amount

should be calculated.

Mr. Brown proposes using the change in kW demand following the meter replacement instead of the meter test result as a method of determining any refunds. The Florida Administrative Code clearly indicates that the meter test results should be used in determining any refund amounts. In addition, using the change in kW demand to compute refunds presupposes that in the absence of a meter error, a customer's kW demand should be constant over time. The use of the meter test result requires no such assumption.

In contrast with Mr. Brown's methodology, the refund methodology presented in my direct testimony is consistent with the Florida Administrative Code. The Florida Administrative Code also offers guidance on how interest on any refund amounts should be determined. With the exception of deposit refunds and refunds associated with adjustment factors, all refunds ordered by the Commission shall be made in accordance with the provisions of Florida Administrative Code Rule 25-6.109, unless otherwise ordered by the Commission. Using the interest methodology outlined in that rule, I have computed the interest on refunds due in this docket as $754.43. Thus the total refund amount with interest is $31,377.53.

Q Does that conclude your summaries?

A Yes, it does.

MR. HOFFMAN: Ms. Morley is available for

cross-examination.

COMMISSIONER DEASON: Mr. Hollimon.

CROSS-EXAMINATION

BY MR. HOLLIMON:

Q Good morning, Ms. Morley. Bill Hollimon representing the Customers.

Ms. Morley, is it your testimony that the goal of your refund calculations is to put the customers in the position they would have been in if the meter error had not occurred?

A No. The goal of my refund calculation is to follow the administrative code which states that the refund should be based on the amount billed in error as determined by the meter test results.

Q Okay. In your prefiled testimony -- do you have a copy available to you?

A Yes.

Q Isn't it true that on Page 2, Lines 21 through 23, that first sentence -- would you just read that sentence, please.

A 21?

Q Yes.

A "As stated in the Florida Administrative Code, whenever a meter is found to have an error in excess of the plus tolerance allowed by rule, refunds should be based on the

amount billed in error."

Q Now do you stand by that testimony?

A Yes, I stand by that testimony.

Q Thank you. So the Florida Administrative Code requires refunds to be based on the amount billed in error?

A Yes. The Florida Administrative Code requires that refunds be based on the amount billed in error as determined by the meter test result.

Q Okay. Does it say in 25-6.103, "As determined by the meter test result"?

A No. It says, "As determined by another rule," and that rule discusses meter testing.

Q Okay. And what rule is that?

A I don't have a copy of the Florida Administrative Code in front of me.

Q Are you referring to Administrative Rule 25-6.052?

A As I said, I don't have a copy of the Florida Administrative Code in front of me.

Q I'm going to hand you a copy.

MR. HOLLIMON: May I approach the witness?

COMMISSIONER DEASON: Yes.

BY MR. HOLLIMON:

Q Now, Ms. Morley, you now have a copy of the Florida Administrative Code rules, do you not?

A Yes.

Q Okay. Now let's start with Rule 25-6.103, if we can.

A Uh-huh.

Q Okay. Are you, are you there?

A Yes.

Q Okay. Now in (1) it states that, "The utility shall refund to the customer the amount billed in error as determined by Rule 25-6.058." Do you see that?

A Yes.

Q Now if you'll turn to Rule 25-6.058, please.

MR. HOFFMAN: Excuse me, Mr. Hollimon. What, what was that reference? I'm sorry.

MR. HOLLIMON: 25-6.058.

MR. HOFFMAN: Thank you.

BY MR. HOLLIMON:

Q Are you there, Ms. Morley?

A You said 25-6.058?

Q Correct.

A Yes.

Q Now would you point out for me within that rule section where -- which portion of that rule applies to determining the meter error for demand meters?

A Well, I couldn't tell you that. The whole section is labeled "Determination of Average Meter Error."

Q Right. And what I'm asking you to do is point out for me and the Commission which section of that rule applies to

the determination of average meter error for demand meters.

MR. HOFFMAN: Commissioner Deason, I'm going to object. Ms. Morley's testimony goes to the calculation of the refunds based on a meter test and a meter error, as she states in her testimony, provided by Mr. Bromley. So we object and we think this is outside the scope of the testimony that she's presented.

COMMISSIONER DEASON: Okay. There's an objection indicating that it is outside the scope of prefiled testimony.

MR. HOLLIMON: Your Honor --

COMMISSIONER DEASON: Can you, can you refer me to the prefiled testimony?

MR. HOLLIMON: Certainly. Well, I'll refer to Ms. Morley's summary she just gave where she testified that her refund calculation is entirely consistent with the requirements of, of the administrative rules that deal with refunds. And I'm simply trying to walk her through to understand how her refund calculation is consistent with these rules.

COMMISSIONER DEASON: Objection overruled. You may answer the question.

THE WITNESS: Could you repeat the question?

MR. HOLLIMON: Certainly.

BY MR. HOLLIMON:

Q We're looking at 25-6.058 that's entitled, "Determination of Average Meter Error." And my question is I

vant you to identify for me the section of this rule that applies to demand meters.

A I could not identify that section. I rely on the testimony of Dave Bromley to determine how the average meter error should be determined.

Q Okay. So is it your testimony then that this rule does not, in fact, address demand meters?

A It is not my testimony one way or the other whether it does or not.

Q Ms. Morley, is it your understanding of the Florida Administrative Code rules that, that the refund should, the refund provided under these rules for a demand meter overregistration should make the customer whole?

A I'm not sure if I can tell you the intent behind the Florida Administrative Code. I think the wording of the phrase "the amount billed in error" could imply that, yes.

Q So does that wording suggest to you that the customer should be made whole?

A Again, I can't tell you the intent behind the Florida Administrative Code. I think a reading of that could suggest that, yes.

Q And would you agree with me that if the refunds you've calculated are not based on the amount billed in error, then you have not satisfied the requirement of Rule 25-6.103?

A Could you repeat the question?

Q Certainly. Would you agree with me that if the refunds you have calculated are not based on the amount billed in error, then you have not satisfied the requirements of Rule 25-6.103?

MR. HOFFMAN: I'm going to object, Commissioner Deason, to the extent it calls for Ms. Morley to render a legal interpretation and a legal conclusion as to whether it complies with that rule.

COMMISSIONER DEASON: What's the purpose of the question, Mr. Hollimon? Are you looking for a legal conclusion from this witness?

MR. HOLLIMON: No, Your Honor. This witness has provided lots of testimony that deals with her interpretation of the rules and the fact that, that the way she's done things is consistent with the requirements of the rules. I'm simply trying to understand a little bit deeper about how she understands these rules to apply.

COMMISSIONER DEASON: With that understanding I will allow the question. You may answer.

THE WITNESS: Could you repeat the question?

BY MR. HOLLIMON:

Q Yes. Would you agree with me that if the refund you've calculated, the refunds you've calculated are not based on the amount billed in error, then you have not satisfied the requirements of Rule 25-6.103?

A Yes.

Q Now, Ms. Morley, you personally are an FP&L customer, are you not?

A Yes.

Q Okay. Now if, if FP&L bills you for $10 worth of electricity when you've only used $5, you expect to be refunded $5, don't you?

MR. HOFFMAN: Object to the relevancy of the question.

COMMISSIONER DEASON: How is the question relevant, Mr. Hollimon?

MR. HOLLIMON: Well, I'm just trying to establish that the rules as applied are not fair to the Customers as FPL -- as Ms. Morley has applied them.

COMMISSIONER DEASON: I'm going to allow you to pursue your hypothetical and see where it leads us, but then I may cut you off just depending on how it proceeds.

BY MR. HOLLIMON:

Q Do you need me to repeat the question?

A I do.

Q As an FP&L customer, if people were charged for $10 worth of electricity when in fact you had only used $5, you would expect to receive a refund of $5, would you not?

A I would say that's probably true.

Q So you would expect to be made whole?

A Yes.

Q And, Ms. Morley, are you aware of any reason why the customers in this docket should receive a different treatment than what you would expect from FP&L?

MR. HOFFMAN: Object to the extent it calls for the speculation on the expectations of the Customers in this docket.

COMMISSIONER DEASON: Objection sustained. It does call for speculation.

BY MR. HOLLIMON:

Q Ms. Morley, do you believe that the Customers in this docket should receive the same treatment that you would expect from FP&L?

A Would I expect them to receive the same treatment?

Q Yes. I mean, you just testified that you would expect to receive a $5 refund when you were overcharged $5, that you would expect to be made whole. And my question is do you, do you have any reason to think that the Customers shouldn't be treated the same way?

A I think the Customers and myself as a customer should be treated consistent with the, with the rules of the Florida Administrative Code.

Q So if you, if you were provided a refund that was less than the $5 we discussed because of the requirements of the Florida Administrative Code, would you believe that to be

fair to you?

MR. HOFFMAN: I'm going to object again, Commissioner. It's a hypothetical. I don't think it's relevant. The whole issue of fairness has been raised in the Customers' petition for rule waiver, which has been denied. And I think the only issue before the Commission is the --

COMMISSIONER DEASON: I'm going to sustain the objection maybe on a different ground. I don't see you've laid any basis whatsoever that would indicate that the, that the implementation of the rule would result in less than a refund. So you've not laid the foundation with this witness. Now if you need to do so, please proceed. But I cannot allow a question which presupposes something that's not in evidence.

MR. HOLLIMON: Now there is prefiled testimony by a Commission witness Sid Matlock to that effect.

COMMISSIONER DEASON: Well, then ask this witness if she knows of that testimony and what her opinion on that testimony is, Mr. Hollimon.

MR. HOLLIMON: I'll do that. Thank you.

BY MR. HOLLIMON:

Q Have you read the testimony prefiled in this docket by Mr. Matlock?

A I did a few months ago, yes.

Q And doesn't Mr. Matlock indicate that providing a refund based on a meter test error is unfair to the Customers

in this docket?

A I couldn't summarize Mr. Matlock's testimony one way or the other.

Q Okay. We're going to move to a different area now.

Your refund calculations are based on a meter test error; is that correct?

A Yes, as provided by Mr. Bromley.

Q Okay. And you used the information that Mr. Bromley provided you to perform the -- or to calculate your correction factor; is that correct?

A That's correct.

Q And did you do any independent analysis regarding the test results provided to you by Mr. Bromley -- actually, actually provide for a refund that equals the amount billed in error?

MR. HOFFMAN: Commissioner, I'm going to object. I think the question is ambiguous because I'm having a hard time understanding it. So I'm going to object on the grounds of ambiguity.

COMMISSIONER DEASON: Mr. Hollimon, can you just restate the question? I think it might help us all.

MR. HOLLIMON: Certainly.

BY MR. HOLLIMON:

Q Ms. Morley, you testified that you were provided some information directly from Mr. Bromley; is that correct?

A That's correct.

Q Now did you do any independent analysis to verify the validity of that information?

A No, I did not.

Q Did you do any independent analysis to determine whether the refunds you calculated using Mr. Bromley's supplied information actually equate to a refund that equals the amount billed in error?

A No, I did not.

Q So you just plugged the information Mr. Bromley gave you into your analysis?

A I relied on the meter test results from Mr. Bromley, yes.

Q Okay. So I just want to make sure I understand your testimony though. You don't have any idea then really of whether or not the refunds you've calculated actually overstate the refund necessary to make the Customers receive a refund equal to the amount billed in error?

A I relied on the meter test results, yes.

Q So the answer to my question is yes?

A Yes.

Q Okay. And you don't have any idea whether the refunds you calculated understate the refund necessary to make these Customers whole?

A That's correct.

Q Now I understand your current job title to be the Rate Development Manager; is that correct?

A That's correct.

Q And so I guess as, as the Rate Development Manager you're familiar with FP&L's rates and tariffs?

A That's correct.

Q And you're familiar with the terms and conditions of these rates and tariffs?

A Yes.

Q Now isn't it true that FP&L can't charge a rate that's not on file with this Commission?

A That's correct.

Q I'm going to ask you a hypothetical question and I want you to assume a couple of facts. Under this hypothetical, the tariff rate for demand is $10 per kilowatt. Okay. Is that clear?

A Okay.

Q And that a meter has a 10 percent demand registration error and it's underregistering by 10 percent; is that clear?

A Yes.

Q Okay. Now isn't it true that under these facts that if this underregistration is not corrected, the Customer is effectively paying a rate that's not on file with the Commission?

A I'm not sure I would conclude that. They're still

being charged a tariff, yeah.

Q Now my question is is it -- isn't an effective rate being charged that's not on file with the Commission?

MR. HOFFMAN: I'm going to object to the form of that question and the use of the word "effective." I believe it's ambiguous.

MR. HOLLIMON: I'll rephrase.

BY MR. HOLLIMON:

Q Isn't it true that under the hypothetical, the two facts that I've provided you, that indirectly a Customer is being charged a rate that's not on file with the Commission?

A Yeah. I'm, I'm still not sure I would conclude that. They're still being charged a filed rate.

Q Okay. But if, if the meter is, in this example, underregistering by 10 percent, okay, they're actually receiving more electricity than they're being billed for; wouldn't that be correct?

A Yes. But the tariff is based on measured kW not hypothetical kW. It's based on measured kW.

Q Right. But if a measurement is wrong, doesn't that indirectly result in a rate that's not on file with this Commission?

A No. They're still being charged the rate on file with the Commission.

MR. HOLLIMON: That concludes the cross-examination.

COMMISSIONER DEASON: Okay. Staff?

MR. KEATING: Staff has no questions.

COMMISSIONER DEASON: Okay. Commissioners?

Redirect.

MR. HOFFMAN: Just one, Commissioner Deason.

REDIRECT EXAMINATION

BY MR. HOFFMAN:

Q Do you still have a copy of those PSC rules, Ms. Morley?

A Yes, I do.

Q Do you have a copy of Rule 25-6.103?

A Yes, I do.

Q Okay. What reference, if any, does Paragraph 3 of that rule make to a meter test?

A It says, "It being understood that when a meter is found to be in error in excess of the prescribed limits, the figure to be used for calculating the amount of refund shall be that percentage as determined by the test."

MR. HOFFMAN: Thank you. That's all I have, Commissioner Deason. And we would --

COMMISSIONER DEASON: Any exhibits? I'm sorry. Exhibits.

MR. HOFFMAN: Yes, sir. We would move composite Exhibits 4 and 5.

COMMISSIONER DEASON: Without objection, show that

Exhibits 4 and 5 are admitted.

(Exhibits 4 and 5 admitted into the record.)

MR. HOFFMAN: And may Ms. Morley be excused, Commissioner Deason?

COMMISSIONER DEASON: Yes. Ms. Morley, thank you for your testimony. You may be excused.

(Witness excused.)

COMMISSIONER DEASON: Mr. Hollimon and Mr. Moyle, just for your information, Mr. Hollimon's cross-examination was 16 minutes, so you're up to 1 hour and 19 minutes.

Let's continue to proceed. We're going to break for a short lunch break, but we're not going to do it right at this time. If anyone needs to make arrangements about having some lunch brought to them or whatever, you may want to make those arrangements because we're certainly not going to take more than a half-hour.

MR. HOFFMAN: Commissioner, I believe that the next witness under the prehearing order would be, I believe, Mr. Brown.

COMMISSIONER DEASON: I believe Mr. Brown is the next scheduled witness; is that correct?

MR. HOFFMAN: Yes, sir.

COMMISSIONER DEASON: Okay.

MR. HOFFMAN: Can we take a two-minute break before we begin Mr. Brown?

COMMISSIONER DEASON: All right. Yeah. We can take a short break. And if anyone wants to check on lunch plans, now is a good time to do that.

MR. MOYLE: Are you planning on working through lunch, Mr. Chairman?

COMMISSIONER DEASON: I'm sorry?

MR. MOYLE: Are you planning on working through lunch, like skipping lunch and eating at our desk or taking 15 minutes?

COMMISSIONER DEASON: We're going to take a short break. But what I'm saying is you're not going to have time probably to go over to the cafeteria and sit down and have a nice, leisurely lunch. You may want to have a sandwich or something brought in.

(Recess taken.)

COMMISSIONER DEASON: Okay. We'll go back on the record.

I believe Witness Brown is the next scheduled witness. Mr. Hollimon, are you going to be sponsoring the witness?

MR. HOLLIMON: Are you ready, Mr. Chairman?

COMMISSIONER DEASON: Yes.

GEORGE BROWN

was called as a witness on behalf of Ocean Properties, Ltd.; J.C. Penney Corp.; Target Stores, Inc.; and Dillard's

Department Stores, Inc.; and, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HOLLIMON:

Q Would you please state your name and address.

A My name is George Brown. My address is 7107 36th Avenue East in Bradenton, Florida.

Q Mr. Brown, have you prepared and caused to be filed direct testimony plus Exhibits 1 through 6 in this docket?

A Yes, I have.

Q Do you have any changes to your direct testimony?

A The -- I do have one change on Page 5, Line 16.

Q What is that change?

A Line 16.

Q And how would you change it?

A The statement is that, "When current is flowing through the meter, one of the bimetal coils is heated." That should be two, rather "both of the bimetal coils are heated."

Q Do you have any other changes to your prefiled direct testimony?

A No, I don't.

Q If I asked you the questions in your prefiled testimony today, your direct testimony today, would you have the same answers?

A Yes, I would.

MR. HOLLIMON: I'd ask that Exhibits 1 through 6 be created as a composite exhibit.

COMMISSIONER DEASON: They will be identified as composite Exhibit 6.

(Exhibit 6 marked for identification.)

BY MR. HOLLIMON:

Q Mr. Brown, have you prepared and caused to be filed prefiled rebuttal testimony with six exhibits in this docket?

A Yes, I did.

Q Do you have any changes to your rebuttal testimony?

A No.

MR. HOLLIMON: I'd ask that the rebuttal exhibits 1 through 6 be identified as a composite exhibit.

COMMISSIONER DEASON: Composite Exhibit 7.

(Exhibit 7 marked for identification.)

MR. HOLLIMON: And I'd ask that the prefiled direct and rebuttal testimony be inserted into the record as read.

MR. HOFFMAN: Commissioner Deason, we do have objections to the direct and to the rebuttal. We, we would like to very briefly voir dire Mr. Brown on his qualifications as a basis for our objections.

COMMISSIONER DEASON: Okay. Please proceed.

VOIR DIRE EXAMINATION

BY MR. HOFFMAN:

Q Mr. Brown, I'm Ken Hoffman. We've met before. I

represent FP&L.

The qualifications that you've outlined in your testimony are that you served in the Navy as a radioman, you worked for FPL for about 19 years, and that work experience ranged from meter reading to Commercial Industrial energy management representative, and that you received training from FPL on how to read a thermal demand meter; is that accurate?

A That is correct.

Q Okay. You do not have a college degree; correct?

A I do not have a college degree.

Q Okay. And you are not an electrical engineer?

A I studied electrical engineering, but I'm not an electrical engineer.

Q Okay. And you admit in your testimony that you do not consider yourself to be an expert in the area of thermal demand meters; correct?

A That is correct.

Q And you would agree that you are not an expert in the design of thermal demand meters; is that correct?

A I am not an expert in the design. That's correct.

Q And you would agree that you are not an expert on the characteristics of thermal demand meters; correct?

A I would not agree with that.

Q Okay. Do you have a copy of your deposition with you?

A No, I don't have it here.

Q Okay. I'm going to turn to your deposition. Do you recall having your deposition taken?

A I do.

Q Okay. And your deposition was taken on August 27th of 2004. Do you recall that?

A I don't recall the exact date, no.

Q Let me read into the record some passages from your deposition.

MR. HOLLIMON: Just if we could have a copy of the deposition for the witness. Do you have a copy for him?

MR. HOFFMAN: Oh, you didn't bring a copy of his deposition?

MR. HOLLIMON: I do have a copy. I was wondering if you had one to give to him.

MR. HOFFMAN: No. I only -- I'm sorry, Commissioner. Typically a witness brings his deposition with him, but --

MR. HOLLIMON: Well, I apologize for my unfamiliarity with the process here.

COMMISSIONER DEASON: If you could, if you could share that with the witness, it would be appreciated.

MR. HOLLIMON: Although that may be my only copy.

BY MR. HOFFMAN:

Q If you would, Mr. Brown, could you turn to Page 51 of your deposition?

A Okay.

Q Line 22 I'll read into the record.

Question, "But you do consider yourself to be an expert in terms of the characteristics of the meter and testing a meter and calibrating a meter; is that fair to say?"

Answer, "I'm not saying that I'm an expert at that."

So my question to you was would you agree that you are not an expert on the characteristics of thermal demand meters?

A I'm not an expert on the characteristics. I'm experienced. That's all I've said.

Q Okay. And you also stated in your deposition, did you not, that you're not an expert in the testing and calibration of a thermal demand meter; is that correct?

A In my deposition that's what I stated.

Q Okay. In fact, it wasn't until you drove to Tallahassee with Mr. Smith, who is the other witness for the Customers in this proceeding, after you filed your prefiled testimony that you gained some in-depth understanding of how a thermal demand meter works; is that correct?

A I gained additional understanding of the thermal demand meter from Mr. Smith. That is correct.

MR. HOFFMAN: Commissioner Deason, with that we are going to object to opinion testimony in Mr. Brown's prefiled direct testimony. Let me cite the passages to you.

Beginning on Page 6, Line 4 through the end of the sentence on Line 12; Page 6, Lines 15 through 21.

MR. HOLLIMON: I'm sorry. Would you say that one again?

MR. HOFFMAN: Page 6, Lines 15 through 21; Page 8, Lines 13 and 14; and Page 8, the sentence beginning on Line 22 through the end of Line 24.

And our basis, Commissioner, is that Mr. Brown lacks the background and qualifications to offer these opinions.

COMMISSIONER DEASON: Do you have any objections to the rebuttal testimony?

MR. HOFFMAN: Yes, sir, we do. Still on the direct testimony before we move to the rebuttal --

COMMISSIONER DEASON: Uh-huh.

MR. HOFFMAN: -- Commissioner Deason, we would object and move to strike the testimony and the data on Pages 3 and 7, those two charts that Mr. Brown has presented to the extent that they include information concerning the Target State Road 7 Boca Raton meter, which is not a part of this proceeding.

COMMISSIONER DEASON: What's the meter number on that, Mr. Hoffman?

MR. HOFFMAN: That, Commissioner, is the first meter. I believe it's Meter Number 1V5885.

COMMISSIONER DEASON: And you're objecting to that on

the basis of what?

MR. HOFFMAN: It is not a part of this proceeding. It was not protested. The Customers have filed motions directed to that issue, they've been denied, and it is, it is not a part of the proceeding.

COMMISSIONER DEASON: Okay.

MR. HOFFMAN: Commissioner, I also want to note for the record that with respect to that chart on Page 3 and those installed period dates, that that's hearsay testimony. It has not been corroborated, independently corroborated. The same with respect to the last test date data, which is in the chart on Page 7, for a number of those meters, and I'll just read them into the record, Commissioner, that is -- and this is apart from the Boca Raton meter which I previously discussed. That is with respect to Meter Number 1V5025D, 1V5887D, 1V5871D, 1V52475, 1V52093, and then the two meters on Page 8 which are 1V7166D and 1V5216D.

And finally on the direct, Commissioner, we would, we would similarly note that the installed period dates on Pages 7 and 8 of Mr. Brown's chart are hearsay, is hearsay testimony that has not been otherwise corroborated or verified.

COMMISSIONER DEASON: What was your objection concerning the, the column for the selected meters entitled, "Last Test Prior To Removal"?

MR. HOFFMAN: The basis for the objection with

respect to the meters that I identified, Commissioner, is that that column provides dates of, purportedly of last test prior to removal and relies on documentation in Exhibit 1. And the documentation in Exhibit 1 do not support the dates that are listed under that column for the meters that I identified.

COMMISSIONER DEASON: The information is inconsistent with another exhibit; is that what you're saying?

MR. HOFFMAN: It's either not there or it gives a different date, but it's not -- either way, it's not supported.

COMMISSIONER DEASON: Okay. We have a number of objections. Let's just concentrate now on the direct. Mr. Hollimon, do you care to respond to the objections?

MR. HOLLIMON: If I might have a minute, Mr. Chairman, to review the specific areas of the testimony that have been cited.

COMMISSIONER DEASON: Yes.

(Pause.)

MR. HOLLIMON: If I may respond to the opinion FPL objections first.

COMMISSIONER DEASON: Yes.

MR. HOLLIMON: As I understand, the, the first one is on Page 6 of his testimony, Lines 4 through 12. Is that correct, Mr. Hoffman?

MR. HOFFMAN: Yes.

MR. HOLLIMON: I believe the appropriate thing here

would be to inquire on cross about the basis of these statements. The only thing that, that looks to me to be opinion is possibly the first two lines. The other lines are, are factual statements, if supportable, but they're not opinion testimony. So I think the appropriate inquiry is to simply measure whether or not the witness is -- can credibly discuss the first statement. But the others are factual statements, I believe.

With regard to the objection on Page 6, Lines 15 through 21, again I believe that the, the witness should be, the factual underpinning for his statement should be examined to determine whether or not he's established the correct basis to make these statements.

On Page 8, the objection to Line 13 and 14, I think that's a factual statement, that's not an opinion, and it can be verified.

And on Page 8, Line 22 through 24, again I think the factual basis should be examined on cross.

With regard to the hearsay objections, hearsay is, is admissible in this proceeding if it's not -- but it can't be used as the sole basis for a finding of fact, of course. I would suggest for those that if there are any inconsistencies, that Mr. Hoffman could point those out on cross.

COMMISSIONER DEASON: What about the Boca Raton meter that's been identified as 1V5885?

MR. HOLLIMON: We have no objection to, to removing that, or you can simply, you know, note that it's not an issue in this docket and ignore it.

COMMISSIONER DEASON: What is your position concerning the, the allegation by Mr. Hoffman that the last test prior to removal dates for a number of the meters are either inconsistent or not supported?

MR. HOLLIMON: Well, I haven't had time to identify these documents, to go through them each and understand whether or not he's accurate or not. But I suggest that that would be appropriate for him to do on cross rather than somehow striking that testimony at this point.

COMMISSIONER DEASON: Okay. I'm going to not strike the testimony based upon the voir dire. I think it goes to the weight that the Commission will give that testimony as to its admissibility; therefore, it will be allowed.

Mr. Hoffman, your objection is also noted concerning hearsay, but I think that it is permissible under the limited circumstances as identified by counsel.

And as to whether the dates for the last test prior to removal are, whether those dates are inconsistent or unsupported, I will allow you to obviously pursue that on cross-examination to show that, if that is the case.

And counsel has already indicated that he concedes that the Boca Raton meter is not at issue. I think with that

concession on the record there's no need in trying to strike matters from prefiled testimony.

MR. HOFFMAN: Thank you, Commissioner Deason.

COMMISSIONER DEASON: Okay. Now do we need to go through an exercise similar to this for rebuttal or let the ruling stand, it can be the same? Are there different objections?

MR. HOFFMAN: Just one objection. It's a different objection in connection with the rebuttal, Commissioner Deason.

COMMISSIONER DEASON: Okay.

MR. HOFFMAN: On Page 2 of Mr. Brown's rebuttal testimony, on Lines 19 through 22, we're going to -- FPL objects to that testimony on the basis that it is, it is pure speculation. There's no testimony that, that Mr. Brown has any experience in working, in working with the manufacturer of the meters. He has speculated here on what the manufacturer intended in a letter that's over 20 years old that's attached as one of his exhibits. He's speculating on a policy that he says the meter manufacturer supposedly instituted regarding meter testings, regarding meter testing. So we don't think he has the background and qualifications to make those comments. We think he's rendering an opinion as to what the manufacturer may have intended without having a basis to do so when it comes to the issue of meter test points and zero and full scale calibration error issues that are addressed in that letter.

MR. HOLLIMON: Mr. Chairman, I believe that the objection probably goes to the weight of the testimony and that's how it should be handled.

COMMISSIONER DEASON: Mr. Hoffman, you indicated that there's speculation on the part of the witness. What -- are you talking about concerning the manufacturer's policy?

MR. HOFFMAN: Yes, sir. He said on Line 20 -- he starts, he starts his statement on Line 19. When you get to Line 20 he states that, "It is clear that the meter manufacturer has instituted a policy" and so forth. And that's what our objection is directed to, that he's not in the position and doesn't have the background to make that statement.

COMMISSIONER DEASON: I'm going to suggest a modification to the testimony, if it's acceptable to the parties. And instead of saying it is clear, just indicate that "It is my opinion that the meter manufacturer has instituted a policy." Now that's just a suggestion. If it's acceptable, fine, we'll make the change. If not, well, then I'll rule on the objection.

MR. HOLLIMON: That's fine, Commissioner Deason. I mean, he's, he's just interpreting a letter that he has attached to this testimony.

COMMISSIONER DEASON: Mr. Hoffman?

MR. HOFFMAN: We'll abide by that, Commissioner

Deason.

COMMISSIONER DEASON: All right. So then on Page 2, ine 20, we will strike the word "clear" and we will insert "my pinion." And the Commission will give whatever weight it deems appropriate to that testimony.

MR. HOFFMAN: I don't have any further objections to ıis rebuttal testimony.

COMMISSIONER DEASON: Okay. With that then we've lealt with the objections and the objections have been noted. And with the rulings and the changes consistent with our ›revious discussion, the prefiled direct and rebuttal testimony ›f Mr. Brown shall be inserted into the record.

TESTIMONY OF GEORGE CLINTON BROWN

Please state your name and address:

George Clinton Brown

7107 36th Ave. East

Bradenton, Florida 34208

By whom are you employed and in what capacity?

Southeastern Utility Services, Inc. ("SUSI")

Vice President of Operations

Owner/Founder

SUSI has been retained by each of the FPL customers ("Customers") whose meters are at issue in this docket. SUSI has been retained to act as the Customers' agent for purposes of determining if a Customer has been overcharged for electricity and, if so, negotiating an appropriate refund for that Customer. SUSI has been fully authorized and empowered by Customers to negotiate and settle these refund claims.

What is the purpose of your testimony?

My testimony is to provide an overview of the problems with thermal demand meters, their accuracy, characteristics, reaction to solar radiation, testing procedures, and appropriate refund methods and appropriate refund amounts.

Please describe your professional work history for the Commission:

I served 4 years 9-month in the US Navy as a radioman from 1962 to 1968.

I began work for FPL in 1968. My work experience ranged from meter reading to Commercial Industrial energy management representative. I left FPL on favorable conditions 12/31/1986. I founded Southeastern Utility Services, Inc. in 1987. SUSI provides specialized

auditing of clients utility needs including rates, taxes, metering application and accuracy of billing.

How did you first become familiar with thermal demand meters?

My first experience with thermal demand meters was as a meter reader in 1968.

My first encounter with a faulty thermal demand meter was a meter found to respond high caused by solar radiation in 1990. The meter was serving an asphalt plan in Venice. FPL along with engineers from Landis/Gyr witnessed that response to solar radiation. FPL provided a refund for the period of erroneous readings. Several other thermal demand meters were identified with similar erroneous readings from 1992 to 1998 on Winn Dixie Stores. FPL also corrected the metering and refunded appropriately.

Have you ever received special training in thermal demand meters?

The only special training of thermal demand meters was for meter reading proposes in 1968.

Do you consider yourself an expert in the area of thermal demand meters?

I do not consider myself as an expert. My level of expertise is limited to a thorough understanding of the thermal demand meter operating and design characteristics, design performance curves and observed variation that are common.

Are you familiar with the meters that are the subject of this docket?

I am familiar with all of the meters in this docket.

Please list those meters:

Please refer to the following table:

METER #	INSTALLED PERIOD	% ERROR FULL SCALE	% DIFF SINCE METER CHANGE
1V5885	6/1/91 to 11/6/2002	+4.84%	-8.91%
1V7001D	7/1/91 to 11/6/2002	+4.60%	-12.89%
1V5192D	7/1/92 to 11/11/2002	+4.36%	-10.62%
1V5025D	6/1/91 to 11/6/2002	+4.12%	-4.81%
1V7019D	5/14/93 to 11/12/2002	+4.12%	-12.16%
1V7032D	7/19/93 to 11/5/02	+4.84%	-6.12%
1V5887D	12/1/92 to 11/11/2002	+4.36%	-7.64%
1V5871D	5/14/97 to 8/10/2002	+6.7%	-9.26%
1V5159D	3/01/92 to 11/11/2002	+4.36%	-4.92%
1V7179D	1/27/93 to 1/7/2003	+4.31%	-9.07%
1V52475	5/1/96 to 11/4/2002	+4.12%	-1.67
1V52093	5/29/96 to 8/10/2002	+6.0%	-13.0%
1V7166D	10/1/90 to 12/5/2002	+2.08% KWH	-1.344%
1V5216D	11/1/97 to 11/5/2002	+4.84%	-4.158%

This table summarizes relevant information about the meters in this docket. I will discuss this information in more detail later in my testimony.

How did you become familiar with those meters?

SUSI has contracted with each of the Customers to evaluate the accuracy of all of their thermal demand meters. SUSI was also authorized to negotiate with FPL for settlement and if necessary file complaints with the Florida Public Service Commission. That evaluation has included field verification of the demand accuracy by means of proprietary computer software. I witnessed the removal and replacement of all meters when possible. I witnessed testing at FPL's meter test center as well as independent testing when appropriate. I have evaluated the usage pattern prior to meter replacements and monitored the usage pattern following the changes.

Did the meters in this docket over-register customer demand by more than 4%?

In all cases the thermal demand meters have over-registered more than 4% of full-scale except the Dillard's meter # 1V7166D, which was a KWH over-registration of greater than +2%.

How did you know this?

The above table clearly indicates that each meter in this docket tested outside the accuracy tolerances established by the FPSC. The data in this table comes directly from FPL's internal test result records. A copy of FPL's test records for the meters in this docket is attached as Exhibit 1.

Please describe for the Commission the basis for your testimony that each meter in this docket over-registered demand by more than 4%.

SUSI has witnessed each meter test along with a representative from the PSC. FPL has provided witnessed test records to SUSI and the PSC that confirm the reported errors. These errors are summarized and included in the above table.

Can it be determined at what point in time these meters began over registering demand?

Yes. The time when these meters began to over-register can be established as the time FPL last calibrated the meters.

What is the basis for that answer?

First, it must be understood that demand is a rate measurement. In other words, demand is expressed as the total energy consumed over a given period of time. One way to measure demand would be to simply divide the total kW hour consumption for a month by the total

numbers of hours in a month. This would result in a "demand" reading of so many kW's per hour (kW/Hour). However, this method does not recognize that over that month period there may be periods of time when the energy consumption per hour (i.e, demand), is much higher and much lower than the monthly average. The lagged thermal demand meters in this docket are designed to significantly shorten the averaging period so that relatively brief increases in demand can be captured.

These meters are pretty straightforward in their design and operation. In operation, these meters rely upon the known principal that metal expands when heated - and that the amount of expansion is a function of the type of metal that is heated. There are two bi-metal coils inside each meter. The two types of metal in each coil have known, and different, thermal expansion properties. When heated, the two metals expand at different rates, creating tension in the coil. The two coils are connected to a shaft in an opposed fashion. This means that when the meter is heated (without electrical current flowing through it) the two coils produce equal and opposite tension on the shaft - thereby canceling each other and having no effect on the shaft. This self correction mechanism is designed to limit any effect based on changes in ambient temperature. When current is flowing through the meter, ~~one~~ both of the bi-metal coils is heated through a resistive heating effect. This additional heating causes an imbalance in the two coils and a rotation of the shaft.

Demand is registered via the interaction of two "pointers" contained within the meter. The first pointer is the "pusher" pointer. This pointer is attached to the shaft that is moved by an imbalance in the two bi-metal coils. This imbalance is a function of the amount of electricity flowing through the meter. The pusher pointer contacts the second pointer (the "maximum demand" pointer) which moves upscale at the urging of the pusher pointer. The maximum demand pointer, however, is not directly attached to the shaft and therefore, does not move downscale as demand decreases and the pusher pointer moves downscale. Therefore, over the course of a month, as demand variously

increases and decreases, the maximum demand pointer remains at the most upscale position that the pusher pointer reached during that month.

Because of the design of these meters, and the method of operation, there is virtually no physical mechanism that can result in these meters gradually, over time, over-registering demand. The only moving part in these meters, the shaft upon which the pusher pointer is mounted, moves slowly on polished stainless steel pivots. No lubrication is required on any part of the thermal meter. The bi-metal coils are subjected to an aging process prior to assembly into a meter, and therefore are stable indefinitely. The heating elements are precisely matched during manufacture and do not require any further attention during the life of the meter. As FPL's test results indicate, failure of a meter component, or physical damage to a meter causing interference within the meter, results in a under-registration of demand of at least 10%. FPL treats these meters as "outliers" and does not include them in determining whether a population of meter meets the required accuracy standards for the population.

Therefore, both theory and practice indicate that the thermal demand meters in this docket do not gradually, over time, over-register demand. To the extent that meter performance changes over time, friction and other similar effects can only cause the meter to under-register. Thus, for meters that are tested and are found to over-register demand, the only plausible explanation is that the meters were not correctly calibrated and have been over-registering since the last meter calibration.

Are you aware of any thermal demand meters going bad or over-registering gradually over time?

No I am not. Additionally, the FPL employees who are primarily responsible for testing these meters also are unaware of any mechanism that can cause these thermal demand meters to gradually over-register demand. (See excerpts from the deposition testimony of FPL employees Keith Herbster, pages 86 -87, Brian Faircloth, page 64, and Jim Teachman, page 96, all attached hereto as Exhibit 2).

List for the commission the refund period for each meter that is involved in this docket:

The following table summarizes my response:

METER#	LAST TEST PRIOR TO REMOVAL	INSTALL'D PERIOD	REFUND PERIOD	% ERROR FULL SCALE	% DIFF SINCE METER CHG
		11/6/2002	11/6/2002		
1V7001D	10/12/1988	7/1/91 to	7/1/91 to	4.60%	-12.89%
1V5192D	4/13/1992	7/1/92 to 11/6/2002	7/1/92 to 11/6/2002	4.36%	-10.62%
1V5025D	6/24/1986	6/1/91 to 11/6/2002	6/1/91 to 11/6/2002	4.12%	-4.81%
1V7019D	1/8/1993	5/14/93 to 11/12/2002	5/14/93 to 11/12/2002	4.12%	-12.16%
1V7032D	1/7/1993	7/19/93 to 11/5/2002	8/9/93 to 11/5/2002	4.84%	-6.12%
1V5887D	10/29/1990	12/1/92 to 11/11/2002	3/19/93 to 11/11/2002	4.36%	-7.64%
1V5871D	1/24/1996	5/14/97 to 8/10/2002	5/14/97 to 8/10/2002	6.70%	-9.26%
1V5159D	10/26/1990	3/1/92 to 11/11/2002	3/1/92 to 11/11/2002	4.36%	-4.92%
1V7179D	1/14/1993	1/27/93 to 1/7/2003	3/3/93 to 1/7/2003	4.31%	-9.07%
1V52475	UNKNOWN	5/1/96 to 11/4/2002	5/8/96 to 11/4/2002	4.12%	-1.67%
1V52093	6/10/1994	5/29/96 to 8/10/2002	5/29/96 to 8/10/2002	6.00%	-13.00%

METER#	LAST TEST PRIOR TO REMOVAL	INSTALL'D PERIOD	REFUND PERIOD	% ERROR FULL SCALE	% DIFF SINCE METER CHG
1V7166D	UNKNOWN	10/1/90 to 12/5/2002	10/1/90 to 12/5/2002	+2.08%	-1.34%
1V5216D	10/14/1990	11/1/97 to 11/5/2002	11/20/97 to 11/5/2002	4.84%	-4.16%

Why did you choose these refund periods?

The refund periods correspond to the period each meter was installed following its last calibration. From the available information, the only plausible explanation for these meters' over-registration is improper calibration.

Does your review of FPL's policies and procedures for testing and calibrating thermal demand meters support this refund period?

Yes. FPL's stated calibration procedures do not comply with the manufacturer's recommendations for calibration. For example, no meter test cover is used, the recommended stabilization period after adjustment is not utilized, no backlash compensation is effected, testing is conducted at less than half of full scale, and test technicians often "tap" the reference standard thereby affecting the accuracy of the reference reading. Test results indicate a disturbing inability to produce repeatable test results and an inability to reconcile differences in reference standards used. Independent testing conducted by Customers indicates that may be a problem with FPL's meter test board. However, FPL has refused to allow Customers to conduct follow-up testing to determine if, in fact, there is a problem with FPL's meter test board. Mr. Smith's testimony discusses this issue in more detail. These factors, along with the design and operating characteristics of thermal demand meters, strongly support my conclusion that the meters were improperly calibrated and have been over-registering demand since they were last calibrated.

Do you have any other evidence to support this conclusion?

Yes. For all of the meters in this docket, FPL has not kept billing records that predate installation of the thermal demand meters at issue. Therefore, the billing information that is available only shows the change in demand that occurred upon replacement of the thermal demand meters with electronic meters. However, for one customer whose meter is not included in this docket, we have obtained billing records that predate installation of a similar thermal demand meter. Attached to my testimony as Exhibit 3 is a graph of the demand experienced by this account before installation of the thermal demand meter, during the life of the thermal demand meter, and after replacement of the thermal demand meter. This graph clearly depicts a step change (increase) in registered demand that occurred when the thermal demand meter was installed, and a step change (decrease) in registered demand when the thermal demand meter was replaced. I believe that this meter is representative of the meters that are included in this docket.

An issue has been identified concerning the impact of heat, including the sun's heat, on thermal demand meters. Are you aware of this issue?

I am familiar with this issue and have addressed that issue with FPL and the PSC.

Describe what impact, if any, heat or the sun has on thermal demand meters?

I have observed and video recorded numerous thermal demand meters that appear to respond to the effects of solar radiation. Generally when the meter is exposed to solar radiation the meter will respond as though it is accurate or in a negative direction. When the meter becomes shaded it will gradually increase to an unpredictable level above accuracy. This phenomenon has been observed on meters with no-load, light-loads and heavy-loads.

Mr. Jim DeMars, a metering engineer at FPL, has also observed and addressed this issue. Attached as Exhibit 4 is the September 24, 2002, e-mail authored by Mr. DeMars in which he

recognizes that "thermal demand meters have demonstrated the ability to register a little demand due to thermal heating from direct sunlight."

Do you know if all thermal demand meters are affected in the same way by the sun?

I cannot categorically answer this question one way or another. However, I have observed numerous meters whose accuracy is affected by solar radiation, and I do not believe FPL has adequately investigated this issue.

Do you know how the thermal demand meters involved in this case have been affected by the sun? If so, please explain.

I cannot say with certainty what part of these meters' demand errors in the docket were affected by the sun. Since they were out of calibration it is difficult to identify that part which is calibration and that part which is caused by the sun. It is clear, however, that solar radiation can impact the readings of thermal demand meters. This is particularly true where, as is the case here, that the manufacturer's recommendation to install solar shields on meters subjected to solar radiation is ignored.

Is the tested full-scale meter "accuracy" a proper basis for calculating refunds?

No. For purposes of determining an appropriate refund, the tested, full scale "accuracy" of a thermal demand meter is simply not appropriate for determining a customer's refund. This is because the tested meter "accuracy" almost never represents the actual impact felt by the customer as a result of demand over registration. In fact, it almost always understates the actual over charge to the customer (it always understates unless the meter is used at 100% of scale). Consider the following example: a meter has a full scale reading of 10 and reads 4.4 when the test standard reads 4.0. The full-scale "accuracy" of the meter is (4.4 - 4.0) /10, or 0.04 or 4%. However, the instantaneous error of registration is significantly different. This instantaneous

error is calculated as (4.4 - 4.0)/4.0, or 0.10, or 10%. The customer is billed for 4.4 units of demand even thought it only used 4.0 units of demand - in other words, the customer is billed for 110% of its actual demand - not 104%. If each unit of demand is billed at $100, the customer is charged $440 instead of $400, and overpays $40. If the "accuracy" is used to calculate the customer's refund, the customer's $440 bill is reduced by 4% and the customer receives a $16.92 refund, leaving the customer paying $423.08 for $400 worth of demand (this calculation is as follows: (1.04)*(actual demand) = (billed demand), therefore, (actual demand) = (billed demand) / 1.04). If the actual error is used to calculate the customer's refund, then the $440 bill is reduced by the actual $40 overpayment and the customer pays $400 for $400 worth of demand. (resulting in this calculation: (1.10)*(actual demand) = (billed demand), therefore, (actual demand) = (billed demand) / 1.10). As this example illustrates, the meter "accuracy" does not accurately reflect the actual impact to customers from an over-registering demand meter.

What is the appropriate way to determine the Customers' refunds?

The most appropriate way to determine the Customers' refunds is to determine the actual change in demand registration that has occurred following meter change and to use this actual change as the basis for calculating refunds.

Have you prepared any graphs that depict the demand change that has occurred since the thermal demand meters were removed?

Yes. Attached to my testimony as Exhibit 5 is a composite exhibit including graphs that visually depict the demand change following meter replacement. This Exhibit also includes my analysis demonstrating the methodology for determining the change in demand registration that has occurred following meter replacement for each meter in this docket. These graphs show the

actual registered demand and also include an average of registered demand for the 12 months prior to meter replacement and an average registered demand for the period following meter replacement. These graphs also clearly indicate a step-change decrease in demand that occurred immediately following meter change-out.

Based on this methodology, have you determined what appropriate refunds are for the Customers?

Yes. Attached to my testimony as Exhibit 6 is a composite exhibit showing the appropriate refund for each Customer. The table below summarizes the principal amount of each such refund.

METER #	PRINCIPAL AMOUNT DUE
1V5885	$54,524.05
1V7001D	$87,563.61
1V5192D	$66,554.47
1V5025D	$27,634.36
1V7019D	$72,038.10
1V7032D	$36,052.00
1V5887D	$40,976.19
1V5871D	$33,411.84
1V5159D	$29,717.52
1V7179D	$32,259.97
1V52475	$11,868.36
DILLARD'S	
1V7166D	$22,684.28
1V5216D	$15,979.81

METER #	PRINCIPAL AMOUNT DUE

Please explain how you determined these refund amounts?

As shown in Exhibit 5, I have used the 12 month period immediately preceding meter replacement as a baseline. I have than compared demand registration following replacement to demand registration during this preceding 12 month period. I then determined the change in demand by performing a month-to-month comparison of demand registrations both pre and post meter replacement (e.g., June pre replacement was compared to June post replacement). I then determined the percent change in demand from the comparative prior year month for each month following meter replacement. I then averaged these percent change amounts to determine the average change in demand following meter replacement. The average change in demand is the basis for adjusting demand registration that occurred while the thermal demand meter was in place.

The percentage of change was multiplied by the monthly demand to determine the monthly demand credit. The monthly demand credits were multiplied by the average cost per KWD. Each month was calculated in the same manor for the period the 1V meter was in service at each location. When billing data was not available prior to March 1993, a reasonable estimate was used to determine a credit. Attached as Exhibit 6 is a spreadsheet for each meter showing this information.

Why do you believe this is the proper refund amount?

These refund amounts most closely approximate the actual effect on each Customer caused by FPL's over-registering demand meters. As discussed above, this methodology

overcomes some of the inherent problems with using the tested meter "accuracy" as a basis for determining refunds and also recognizes that these meters simply do not gradually come to over-register demand. These refund amounts are based on actual, observed variations in demand that followed replacement of thermal demand meters with electronic demand meters.

What is the interest rate that should be applied to these principal amounts?

The interest rate that should be applied is the rate of interest as prescribed by Florida Statute.

Have you determined the amount of interest that each Customer is due based on the statutory interest rate?

Yes. Exhibit 6 also contains calculations applying the statutory interest rate to the principal balance for each account. The table below summarizes this information:

METER #	PRINCIPAL AMOUNT DUE	INTEREST DUE
TARGET		
1V5885	$54,524.05	$36,544.96
1V7001D	$87,563.61	$58,244.26
1V5192D	$66,554.47	$40,637.64
1V5025D	$27,634.36	$18,496.52
1V7019D	$72,038.10	$41,539.47
1V7032D	$36,052.00	$19,928.35
1V5887D	$40,976.19	$23,357.15
1V5871D	$33,411.84	$13,187.80
1V5159D	$29,717.52	$18,193.40
1V7179D	$32,259.97	$18,427.48
1V52475	$11,868.36	$5,203.63
1V52093	$55,666.12	$24,398.71

METER #	PRINCIPAL AMOUNT DUE	INTEREST DUE
1V7166D	$22,684.28	$15,923.63
1V5216D	$15,979.81	$5,681.85

Interest has been calculated by applying the statutory rate for each year to the principal balance for each month. No compounding (interest on interest) has been included.

On behalf of your clients, did you perform all of the work related to the meters in dispute?

SUSI has performed all of the work necessary to identify witness and negotiate for recovery of erroneous meters in this case.

Does this conclude your testimony?

Yes it does.

REBUTTAL TESTIMONY OF GEORGE CLINTON BROWN

Mr. Bromley testified (Page 13, lines 6 - 11) that testing of 1V thermal demand meters has been conducted in compliance with FPSC rules. Do you agree with this testimony?

No. This issue is similar to one addressed in Mr. Matlock's testimony filed on behalf of PSC staff. Mr. Matlock recognized that FPSC rules do not specifically address how to determine the appropriate refund for over-registration by demand meters (Matlock Direct Testimony, Page 7-8, lines 24 - 1). Likewise, the FPSC rules do not specifically address how 1V thermal demand meters should be tested. Rule 25-6.052(2)(a) addresses the performance of thermal demand meters, but does not specify where on the meter's scale testing should be conducted. However, this issue is addressed by both ANSI Standard C12.1-2001 and the meter's manufacturer, Landis & Gyr. ANSI C12.1 states in section 5.2.1.2 that "[m]echanical or lagged thermal demand meters should be tested at load points at or above 50% of full scale." (See 013 TDM, attached hereto as Rebuttal Exhibit GB-1.) Likewise, Landis & Gyr, the manufacturer of the 1V thermal demand meters in this docket, also recommends that its thermal demand meters be tested at or above 50% of full scale. (See excerpt of Landis & Gyr Technical Manual, page 6, attached hereto as Rebuttal Exhibit GB-2.) While both of these sources recognize that a meter's performance is acceptable when full scale error is less than 4% when tested between 25% and 100% of full scale, they clearly recommend testing at loads between 50% and 100% of full scale.

What is your understanding as to why ANSI and Landis & Gyr recommend testing at or above 50% of full scale?

These entities recognize that the thermal demand meters are much more accurate when tested at higher load points. FPL has presumably known this since at least April 5, 1982, when it received a letter from Landis & Gyr addressing this issue (See 4829-4832 TDM, attached hereto as Rebuttal Exhibit GB-3.). In this letter, Landis & Gyr provides a

chart which clearly depicts the relationship between meter error and "percent scale deflection," or percent of full scale. This chart clearly indicates that a meter tested at 50% of scale, and exhibiting 0.5 % error, would register 1% error when tested at full scale. Likewise, a meter tested at 25% of full scale, an exhibiting a 0.25% error, would register 1% error when tested at full scale. This chart tells us that a meter exhibiting a 4% full scale error when tested at 50% of full scale will exhibit an 8% full scale error when tested at 100%, and that a 4% error when tested at 25% of full scale will result in a 16% error when tested at 100%.

What else has the manufacturer of the meters in dispute, Landis & Gyr, done to indicate that a meter tested at a higher load is more accurate than a meter tested at a lower load?

This point is further emphasized by the letter sent by Landis & Gyr to FPL on May 28, 1982 (See 001-002 TDM, attached hereto as Rebuttal Exhibit GB-4). In this letter, Landis & Gyr notifies FPL that it has changed its calibration procedures so that thermal demand meters are tested at 75%, rather than 50%, of full scale, and states that this change has allowed Landis & Gyr to "improve the performance of this product." This letter also includes a "Calibration Warranty" for thermal demand meters, stating that meters are tested at 75% of full scale, and that calibration is maintained within plus or minus 1% of full scale. When this Calibration Warranty is viewed in conjunction with the chart attached to the April 5, 1982, letter (Rebuttal Exhibit GB-3), it is my opinion ~~clear~~ that the meter manufacturer has instituted a policy designed to provide meters that are accurate over the range of recommended test load points.

In conclusion, there is no FPSC Rule that specifies the manner in which thermal demand meters should be tested for accuracy. Therefore, Mr. Bromley's testimony that

FPL's testing was conducted in compliance with FPSC Rules is off base.

Mr. Bromley testified (Page 13, line 13 - Page 15, line 13) that FPL has recently modified its process for testing customer requests for thermal demand meter tests and that this change is consistent with the requirements of Rule 25-6.052. Do you agree with this testimony?

No. There are several things about this testimony that are incorrect. First, as discussed above, Rule 25-6.052 does not specify test requirements for thermal demand meters. This rule only addresses performance requirements of thermal demand meters. Mr. Bromley states (page 15, lines 12-13) that "Rule 25-6.052 state[s] that testing demand at any point between 25% and 100% of full scale is appropriate." This is simply incorrect. Rule 25-6.052 does not address test points - rather it addresses what constitutes acceptable performance. Again, there is a reason why ANSI and the manufacturer recommend testing at or above 50% of full scale - and that reason is that these entities recognize that, due to the inherent operating characteristics of these meters, testing at a low percentage of full scale provides no assurance that the meter will be accurate at higher points on the scale. In direct contrast to Mr. Bromley's view, Landis & Gyr's calibration warranty is premised on a test conducted at 75% of full scale, with a full scale accuracy of plus or minus 1 %. By testing at this point, at this level of accuracy, Landis and Gyr provides the best available assurance that its meters will meet the applicable performance standard (plus or minus 4% full scale error when tested between 25% and 100% of full scale) when tested.

Do you have concerns about FPL's recently "modified" test process for thermal demand meters?

Yes. The modification Mr. Bromley refers to is to test thermal demand meters at each customer's 24-month average demand. As Mr. Bromley's example indicates, this can result

in testing conducted at less than 50% of full scale - testing which is not recommended by either the meter manufacturer or ANSI. Mr. Bromley's testimony conflates two very important - and very different - pieces of information that can be determined from FPL's testing of thermal demand meters. In any meter test, it is possible to determine both the meter's full scale accuracy and the meter's test point accuracy. This issue is discussed in more detail below.

Mr. Bromley testifies (Page 15, line 17 - Page 16, line 6) regarding which meters in this docket are entitled to refunds for testing outside of allowed tolerance levels. What is your reaction to this testimony?

I want to comment about the bent meter error found at a Target store, specifically, Target meter, serial # 23864871, company # 1V5871D, located at Fruitville Rd. Sarasota. This meter has two errors associated with its accuracy. The test records show a calibration error ranging from 2.21% to 3.57% depending on where the meter was tested by FPL on the full-scale. The other part of error in registration is due to a bent black maximum indication pointer. The pointer is bent outward toward the red instantaneous pointer, which causes the red pointer to strike the black pointer prematurely causing an erroneous deflection of approximately +2.5 divisions on the scale. That additional deflection amounts to +30 KWD anywhere on the scale.

What is the effect of this bent black maximum modification pointer?

SUSI has documented with photography over a period of April 2002 through August 2002 that the bent black pointer was never captured by the red pointer as FPL has claimed. In fact, on August 10, 2002, when the meter was independently tested by Mr. Bob Armstrong, the representatives from FPL, SUSI and the FPSC all witnessed the pointers being separated. Mr. DeMars, FPL's principle metering engineer was present and visually

inspected the meter to identify this mal-adjustment. That point in time is recorded on video and is available for review if necessary.

The historic billing data following the change out of the disputed meter supports the combined error. Since the meter replacement there has been an average of 58 KWD monthly reductions. The full-scale of the meter is 7 with a multiplier constant of 120; therefore the full-scale value of this meter is 840 KWD. If the percentage error of 3.57% stated above is calculated to a value of full-scale, the error value is approximately 30 KWD. That 30 KWD combined with the mis-alignment error of 30 KWD equals a 60 KWD monthly error. The average monthly billing difference of -58 KWD is very convincing evidence that the pointers were never stuck together at any point through out the history of energy usage on this meter.

Does this then equate to a percentage of error for this meter?

Yes, according to my calculations, it equates to a 7.14% error as of full scale.

Mr. Bromley testifies (Page 18, line 19 - Page 19, line 23) that the full scale percent error is the appropriate error to be used for calculating refunds for demand over-registration. Do you agree with this testimony?

No. When a thermal demand meter is tested for as-found accuracy, three important pieces of information can be determined from that test. One is the full scale meter accuracy, the second is the test-point percent error, and the third is the zero error. As explained by Mr. Matlock in his testimony (Page 10, lines 3 - 11), basing a customer's refund on full scale error results in a refund that does not make the customer whole.

For example, if a meter with a full scale reading of 5 is tested, and the tested meter reads 2 while the standard meter reads 1, the following information can be determined:

Full scale error: [(Tested Meter) - (Reference Meter)] / Meter Full Scale

$$[(2 - 1)] / 5 = 1/5, \text{ or } 20\%$$

Test point error: [(Tested Meter) - (Reference Meter)] / Reference Meter

$$[(2 - 1)] / 1 = 1/1 = 100\%$$

In this example, if the customer actually paid for two units of demand when only one unit of demand was actually used, the refund necessary to make the customer whole would be 100% of one unit of demand. Calculating the customer's refund based on the full scale error, and using FPL's methodology, would result in the following billing adjustment:

Correction Factor = 1 / (registration percentage) = 1 / 1.20 = 0.8333

Adjusted Demand = Billed Demand * Correction Factor

= (2) * (0.8333)

= 1.67

So, in this example, the customer's adjusted bill would be for 1.67 units of demand when only 1.0 unit of demand was used. If demand was billed, for example, at $10 per unit of demand, this customer's adjusted bill would be for $16.70, when only $10 worth of demand was actually used. In other words, rather than getting back $10.00, the amount overcharged, the customer would get back only $3.30. Clearly, this does not make the customer whole. Moreover, using full scale error to calculate customers' refunds fails to comply with the requirement of Rule 25-6.103 that refunds should be based on "the amount billed in error." In this example, the amount billed in error is one unit, or $10 worth of demand. Therefore, the appropriate refund is $10, not $3.30. It should also be noted that the meter manufacturer, Landis & Gyr, also recommends using the test point error as one component of a proper refund calculation. (See April 5, 1982 letter in Rebuttal Exhibit GB-3.)

What consideration should be given to zero error for refund calculation purposes?

Neither FPL nor Mr. Matlock have properly considered the effects of zero error for

refund calculation purposes. As discussed by Landis & Gyr in its April 5, 1982, letter to FPL, a proper refund for demand over-registration is based on two components: the first is the "test load error" which is equivalent to the test-point error discussed above. The second is the zero error component. Zero error is the registration error that occurs when the indicating pointer is not on zero when the meter is energized, but with no current flowing through the meter. The total error is the sum of test load error and zero error.

Although the test-point percent error may better represent the actual impact on a customer from an over-registering meter than does the full-scale calibration error, it does not always best represent the actual impact on the customer from meter over-registration. In fact, FPL also recognizes that using the tested meter accuracy often greatly understates the impact on the customer from thermal demand meter over-registration. This is why FPL, in providing refunds for 1V meters that over-registered demand beyond an acceptable range of tolerance, based refunds on the higher of: 1) the test error; or 2) the actual percentage difference of the monthly demand readings of the new meter vs. the replaced meter.

In fact, for the 263 1V meters and for which FPL provided a customer refund for demand over-registration, at least one third of these refunds (approximately 93 meters) were based on the percentage difference of the monthly demand readings of the new meter vs. the replaced meter. (See FPL Response to Staff's Interrogatory No. 3, attached hereto as Rebuttal Exhibit GB-5). Of these one third, approximately one half of these refunds (approximately 47 meters) were for meter error determined to be greater than 10%.

Why is this significant?

Many refunds were based on meter error of at least 30%, and the highest refund was based on a meter error of over 63%. Given this information, it is not difficult to discern why FPL determined it would be more fair to these customers to calculate their refunds based on a

comparison of the actual change that occurred when a thermal demand meter was replaced with an electronic demand meter.

A "before and after" demand comparison provides the best indication of the actual change in demand experienced by the customer. This comparison is based on actual billing history, not on the results of a single meter test which, experience has demonstrated, is dependent upon the percentage of full scale at which the meter is tested - and therefore, is subject to manipulation and variation. In stark contrast, historical billing information does not change based on any test point of full scale and can be uniformly, and consistently, analyzed.

Is there information filed in this case that provides a "before and after" review, similar to the "before and after" review FPL conducted on the accounts of other customers who had 1V Thermal demand meters?

Yes. Exhibit 5 to my direct testimony provides a "before and after" comparison of the change in demand that the customers in this docket experienced when their thermal demand meters were replaced with electronic demand meters. This analysis is based on the same process and procedure that FPL used in determining the change in demand that occurred for 1V thermal demand meters for other, similarly situated customers not represented by my company. This analysis graphically demonstrates a step-change in demand registration (decrease) that occurred upon meter replacement.

Should this "before and after" approach be used in considering the meters in this docket?

Yes, since it is a valuable source of information regarding the actual change in **demand** a customer experienced. Additionally, Florida Statute states "No public utility shall make or give any undue or unreasonable preference or advantage to any person or locality, or

subject the same to any undue or unreasonable prejudice or disadvantage in any respect."

What is the best available information to use for refund calculation purposes?

The best available information for refund calculation purposes is not the full-scale error; rather, it is the historical billing information that shows the actual effects upon a customer when its thermal demand meter is replaced. Moreover, this approach is entirely consistent with FPL's stated goal for calculating refunds for demand over-registration. FPL witness Rosemary Morley testified in her direct testimony that "any refund amount should be based on the difference between the amount actually billed the customer less the amount which would have been billed if the meter had accurately measured the customer's kW demand and kW usage. Using this method, the customer's electric bill, less any refunds, is made equal to the electric bill which would have been rendered had the meter error not existed." (Morley, Page 2, line 23 - Page 3, line 5).

Is calculating refunds as suggested by Mr. Bromley's direct testimony consistent with Mrs. Morley's testimony?

No. For all the reasons identified above, calculating refunds based upon full-scale meter error (as Mr. Bromley suggests) can never accomplish Ms. Morley's above-stated objective. FPL's position in this docket does not "hold the customer harmless from the effects of the meter error and return the customer to a correctly billed status quo." (Morley Direct Testimony, Page 4, Lines 13 - 15).

Mr. Bromley testifies (Page 20, lines 1 - 8) that there are 12 accounts that are subject to refund in this proceeding. Do you agree with this testimony?

No. All 14 accounts in this proceeding are identified in Exhibit 5 to my direct testimony, and all these accounts are subject to refund. There is a mix-up regarding a Target account in Bonita Springs for the Target store on State Road 7 in Boca Raton. The Target

Bonita Springs store was identified in error in the Petition. The Target store located on State Road 7 in Boca Raton, Store number 21637, and meter 1V5885D is the meter in dispute. This meter tested at +4.85% on May 21, 2003. For the Target store in Sarasota, FPL has failed to recognize the results of independent, refereed testing which indicated demand over-registration greater than 4% of full scale.

Mr. Bromley testifies (Page 20, line 7 - Page 21, line 6) that the appropriate refund period for the meters in this docket is 12 months, and that this refund period is consistent with FPSC Rules. Do you agree with this testimony?

No. Rule 25-6.103(1) provides that refunds can exceed 12 months "if it can be shown that the error was due to some cause, the date of which can be fixed, the overcharges shall be computed back to but not beyond such date based on available records." This Rule does not specify who has the burden of demonstrating such "cause," or what standard should be applied to determining what constitutes adequate "cause," or to determining when a date can be "fixed." Because only the utility has custody and control of the meter and meter tests records, the utility will have most, if not all, of the information necessary to make this determination. Consequently, FPL should have the same burden of making reasonable efforts to fix a point in time the meter was in error.

Describe FPL's "process" for determining if a meter over-registered for longer than 12 months.

With regard to the 1V thermal demand meters, FPL has designed and effectuated a process that gives it very little incentive to investigate and determine a "cause" that would result in longer refunds. Obviously, it is not in FPL's financial interest to pursue a rigorous method or approach to determining a point in time when a meter began over-registering. So long as FPL cannot "determine" a point in time when the meter over-registered, FPL's refund

liability is limited to 12 months. Consequently, it is not surprising that FPL has never been able to "determine" or pinpoint a date that would force it to provide more than a 12 month refund, not only for meters in this docket but for any thermal demand meter!

Additionally, FPL has conducted no investigation to determine the actual cause for the 1V meters to fail as a class, even though FPL has exclusive control over, and has warehoused, all 1V meters it has removed from service (except for the 60 or so 1V meters that it has "misplaced," and could not locate). FPL has conducted no physical investigation of the meters in this docket to determine why the meters in this docket over-registered demand in excess of allowable tolerance. FPL has not determined if a particular meter component, or components, have failed or have degraded, nor has it determined the effects on demand registration of such failure or degradation. Further, FPL has, to date, denied the customers access to their meters so that the customers and their experts could conduct this type of investigation. (Efforts to review and inspect these meters will continue so as to present complete evidence to the trier of fact.) Thus, FPL has elected not to obtain, and has refused to allow its customers to obtain, information that could establish the "cause" referenced in Rule 25-6.103(1). Further, Mr. Bromley states (Page 20, lines 13-19) that FPL could not determine a point-in-time where over-registering might have occurred, and that a "significant factor" in making this determination "is that factors such as weather, seasonal trends, and the customer's equipment tend to have a greater impact on demand than the 4-5% error determined by the meter test." However, during his deposition, Mr. Bromley admitted that FPL did not conduct any analysis regarding how these factors may have impacted the meters in this docket. Finally, FPL has apparently ignored the information in its possession from the manufacturer of thermal demand meters, Landis & Gyr. During discovery in this docket, FPL produced a Landis & Gyr document, Technical Bulletin 840,

dated March 1, 1961 (Bates No. 003977 TDM - 004004 TDM). This document contains a page entitled "Interpretation of Bad Test Results," which provides a table with columns for "Conditions Found," "Possible Cause," and "Correction." A copy of this document is attached as Rebuttal Exhibit GB-6. This table provides a convenient reference for the cause and cure of various conditions. One such condition is identified (line F) as "Excessive Error (more than 3% at scale check points)." The number one cause for this condition is identified by the manufacturer as "Faulty Calibration," the reason that the Customers contend their meters overregistered since the date they were installed.

Tellingly, FPL has designed an evaluation process that does not rely on any objective criteria to determine whether sufficient "cause" exists to justify a longer refund. In fact, as testified to by Mr. Bromley in his deposition, this process, as applied to all 1V meters (including the meters in this docket) is, ultimately, entirely subjective as applied by FPL. I find it telling that FPL could not come up with any real objective standards to use in determining whether a refund beyond 12 months is warranted. As long as the FPC keeps the issue cloudy and confused, using "subjective" analysis, its potential liability does not exceed 12 months.

By using its subjective evaluation criteria to determine whether to issue a refund of longer than 12 months, not a single customer has received a refund longer than 12 months. This failure to award a refund longer than 12 months is based on 263 1V meters for which FPL has already provided limited refunds. This is true even for meters where the change in demand registration for the 12 month refund period exceeds 60%. It is not surprising that FPL has reached a similar conclusion for meters in this docket and refused to provide a refund beyond a 12 month period of time.

FPL contends it was never presented with information that demonstrated when a meter

error might have occurred. Do you agree with this?

No. Mr. Bromley testifies (Page 20, lines 19 - 21) that "there was no information brought to us by any customers or their representatives in this docket that demonstrated to us when a meter error might have occurred." FPL has been provided with reams of analyses indicating that a significant, consistent change in demand registration has occurred for each of the meters in this docket, and that this over-registration has occurred for the entire installed period of each meter. Apparently, this information did not meet FPL's subjective criteria. Attached as Rebuttal Exhibit GB-7 is a graphical summary of the information that has been provided to FPL for the meters in this docket, demonstrating the change in demand that has occurred after meter replacement as compared to before meter replacement. The customers contend this compelling evidence strongly suggests the meters in question have been over-registering to a date certain, namely the date of meter installation.

In conclusion, FPL has established a subjective, self-serving process that provides it with complete control and discretion to determine whether a refund longer than 12 months is warranted. Under these circumstances, it is not surprising that FPL has not identified a single 1V meter eligible for a refund longer than 12 months. An appropriate refund is one that satisfies the goal identified by Ms. Morley, i.e., "to hold the customer harmless from the meter error and return the customer to a correctly billed status quo." This is best accomplished through the methodology described in my direct testimony and should result in customers receiving full refunds, beyond a 12 month period of time.

FPL witness Rosemary Morley has also prefiled testimony in this docket. Have you reviewed this testimony?

Yes.

Ms. Morley testifies about how refunds should be calculated (Page 2, line 19 - Page 3,

line 5). Do you agree with this testimony.

Yes, in part. Ms. Morley recognizes in her testimony that the purpose of a refund is to put the customer in the position the customer would have been but for the meter error. This is entirely consistent with the requirement of Rule 25-6.103 that refunds should be based on "the amount billed in error." It is also consistent with the procedure FPL adopted for determining the percent change in demand (comparing actual demand readings "post" change out with actual demand readings "pre" change out, the "before and after" review) for all 1V meters that are not in this docket. However, this testimony is not consistent with FPL's practice of only providing one year refunds to 1V meters not in this docket, and is not consistent with the methodology (and the inputs) she actually uses to calculate refunds for the meters in this docket.

Ms. Morley testifies about how FPL has determined the amount which would have been billed if the meter was accurate (Page 3, lines 6 - 17). Do you agree with this testimony.

I agree that a correction factor is necessary to adjust the as-billed demand or kWhr consumption to what the demand or consumption would have been but for the meter error. I also agree that the amount of the refund should be based on this adjustment and application of the applicable rate schedule. I disagree with Ms. Morley on her choice of inputs to compute the correction factor and to her use of a different rate schedule than what the customer was actually billed under.

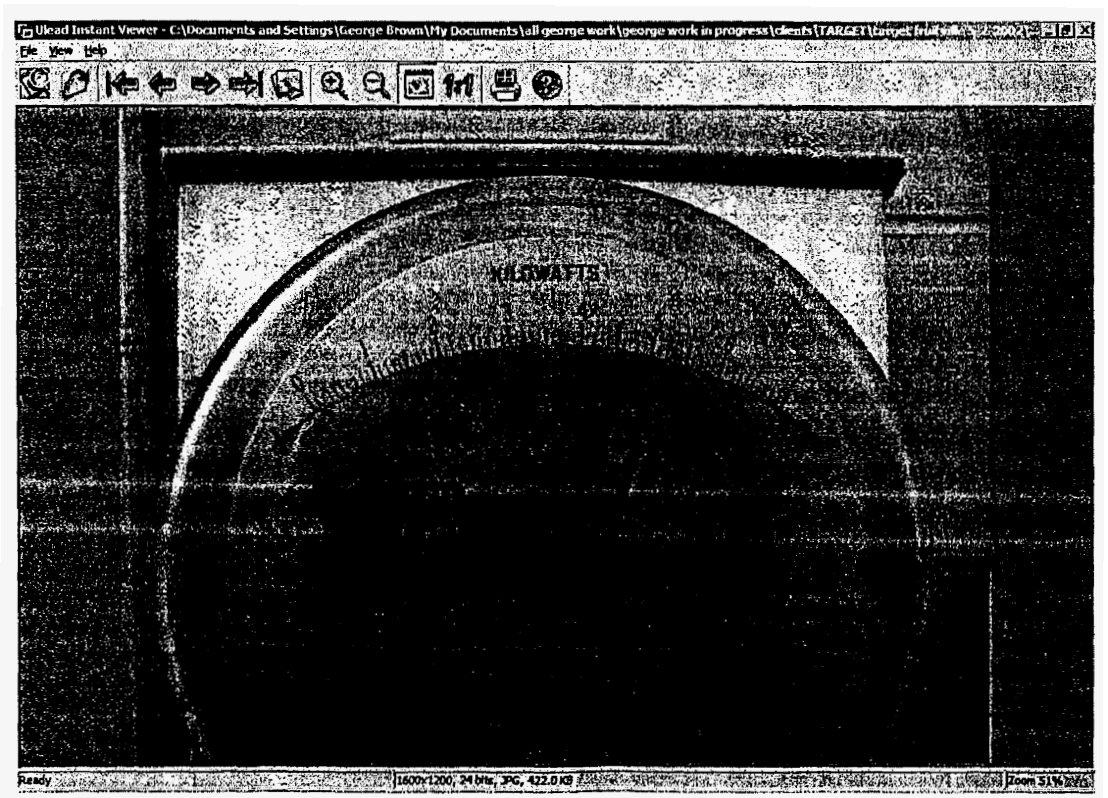
Why do you disagree?

Ms. Morley has used the full-scale meter error as an input into determining the correction factor. As discussed earlier in my rebuttal testimony, using the full-scale meter error for refund calculation purposes results in the customer paying for demand and consumption that was not used. Therefore, this method fails to conform to Ms. Morley's

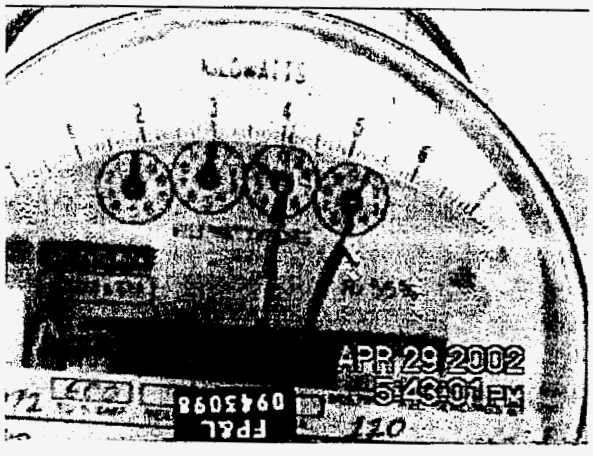
stated goal; namely, to fully restore the customer to the position it would have been in but for the meter error. The test point error provides a truer indication of the actual over-registration felt by the customer; however, because these meters have a varying degree of error that is dependent upon the percentage of full scale at which the meter is operating, the test point error only provides a snapshot of what has actually occurred. The best way to determine the true amount of over-registration is to compare the actual decrease in demand that has occurred following replacement of the 1V meter with an electronic meter, i.e., the "before and after" review to which I refer in my testimony.

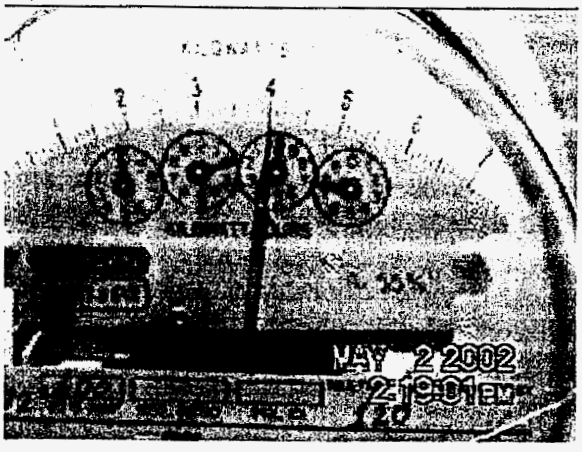
Do you agree with Ms. Morley's conclusion regarding the total refund due?

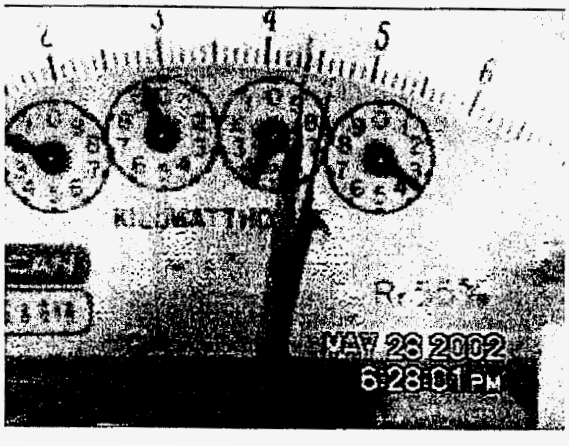
No. Ms. Morley has calculated no refund for Target Sarasota (FPL Account No. 49909-58540). The Target Sarasota meter has a bent maximum demand pointer that results in over-registration of actual demand. The photograph below was taken by me on 8/6/2002 four days prior the independent test on August 10, 2002.



Additional photographs were taken well before I could determine the needles were misaligned causing the erroneous over charges. On the photograph taken May 2, 2002, (the regular read date) it is believed the meter had just been read and the demand reset. It was then when I observed the needles captured for the first time. However on May 28, 2002 it was observed that the needles were again separated, as had always been the case.







This photograph shows the clockwise separation to the right (maximum demand) needle. The bend occurs about midway up the needle and results in an over-registration of 2 - 3 small scale divisions (e.g., the black needle reads 5.2 or 5.3 instead of 5.0). An independent test of this meter was conducted on August 10, 2002. In that test it was demonstrated that the needles were not stuck together, but were separated by 2 to 2.5 divisions. When this meter was shop tested by FPL, several sequential tests were conducted.

The purpose of these additional tests was to verify that the needles would separate. In each subsequent test the needles separated at a higher point on the scale. It is believed that if several additional tests would have been performed the red needle would have not captured the black needle on its rise up-scale. The same as would have occurred in actual operation at the customer location. For this meter, FPL's test results do not tell the whole story. This is just another example that demonstrates that the most accurate way to determine the actual meter error is by comparing before and after billing information.

Additionally, Ms. Morley's refund calculations are based on only a 12 month refund period. As explained in my pre-filed testimony, these meters all demonstrate a significant change in demand registration when compared with their entire billing histories. This conclusion is supported by the rebuttal testimony of Bill Gilmore. Therefore, each of these meters is entitled to a multi-year refund and the amount calculated by Ms. Morley significantly understates the amount of refund due to each customer that is necessary to "hold the customer harmless from the effects of the meter error and return the customer to a correctly billed status quo." (Morley, Page 4, lines 13-15).

Do you agree with Ms. Morley regarding how account number 90964-37216, J.C. Penney's account, should be refunded?

No. Ms. Morley points out in her direct testimony that customers are charged a lower energy charge if their demand is over 500 kWd at least once very 12 months. In one instance, account number 90964-37216, J.C. Penney's, a meter erroneously over-registered demand at a rate greater 500 kW of demand. FPL wants to go back and recalculate its billing in such as way that would charge the customer more money for energy, using a demand of less than 500 kW of demand.

Why shouldn't FPL be able to do this?

It would be unfair to that particular customer, since it was given information that it qualified for the lower energy rate associated with the GSLD-1 (over 500 kW of demand) rate schedule. Ms. Morley failed to testify that customers such as this J.C. Penny account are able to contract for the GSLD rate should they so desire. If a customer's usage puts it close to the break point between the GSD-1 (25 kW of demand to 500 kW of demand) rate schedule and the GSLD-1 (over 500 kW of demand) rate schedule, it is free to contract for this GSLD-1 rate should it so desire. A decision as to whether or not to contract for the GSLD rate is invariably based on whether the customer's account exceeded 500 kW of demand within the past 12 months so that it automatically qualifies for the GSLD-1 rate schedule.

FPL provided faulty information regarding this J.C. Penney account, that it was registering over 500kW of demand. This key information can lead one to believe it qualified for a lower energy charge associated with the GSLD-1 rate schedule. However, this customer never was aware of its opportunity to contract for the GSLD-1 rate schedule, since its billing records showed it already qualified for this GSLD-1 rate. Accordingly, it would be unfair to the customer to now adjust its billing to force it to pay the higher energy charges of the GSD-1 rate schedule. At the very least this customer and any others similarly affected ought to be given a reasonable opportunity to retroactively contract for the GSLD-1 rate, and the lower energy charges associated with this rate, should FPL be permitted to make the adjustments suggested by Mrs. Morley.

Does this complete your rebuttal testimony?

Yes.

COMMISSIONER DEASON: Is the witness prepared to give a summary at this point?

MR. HOLLIMON: Yes.

CONTINUED DIRECT EXAMINATION

BY MR. HOLLIMON:

Q Mr. Brown, have you prepared a summary of your testimony?

A Yes, I have.

Q Would you please provide that now.

A Yes, sir. Commissioners, my name is George Brown. I am the founder and principal of Southeastern Utility Services, which is also known as SUSI, S-U-S-I.

SUSI provides services to utility customers, including services related to metering of their utility services. I founded Southeastern Utility Services in 1987 after working for Florida Power & Light for approximately 18 years in various capacities ranging from meter reader to Commercial Industrial energy management representative.

SUSI has been engaged by Target, Dillard's, J.C. Penney's and Ocean Properties to act as their companies' agents to pursue refunds for electricity overcharges associated with thermal demand meters that are the subject of this docket.

I filed direct and rebuttal testimony in this docket. The purpose of my testimony is to provide an overview of design and operating characteristics of thermal demand meters and

address appropriate refund calculation methods, appropriate refund periods and appropriate refund amounts.

Thermal demand meters are relatively simple in design and operation. They have few moving parts and are designed by the manufacturer to provide long and reliable service. Essentially thermal demand meters are a type of thermometer with the amount of heat registered being dependent upon the amount of electricity flowing through the meter. In other words, the greater the electrical flow in the meter, the greater the heat generated and the greater the indication of the demand on the meter.

The design and operation characteristics make it highly unlikely that these meters will gradually over time begin to overregister demand. In fact, just the opposite is true. Things like friction and corrosion are much more likely to cause a thermal demand meter to underregister than overregister.

Landis & Gyr, the manufacturer of these meters, recognizes that a primary cause for excessive thermal demand meter error is calibration, faulty calibration. I personally witnessed Florida Power & Light's removal and testing of each of these meters in the docket with the exception of one Dillard's store, which is an overregistering kilowatt hour consumption. Each of the meters, each of the other meters overregistered demand outside of the allowable tolerance.

The goal of the Commission's refund rules must be to restore the customer to the position the customer would have been in but for the metering error. However, using the thermal demand accuracy test specified in these rules to calculate refunds for demand overregistration actually guarantees that this goal is not and cannot be met. The best way to determine the actual impact on a customer for an overregistering demand meter is to compare the change in demand registration that occurred following the meter replacement.

In my testimony I provided a table that shows the actual change in demand registration for each meter before and after meter replacement. I then used this information to calculate the billing adjustments necessary to restore each customer to the position it would have been in but for the metering error.

Because thermal demand meters do not gradually over time overregister demand, the appropriate refund period is the period each meter was, was installed following its last calibration.

Using the before and after demand adjustments and this refund period, I then calculated the refund necessary to make each customer whole. This information is summarized in a table on Page 12 of my testimony. I then determined the interest due for each customer based on the statutory interest rate provided by Florida Statutes. This information is

summarized in a table on Page 14 of my testimony. And that concludes my summary.

MR. HOLLIMON: With that, we tender the witness for cross-examination.

COMMISSIONER DEASON: Mr. Hoffman.

MR. HOFFMAN: Thank you, Commissioner Deason.

CROSS EXAMINATION

BY MR. HOFFMAN:

Q Good afternoon again, Mr. Brown.

A If you can speak a little louder because I think I'm hearing rain outside and my hearing is not good to begin with.

Q Yes, sir. I noticed in your summary you mentioned a few time, a few times the notion of making the customer whole.

A Correct. Yes, sir.

Q Could you show me where in your prefiled testimony you address that topic?

(Pause.)

MR. HOFFMAN: While Mr. Brown continues to look, I was hesitant to interrupt him in his summary, but I do not think he addresses the issue of making a customer whole or whether the rule should be interpreted to make a customer whole. So I would move to strike those passages of his summary. I think that's outside the scope of his prefiled.

THE WITNESS: I think I -- excuse me. I think I found on Page 10, Line 17 --

MR. HOFFMAN: Uh-huh. Of your direct?

THE WITNESS: In my direct testimony, yes, sir.

MR. HOFFMAN: Okay.

THE WITNESS: When we're talking about the proper basis for refunding to customers, I think we're talking about making them whole.

BY MR. HOFFMAN:

Q Okay. But you don't actually use that phrase in your testimony, do you?

A I don't recall using that exact phrase. I may have. I can reread my whole testimony, if you'd like.

Q No, you don't need to.

MR. HOFFMAN: I'm going to represent to you, Mr. Brown, that you do not use that phrase in your testimony, and on that basis I'm going to move to strike the portions of his summary that address that issue.

COMMISSIONER DEASON: Mr. Hollimon.

MR. HOLLIMON: Yes, Mr. Chairman. Mr. Brown's testimony may not use the magic words "made whole," but the impact of his testimony is clearly that the purpose of this process is to restore the customer to the position that refunds the money. If you look at Page 13 --

COMMISSIONER DEASON: Mr. Hollimon, I'm going to cut you short. I'm going to overturn the objection. I'm going to allow the summary to stand as it is. I think that the summary

1 ıay not use the exact terminology, but it fits within the
2 ;eneral broad scope of the testimony and I will allow it.
3 Mr. Hoffman, you may proceed.
4 MR. HOFFMAN: Thank you, Commissioner.
5 3Y MR. HOFFMAN:
6 Q Mr. Brown, you're here testifying today on behalf of
7 :he Customers seeking refunds; correct?
8 A Yes, I am.
9 Q And you have various financial arrangements with
10 :hese Customers under which you have a percentage financial
11 stake in the outcome of the refunds ordered by the Commission;
12 :orrect?
13 A That is correct.
14 Q So the higher the refunds ordered by the Commission,
15 the more money you make; correct?
16 A That is correct.
17 Q Now as I understand it, Mr. Brown, it is a, it is a
18 standard practice for you to scour FPL's territory in search of
19 thermal demand meters on a customer's property and conduct a
20 stopwatch test on that meter; correct?
21 A Say that again.
22 MR. HOLLIMON: I'm going to object.
23 THE WITNESS: Excuse me.
24 MR. HOLLIMON: I'm going to object. That's outside
25 the scope of his direct testimony and his rebuttal testimony.

COMMISSIONER DEASON: Mr. Hoffman.

MR. HOFFMAN: We're doing both, aren't we?

COMMISSIONER DEASON: He said it's outside the scope of the direct and rebuttal, I believe, is the objection.

MR. HOFFMAN: Chairman, I think it's relevant from the standpoint of the credibility of this witness. We intend to demonstrate that this witness initiates contacts with FPL customers and makes recommendations that can be characterized --

COMMISSIONER DEASON: Mr. Hoffman, I'm going to allow the line, but just don't use an inordinate amount of time pursuing this.

MR. HOFFMAN: Yes, sir.

BY MR. HOFFMAN:

Q My question, Mr. Brown, was if it's a standard practice for you to scour FPL's territory in search of thermal demand meters on a customer's property and conduct a stopwatch test on that thermal demand meter?

A I generally make a contact with a customer and ask them if I can investigate their metering equipment. That's correct.

Q Mr. Brown, if you would, I'm going to remind you of an instruction Mr. Moyle gave to Mr. Bromley, which would be that I would ask you to answer the question yes or no and provide your explanation.

Would you turn to Page 114? I'm sorry. Not 114 Page 48 of your deposition.

A I'm there.

Q Line 19.

Question, "So is it fair to say then that it's a standard practice of Southeastern Utility Services to make contacts with potential clients who have thermal demand meters and request permission to conduct some type of informal or stopwatch test?"

Answer, "Correct."

Are you changing that testimony?

A I believe that's exactly what I just said.

Q So you stand by that testimony?

A Yes.

Q Thank you. And you do not contact FPL before you perform these tests on FPL's equipment, do you?

A I've, I've never done a physical test on the meter, so I'll answer, no, I don't

Q Okay Now --

A And I -- if I can follow up.

Q Sure.

A I've never seen a need to since I don't interrupt the integrity of their metering equipment.

Q Okay. You do not contact FPL before you perform a test on an FPL meter; is that your testimony?

A That is exactly what I'm testifying. Yes.

Q Okay. Now, now you and your consulting company provide services to your clients where you recommend actions that involve spiking meters; correct?

A Would you define spiking for me, please?

Q Well, what would be your definition of spiking a meter?

A Spiking a meter, if I took it into the end zone and drove it into the ground, that would be spiking, wouldn't it?

Q Well, why don't you turn to Page 29 and 30 of your, of your deposition.

A 29 and 30?

Q Yes, sir.

I'll read into the record, Mr. Brown, if you'd start at Page 22. My question to you at your deposition is, "What is your understanding of that term, 'spiking the meter'?"

Answer, "My understanding of that is that whenever you apply enough electrical load to qualify and exceed 500 kW, your rate will change."

Do you wish to change that testimony?

A I'm trying to read it, if you don't mind. Did you say Page 22?

Q 29 and 30.

A I'm sorry.

Q Page 29, begin at Line 22.

A I believe I answered on Line 22 that that's the same thing that you're trying to call spiking is calling, called qualifying a customer's account for a better rate.

Q Okay. You're not changing your testimony that I read into the record from your deposition, are you?

A No, I'm not changing my testimony.

Q All right. Now isn't it true, Mr. Brown, that you have made recommendations to your clients as to how to spike their meters over 100 times?

A Are we still talking about qualifying, or do we want to change the term to "spiking"?

Q Mr. Brown, I'd ask you to answer the question yes or no and give your explanation.

MR. HOLLIMON: Objection. I believe the witness is entitled to a clarification of a question if it's --

COMMISSIONER DEASON: I believe the witness is entitled to the clarification of the terminology, Mr. Hoffman, if you could.

BY MR. HOFFMAN:

Q Okay. Mr. Brown, I'm going to use your definition that has been read into the record of spiking a meter, and I'll read it again.

Your deposition testimony was that that term means "that that's whenever you apply enough electrical load to qualify and exceed 500 kW so your rate will change." Now I'm

using your definition. Are you with me, sir?

A Are we on Line 11, Page 28?

Q No. We're on Line 29 -- I'm sorry. Page 22, Line 29 -- Page 29, Line 22.

A Let me get there.

Q I'm sorry. Page 29, Line 22.

A Okay.

Q Over to Page 30, Line 1.

A Oh, okay.

MR. HOLLIMON: Commissioner, I'm going to renew my objection here. We're spending a lot of time on something that's completely outside the scope of this docket. I mean, if he wants to inquire about actions related to the meters in this docket, that seems like that would be within the scope and would be proper. But --

COMMISSIONER DEASON: The objection has already been made, it's been noted. This line of questioning goes to the credibility of the witness and I will allow it.

BY MR. HOFFMAN:

Q Now have you had an opportunity to read that?

A I read Line 22 through 25 and then Line 1 of Page 30.

Q **Okay. Now does that provide you your definition of** spiking a meter that you gave in your deposition?

A That is my definition of qualifying a customer account for the large demand rate. That's correct.

Q Now let me go back to my original question. Isn't it true that you have made recommendations to your clients as to how to spike their meters over 100 times?

A I have made recommendations to my clients of how to qualify their meters over 100 times. That's correct.

That -- let me go further, if I may. That also includes Florida Power & Light's customers when I worked for Florida Power & Light. That was a common practice as an energy management specialist. It was our obligation to tell our customers what was the most, most advantageous rate, particularly whenever we would make a recommendation that would bring them below the threshold of 500 on a conservation effort. And not only would they save energy, but they would lose money. So it was part of our practice as representatives to identify for customers how they could regain that advantage of the rate. That's true.

Q Yes, sir. Is it your testimony that when you worked for Florida Power & Light, that you were instructed to advise customers how to manipulate their demand to put it over a 500 kW demand threshold level so as to not have to pay the contract rate?

A That is correct. That was not a common printed policy, but in meetings when we would bring up the fact that we were going to reduce their demand below a threshold and our effort wasn't to save them money, it was just to save energy

and cost them more money. And that's --

Q I'm sorry. Go ahead.

A And, and we were instructed that you should let the customer know what rate structuring they're on and how to take advantage of more attractive rates.

Q And in connection with these recommendations that you've made to your clients that you talked about in your deposition and today as to how to spike their meters and put it over that 500 kW level, by doing that, that allows a customer to forego the requirement of contracting up to pay for the GSLD rate demand level each month for 12 months and allows that customer to get the lower kWh rate; correct?

A That would be the end result, correct.

Q Okay. So by acting on your recommendations, the customer is able to qualify for the GSLD rate because his kW demand pushes over 500 kW and he gets that lower kWh rate; correct?

A That is correct.

Q Okay.

A None of the Customers in this docket have any relationship to this. I mean, I don't know what this has to do

Q Now when I asked you at your deposition how you accomplish this spiking of meters, you refused to disclose the techniques that you use to manipulate a customer's kW demand to

allow it to qualify for a lower kWh rate because your position is that these techniques are confidential; correct?

A Yes.

Q So one of the main things that your consulting company does is assist FPL customers in manipulating or altering their kW demand to get that cheaper kWh rate; correct?

A That is a portion of our business.

Q Now when one of your clients is successful in spiking its kW demand above that 500 kW threshold level to get that cheaper kWh rate, that customer gets that lower kWh rate for 12 months without having to contract up; correct?

A That is correct.

Q And had that customer entered into a contract, that customer would have to pay FPL the kW demand rate for 500 kW even if the customer experienced a monthly kW below 500; correct?

A That is correct.

Q Have any of the -- excuse me. Have any of your four clients in this docket contracted up to the GSLD rate?

A I, I recently suggested that, yes.

Q Have they moved forward with that recommendation?

A I haven't seen the documentation back from them.

Q Would you agree that a possible result of spiking meters is that it can shift cost responsibilities from the customer who spiked their meter to FPL's remaining customers?

A I think that's a legal matter. I don't necessarily know.

Q You don't know?

A I don't know the structuring of, of how the internal cost factors are done.

Q Do you think it's fair to the other customers when a customer spikes his demand above the 500 kW threshold level?

A Do I think it's fair to --

Q The remaining customers of FPL?

A I think it's fair to the customer, if he qualifies for that rate, that he does so.

Q As I understand it, Mr. Brown, you and your company also provide recommendations to customers on how to conserve energy and lower their electric bill; is that true?

A No, that's not true.

Q Okay. So you -- so your company does not, as part of its consulting services, provide recommendations on how to reduce electric bills?

A We, we provide services, how to reduce the amount of money customers pay.

Q Okay.

A And make sure that they only pay for what they're getting.

Q Now isn't it true that you solicited the business of each FPL Customer who is a client who has a meter at issue in

this docket?

A I'm sorry. I didn't understand you.

Q Isn't it true that you solicited the business of each FPL Customer who is a client of yours who has a meter at issue in this docket?

A Yes.

Q And you entered into a contingency fee compensation arrangement with each of those Customers; correct?

MR. HOLLIMON: Objection. That's asked and answered.

COMMISSIONER DEASON: It is asked and answered.

MR. HOFFMAN: I'm sorry. I'll withdraw.

BY MR. HOFFMAN:

Q When did each Customer become a client of Southeastern Utility Services? I'm talking about the Customers in this docket.

A Over various times throughout the past two years.

Q Did you make any recommendations to any of the four Customers who are seeking refunds as to how to help them lower their electric bills?

A I did not contract with them for that purpose solely. No.

Q You did not make any recommendations to these four Customers as to how to lower their electric bills; is that your testimony?

A No. That's correct.

Q Didn't you just tell me that's what -- that that is one of the main functions that you provide to your clients?

A The purpose -- I have various services that I provide.

MR. HOFFMAN: I'm sorry, Commissioner. Could you instruct the witness to try to answer yes or no and then follow with --

COMMISSIONER DEASON: I think he's just seeking clarification at this point, Mr. Hoffman.

BY MR. HOFFMAN:

Q I'm sorry, Mr. Brown. Go ahead.

A Ask me the question again, please.

Q Isn't one of the -- didn't you just testify a few minutes ago that one of the primary functions, one of the primary services that you and your consulting company provide is to help customers in lowering their electric bills?

A Yes. And now may I continue?

Q Sure.

A Okay. You asked me if that was one of my primary. I said it was one of our services. We have various services that we provide for, for customers, depending on what their utility needs are.

Q Okay. Did you provide Target Corporation with recommendations to lower their kW demand after their thermal demand meters were replaced with an electronic meter?

A Yes, I did.

Q Did you also provide Dillard's --

A I'm sorry. Ask that again.

Q Well, let me ask you about Dillard's first.

A Okay.

Q Did you make recommendations to Dillard's as to how to lower their kW demand after their thermal demand meter was replaced with an electronic meter?

A No, I did not. If that was the same question you asked me on Target, I did not, no.

Q Your answer would be the same if I asked you about Ocean Properties and J.C. Penney's?

A That is correct.

Q Let me ask you to turn in your direct testimony, Mr. Brown, to Page 3, Line 9, Meter Number 1V5871D.

A 71D?

Q 1V5871D.

A Correct.

Q That's the meter for the Target store on Fruitville Road in Sarasota?

A That's correct.

Q And your chart on Page 3 shows a full, a full percentage error full scale of 6.7 percent; is that correct?

A That's correct.

Q Okay. Can you point me to the meter test report in

your Exhibit 1 which reflects that 6.7 percent overregistration figure that you've used in your testimony?

A I cannot point you to a Florida Power & Light meter test record that shows that was the exact point. I did make the point that Florida Power & Light ignored the separation of the meter, of the needles, which contributed to a 6.7 percent error on this meter.

Q That 6.7 percent figure is not reflected in the documentation in Exhibit 1; correct?

A No, it's not. That was an agreed upon number that Florida Power & Light, myself and staff recommended back in the PAA to use as a determining number.

Q And that was --

A That's why I stayed with that number. That was what I agreed to.

Q And that was in the context of settlement discussions; correct?

A That is correct.

Q If you -- Mr. Brown, look at your column in your chart all the way to the right on Page 3, it's entitled, "Percentage Difference Since Meter Change." Are you with me there?

A Yes, I am.

Q Okay. Those are the numbers that you've used to calculate refunds; is that correct?

A That's correct.

Q And those figures represent the difference in kW demand billing for some period of time before the thermal demand meter was replaced versus some period of time after the thermal demand meter was replaced; is that correct?

A That is correct.

Q And would you agree that there is nothing in the PSC's rules that authorize the use of before and after billing demand to determine the amount of meter error to be used for calculating a refund?

A I believe that the rules that you're pertaining, referring to are very ambiguous of how to make a determination of what the percentage is. And I believe Mr. Matlock in his testimony addressed that as well.

Q Is that a yes or a no answer to my question?

A Please ask the question one more time.

Q Sure. Would you agree that there is nothing in the Commission's rules that authorize the use of before and after kW billing demand to determine the amount of meter error to be used in calculating a refund?

A There is -- the answer is, yes, there is no rule that addresses that.

Q And that's why you petitioned for a rule waiver; correct?

A Correct.

Q And that petition was denied just two days ago; correct?

A Just two days ago, I think, yeah.

Q I'm sorry?

A I think it was just two days ago.

Q Let's pick one of these meters in your chart on Page 3 to try to illustrate what you're, what you're trying to demonstrate here.

If you would, Mr. Brown, take the fifth meter, fifth meter down, which is Meter Number 1V7019D. Are you with me there?

A I am.

Q Okay. Is that the meter for the Target Ft. Myers store?

A I'd have to look at a chart, but I believe it is.

Q Okay. You are saying in your chart there that the kW demand went down 12.16 percent when you compare a period of time before the thermal meter was replaced with a period of time after the thermal meter was replaced. Is that a fair statement?

A That's what I'm saying in this, yes.

Q Now what period of time did you use for before the meter was replaced for this meter?

A I used a, an entire 12-month period before the meter was replaced. Now --

Q And what period -- I'm sorry. Go ahead.

A I don't know if you're aware or not that this particular meter, when we came on site to replace this meter, had been damaged by lightning and it was only recording a portion of its energy. And, and my calculations using the portion that the meter test technician or the meter removal technician used, I believe he had 62 or 63 percent was what it was actually registering, I used that number and increased it by whatever factor to make it a whole number for that period.

Q Okay. Let's go back to my question.

What period of time did you use in your calculation for before the meter was replaced; 12 months?

A It says the meter was removed in this case on 11/12/2002, so I would have went back one year prior to that time period to the, for the beginning of that.

Q Okay. And to calculate your 12.16 percent, what period of time did you use for after the meter was replaced; 18 months?

A Pardon me?

Q 18 months?

A It may have been 18 months, and it was on a month-to-comparative-month basis.

Q Okay. Would you accept, subject to check, that your Exhibit 5 shows that you used an 18-month period after the meter was replaced for this particular meter?

A My Exhibit 5?

Q Yes, sir.

A According to the information that I have here, I used a period from December the 20th billing period '02 to 5/24/04 as a comparative period.

Q Okay. So you did use an 18-month period?

A Yes, that's 18 months. That's correct.

Q Okay. Now for this meter back on Page 3, Mr. Brown, you are seeking a refund back to May 1993 for this meter; correct?

A Let me go back to my table.

Q Okay.

A Yes. I show the meter was installed on 5/14/93.

Q Was that a yes to my question; you're seeking a refund back to May of 1993?

A That's correct.

Q Okay. Would you agree that there was not a 12.16 percent difference in kW demand in each year before the meter was replaced versus after the meter was changed?

A I cannot agree with that. I don't know. I wasn't -- I don't have that table in front of me, but I could surely provide it.

Q Okay. But your figure is an averaged figure, is it not?

A That's an average from the year prior to to the

period following the meter change. That's correct.

Q But in seeking a refund back to 1993, your calculation assumes that this 12.16 percent differential applies every year going back to May 1993, does it not?

A That was the -- yes. That was the difference I saw once the meter was changed is a 12.16 percent.

Q Okay. And your calculation assumes that that differential was intact every year going back to May 1993; true?

A I would have to have made that assumption. That's correct.

Q Okay. If you would turn to Page 4 of your testimony, of your direct testimony, you state that the time when these meters began to overregister was the time FPL last calibrated the meters; correct?

A That is correct.

Q Okay. You've never dismantled an overregistering thermal demand meter to analyze it, have you?

A I've dismantled thermal demand meters, yes, I have.

Q Okay. Well, let me ask you this. If the Commission were to agree with your theory about miscalibration, refunds would be due well beyond one year, in some cases ten years or more; correct?

A That's correct.

Q And for some of your refund requests you go back to a

date of meter installation even when you don't know when the last test occurred, according to your chart on Pages 7 and 8; is that accurate?

A That's inaccurate. I know when the last test occurred.

Q Well, take a look at Page 8, Line 2 and a half, between Lines 2 and 3. Your testimony for the last test says, "Unknown."

A That was the one exception. That was the meter I did not witness being tested, as, as I provided in my summary.

Q Well, there are actually two, aren't there? Go back to Page 7, Line 23. For Meter Number 1V52475, last test, according to you, unknown, last test date; correct?

A I believe I have a photograph of the back of this meter that I found later after my testimony that shows me a date, an absolute date when the meter was last tested.

Q Okay.

A I do not, as I recall, have one for the other Dillard's meter.

Q Okay. On Page 4 of your direct testimony, Mr. Brown, Line 22, continuing through Page 6, Line 21, you give the basis for your conclusion that these meters began to overregister at the time they were last calibrated by FPL; is that correct?

A Correct.

Q Now from Page 4, Line 23, through Page 6, Line 2,

your discussion there is limited to your understanding of how a thermal demand meter works; correct?

A That was through Page 6, Line 2?

Q Yes, sir.

A That's correct.

Q Okay. So the basis for your opinion that these meters began to overregister when they were last calibrated by FPL is actually found on Page 6, Lines 4 through 21; is that correct?

A I'd have to read it.

Q If you would, please.

(Pause.)

A I read it.

Q Are you finished, Mr. Brown?

A Yes.

Q Okay. Your opinion is based first on the design of the meters; correct? That's what you talk about first?

MR. HOLLIMON: I'm going to object. It's vague. We're not sure what opinion that he's talking about.

MR. HOFFMAN: I'll restate, Commissioner.

BY MR. HOFFMAN:

Q The testimony that you provide on Page 6, Lines 4 through 21, is based first on the design of the meters; correct?

A That, that is correct.

Q Okay.

A Based on the design of the meter and information I've received from experts in metering. That's correct.

Q Okay. The first thing you talk about is you say, "Because of the design of these meters" on Line 4; correct?

A Yes.

Q Okay. Now you've already conceded that you're not an expert in the design of these meters; correct?

A Correct.

Q Okay. And you certainly were not an expert when you filed your testimony; correct?

A I was not an expert when I filed my testimony.

Q Okay. Now your opinion is also based on the method of -- I'm sorry. The testimony that you provide on Page 6, Lines 4 through 21, is also based on the method of operation of these meters; correct?

A Correct.

Q And you've already conceded that you're not an expert in how these meters work; true?

A I am not an expert in how these meters work, but I do know exactly how they work. But I'm not an expert that I could go design one tomorrow. **That is correct.**

Q Now your opinion is that there is virtually no physical mechanisms that can result in these meters gradually over time overregistering demand. Is that your opinion?

A My, my -- that is my opinion. Without any human intervention, they will not.

Q Okay. I'm going to hand you a document.

MR. HOFFMAN: Commissioner Deason, I am -- Mr. Menton is handing out a copy of the Customers' responses to FPL's second set of request for admissions, and I would ask that that document be marked for identification.

COMMISSIONER DEASON: Exhibit 8.

(Exhibit Number 8 marked for identification.)

BY MR. HOFFMAN:

Q Now if you would -- I'm not going to go through this whole document with you, Mr. Brown. But just by way of example, if you would for me, turn to Page 4, Request for Admission Number 10, and read into the record the request for admission and the response.

A "The physical characteristics of springs of Type 1V thermal demand meters can change."

Response, "Admit that in theory physical characteristics of springs in 1V thermals can change. But as Customers' efforts to inspect meters at question have so far been denied by Florida Power & Light, Customers are without knowledge and, therefore, deny the physical characteristics of the springs in the meters at issue in this docket."

Q Okay. Thank you. Now if you look through, if you flip through Exhibit 8, the same response was given to request

for admissions concerning other components such as the heaters and the bimetal coils and the screws and the grease and the soldering points, the cap (phonetic) stands and the bearings; correct?

A I believe that's true.

Q So we agree that these meter components can change; correct?

A We agree in theory that these meter components could change under certain conditions.

Q And you were -- I'm sorry. You were at Mr. Smith's deposition, were you not?

A That's correct.

Q And you are aware, are you not, that Mr. Smith recognized in his deposition that these components in the meter can change and cause overregistration; correct?

A I'm not going to testify for what Mr. Smith had to say.

Q Okay. So you don't --

A I was there and I don't recall precisely what he did say, but I don't believe it was that, that concise that, yeah, that they're overregistering. No.

Q Okay. Now, Mr. Brown, it was, it was back in 2002 when you reached your conclusion that these meters supposedly began to overregister when FPL last calibrated the meters; correct?

A In -- that is correct. In 2002 I made a decision from the information that I had that the meters had most likely and very probably were miscalibrated when they were last handled by Florida Power & Light.

Q In fact, you concluded that they had been miscalibrated right after you saw these meters tested; true?

A Very probably, yes.

Q If you'd turn to your deposition, Pages 68 and 69 on, beginning on Page 68, Line 18, through Page 69, Line 7. Go ahead and continue through Line, Line 9, Mr. Brown, on Page 69.

A That was the answer I gave, yes.

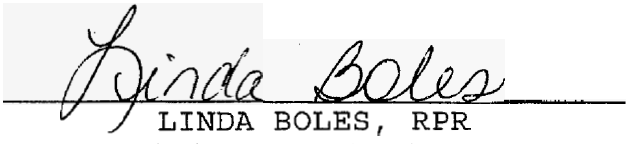
STATE OF FLORIDA)
: CERTIFICATE OF REPORTER
COUNTY OF LEON)

I, LINDA BOLES, RPR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 15th day of NOVEMBER, 2004.



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