

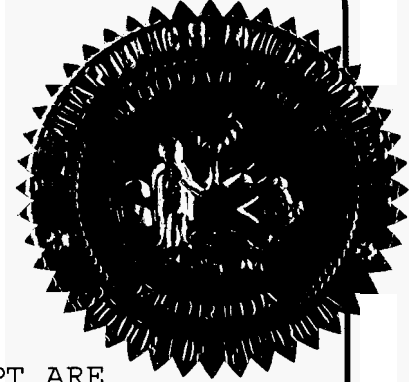
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BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 041272-EI

in the Matter of:

PETITION FOR APPROVAL OF STORM  
COST RECOVERY CLAUSE FOR RECOVERY  
OF EXTRAORDINARY EXPENDITURES  
RELATED TO HURRICANES CHARLEY,  
FRANCES, JEANNE, AND IVAN, BY  
PROGRESS ENERGY FLORIDA, INC.



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THE OFFICIAL TRANSCRIPT OF THE HEARING,  
THE .PDF VERSION INCLUDES PREFILED TESTIMONY

VOLUME 4

Page 348 through 424

PROCEEDINGS: HEARING

BEFORE: CHAIRMAN BRAULIO L. BAEZ  
COMMISSIONER J. TERRY DEASON  
COMMISSIONER RUDOLPH "RUDY" BRADLEY  
COMMISSIONER CHARLES M. DAVIDSON  
COMMISSIONER LISA POLAK EDGAR

DATE: Thursday, March 31, 2005

TIME: Commenced at 9:35 a.m.

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

REPORTED BY: LINDA BOLES, RPR  
Official FPSC Hearings Reporter  
(850) 413-6734

APPEARANCES: (As heretofore noted.)

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I N D E X

WITNESSES

NAME :

PAGE NO

JAVIER PORTUONDO

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CERTIFICATE OF REPORTER

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## P R O C E E D I N G S

(Transcript continues in sequence from Volume 3.)

COMMISSIONER BAEZ: Good morning. We'll reconvene the hearing.

Ms. Brubaker, do we have anything preliminary this morning?

MS. BRUBAKER: Staff is aware of nothing.

COMMISSIONER BAEZ: The parties, do you have any, any preliminary matters that you want to take up before we continue with the witness? No? Excellent.

But the witness is not here. Yes, he is. There he is. Good morning, Mr. Portuondo.

THE WITNESS: Good morning.

COMMISSIONER BAEZ: And previously I think, Mr. McGlothlin, you had finished your cross, which would lead us to Mr. McWhirter or Mr. Perry, whomever of you is --

## CROSS EXAMINATION

BY MR. McWHIRTER:

Q Good morning, Mr. Portuondo.

A Good morning.

Q Congratulations upon being a newly crowned expert witness

A Thank you.

Q Verified under fire.

In your concept as a regulatory expert, would you

1 outline -- or let me outline for you what I think the two ways  
2 that you could collect for your storm damage are.

3 One, I would perceive that you could collect for your  
4 storm damage through base rates; is that correct?

5 A That's theoretically possible, yes.

6 Q And historically that's the way it has been done; is  
7 that correct?

8 A The noncatastrophic storm expenditures have been  
9 included in base rates. That is correct.

10 Q All right. Now the way you propose to do it in this  
11 case is through a new cost recovery mechanism; is that correct?

12 A This is -- yes. This is consistent with the  
13 testimony that we put forth back in 1993 when we filed for the  
14 self-insurance.

15 Q Are -- I've explored those two ways, and I'll go into  
16 them in a little more detail. But are there any other ways  
17 that storm damage can be taken care of in the rates to achieve  
18 fairness between the company and its customers?

19 A I'm sure there are. I mean, we are pursuing  
20 securitization in the Legislature. Again, there might be other  
21 avenues. I have not given it that much thought beyond the  
22 securitization effort that we are pursuing in the Legislature.

23 Q Okay. How about -- I'm going to talk about that a  
24 little bit, too. But are there any other -- those are three  
25 basic, simplest tried and true mechanisms, or at least two are

1    tried and true and the legislative process is another new one;  
2    is that correct?

3           A     Yes.  The two basic approaches to ratemaking in the  
4    state of Florida.

5           Q     Now there's pending in the Legislature a bill called  
6    the Securitization Bill, which calls for a special rate  
7    increase to deal with this rate matter.

8                     How do you -- if that bill passes and Progress has  
9    that option available to it, how will that option integrate  
10   with this case today and the rate case that you requested a  
11   test year for in January?

12          A     I don't believe it has any correlation with the rate  
13   case.  It does have a direct impact in this proceeding because  
14   if securitization is chosen by the Commission as a better  
15   alternative for the customers of the state of Florida in order  
16   to minimize the rate shock associated with the collection, then  
17   that option would supersede our request here.  It's either/or.

18          Q     Either/or?

19          A     Yes.

20          Q     So if we finish up this hearing and file briefs and  
21   go through the full exercise, are you telling me that if the  
22   Securitization Bill passes, you will have the option to dump  
23   everything that's happened here and proceed again under that  
24   bill?

25          A     No.  It'll be the, at the option of the Commission.

1 If we, if we choose to file for that option -- if the  
2 Commission supports our petition here in this proceeding, the  
3 impact to customers, yes, will be a bit larger, but it will be  
4 for a shorter period of time.

5           So we would, we would more than likely continue on  
6 the path to a two-year recovery rather than seeking a longer  
7 term option that the securitization would bring about.

8           Q     Storm damage, as I see it, has two components. One  
9 component is taking care of your deficit, and another component  
10 is figuring out a way to restore your Storm Damage Reserve for  
11 future hurricanes; is that not correct?

12          A     This proceeding is only addressing the, the  
13 deficiency that resulted from 2004 hurricane costs.

14          Q     I understand that. But my question was there are two  
15 components: One is the deficit and one is the storm damage.  
16 Is that correct?

17          A     Yes.

18          Q     All right. And this proceeding deals only with the  
19 deficit, as you've said.

20                 And the Storm Damage Reserve is already covered in  
21 base rates, and it may or may not be adjusted in your  
22 forthcoming base rate case; is that correct?

23          A     That is correct. \$6 million is included in base  
24 rates.

25          Q     And if the Securitization Bill passes, that bill

1 takes care of both operations, doesn't it? It takes care of  
2 the deficit plus the restoration of the reserve.

3 A That is what's contemplated, yes.

4 Q And if the Securitization Bill passes and you elect  
5 to choose that route for the restoration of your Storm Damage  
6 Reserve, what will you do about the money that you're already  
7 collecting in base rates from the customers to build up the  
8 Storm Damage Reserve? Will you reduce your base rates to  
9 offset that?

10 A Yes, sir.

11 Q And would it entail coming in here for another rate  
12 case to do that, or will you just do it in the pending case?

13 A It would be dealt with in the pending case.

14 Q All right. Now am I correct that the last time that  
15 Progress Energy initiated a base rate case was in 1992 when you  
16 brought the Intercession units online, about the year you  
17 graduated from USF?

18 A We did have a case in '92/'93, it was a dual test  
19 period. And then we had a case in 2002, as you recall, that  
20 resulted in a settlement.

21 Q But in that case -- in the '92 case, the Commission  
22 established for you a return on equity; is that correct?

23 A Yes, it did.

24 Q And in the 2002 case, which was brought about by the  
25 merger of your company with a North Carolina company, you

1 requested an increase in your return on equity to 13 percent;  
2 is that correct?

3 A Yes, it is.

4 Q But the stipulation and the order provided that this,  
5 that case would have nothing to do with return on equity and  
6 would focus on revenues only, so no return on equity was  
7 established in that case.

8 A Yes. The premise of the settlement was that the  
9 company's performance would be judged on a revenue basis rather  
10 than an earnings basis.

11 Q And so the last time your return on equity was set  
12 was in 1992.

13 A That is correct.

14 Q Do you have of your own knowledge an idea as to what  
15 the market cost of capital is in 2005 compared to what it was  
16 in 2002?

17 MR. WALLS: I'm going to object on relevance grounds.

18 MR. McWHIRTER: Beg your pardon?

19 MR. WALLS: I object --

20 COMMISSIONER BAEZ: It's a relevance objection,  
21 Mr. McWhirter.

22 MR. McWHIRTER: I'm sorry.

23 COMMISSIONER BAEZ: There's an objection on  
24 relevance.

25 MR. McWHIRTER: Mr. Chairman, I think the company's



1 return on equity is a relevant component of this, of this case.  
2 And it was set in 1992 and it's going to be set again this  
3 year, and it would seem to me that we've already established  
4 what it was in '92. And so the current return on equity in the  
5 market, this gentleman, if he knows, would be very relevant.

6 MR. WALLS: I still fail to see why the question  
7 regarding what a ROE would be in 2005 is relevant to our  
8 request for a storm cost recovery for costs incurred in 2004.

9 COMMISSIONER BAEZ: I'm going to overrule the  
10 objection, allow the question, and I'm sure that Mr. McWhirter  
11 is going to vindicate me in that.

12 MR. McWHIRTER: Thank you.

13 BY MR. McWHIRTER:

14 Q Go ahead, sir.

15 A I am not familiar with the 2005, that it will be a  
16 component of our pending petition for a base rate proceeding in  
17 the coming months, and we will secure further expert testimony  
18 to support the actual, the 2006 cost of capital.

19 Q If I understood your testimony yesterday, you  
20 distinguished your cost recovery mechanism from what normally  
21 goes in in base rates because you said that the 2004 hurricane  
22 season was extraordinary and it could not successfully be  
23 handled in a base rate case. Is that a fair paraphrase of your  
24 position?

25 A Sort of. I think what I tried to explain is that a

1 base rate proceeding in the state of Florida requires the  
2 utility to bring before the Commission those costs that are  
3 deemed to be normal recurring costs on which rates would be  
4 set.

5 The extraordinary nature and unpredictability of  
6 something like what happened in 2004 would not have been  
7 considered in setting rates in a base rate proceeding.

8 Q All right. Would you look at your Exhibit JP-1,  
9 which has now been designated Exhibit 42.

10 COMMISSIONER BRADLEY: Which page is that again?

11 COMMISSIONER BAEZ: That's Exhibit JP-1. I'm  
12 assuming it's a direct.

13 COMMISSIONER BRADLEY: JP-1. Okay. Go ahead.

14 MR. McWHIRTER: Is my numbering right? Is it -- it's  
15 not 42?

16 COMMISSIONER BAEZ: Yeah. But I think the way the  
17 Commissioners' notebooks are set up, we don't have the benefit  
18 of the exhibit numbers.

19 BY MR. McWHIRTER:

20 Q And 1994 was when the Commission authorized Florida  
21 Power Corporation to increase its base rate accrual for storm  
22 damage expense of \$6,000 -- \$6 million a year; is that correct?

23 A That is correct.

24 Q And since that time you've been collecting \$6 million  
25 a year, and that's how you built up to the 46.9 that was

1 available to cover the 2004 storm damage.

2 A Yes, sir.

3 Q And this exhibit seems to bear out your proposition  
4 that normal accruals were inadequate to handle this  
5 extraordinary circumstance.

6 A Yes. The accrual was not based on trying to capture  
7 catastrophic type storms.

8 Q In fact, there's no year in that 10-year period that  
9 you have under study -- because I'm excluding 2004, you don't  
10 have a number there. In the ten years under -- there's no  
11 single year in which your storm damage actually rose to the  
12 level of the annual accrual, is there?

13 A I would say in 2001 it was very close with Gabrielle;  
14 it was \$5.8 million. In 2005, Erin and Opal was \$4 million.  
15 So we have gotten close to the annual accrual on a couple of  
16 occasions.

17 Q But you've never exceeded it before?

18 A No, sir. No.

19 Q So it would appear, would it be fair to say, that  
20 under ordinary circumstances, if you look at a ten-year  
21 history, a \$6,000 (sic.) accrual is adequate for meeting your  
22 ordinary Storm Damage Reserve, but it's not adequate in 2004,  
23 is that it?

24 COMMISSIONER BAEZ: We can clarify for the record  
25 that it's \$6 million and not \$6,000, Mr. McWhirter. Is that

1 all right?

2 MR. McWHIRTER: Okay. I'm glad somebody listens to  
3 what I say because --

4 COMMISSIONER BAEZ: I do try.

5 MR. McWHIRTER: You're doing fine.

6 THE WITNESS: I believe the \$6 million would have  
7 been adequate if we had experienced the type of noncatastrophic  
8 hurricane season that the \$6 million was predicated on.

9 BY MR. McWHIRTER:

10 Q In '94 you only had \$1,000 worth of damage, in '96  
11 you only had \$7,000 worth of damage, in '98 you have zero, but  
12 this Storm Damage Reserve is continuing to accrue and build up  
13 for the future; is that right?

14 A Yes, sir. I think, as I mentioned yesterday, the  
15 \$6 million, of course, is predicated on a probabilistic  
16 assumption and that it doesn't necessarily mean that every year  
17 you will have exactly \$6 million worth of damage. But what you  
18 want to do is, is accumulate enough on a levelized basis so  
19 that when you do experience the noncatastrophic event, and I  
20 believe our study said that we could expect maybe \$20 million  
21 worth of damage and it would occur 23 percent of the time, that  
22 over time, because this is a long-term probabilistic analysis,  
23 that you would have sufficient if you accrued at a rate of  
24 \$6 million.

25 Q So when you file your rate case, you're not going to

1 come in and ask for an accrual that will be substantially  
2 greater than \$6 million a year.

3 MR. WALLS: I'm going to object on relevance grounds.  
4 I'm not sure what purpose addressing the accrual in our next  
5 base rate proceeding has to this proceeding.

6 COMMISSIONER BAEZ: Mr. McWhirter?

7 MR. McWHIRTER: I'll accede to that objection and  
8 won't ask that question.

9 COMMISSIONER BAEZ: That's, that's good.

10 BY MR. McWHIRTER:

11 Q I will refer you back to '95, and in '95 you accrued  
12 \$6 million, but the number -- I mean, in '94 you had \$6 million  
13 and every year after you had \$6 million, but in '95 you only  
14 had \$5,300,000. What's that all about?

15 A What is that all about? That's an anomaly that I  
16 will have to get back to you on. I don't recollect at the  
17 moment what contributed to that lower amount.

18 Q And the title of that column is Expense Accrual Fund  
19 Earned. Can you tell me what that means?

20 A This is the account to which we record the expense  
21 that corresponds with the, the storm damage fund that is kept  
22 in the account 220A that's to the left of that column.

23 Q Now your storm damage with \$4.3 million for the three  
24 hurricanes that occurred in that year was only 4.3, and I can't  
25 correlate that to the 5.3 either. Can, can you?

1 A I'm sorry. What -- could you repeat that?

2 Q Well, the normal accrual is \$6 million, the accrual  
3 that you used in that year was \$5.3 million, your storm damage  
4 was 4.3.

5 A Yes.

6 Q And so the 5.3 doesn't have anything to do with your  
7 actual storm damage, does it? Did it?

8 A No, sir. That is the accrual. The 4.3 represents  
9 the actual storm damage experienced in that year. So the math  
10 would be to take the beginning balance of 6.3, plus the  
11 accrual, less the actual damage incurred to arrive at a new  
12 ending balance.

13 Q Right. I understand the math. I just didn't know  
14 where the number \$5,323,000 came from. And you don't either;  
15 right?

16 A I mean, I don't have it at the tip of my tongue. I'd  
17 have to go back and look at my work papers and see.

18 Q But under the Commission order in '94 it should have  
19 been \$6 million. It's not a lot of money, but it should have  
20 been \$6 million, shouldn't it?

21 A Yes, sir. Yes.

22 Q All right. So for modest purposes your total accrual  
23 should be a little bit higher than the 46.9.

24 A It depends on the, on the events that took place in  
25 '95. I mean, there was probably a very logical reason why that

1 was lower. I'd be glad to get that to you.

2 Q Now in '95 when you had Hurricane Erin and in '99  
3 when you had Hurricane Floyd, in 2001 when you had Gabrielle,  
4 we have big numbers in that year, although they're less than  
5 the hurricane annual accrual.

6 How did you present to the, to the general public or  
7 to the Commissioners of this Commission the accounting  
8 methodology you used to account for the storm damage incurred?

9 A There was no direct presentation to this Commission  
10 for the accounting for those storms, as there is no formal  
11 presentation to the Commission on any of the accounting that  
12 the company does year to year, month to month.

13 The Commission established the policy which we were  
14 required to follow.

15 Q We'll get that, to that a little bit later.

16 I'm asking about these specific hurricanes, what  
17 evidence did you present to the Commission at that time to  
18 demonstrate what your accounting procedure was and how to seek  
19 the Commission's approval of the accounting procedure in those  
20 years?

21 A I was not required to, and I did not present anything  
22 to this Commission.

23 Q I see. So the Commission did not rule on the  
24 accounting procedure then or in '99 or in 2001. What you're  
25 saying is it ruled upon the procedure in your opinion by



1 accepting your study back in 1994.

2 A Absolutely.

3 Q You have been giving opinions on the -- and are  
4 established as a regulatory expert on interpreting Commission  
5 orders.

6 Are you familiar with the difference between dicta  
7 and ratio decidendi?

8 A No, I am not. I'm not a lawyer.

9 Q You don't know what that means?

10 A No, I don't.

11 Q Do you know what dicta means?

12 A No. I didn't do very good in Latin.

13 Q Beg your pardon?

14 A I didn't do very good in Latin.

15 Q I see. Well, do you, do you understand that a  
16 judicial proceeding or a proceeding, a quasi-judicial  
17 proceeding before an administrative agency is what we call a  
18 case or a controversy? Do you understand that?

19 A Yes.

20 Q And do you understand that the person that's ruling  
21 on the evidence before them doesn't necessarily rule on  
22 everything that somebody says in the hearing, they come up with  
23 a final order or final ruling which is the focus of that order?  
24 Do you understand that?

25 A I do. But I, I also understand that the body of



1 evidence presented in that proceeding is part and parcel to the  
2 intent behind that order.

3 Q Well, that's the body of the -- say it again.

4 A The body of evidence presented in order to arrive at  
5 that order is part of the intent behind what the Commission is  
6 requiring of the utilities that it regulates.

7 Q Well, if you filed a petition with the Commission and  
8 in that petition you asked the Commission to rule on your power  
9 company buying four new airplanes, and you also asked for it to  
10 approve an accrual to the storm damage, and you talked in your  
11 testimony about the four new airplanes and you also talked  
12 about storm damage, like in this case we've got 30 issues or  
13 so, and then the Commission in its ruling, it would, it  
14 approved the storm damage accrual and didn't mention the  
15 airplanes, would it be your position that because your evidence  
16 that talked about the airplanes and the Commission hadn't said  
17 you can't do it, that that would authorize you to buy the  
18 airplanes?

19 A No, sir. What the company would probably have sought  
20 is clarification of their order and rationale for the absence  
21 of a ruling on that particular aspect of the petition.

22 In the case before us, the Commission itself  
23 requested that the company present to it the accounting that it  
24 was intending to use to address storm cost expenditures. We  
25 proceeded to comply with that order, presented it to the

1 Commission. The Commission took no exception and closed the  
2 docket.

3 Q Have you ever been involved in preparing a tax return  
4 for your company?

5 A Yes, I have.

6 Q And three years after the tax return is filed, if the  
7 Internal Revenue Service comes back and takes exception to a  
8 deduction you took in the return, do you take the position that  
9 since they didn't do it at the time, they're now bound to  
10 accept that at the time you filed your return, they're now  
11 bound to accept that deduction?

12 A No, sir. The challenge by the IRS would be a failure  
13 to comply with their code of regulations with regards to the  
14 admissibility of a deduction. So it would be a discussion on  
15 whether the deduction is valid or not.

16 Q Does the Commission have a rule that, like the IRS  
17 rules that permit you to take normal operating expenses and  
18 call them storm damage?

19 MR. WALLS: Objection. Assumes facts not in  
20 evidence.

21 MR. McWHIRTER: I'm asking him if the Commission has  
22 a rule that permits the taking of normal operating expenses as  
23 storm damage, and I think his entire testimony has indicated  
24 that's what you do.

25 COMMISSIONER BAEZ: Mr. Walls, do you have a comment?

1           MR. WALLS: Yes. I was objecting on the ground that  
2 our testimony shows that we do not take normal work and put it  
3 into storm damage. If we -- the testimony was clear that when  
4 employees are assigned to storm restoration, their costs are  
5 assigned, but they do have to come back and complete makeup  
6 work. That's why I'm objecting.

7           MR. McWHIRTER: I didn't ask anything about makeup  
8 work.

9           COMMISSIONER BAEZ: Mr. Walls, I saw it as a pretty  
10 straightforward question.

11           Mr. Portuondo, are you aware of a rule that deals  
12 with this --

13           THE WITNESS: Yeah. I can address that question.

14           COMMISSIONER BAEZ: Go ahead. Answer the question.

15           THE WITNESS: If you read the language in the rule  
16 that addresses the reserve account, it states that you will  
17 charge to the reserve the costs associated with the storm. And  
18 we have complied with that rule. We have charged the actual  
19 costs associated with storm restoration. And it goes on to say  
20 that you will not expense those costs. You will charge them to  
21 the reserve.

22 BY MR. McWHIRTER:

23           Q     Well, tell me, was any part of your salary charged to  
24 storm costs?

25           A     No.

1 Q Bear with me just a minute.

2 Look at Page --

3 COMMISSIONER DEASON: Excuse me, Mr. McWhirter.

4 MR. McWHIRTER: Yes, sir.

5 COMMISSIONER DEASON: I have a quick question. I  
6 thought you were going to take a little longer than you did.

7 MR. McWHIRTER: Yes, sir. Go ahead.

8 COMMISSIONER DEASON: Mr. Portuondo, referring again  
9 to the exhibit which Mr. McWhirter had you refer to in the, the  
10 accrual column.

11 THE WITNESS: Yes, sir.

12 COMMISSIONER DEASON: I know that you just indicated  
13 '95 was an anomaly and there's probably some explanation for  
14 that, you just don't have it with you at this moment.

15 But the other accrual items are an even \$6 million,  
16 but the title for that column is Accrual and Fund Earnings.  
17 How are the earnings accounted for?

18 THE WITNESS: Actually it's a generic title. For  
19 Progress Energy, the Commission supported its petition to have  
20 an unfunded reserve. I believe for other IOUs they have a  
21 combination of funded and unfunded.

22 COMMISSIONER DEASON: So that's just a generic title  
23 that's really perhaps a little misleading there.

24 THE WITNESS: Yes.

25 COMMISSIONER DEASON: Okay. Did you, did you

1 participate in the 1992 rate case which Mr. McWhirter  
2 referenced earlier?

3 THE WITNESS: Yes, I did.

4 COMMISSIONER DEASON: Okay. Do you recall how the  
5 Commission accounted for the accumulated -- first of all, was  
6 there an accumulated balance in the storm reserve account?  
7 Even though it was unfunded, was there an amount in that  
8 reserve account during that rate case?

9 THE WITNESS: Yes. It was fairly small at the time,  
10 I believe.

11 COMMISSIONER DEASON: Okay. Do you recall how the  
12 Commission accounted for that? Was it part of the working  
13 capital calculation?

14 THE WITNESS: Absolutely.

15 COMMISSIONER DEASON: And it was considered a  
16 cost-free source of capital in determining the overall working  
17 capital requirement of the company?

18 THE WITNESS: Yes.

19 COMMISSIONER DEASON: When you report your  
20 surveillance, your surveillance reports, is there a -- and you  
21 calculate your earnings, obviously you have to calculate a rate  
22 base. Is there a rate base calculation which includes the  
23 accumulated balance in the storm reserve as a cost resource of  
24 capital in working capital calculation?

25 THE WITNESS: It is, it is included in the total

1 working capital. As you synchronize your working, your --  
2 sorry. It's included in working capital as part of your rate  
3 base. And, therefore, when you synchronize your capital  
4 structure to your rate base, it's a component of your cap  
5 structure.

6 COMMISSIONER DEASON: And that's the procedure you  
7 have followed during this entire period of time?

8 THE WITNESS: Absolutely.

9 COMMISSIONER DEASON: Thank you, Mr. McWhirter.

10 BY MR. McWHIRTER:

11 Q And kind of following up on that, in your  
12 surveillance report for 2004 how did you treat the accrued  
13 storm damage?

14 A We -- the, the deficiency?

15 Q Yes, sir.

16 A The deficiency was removed from surveillance.

17 Q So you're -- there's nothing in your 2004  
18 surveillance report that deals with storm damage.

19 A Well, the, the, the -- I stand corrected. The  
20 working capital deficiency is in the working capital portion of  
21 rate base in the 2004 surveillance.

22 Q All right. Let me reiterate a question that FIPUG  
23 asked you in its interrogatories, Question 28.

24 It says, "For each surveillance report since July of  
25 2004 please describe the amounts, if any, of storm recovery

1 expenses that are included in each report, and identify where  
2 in the report the storm reserve dollars can be found and the  
3 amount of those dollars."

4           And then under Item 1861900 in your answer, you say  
5 that in September, job orders, work in progress, end of period  
6 balance system show \$312,602,817. And that amount of money did  
7 go into your surveillance report; is that correct?

8           A     Yes. It went into the working capital.

9           Q     And how did that amount of money affect your  
10 utility's rate base for that surveillance report?

11          A     It increased the rate base in that surveillance  
12 report.

13          Q     So it increased the rate base. And can you tell me  
14 at year's end what those job orders, work in progress, and end  
15 of period balance amounts were?

16          A     I did not bring that with me, but it would probably  
17 still be in that range.

18          Q     All right. So to the extent that that \$300 million  
19 or so is included in your rate base, do you know what your  
20 return on equity was at year-end?

21          A     I believe it was 13.5.

22          Q     And it's 13.5 even after adding that \$300 million to  
23 the rate base; is that correct?

24          A     It's 13.5 with the working capital impact of the  
25 storm.

1 Q What if you took that \$300 million out, what would  
2 that do to the return on equity?

3 A I have not calculated that.

4 Q All right. Back to another line of thinking. If  
5 you'll go to Page 10 of your direct testimony.

6 The question is, "What costs would be recovered under  
7 the company's proposed storm cost recovery clause?"

8 And in that you say, "The storm costs would include  
9 the company's storm-related O&M costs, net of the year-end  
10 balance in the reserve, and its incremental costs above those  
11 typically incurred under normal operating conditions for  
12 capital expenditures."

13 Do I understand you to be saying there that for storm  
14 damage costs you use incremental costs for capital, but you  
15 don't use incremental costs for O&M?

16 A That's correct.

17 Q Explain to me what that's all about. What are we  
18 talking about when we say incremental cost as opposed to --  
19 just what does incremental cost mean?

20 A Well, in that particular response what I was trying  
21 to communicate was that we attempted to place on the books the  
22 capital assets at a value that, as best we could, provided the  
23 normal value of the material, the actual material cost, plus  
24 the normal value of the labor to install those facilities under  
25 normal circumstances such that the rate base of the company was



1 not inflated by the premium that was required during the  
2 hurricane to install those facilities.

3 Q Okay. I asked both your distribution man and your  
4 transmission lady about the numbers and about the permanency of  
5 equipment and so forth, and they didn't know. They said you  
6 are the numbers guy and I should ask you, so I'll ask you some  
7 questions about it.

8 When you did your study in response to the  
9 Commission's Hurricane Andrew order, you indicated that you  
10 were going to treat capital in this fashion, and you said  
11 capital, incremental capital costs would normally be  
12 20 percent; is that correct?

13 Would you like me to give you the reference?

14 A If you could. I don't have it memorized.

15 Q All right. Now in this case, in your initial  
16 petition you said that your storm damages were \$366 million,  
17 and of that number you had \$54.9 million as incremental capital  
18 costs. That's 15 percent, is it not, in round numbers? Have  
19 you got your calculator handy?

20 A It -- the capital components of each storm vary from  
21 as low as no capital impact to as high as 18 percent capital  
22 impact.

23 Q 18 percent?

24 A Yes, sir.

25 Q Now look at your Exhibit JP-6 where you give a tax

1 reconciliation.

2 A That will be JP-5?

3 Q Yeah. JP-5. I'm sorry. Yes. I think it's  
4 Exhibit 44.

5 Now look at Line 5 in that exhibit, and it says,  
6 capital portion for cost for tax, \$66.7 million. And then down  
7 at Line 15 you have, less capital, \$48.8 million. So in my  
8 mind it looks to me like one time you're asking for 20 percent  
9 for capital costs, which would be somewhere around \$72 million;  
10 for tax purposes you ask for \$66.7 million; for after the price  
11 went up from 366 to 385, you used 48.8 for capital cost. Is  
12 that because you go through some exercise and make a  
13 determination for each storm exactly how much of the work done  
14 results in a capital, permanent capital improvement and should  
15 be deducted from the Storm Damage Reserve?

16 A I think the first problem with the way you're looking  
17 at this is that you're mixing the book accounting with the tax  
18 accounting.

19 Q Oh. You mean you keep two sets of books?

20 A Yeah. Every --

21 Q You keep more than that, don't you? You have  
22 shareholder (phonetic) books and regulatory books?

23 A I agree. Let's not go down that path.

24 Every corporation has a tax set of books and a, and a  
25 financial set of books. And, of course, as you are very much

1 aware, the depreciation rules under tax accounting are  
2 different than under book accounting, and that's what gives  
3 rise to the difference in the numbers.

4 Q Well, what is the current number in this case? I'm a  
5 little bit perplexed and I guess I might as well ask it at this  
6 point.

7 The petition says \$366 million is what you ought to  
8 collect from your customers, but it looks to me like the total  
9 storm damage estimate now is \$385 million. Is the 366 number  
10 going to be changing?

11 A Absolutely. And we made it clear in our petition  
12 that we were presenting to the Commission an estimate based on  
13 what the facts that we knew at the time, and that we would be  
14 truing up this number as we were able to audit all the invoices  
15 and charges that were presented to the company. And like any  
16 other clause mechanism, it would proceed down the true-up  
17 testimony, we would give the Commission auditors the  
18 opportunity to review the actual results, and it would, you  
19 know, be presented to the Commission for a true-up process.

20 Q Okay. Let's just look at the capital component. And  
21 since you're only using the incremental cost for the amount  
22 that you X out for capital, how are we going to be able to find  
23 out the methodology you used for each storm to determine how  
24 much is capital and how much is O&M?

25 A Actually, I believe we presented to one of the

1 intervenors exactly what that methodology was. And, of course,  
2 the Commission staff, when they review the actual and final  
3 results, will have an opportunity to assure themselves that we  
4 followed that procedure.

5 Q So you're actually going into the books and making a  
6 determination as to what the capital cost is.

7 A Yes, sir. We are actually taking all the material  
8 that was utilized in restoration, comparing it, comparing that  
9 material to the Commission's unit of property chart of accounts  
10 and establishing what is capital and what is O&M. And once the  
11 capital is identified, then we are quantifying what the normal  
12 labor cost would have been for the installation of that  
13 property, and the sum of the two becomes the capital component.

14 Q So going through that exercise, you can actually  
15 identify what your incremental costs are and it's not a  
16 mind-boggling exercise, except for people like me.

17 A Well, we're identifying the actual cost of the  
18 material, and we are using our work management system to  
19 quantify what it would have cost to install that material under  
20 normal circumstances. And it's an approximation because each  
21 job is a little different from, from, you know, from the other,  
22 and sometimes it could cost more, sometimes a little less. So  
23 what you're applying to that methodology is, is just an  
24 average.

25 Q And all -- back in '93 you estimated that -- or

1 '94 you estimated that that would be 20 percent, and now it's  
2 down to 15 or 12, whatever. What's been the occasion for the  
3 change?

4 A As I indicated to you, in particular, Hurricane  
5 Charley was actually very close to that estimated capital  
6 component. It was about 18 percent capital. So the  
7 20 percent, again, was an estimate based on the analytics that  
8 were done at the time and based on the simulation of the storms  
9 and at what intensity it actually impacted our service  
10 territory. So the effects on the capital assets are going to  
11 vary widely. As you can see, we had in Hurricane Ivan, of  
12 course, it was very minimal, but we had no capital impact.  
13 Hurricane Frances, we had 8 percent capital impact. So it's,  
14 it's not a number that was meant to be set in stone.

15 Q But it's a number that can be readily identified so  
16 you can determine incremental as compared to normal capital  
17 costs.

18 A I think what I'm trying to get at is you can identify  
19 the capital assets as we've always been able to identify.  
20 That's a function of what retirement unit of property you've  
21 placed into service, and that's easily identified through the  
22 records.

23 And then we arrive at a formulistic approach for the  
24 labor costs, which is not as precise as actual direct costs  
25 like we do on O&M where we track that precisely because it is a

1 dollar-for-dollar recovery, there's no return associated with  
2 those costs; whereas, on the capital side we want to make sure  
3 that we, in essence, don't inflate the rate base such that  
4 customers are paying a return on an asset that's been placed on  
5 the books under extraordinary circumstances.

6 Q You mentioned two components of capital costs: One  
7 is labor and one is material. Are there other significant  
8 components or are those the two major ones?

9 A Those are the two major.

10 Q And from the transmission lady and the distribution  
11 man we concluded that a lot of the materials used came out of  
12 your inventory.

13 A Yes, sir.

14 Q Is your inventory of materials in your rate base  
15 already?

16 A Yes, it is.

17 Q And so when you take them out of that and you put  
18 them into your capital, do they go in rate base again, or do  
19 you reduce the rate base by the amount that came out of the  
20 materials?

21 A You reduce inventory and you increase electric  
22 plant-in-service. So your rate base pretty much stays the same  
23 except for the labor component.

24 Q And the difference in this kind of labor and other  
25 kind of labor is that you have some kind of methodology in

1 place that says it costs -- it takes three hours and two men to  
2 put up a pole or something like that?

3 A That's, that's right.

4 Q But don't you also have labor costs that, what your  
5 normal monthly operating costs are just for a lineman's salary?  
6 You know what that is, don't you?

7 A For calculating the capital costs?

8 Q No. No. For just estimating your normal O&M. You  
9 know what it costs you each month for O&M historically and  
10 prospectively, and you set budgets based on that, don't you?

11 A Yes. The organization does do that.

12 Q But from the period beginning August 13th to the end  
13 of the year a lot of those normal operating costs were  
14 reclassified as storm damage expense, weren't they?

15 A That's correct. The costs of those individuals that  
16 were directly assigned to restoration were charged to the storm  
17 reserve consistent with our plan that we set out in the study.

18 Q Okay. Now with the storm expense, under the  
19 Commission Rule 1 -- I mean, 6.014(3) you deferred your storm  
20 costs, did you not, to another period?

21 A We charged it to the reserve.

22 Q And so you didn't book any of those storm costs in  
23 2004.

24 A No, we did not.

25 Q And did that have any impact on your earnings, the

1 fact that you didn't book labor costs that normally would have  
2 booked?

3 A Yes, it did. The -- if I could elaborate, the other  
4 side that you're not mentioning is the fact that the work that  
5 was left undone and will need to be caught up --

6 Q I'm not asking about that. You can explain that  
7 later and I'll ask you about it. But I wanted to get you to  
8 answer my question this time.

9 A And I did. I said it would have an impact on the  
10 rate.

11 Q I've got a whole line of questions on that. And if I  
12 can get to it and will get to it, I'll give you the  
13 opportunity.

14 A As long as you get to it.

15 Q But I want to kind of focus on this one point. Go  
16 ahead and object, Mr. Walls.

17 MR. WALLS: And I was going to object and ask that  
18 the witness be allowed to complete his answer.

19 COMMISSIONER BAEZ: But at this point in time it  
20 looks like I think they've worked it out; right?

21 Mr. McWhirter, let him -- just remember to let him  
22 finish, finish his answer, please.

23 BY MR. McWHIRTER:

24 Q Do you feel like you've fairly had an opportunity to  
25 answer that question? I apologize for interrupting you.



1           A     I just wanted to make sure that everyone understands  
2 that although I agree that it has a current period impact on  
3 earnings, the deferral of the work that was left undone will  
4 have a corresponding negative impact in future periods.

5           Q     Well, you're going to true-up a lot of stuff  
6 apparently. Is there any reason why you can't true that up as  
7 well, the impact of the storm in future period?

8           A     I'm not, I'm not truing -- I guess you need to make  
9 sure that you separate -- I'm truing up the storm costs to  
10 actual. The work that was left undone is a base rate function.

11          Q     Right.

12          A     So there really is no true-up in the base rate  
13 component. It will have a negative impact when that work is  
14 performed in order to get back on schedule.

15          Q     Well, it seems to me, and maybe I'm not a logical  
16 thinker, but if you have normal operating expenses in the  
17 Year 2005 and you have to pay overtime or bring in extra crews  
18 in order to do your normal work, you would know the incremental  
19 cost of what that would be, wouldn't you?

20          A     Yeah. We have an approximation of what the costs  
21 will be to make up that work that was not done.

22          Q     Why can't you include that -- what is the prohibition  
23 against you including that extra work that came about as a  
24 result of the storm as a storm damage cost in your true-up?

25          A     Its, it's not -- my understanding, it's not

1 permissible by the Commission because it is not restoration  
2 work. It's not built into the storm fund account. It's not --  
3 has -- it's an unfortunate impact of the storm that we have to  
4 redeploy our forces to address the immediate needs of our  
5 customers due to the storms, but it's a, it's a cost that is  
6 normal, recurring and traditionally recovered in base rates,  
7 and that the company will have to incur in a future period.

8 Q Mr. Wimberly, in his testimony, has said his estimate  
9 of that future cost is something like \$25 million. Did you  
10 help him with developing that number?

11 A No, I did not.

12 Q Have you ever heard that number before?

13 A Yes, I have.

14 Q Do you think that's a reasonable number?

15 A I'd have to defer to him. He's got the information  
16 that was used to derive that.

17 Q Have you done any estimates on it?

18 A No. I'm not close enough to the actual work scope to  
19 have derived that number.

20 Q Well, assume for purposes of these questions that  
21 Mr. Wimberly is telling the truth under oath and the estimate  
22 of \$25 million is a fair estimate of these future costs.

23 If you pay \$25 million for labor, is that a  
24 tax-deductible expense?

25 A Yes, it is.

1 Q So from the company's earnings perspective, what does  
2 that \$25 million translate into actual out-of-pocket cash  
3 dollars against the company's earnings?

4 A Are we talking about cash or are we talking about  
5 earnings?

6 Q Well, let's talk about tax.

7 A Tax.

8 Q What does it translate into your actual out-of-pocket  
9 cash flow?

10 A It would be about 61 percent of that number.

11 Q Which is about \$15 million?

12 A Approximately.

13 Q And since you have a \$4 billion rate base, you're  
14 faster at numbers than I am, although I see you don't have your  
15 calculator, what would be the impact on your return on equity  
16 if \$15 million in revenue goes away?

17 A Subject to check, maybe 50 basis points.

18 Q 50 basis points? So if you're earning 13.5 percent,  
19 it would bring you down to 13 percent?

20 A Yes.

21 Q And when your return on equity was set in 1992, the  
22 Commission authorized 12 percent as an appropriate number, but  
23 gave you what they called a range of reasonableness on the  
24 downside and on the upside?

25 A Yes, sir.

1 Q I see. So even if those after-year-end expenses are  
2 considered, would it be fair to say that the impact on your  
3 return on equity won't bring you down beneath the ceiling of  
4 your authorized return on equity?

5 A We --

6 MR. WALLS: I'm going to object. It assumes facts  
7 not in evidence. I think contrary to the evidence, there is no  
8 authorized return on equity right now.

9 COMMISSIONER BAEZ: Mr. McWhirter?

10 MR. McWHIRTER: He said the discovery is in evidence.  
11 Is it in evidence?

12 COMMISSIONER BAEZ: I don't think that's what he  
13 said.

14 MR. WALLS: Mr. McWhirter, your question was phrased  
15 as to whether it had dropped below the authorized return on  
16 equity. And my point was the evidence, there is no authorized  
17 return on equity right now.

18 MR. McWHIRTER: That's intriguing

19 I'm going to drop that question and start --

20 COMMISSIONER BAEZ: Ask it, ask it another way,  
21 Mr. McWhirter, because I think, I think that's a fair  
22 statement. There is no -- I think that the witness testified  
23 to it earlier based on your question.

24 MR. McWHIRTER: I accede to that point

25 BY MR. McWHIRTER:

1 Q Is it your position that no matter what your company  
2 earns, there's no restriction on your profits?

3 A That is correct. As a result of the 2002  
4 stipulation, we are not under earnings ROE regulation, we are  
5 under revenue sharing mechanism.

6 Q And if you had an exorbitant -- I'm just -- this is a  
7 hypothetical question. If you had an exorbitant return in  
8 2004, in the minds of reasonable men, is there any action the  
9 Commission could take in 2005 or 2006 to make the pot right for  
10 customers?

11 He's waiting for you to object. Go ahead.

12 MR. WALLS: I'm going to object. It's vague and  
13 ambiguous. It's what he means by "exorbitant in the minds of  
14 reasonable men."

15 COMMISSIONER BAEZ: Mr. McWhirter, I want to  
16 understand your question.

17 MR. McWHIRTER: Well, let me give a hypothetical  
18 example, Mr. Chairman, and I'll restate exorbitant and say  
19 16 percent return on equity.

20 COMMISSIONER BAEZ: Wait. Before -- and, okay, you  
21 can go ahead and use the 16 percent as an example. But I want  
22 to understand what you're getting at with your question. We've  
23 already established that it's on a revenue sharing basis,  
24 also -- also based on some, some number, some trigger numbers  
25 as well, at least that's the understanding of the stipulation

1 and settlement. Is that the basis of your question?

2 MR. McWHIRTER: That's correct.

3 COMMISSIONER BAEZ: Okay. Can you -- go ahead and  
4 ask your question again so the witness can --

5 BY MR. McWHIRTER:

6 Q If you had a 16 percent return, there's nothing this  
7 Commission could do in your professional opinion to enable the  
8 customers to receive some bit of fairness. The stipulation  
9 that's been referred to is the stipulation between the  
10 Public Counsel and FIPUG and some others and your company, and  
11 it in no way binds it -- it specifically says it doesn't bind  
12 the Commission. So irrespective of the fact we're operating  
13 under revenue, if the Commission saw a 16 percent return and  
14 determined that that was too high, is there anything it could  
15 do to mandate a refund for customers in a subsequent year?

16 A Absolutely. I mean, as you indicated, they are not a  
17 signature to the settlement. They are within their regulations  
18 to initiate a show cause proceeding and address the base rate  
19 problem that they see at the time.

20 Q So what you're saying is that in your professional  
21 opinion this Commission could engage in what some people would  
22 call retroactive ratemaking. And if they determined that a  
23 16 percent gave you \$500 million too much, it could order you  
24 to refund \$500 million in 2006 to compensate for the 2004  
25 excess earnings?

1           A     No, sir. No, sir. I did not say that. I think your  
2 hypothetical was if the company was earning 16 percent, could  
3 the Commission do something for customers perspective? And I  
4 agreed that they could do something prospectively through a  
5 show cause proceeding.

6                     If the 16 percent was something that now had become  
7 normal and recurring and they saw that that return was not just  
8 and reasonable, it, it's within their jurisdiction to reset  
9 rates perspective.

10           Q     But it couldn't do anything about 2004, could it?

11           A     To my understanding, no.

12           Q     All right. Would you classify -- well, you have  
13 classified Hurricane Andrew as an unusual and extraordinary  
14 event that's similar to what happened in 2004; is that correct?

15           A     Yes.

16           Q     Did the Commission authorize cost recovery for  
17 Hurricane Andrew for Florida Power & Light?

18           A     No. At the time there was insurance coverage.

19           Q     Okay. And so the insurance made up the difference?

20                     Did -- in 1993 both you and Florida Power & Light  
21 come in and asked for a change in your, or asked to go for  
22 self-insurance.

23           A     That is correct.

24           Q     Is that correct? And the Commission asked you to  
25 bring in a study.

1 A Yes. They ordered it.

2 Q They ordered you to bring in a study?

3 A Yes, they did.

4 Q And are you familiar -- you've attached the FP&L  
5 study to your testimony. Are you familiar with the accounting  
6 methodology that it used in its study?

7 A I am. They used a similar method for O&M. They did  
8 use a different methodology for capital.

9 Q They used a different methodology for capital?

10 A Yes, they did.

11 Q So is it your testimony that in your opinion the  
12 Commission, by its inaction in dealing with the studies other  
13 than receiving them, it has approved one methodology for  
14 capital costs for your company and a separate method for  
15 Florida Power & Light?

16 A Yes, sir.

17 Q Can you -- there's essentially six orders that are  
18 involved. Were any of those orders in contested proceedings?  
19 There are, I think, three for you and three for FP&L and one  
20 for Gulf. I guess that's six -- that's seven.

21 A I guess I would seek your definition of "contested."  
22 I believe that there were interventions associated with each of  
23 those proceedings.

24 Q There were what?

25 A Interventions by the Office of Public Counsel and



1 others. But I'm not sure what, to what degree you mean  
2 contested.

3 Q Was there, was there a public hearing on any of them?

4 A I don't believe they went through public hearing. I  
5 thought it was PAA.

6 Q Was there a rate increase of any kind connected with  
7 any of those proceedings?

8 A The, the initial proceeding was linked, in our case  
9 was linked to our base rate proceeding. So there was an  
10 adjustment in base rates made for the new accrual.

11 Q Is that where the Commission capped your return on  
12 equity to 12.5 percent back in '94?

13 A That was attributable to the, to the move from  
14 \$3 million to \$6 million.

15 Q Say that again. I didn't understand it.

16 A The Commission originally established the accrual at  
17 \$3 million, which was part of our base rate proceeding.

18 Q Right.

19 A Subsequent to our having filed our study, the  
20 Commission, upon review of that new evidence, concluded that  
21 \$6 million would be a more appropriate figure.

22 Q Now I'm looking at Order 98-0953, which is a Florida  
23 Power & Light case. And they rendered an order on July 14th,  
24 1998, and the number of it is 98-0953. If you don't have that  
25 in your bag of tricks over there, I've got a copy for you.

1           COMMISSIONER BAEZ: Mr. McWhirter, I'm not sure if  
2 the Commissioners have it in their bag of tricks.

3           MR. McWHIRTER: I don't have enough for your bag of  
4 tricks, Mr. Chairman. I'm just going to ask him --

5           COMMISSIONER BAEZ: It's, it's our loss then, I  
6 guess. Do they have copies?

7           MR. McWHIRTER: We have copies.

8           COMMISSIONER BAEZ: Excellent. It's magic.

9 BY MR. McWHIRTER:

10          Q       Look at Page 4 of that order, and for the -- at the  
11 beginning of Paragraph 3, for the benefit of the people who  
12 don't have this order in their bag of tricks, read the first  
13 sentence.

14          A       "In its Petition, FPL states that a 'funding level  
15 sufficient to protect against another Andrew type event is  
16 appropriate.'"

17          Q       Okay. And so what apparently they did, instead of  
18 receiving or asking for a cost recovery mechanism at that time,  
19 they sought to increase the Florida Power & Light storm reserve  
20 sufficiently to cover a catastrophic storm; is that correct?

21          A       I can't speak for Power & Light.

22          Q       Well, what does that language say?

23          A       It would lead me to believe that their actuarial  
24 analysis showed that they had a higher risk profile than  
25 Progress Energy, and, therefore, they were in need of a higher

1 accrual. Although Hurricane Andrew was catastrophic, the  
2 effects of 2004 surpassed what Andrew did.

3 Q What I'm trying to figure out is whether your  
4 philosophy with respect to cost recovery is consistent with the  
5 philosophy expressed by Florida Power & Light. **It appears to**  
6 **me,** and I'm not the expert, but it appears to me that it's  
7 asking for an accrual that's big enough to cover catastrophic,  
8 and you say keep our accrual small, but allow us cost recovery.  
9 Is that a fair distinction between your approach and the FP&L  
10 approach?

11 A I don't think so. When we filed our study, we made  
12 it clear that it was noncatastrophic events that we were  
13 funding or requesting a reserve for. **Our risk profile**  
14 **supported that** and the actual costs incurred up until last year  
15 **supported that.**

16 My understanding of the FP&L service territory is  
17 that hurricanes of a much larger intensity have a tendency to  
18 impact their service territory. Therefore, they would want to  
19 establish a normal recurring fund to address those types of  
20 storms. And I believe they use Andrew here as analogous to the  
21 fact that the intensity of the storms affecting their territory  
22 is much higher than the norm in other parts of the state.

23 Q When the Commission in '93 considered FP&L's request  
24 and later your request about what to do on storm damage, it  
25 authorized increases in the accrual amount, and then it called

1 for this study that we've been talking about, and then it  
2 called for an annual report from you on your ability to get  
3 insurance, and it called for a report on a prospect where all  
4 the utilities in the state would enter into a mutual fund so  
5 that you could spread the risk more. Have you over time  
6 submitted all those studies?

7 A We have complied with every order of the Commission.  
8 And the annual review of the insurance market or underwriting  
9 capability for T&D storm damage has been filed in the  
10 '93 docket and is a matter of record on the Commission's Web  
11 site.

12 Q And you still can't get insurance?

13 A We're not saying that we cannot get insurance. We  
14 are saying that the insurance -- the cost of that insurance is  
15 prohibitive to the customers of Progress Energy.

16 Q What was the last quote you got on T&D insurance?

17 A I do not have that with me, but I believe we have  
18 responded in discovery to those types of questions.

19 Q Uh-huh. You don't recall in general terms what it  
20 is?

21 A No. We answered quite a number of discovery  
22 questions.

23 Q And what happened to the mutual fund concept?

24 A I do not recollect.

25 Q Would you agree with me that the theory of insurance

1 going back to medieval times almost is an idea of sharing the  
2 risk among a large base; so the larger the base, the less cost  
3 probability for the person that actually suffers the damage?  
4 Isn't that the underlying theory of insurance?

5 A It -- I'm not in the insurance business and it is a  
6 business. It's meant to be a profitable business. And I think  
7 they arranged the, the diversification of risk to accomplish  
8 the profitability their shareholders are expecting. So I think  
9 it's a function of, like you said, providing a product that is  
10 competitive in the marketplace and doing what you need to do  
11 behind the scenes to spread the risk associated with the  
12 policies you've underwritten.

13 Q Well, when you limit -- you used the term  
14 "self-insurance." Does -- under your proposal, does Progress  
15 Energy of Florida bear any of the cost of your storm damage  
16 itself or does it propose to put the entire cost on to  
17 customers?

18 A No, sir. I mean, I've tried to explain that the, the  
19 impact of the capital cost, the outlay of that cash is being  
20 absorbed in base rates by the customers, and the cash will not  
21 be returned to the shareholders for 30 to 40 years. The  
22 company is having to address in base rates and through an  
23 effect on the earnings related to all the backlog work that it  
24 has to undertake in the coming months.

25 So I think there is a sharing in the costs, and I

1 think that it's consistent with the ratemaking for a monopoly  
2 in the state of Florida. The regulatory compact (phonetic)  
3 says that the utility shareholders will be allowed to recover  
4 the costs of operating and maintaining the system, of its  
5 normal recurring costs, and be given an opportunity to earn a  
6 reasonable return. And I think that our proposal in '93 is  
7 consistent with all those fundamental premises.

8 Q Well, before you under -- were authorized to  
9 undertake self-insurance, you paid a premium to a third party  
10 and that money was gone; right?

11 A Actually the customers paid that premium through  
12 rates.

13 Q The customers paid that premium. And that money was  
14 gone.

15 A Yes, it was.

16 Q And after '93 when you went to self-insurance you got  
17 to keep the insurance premium, didn't you?

18 A The \$6 million was established in the reserve, and it  
19 was set aside to address these types of events.

20 Q And you've had the use of that money since -- every  
21 year, but, of course, it has resulted in a reduction in your  
22 rate base.

23 A Exactly. And it's also resulted in our ability to  
24 utilize those funds to pay down maybe higher long-term debt or  
25 short-term debt to the benefit of customers through a lower

1 cost of capital.

2 Q But customers never see that benefit in base rates  
3 until there's a base rate case, do they?

4 A Well, our accrual was originally set as a result of a  
5 base rate proceeding. So they are in the rates that were set  
6 in '92 seeing the effects of that.

7 Q Well, they're being charged that, you're saying.

8 A Well, they also see the corresponding lower cost of  
9 capital by having a lower rate base in the accumulated reserve.  
10 And as we go through time, in the Commission's exercise of its  
11 earnings surveillance monitoring, they are making sure that the  
12 company is still earning a, or is still able to earn a  
13 reasonable return on equity.

14 So I think it's, it's like any other cost that over  
15 time is increasing and decreasing. As the reserve gets bigger  
16 and there's more contributions in cash, the company is able to  
17 utilize that cash to reduce the cost of capital to customers  
18 and, therefore, maintain rates for such a long period of time  
19 without increases. We last increased rates in '92. And in  
20 2002 we subsequently decreased rates by \$125 million.

21 Q What happened to your gross revenue in that period of  
22 time?

23 A Actually for -- we had projected in our 2002 MFRs  
24 that revenues would be declining due to the economy. I believe  
25 that it has turned around, and I think we're continuing to see

1 about a 2 percent increase in revenues, which is in some cases  
2 not keeping pace with the level of expenses that the company is  
3 incurring through increased medical costs, just costs of  
4 operating the business. So we're, we're finding ways to be  
5 efficient. And I think that's what the settlement proffered  
6 was an opportunity for the company to do what it said it was  
7 going to do, utilize the benefits of the merger to, to help  
8 lower costs to customers, as well as try and maintain lower  
9 costs.

10 Q I don't want to cut you off.

11 A That's fine.

12 Q It looks like I've put you on the soapbox with that  
13 question.

14 All I was trying to get at is between rate cases,  
15 even though your cost of capital may go down or your efficiency  
16 may improve and so forth, customers don't see any change in  
17 their base rates as a result of those activities until there's  
18 another rate case; is that right?

19 A That's correct. And that's the reason that the  
20 Commission sets that range of reasonableness so that it can  
21 monitor the year-to-year fluctuations in operating this  
22 business.

23 Q And in 2004 you're under the stipulation, and your  
24 gross revenues, did they exceed or were they less than the  
25 threshold for sharing?



1 A In 2004 they exceeded the threshold for sharing.

2 Q So even though you had lost revenue from your storm  
3 operations because your sales were less, you still exceeded the  
4 revenue threshold for sharing, didn't you?

5 A We did. There was increased usage in the early part  
6 of the year that was greater than the -- the loss of revenues  
7 did not bring us below the weather-related revenues that were  
8 generated in the beginning part of the year.

9 Q Would you be receptive to using -- instead of doing  
10 the 60/30 or 67/23, whatever, 33, sharing of the money above  
11 the threshold, would you be receptive to using that money to  
12 reduce your storm damage deficit? It seems to me if you did  
13 that, it would benefit customers on the storm damage and it  
14 wouldn't hurt you because you still made the threshold of your  
15 earnings level.

16 A I don't think that was the arrangement that was  
17 agreed to in the settlement.

18 Q The answer is, no, you would not?

19 A The answer is, no, I would not.

20 Q Now you mentioned that customers would benefit by the  
21 fact that you take the capital out of the storm damage cost  
22 that you're seeking to, cost recovery for, and you put it over  
23 in the rate base. But you've got a rate case pending, and once  
24 you've done that, don't you ask for a depreciation expense on  
25 that and don't you ask for a return on that investment from the

1 customers?

2 A Yes, I do.

3 Q So it would be more fair to say that the customers  
4 will bear the ultimate burden of that capital addition rather  
5 than the, quote, shareholders.

6 A Well, I don't disagree with that. And I think my  
7 statement was that the cash laid out for that capital  
8 investment will not be recovered for 30 years.

9 Q Well, what is it that the company contributes under  
10 the self-insurance program?

11 A I don't think that our proposal in '93 was to arrive  
12 at any different outcome than what we had prior to Hurricane  
13 Andrew.

14 Prior to Hurricane Andrew, customers paid a premium  
15 on an annual basis which was embedded in base rates, they paid  
16 for the deductible that the insurance policy didn't cover. And  
17 the customers for paying that premium were able to lay off the  
18 risk to a third party.

19 What we have moved to with this concept of  
20 self-insurance is that the customer is not having to pay  
21 extremely high premiums in order to lay off the risk that the  
22 customers are self-insuring for storm damage.

23 Q What is it that the company is contributing to storm  
24 damage?

25 A We are absorbing -- we are having to absorb the cost

1 of all efforts, all normal recurring work that did not take  
2 place during that storm season on the shareholders' dime in  
3 between rate cases. That is, that is -- that would not be a  
4 normal recurring cost that I can include in base rates because  
5 it's makeup or catch-up for a prior period.

6 Q It has to do with a storm; right?

7 A It is a direct result of having had storms, and the  
8 company is having to absorb that cost.

9 Q And for the next two years you've asked for a storm  
10 recovery true-up; right?

11 A But that is, that is for other costs, the costs  
12 directly related to restore power to customers. It is not the  
13 cost that the company will incur to make up the work that was  
14 not done.

15 COMMISSIONER BAEZ: Mr. McWhirter?

16 MR. McWHIRTER: Yes, sir.

17 COMMISSIONER BAEZ: How much, how much time do you  
18 have left with the witness?

19 MR. McWHIRTER: I think about 20 minutes maybe.

20 COMMISSIONER BAEZ: All right.

21 MR. McWHIRTER: I don't want to put you to sleep.

22 COMMISSIONER BAEZ: No. No. That's really not my  
23 concern. I wanted to take a break, let Carol stretch her  
24 muscles and, you know, have the Commissioners take a break. If  
25 you've only got 20 minutes, I think we might be able to let you

1 run. If it's a little bit more than that, then I'd like to  
2 take ten minutes.

3 MR. McWHIRTER: I'll wind it up in that period of  
4 time.

5 COMMISSIONER BAEZ: Okay. Thank you.

6 BY MR. McWHIRTER:

7 Q In your rebuttal testimony you have a dispute with  
8 Ms. Brown about her tax treatment, and your Exhibit 44 kind of  
9 explains that. And what, as I understand, we see is that in  
10 2004 you're going to take a tax deduction or you, when you file  
11 your return, you will take a tax deduction, and so you will pay  
12 less taxes than you would have paid had the storm not been  
13 there; right?

14 A Yes. They become deferred taxes.

15 Q And so what happens to the money that you don't pay  
16 for federal income tax in 2005 of, you know, for the 2004  
17 taxes?

18 A I would assume that it's being used to lower the cost  
19 of capital.

20 Q Okay. But in your cost recovery you asked for a  
21 3 percent or whatever the commercial paper rate will be  
22 interest on the amount of money that you had to, will have to  
23 borrow or cash you have to come up with for other purposes to  
24 cover your storm cost. Is there any reason why you can't use  
25 that 2004 tax savings to reduce the interest cost by using that

1 cost-free capital for that purpose?

2 A Having thought about it more after the rebuttal is  
3 written, my initial thought was to leave it in base rates as an  
4 opportunity to lower the overall weighted (phonetic) cost of  
5 capital for customers going forward.

6 But I would have no objection, Mr. McWhirter, to  
7 taking that, the tax effect and lowering the principal on which  
8 the interest is calculated. I believe that would be at a --

9 Q A couple million dollars.

10 A At a 38 percent tax rate, it would lower the 252 by,  
11 I believe, \$130 million, and would result in about a \$4 million  
12 reduction in carrying costs.

13 Q Well, good. Thank you very much. We consumer  
14 insurance company representatives appreciate that.

15 COMMISSIONER DEASON: I'm sorry, Mr. McWhirter. Let  
16 me ask a question right here. Now I need to ask a question to  
17 follow up.

18 MR. McWHIRTER: Go ahead.

19 COMMISSIONER DEASON: If you're willing to make that  
20 concession, does that have any long-term effect upon the  
21 treatment of deferred taxes in future rate cases for any other  
22 reason?

23 THE WITNESS: Well, what would happen is I'd just  
24 take that component out of my cap structure and apply it to the  
25 clause in order to reduce the carrying costs in the clause

1 rather than in base rates.

2 COMMISSIONER DEASON: Yeah. But would that be a  
3 permanent or would that just be a one-time for the period of  
4 time that interest otherwise would be calculated on the  
5 deficiency?

6 THE WITNESS: No. It would be a permanent adjustment  
7 because you're, you're reassigning that benefit to the clause  
8 and they're getting the full benefit through the clause.

9 COMMISSIONER DEASON: Okay. So it would be a  
10 permanent reassignment of that cost resource or capital from  
11 base rate calculations to clause calculations.

12 THE WITNESS: Yes, sir.

13 COMMISSIONER DEASON: I'm not so sure that's a good  
14 deal, but, I mean, we'll, I'm sure we'll take a look at it.

15 BY MR. McWHIRTER:

16 Q Well, our approach on that was that instead of  
17 charging 3 percent during the recovery period, you only charge  
18 3 percent on the unpaid component of the taxes. But that's not  
19 what you're suggesting.

20 A Yes, sir. That is what I'm suggesting. The  
21 3 percent or whatever the rate would be would be on the  
22 difference between the 252 and the tax effect of approximately  
23 130, I believe it is.

24 Q But I don't understand why that would be a permanent  
25 kind of thing, unless it's, you're talking about future storms.

1           A     No. No. It's not permanent in the -- the clause is  
2 only for two years.

3           Q     Yeah.

4           A     So you get the full benefit in that two years.

5           Q     What's the total interest cost that you've estimated  
6 customers will have to pay during the two-year period?

7           A     Maybe it's a little bit over \$8 million, I believe.

8           Q     And what you're saying is under your new approach  
9 that will be reduced about \$4 million.

10          A     It cuts it about in half, maybe a little bit more.

11          Q     All right. I don't want to get into a complex  
12 discussion about rate design and cost recovery, but it looks  
13 from your testimony like about 98 percent of the costs you've  
14 incurred are demand-related as opposed to energy-related costs;  
15 is that correct?

16          A     I don't believe it's that high, Mr. McWhirter.

17          Q     Give me an approximation.

18          A     I guess, are you deriving that from my exhibit?

19          Q     Look at Exhibit 5, PROJ P-4.

20          A     Exhibit 5?

21          Q     That's attached to your direct testimony.

22          A     It'd be JP-2, is that what we're referring to?

23          Q     The title of it is --

24          A     '05 Projected Page 2?

25          Q     Yes.

1 A Okay. I'm there.

2 Q Page 4 is what I want you to look at.

3 A Page 4. Production demand, you're looking at Columns  
4 5, 7 and 8?

5 Q Look at Column 9, the total storm costs that you  
6 attribute to each class.

7 A Yes, sir. That's for that period of time.

8 Q Beg your pardon?

9 A That's for the '05 period of time.

10 Q And the thing that perplexed me was for each set of  
11 customers within the class you've estimated what their  
12 kilowatt-hour sales would be. And then when I multiply the  
13 2.09 times the megawatt-hour sales, it comes up to a different  
14 number than the number in the total storm costs allocated to  
15 that customer within the interruptible class.

16 Let me give you an example.

17 A I believe we addressed this exact question in a  
18 discovery request.

19 Q Yeah.

20 A And the calculations as presented here are consistent  
21 with those presented in a base rate proceeding, as well as in  
22 the capacity cost recovery clause and other proceedings before  
23 the Commission, and we have simply attempted to comply with  
24 those calculations and have not deviated from those to present  
25 an alternative.



1 Q This is somewhat of a theoretical concept and I don't  
2 want to spend a lot of time with it, and it doesn't impact your  
3 revenue. But it looks to me like if you figure out what the  
4 cost on a demand basis is to a demand metered customer, it  
5 makes more sense to recover that cost through a demand charge  
6 than it does through a kilowatt-hour charge and you could be  
7 more precise.

8 A That has not been the --

9 Q Beg your pardon?

10 A That has not been the approach taken in the clauses  
11 to date.

12 Q Okay. Well, I was -- doesn't that seem like that  
13 would be a fair thing to do to you?

14 A It's an alternative.

15 Q Beg your pardon?

16 A It's an alternative.

17 Q And is it unreasonable or unfair to allocate demand  
18 costs on the demand basis?

19 A I couldn't say without further analysis to see what  
20 the impacts are to other customers.

21 Q Bear with me just a moment. I've got some cleanup  
22 questions and then we'll be done.

23 We were talking about cost recovery mechanisms and  
24 using, you could either use base rates and an accrual or you  
25 could use the cost recovery. And I ran across this letter to

1 FERC from a law firm called Bruder, Gentile & Marcoux, LLP.

2 Are you familiar with that outfit?

3 A Yes, I am.

4 Q Do they represent you in proceedings before the  
5 Federal Energy Regulatory Commission?

6 A Yes, they do.

7 Q Did you seek the cost recovery mechanism before FERC  
8 or some other mechanism?

9 A FERC does not have cost recovery, cost recovery  
10 mechanisms beyond the fuel adjustment clause, so we did not  
11 seek a clause recovery mechanism.

12 Q So what you did there was you had, you did it through  
13 your regular base rates and you did a five-year amortization  
14 period; is that the deal?

15 A We applied to the FERC consistent with the type of  
16 regulation that they impose in the wholesale arena, which is  
17 one that does not provide as much division as the state  
18 Commission here does with separating base rates that are normal  
19 recurring with volatile, non -- hard to predict type of costs.  
20 and example of that is capacity costs in the wholesale  
21 jurisdiction are a component of base rates. In the retail  
22 jurisdiction they're a pass-through clause.

23 Q So I just wanted to know the cost recovery you asked  
24 or here, you're asking something different than the FERC; is  
25 that right?

1           A     Yes.  I'm complying with the regulatory framework of  
2 each state and federal.

3           Q     And so it's your opinion that the regulatory  
4 framework of this Commission calls for a cost recovery  
5 mechanism even though it never has done it that way before?

6           A     It's never been confronted with this before.

7           Q     Has FERC ever been confronted with this before?

8           A     To my knowledge, I think they have been faced in  
9 other jurisdictions with, you know, major tornados and things  
10 like that.

          Q     It's our position as the insurance company  
representatives that we're trying to reach fairness on the  
claim.  And would you agree with me that our witness Ms. Brown  
has accepted your cost recovery mechanism with adjustments?

15          A     Yes, she has accepted our cost recovery mechanism.

16          Q     And the only difference is that she suggests some,  
17 some changes in the adjustment so that the customer -- the  
18 company bears part and the customers bear part.  Is that a fair  
19 representation of what she's done?

20          A     Yes, which I disagree with.

21          Q     And how about Mr. Majoros for the Public Counsel,  
22 what has he done?  Has he taken that same, that you acknowledge  
23 cost recovery if the Commission orders that --

24                MR. MCGLOTHLIN:  I'm going to object to that question  
25 and ask Mr. McWhirter to put that question to Mr. Majoros, who

1 can speak for himself.

2 MR. McWHIRTER: I won't ask anymore questions about  
3 the other people, and I've concluded my cross-examination.

4 COMMISSIONER BAEZ: Thank you, Mr. McWhirter. We're  
5 going to break for ten minutes and resume cross.

6 (Recess taken.)

7 COMMISSIONER BAEZ: Go back on the record.

8 Mr. Wright, I think you're up.

9 MR. WRIGHT: Thank you, Mr. Chair.

10 CROSS EXAMINATION

11 BY MR. WRIGHT:

12 Q Good morning, Mr. Portuondo.

13 A Good morning.

14 Q We know each other, and I think you're aware that I  
15 represent the Florida Retail Federation in this case.

16 A Yes, sir.

17 Q Okay. I have a few questions for you. Hopefully  
18 they will not take too long.

19 Let's see. The exhibit -- I'm sorry. I want to  
20 follow up first on some questions that Mr. McWhirter asked you.  
21 You and he had a colloquy regarding the securitization  
22 legislation that's currently pending in the Legislature. Do  
23 you recall that conversation?

24 A Yes, sir.

25 Q I believe Mr. McWhirter asked you something like,

1 after the Commission resolves this case, can you dump the  
2 results and file again if the Securitization Bill is passed?  
3 Do you recall him asking you something like that?

4 A Yes, I do.

5 Q As I recall your response, you said that if the  
6 Commission were to support and approve Progress's proposal in  
7 this case, you'd be on a path to a two-year recovery and you  
8 might choose to stick with that. Is that about how you  
9 responded to that?

10 A Yes, it was.

11 Q Okay. My, my question for you then becomes what if  
12 the Commission does not support and approve the company's  
13 proposal here? For example, what if the Commission accepts our  
14 side, the consumers' side of the case's position that Progress  
15 should share the risks and the costs such that its expenses  
16 revenues down to the point of a 10 percent ROE? Is it your  
17 position that if the Securitization Bill passes, you can come  
18 back and try again to get all of it?

19 A I don't think that they're related. I think the  
20 securitization is just a mechanism by which you will recover  
21 the prudently incurred costs that the Commission deems  
22 recoverable. It's hard to tell what the legislative outcome  
23 will be, but that's my understanding. It's just a mechanism  
24 for recovery. It doesn't really outline what will be  
25 recovered.

1 Q So you've asked for \$252 million here. If the  
2 Commission allows you to recover \$150 million, is it your  
3 belief that you could come back if the Securitization Bill  
4 passes and ask for 252, or could you just come back and ask for  
5 an alternate recovery mechanism for the 150?

6 A I'm not sure. I'm not sure. It'll all depend on  
7 what happens in the Legislature.

8 Q Okay. You and Mr. McWhirter also had some  
9 conversation regarding the treatment of storm restoration costs  
10 at the wholesale level. Do I understand correctly that you're  
11 amortizing the wholesale piece of this over five years?

12 A We're amortizing it through base rates, yes.

13 Q And when did that amortization begin?

14 A It began in, I believe, the fourth quarter of last  
15 year.

16 Q You just said that you're amortizing it through base  
17 rates. Were you allowed to adjust or increase your base  
18 wholesale rates as approved by FERC?

19 A No, we were not.

20 Q Mr. McWhirter also asked you a few questions about  
21 rate design. Did I understand correctly that you allocate most  
22 of the -- most of the costs we're talking about here are T&D,  
23 aren't they?

24 A Yes, sir.

25 Q And my recollection is that most transmission is

1 allocated on the basis of coincident peak kilowatts; is that  
2 right?

3 A Yes.

4 Q And most distribution is allocated on the basis of  
5 class noncoincident peak kilowatts?

6 A Yes.

7 Q Okay. So your position is that you would allocate to  
8 classes on the basis of the sum of their customers' demands  
9 whether it's CP or NCPkW; right?

10 A Yes. And we would recover the costs on an energy  
11 basis.

12 Q Okay. Will you agree that that's inconsistent as  
13 between customers with different load factors within classes?

14 A I would say that it's, the methodology is consistent  
15 with what this Commission has approved for us to do in base  
16 rates and in other pass-through proceedings.

17 Q Excuse me. You just said that consistent with what  
18 they've approved in base rates? Don't you recover distribution  
19 costs through demand charges in base rates for demand metered  
20 classes?

21 A The, the allocation amongst the classes is consistent  
22 with what is approved in base, the methodologies approved. And  
23 the recovery through an energy charge is consistent with a  
24 clause mechanism. So it's kind of a combination of the two.

25 Q Isn't -- you didn't answer my question. Isn't it

1 true that in base rates for T&D costs you allocate them on a  
2 demand basis and recover -- your company has a very nice rate  
3 design that I actually approve of, the load factor type rate  
4 design. But as an aside, isn't it true that you recover a  
5 significant chunk through a flat dollars per kW demand charge  
6 in base rates?

7 A That is correct.

8 Q Okay. And you didn't answer my earlier question  
9 either. Don't you agree that allocating on the basis of demand  
10 and recovering on the basis of energy is inconsistent vis-a-vis  
11 customers with different load factors within demand metered  
12 classes?

13 A That is correct.

14 Q Thank you. I have a few questions for you, they're  
15 really more predicate type questions than, than detailed  
16 substantive questions, regarding what I believe is your Exhibit  
17 43, the FPL study. Did you prepare that study?

18 A The FP&L study? No, I did not.

19 Q Was it prepared for Florida Power Corporation or  
20 Progress Energy Florida?

21 A No, it was not.

22 Q Was it used by Florida Power Corporation or Progress  
23 to support Florida Power's earlier request for approval of the  
24 self-insurance program?

25 A No, it was not.



1 Q Did the Florida Public Service Commission cite to or  
2 rely on the FPL report when it acted on Florida Power's request  
3 for a self-insurance program?

4 A I'm not sure of that. That would be a question for  
5 the Commission. I'm not sure whether they took that into  
6 consideration, given the fact that they had just completed a  
7 proceeding with FP&L.

8 Q Well, that wasn't what I asked you. I asked you did  
9 they cite to it?

10 A Did they cite to it in their order?

11 Q Yes. Yes.

12 A I don't have their -- wait. I do.

13 They cite Order 93-0918, which I believe was the  
14 docket in which their study was filed.

15 Q Which order are you referring to?

16 A Well, I'm looking at the document that was given to  
17 me by OPC labeled 93-FPSC-10-256. **And there is a paragraph**  
18 **that refers to FPC shall submit a study similar to that**  
19 **required of FP&L in Order Number PSC-93-0918-FOF-EI.**

20 Q Okay. You had some brief discussion with  
21 Mr. McWhirter regarding the differences and similarities  
22 between FPL's accounting methods and Progress's. **I believe** you  
23 testified that, that you acknowledged in your testimony that  
24 FPL treats capital costs differently than Progress. Is that  
25 accurate?

1 A Yes.

2 Q Correct me if I'm wrong, but I thought I heard you  
3 say that, that your treatments for O&M were similar. Is that  
4 the word you used; do you recall?

5 A Yes.

6 Q Are they identical?

7 A Without double checking, I believe they're identical.  
8 I qualified it as similar because I could not recall precisely.

9 Q Okay. We agreed -- I didn't mean to interrupt you.  
10 Sorry.

11 Will you agree that FPL also treats cost of removal  
12 differently than Progress does?

13 A I'm not 100 percent sure on cost of removal.

14 MR. WRIGHT: Okay. Commissioners, I want to, if I  
15 may have permission to approach the witness, I'm going to hand  
16 him a copy of Commission Order 94-0852. I have copies for  
17 y'all, if you like. It's a short order. I'm going to have him  
18 read a couple of paragraphs in.

19 COMMISSIONER BAEZ: Okay.

20 MR. WRIGHT: I'll continue, Mr. Chairman.

21 BY MR. WRIGHT:

22 Q Mr. Portuondo, you've seen this order before, I'm  
23 sure.

24 A Yes.

25 Q This is, in fact, the order that, that substantively

1 resolved your, your case about ten, 12 years ago; is that  
2 right?

3 A Yes, sir.

4 Q I'd like you to read into the record, if you would,  
5 please, the paragraph that begins at the bottom of the page  
6 designated 94 FPSC 7:109, and then continue through the  
7 ordering paragraphs on the next page.

8 A "FPC has also offered to permanently increase its  
9 annual storm damage accrual from \$3 million to \$6 million  
10 effective January 1, 1994. The appropriate storm damage  
11 accrual level is currently under review in Docket Number  
12 930867-EI. A study has been submitted in that docket and our  
13 review of that study indicates that an increase above the  
14 current \$3 million annual accrual is needed. Accordingly, we  
15 find that FPC's proposal to permanently increase the storm  
16 damage accrual is reasonable and hereby approve the proposal."

17 Q If you would, please continue and read the, "It is  
18 therefore," and the two ordering paragraphs that follow where  
19 you left off.

20 A Okay. Very good.

21 Q Thanks.

22 A "Ordered that FPC's June 19, 1994, proposal to cap  
23 its 1994 earnings at 12.5, apply any amount in excess of that  
24 level to the Sebring ongoing concern amortization/storm damage  
25 expense and permanently increase its storm damage expense

1 accrual to \$6 million effective January 1, 1994, is approved.  
2 It is further ordered that Docket 930867-EI and Docket  
3 940621-EI shall be closed if no substantially affected person  
4 timely files a protest to this proposed agency action."

5 Q Thank you. Next I have a few questions for you  
6 regarding what has been identified as Exhibit 46, which is the  
7 testimony of the Public Service Commission staff's witness  
8 Iliana Piedra in the FPL storm charge docket.

9 My first question for you is this. Did Ms. Piedra  
10 audit Progress?

11 A No, she did not.

12 Q Has she submitted a report or findings or testimony  
13 that addresses Progress in any way?

14 A No, she did not.

15 Q Has her prefiled testimony been accepted into the  
16 record of the FPL case?

17 A That case has not yet taken place, so I would say no.

18 Q Does her testimony address the Progress study?

19 A No, it does not.

20 Q Progress hasn't called her as a witness in this case,  
21 have you?

22 A No, we have not.

23 Q Okay. There's been some discussion in your cross and  
24 at other points in the hearing about lost revenues. And as I  
25 read your testimony, you talk about impaired revenues at

1 Pages 22 and 23. Is that about right? Really it's at the top  
2 of 23.

3 A Yes, sir. That's correct.

4 Q Okay. When you say lost revenues, do you mean  
5 revenues that Florida -- I'm sorry, excuse me -- Progress  
6 Energy Florida did not collect because the meters weren't  
7 turning when the lines were down?

8 A That is correct.

9 Q Okay. I want to ask you just to assume for the sake  
10 of this line of questioning that the Public Service Commission  
11 in this case decides to allow Progress to collect a portion of  
12 the negative balance, but to first require Progress to expense  
13 storm costs for 2004 down to the point at which its ROE is  
14 reduced to 10 percent.

15 Next I want you to assume that but for the lost  
16 revenues, as you and I have agreed they are defined here,  
17 resulting from the storms, Progress would have achieved a rate  
18 of return of, say, 14 percent, but because -- sorry.

19 COMMISSIONER BAEZ: Go ahead.

20 MR. WRIGHT: Thank you.

21 BY MR. WRIGHT:

22 Q But because of the reduced sales, you actually  
23 achieved a rate of return on equity of about 13.5 percent. Are  
24 you okay with those assumptions?

25 A Yes. I don't agree with them, but, yes.

1 Q Okay. Isn't it true that if the PSC were to apply  
2 ratemaking treatment, as our side of the case advocates, if  
3 Progress had not experienced lower revenues, its share of the  
4 negative balance would have been greater?

5 A Its share of the negative balance in the reserve?

6 Q Yes.

7 A Under your hypothetical, which is calculating it  
8 based on achieved ROE, I would say yes.

9 Q I believe that your position is that Progress will  
10 absorb capital costs until the next rate case or base rate  
11 proceeding. Is that, is that accurate?

12 A That is accurate.

13 Q As I understand it, yesterday there were some  
14 questions and answers regarding your testimony in which you --  
15 you just confirmed that. Sorry.

16 You were speaking of the replacement plant costs that  
17 will be placed in rate base at the normal cost of replacement;  
18 is that accurate?

19 A Yes, it is.

20 Q Is it true that because of different vintages of  
21 equipment facilities, poles, wires, whatever, that were  
22 replaced, you expect the normal cost of replacement to be  
23 higher than the plant being removed and retired was?

24 A I would expect the overall cost of the new facilities  
25 to be greater than the old ones being removed, yes.

1 Q So would it be correct that the rate base will  
2 increase?

3 A I would expect so. Yes.

4 Q Will it also be correct that depreciation expense  
5 will be higher associated with the higher rate base?

6 A All other variables, health costs, yes.

7 Q Will Progress absorb the higher depreciation expense  
8 until the next base rate proceeding?

9 A Yes.

10 Q Okay. Do you know how much Progress earned in 2002  
11 as, as an FPSC adjusted rate of return on equity?

12 A In 2002 I don't recall, to be honest with you. I  
13 apologize.

14 Q That's okay. I apologize that I don't have the  
15 number at my fingertips.

16 I believe the number for 2003, and I have this from  
17 an earnings surveillance report that I'll be happy to share  
18 with you, if necessary, was 13.43 percent. Does that ring a  
19 bell?

20 A Subject to check, I think that's probably right.

21 Q And the number for 2004 was 13.48 percent. Does that  
22 sound right?

23 A Sounds right.

24 Q I think in your testimony at Page 22 you said you  
25 were targeting earnings in excess of 13 percent. And so you

1 came out right about where you were targeting, didn't you?

2 A For what year? 2004?

3 Q 2004.

4 A Yes, sir. I was targeting 13 percent.

5 Q Okay. And you actually earned almost 13.5.

6 A Yes, sir.

7 Q Okay. In fact, your NOI increased by more than  
8 10 percent from 2003 to 2004, didn't it?

9 A I haven't made that calculation.

10 Q Okay. The numbers I have from the earnings  
11 surveillance reports are \$338 million in '03 to \$377 million in  
12 '04.

13 A Subject to check, I'll, I'll assume that you're  
14 right.

15 Q Okay. From some responses you made to questions by  
16 Mr. McWhirter, I think you indicated that, that \$15 million of  
17 earnings equates to around 50 basis points.

18 A That's a high level estimate.

19 Q Okay. If -- assuming that that's right and taking it  
20 as you qualified it as a high level estimate, that would mean  
21 that, that each 100 basis points or each 1 percent ROE would be  
22 worth about \$30 million or would equate to about \$30 million;  
23 is that right?

24 A That's right.

25 Q Okay. So in -- it would follow, wouldn't you agree,



1 that in 2003 earning just under 13.5 percent, the company  
2 earned something in the range of \$160 million above the  
3 10 percent floor established in the stipulation?

4 A Assuming your math is right, yes.

5 Q Well --

6 A I mean, I --

7 Q 340 basis points times \$30 million?

8 A Yeah. Yeah. I would agree.

9 Q Okay. I'm sorry. I did my math wrong.

10 A It's about the \$90 million if it's 300 basis points.

11 Q It's about \$100 million.

12 A Yeah.

13 Q I think that's right. 340 basis points at \$30  
14 million, I get \$102 million.

15 A \$102 million.

16 Q I apologize for the, for the mistake. I transposed  
17 50 basis points into \$50 million as I was making notes earlier.  
18 And you'd agree too that the same would hold true, around \$100  
19 million plus or minus for '04 above the, above the floor?

20 A Yes, sir.

21 Q Okay. I assume you know this, but we'll see if you  
22 do. Isn't it true that your operations in North Carolina are  
23 subject to a rate freeze at the present time?

24 A That is my understanding.

25 Q And do you recall what year the rate freeze was

1 initiated? I believe it was either 2001 or 2002. But if you  
2 know, I'd appreciate a straight answer, an accurate answer.

3 MR. WALLS: I'm going to object to this line of  
4 questioning on relevance grounds. I'm not sure what conditions  
5 in North Carolina with respect to a different utility have to  
6 do here.

7 MR. WRIGHT: These are predicate questions,  
8 Mr. Chairman. I am about to ask him about storm costs that  
9 they incurred as a result of Hurricanes Isabel and Ivan, and  
10 then ask him whether they were allowed to get a surcharge in  
11 light of the rate freeze that they have in place in North  
12 Carolina.

13 MR. WALLS: Who does he mean by "they"? I assume he  
14 means Progress.

15 MR. WRIGHT: Progress, I mean Progress.

16 MR. WALLS: Progress Energy Carolina? I again object  
17 on relevance grounds.

18 COMMISSIONER BAEZ: I'm going to allow it.

19 BY MR. WRIGHT:

20 Q I believe the rate freeze kicked in about 2002; is  
21 that right?

22 A That seems about right.

23 Q And isn't it true that since that time your company  
24 incurred costs for restoration work following Hurricanes Isabel  
25 and Ivan?

1 A My company?

2 Q Progress Energy Carolinas.

3 MR. WALLS: I appreciate that.

4 MR. WRIGHT: Me too. Thanks.

5 THE WITNESS: I would assume that they did. I do not  
6 track their, their costs and revenues. I, I understand that  
7 they had ice storms and they had hurricanes during that period  
8 of time.

9 BY MR. WRIGHT:

10 Q And isn't it true that they have not been allowed to  
11 implement a surcharge, Progress Energy Carolinas, to recover  
12 any of those costs consistent with the rate freeze that is in  
13 effect in North Carolina?

14 A You indicated it's consistent with the rate freeze.  
15 I don't know that it's correlated to the rate freeze. I  
16 believe it's consistent with the regulatory framework in the  
17 Carolinas.

18 Q So it's your testimony that the regulatory framework  
19 in the Carolinas at this time is not allowing you a  
20 surcharge -- allowing your sister company, Progress Energy  
21 Carolinas, a surcharge to recover storm costs; is that correct?

22 A I -- my understanding is that they're amortizing  
23 those costs. They do not have a similar regulatory framework  
24 as we have in Florida. I'm not intimately familiar with the  
25 regulatory scheme in the Carolinas, so I don't know whether

1 there are other provisions in base rates that make that a  
2 reasonable approach.

3 Q Well, we've never had a storm surcharge in Florida  
4 for any IOU, have we?

5 A No, we have not. But we have an accrual for storms  
6 that the Carolinas do not.

7 MR. WRIGHT: Okay. Thank you. That's all I have,  
8 Mr. Chairman. Thank you.

9 COMMISSIONER BAEZ: Thank you, Mr. Wright.

10 (Transcript continues in sequence with Volume 5.)  
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CERTIFICATE OF REPORTER

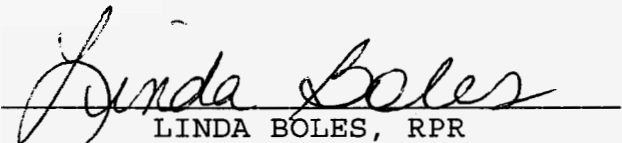
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I, LINDA BOLES, RPR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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 1st of APRIL, 2005.

  
 LINDA BOLES, RPR  
 FPSC Official Commission Reporter  
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