BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060038-EI

In the Matter of:

PETITION FOR ISSUANCE OF A STORM RECOVERY FINANCING ORDER, BY FLORIDA POWER & LIGHT COMPANY.
_______________________________________/

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VOLUME 6

Pages 482 through 560

PROCEEDINGS: HEARING

BEFORE: CHAIRMAN LISA POLAK EDGAR
COMMISSIONER J. TERRY DEASON
COMMISSIONER ISILIO ARRIAGA
COMMISSIONER MATTHEW M. CARTER, II
COMMISSIONER KATRINA J. TEW

DATE: Thursday, April 20, 2006

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

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

I N D E X

WITNESSES

EXHIBITS

NUMBER:		ID.	ADMTD.
146	Comparative Approach to Actual Restoration Cost Approaches	540	
147	FPL's Base Revenue Variance - July, August, September, October, November 2005	543	

P R O C E E D I N G S

(Transcript follows in sequence from Volume 5.)

CONTINUED CROSS EXAMINATION

BY MR. McWHIRTER:

Q Let me see if I can state it another way. Your, according to your testimony, your actual out-of-pocket costs for the storm are about a billion dollars. I haven't added up the 213 plus the 826. So that's money that the company paid out for storm damage and that's tax deductible to you, is that what you're saying, and you're giving customers the benefit of the tax deduction you received on that?

A In general, yes. But what I would point out is the actual losses as shown on Line 5 of that schedule is approximately $1.7, $1.8 billion, of which --

Q Uh-huh. Okay.

A -- a portion of the '04 costs were covered by the existing storm reserve. The '04 costs were further reduced by the collections that have occurred since February of '05, leaving a projected amount of $213 million for those, and then we have the full amount of the '05 costs.

Q All right. Now on Line 16 you have replenishment of the reserves, that $650 million, and that money is going to be subject to tax, is that correct, when you -- not when you get, not when you issues the bonds, but when the reserve is being built up?

A No, that is not correct. What will occur, what will occur is when we receive the bond proceeds, the full amount would be credit -- well, actually let's back up a step.

When the Commission approves regulatory assets, which are also addressed in my testimony, we would create the reserve balance of $650 million. We would simultaneously create a $650 million regulatory asset. That asset would then be sold to the SPE, the special purpose entity, and the monies that the SPE would use to buy that regulatory asset representing future collections from customers would be the money that they derived by issuing the bonds. We would receive that money, we would put the amount received into a storm fund, a special fund that would be held for the sole purpose of storm costs in the future. I tried to walk through all of it. I may have missed a piece, but --

Q No. You're doing fine. And I appreciate your not going too much at one time.

So essentially what's going to happen is you're going to issue a billion dollars worth of bonds, in round numbers, and then, or the SPE will issue it, and then you will give a security to the SPE or something and it's going to give you the million dollars, is that right, give Florida Power & Light the million dollars?

A The billion dollars. Yes, sir.

Q All right. Now do I understand from what you said before that you really don't need $1.7 million to pay for your out-of-pocket storm damages because your income tax savings paid for part of that, so you really need less than $1.7 million?

A I believe that that is a fair characterization of what you see on Lines 5 through 9. When you add the targeted balance of the storm reserve, then you get back to the million -- $1.690 billion.

Q All right. Now so when that million dollars in cash comes in, tell me how the company is going to use that cash. Is it going to immediately set up a $650 million reserve fund or is it going to put part of it in deferred taxes?

A The -- as I indicated earlier, the reserve is created by this Commission authorizing the creation of a regulatory asset. And if we' re -- are we only talking about the 650 here?

Q Yes.

A If we're talking about only the 650, we'll create a regulatory asset for 650, we'll create a storm reserve. Remember, the storm reserve is the capacity to absorb losses in the future. It's not the resources to pay for the restoration, but it's the capacity to absorb that loss without, say, hitting the income statement. The --

Q All right. Now I'm going to stop you here because I'm a little bit confused. My question was, are you going to take $650 million and put it in the bank or some kind of short-term investments?

A Okay. I'll try to continue. I'm not ignoring your question.

Q Okay.

A But I was trying to follow what, at least to be as a logical sequence, may not be to anyone else --

Q Well, you're doing fine. You're doing fine.

A We have the, we have the 650 asset.

Q Right.

A The bonds are issued by the SPE, and we're only talking about the 650 here. What will happen is Florida Power & Light will sell 400 of that 650 regulatory asset to the SPE. That represents the after-tax portion of that. We will retain the tax portion on Florida Power & Light's books.

So what Florida Power & Light will receive relative to the 650 is 400. That 400 will be received by the company, will be immediately put into the storm fund, which is on the asset side. It's a special fund; that provides the resources.

The remaining $250 million regulatory asset will remain on Florida Power & Light's books. No cash changed hands. It's sitting there as a receivable, if you will. And what -- that receivable represents the tax effect of that 650. So that when we collect the money from the customers, and the money that we will collect from the customers will be to cover the 650, because when Florida Power & Light receives it, let's fast forward to the end, Florida Power & Light will have received a full 650, they will have taken 250 and used that to pay the income taxes. They will have remitted the 400 back to the SPE to pay off the bonds. I'm obviously ignoring interest and all of these other things.

Q I understand. But now $400,000 (sic.) is the money that's going to draw interest. The 200 -- I mean $400 million. The $250 million is for the purpose of paying taxes. But the taxes aren't due at the time you receive the money, are they?

A That's correct.

Q And they'll be paid over the period of the amortization of the bonds.

A That's correct. And there's also -- there's -- when you start day one, you'll actually have two -- a regulatory asset and a regulatory liability.

Q Right.

A I'm sorry. A deferred tax asset and a deferred tax liability. The deferred tax asset relates to the 650 that we created in the reserve. The regulatory liability relates to the regulatory asset.

What will happen is that over time the regulatory -- doggone it -- the deferred tax asset -- even accountants get confused with this stuff. The deferred tax asset which relates to the 650 reserve, it will stay. It will not change unless and until storm costs are incurred and the storm reserve is charged.

However, the regulatory liability that's associated with that asset will come down as we collect the funds from the customers. So what you will wind up with is a deferred tax asset sitting in, sitting on the books of the company until the storm reserve is used.

Q I'm kind of like Cuba Gooding in that Tom Cruise movie: Don't confuse me with the accounting, just tell me where the cash went.

And I've gotten $400 million in cash that you're going to get; that's going into an investment for future storms. So you have that cash in your hip pocket when a storm, catastrophic storm comes by. You're not going to need it for any current damages; it's for the future.

All right. Now the $250 million, you don't need that now to pay taxes with either because the taxes accrue over a period of time; is that correct?

A The taxes would become payable as we collect the monies from the customer. But, Mr. McWhirter, I need to point out to you that the 250 that we are talking about basically was created by, you know, was, was created. It did not involve cash. It neither involved the receipt of cash nor --

Q I'm not here to deal with the creator or intelligent design. What I want to know is where will you put the $250 million that you get?

A When I receive the $250 million --

Q Yes, sir.

A -- from our customers --

Q Yes, sir?

A -- I will pay that to the government.

Q So, but you're going to receive the money from the bond issue. You're not going -- I'm talking about the $250 million that you're going to get in the year 2006. Taxes aren't due in 2006. They're going to be due over a 12-year period. What are you going to do with that cash?

A As I indicated earlier, the amount that is financed, it's shown basically on Line 21, 22 of the exhibit, is only the after-tax portion. I will not receive the $250 million that we are talking about until such time as I receive it from the customers. I will immediately turn around and pay that 250 to the government. And at the same time I will make the after-tax payment, if you will, the 400 would be paid to the SPE to pay down the bonds. I do not have cash at any point in time for any use, for any purpose associated with these taxes.

Q I see. Well, I somehow thought that there was a billion dollars involved in this bond issue. Isn't there a billion dollars?

A There is a billion dollars. But while we were --

when we were trying to frame this question earlier, you agreed that we would only talk about the 650, and I can do the math in my head for the 650.

Q Okay. I'm sorry.

A I have not attempted to do it for the rest.

Q Okay. So we've still got 350 on the table we're going to talk about in a minute.

A No, we actually --

Q The 650, we've accounted for $400 million of that that's going to be invested. Got that. The 250, taxes aren't due now. They're due at some future time; right?

A And I have no cash now either. Correct.

Q And what are you going to do with that pot of cash?

A Which pot of cash?

Q That $250 million.

A I told you, I did -- we will not receive cash -- let's go back and look at the billion dollars we're going to receive.

Q Okay.

MR. ANDERSON: Chairman Edgar -- all right.

THE WITNESS: Approximately 400 of that relates to the 650. Okay? The remaining 600 relates to the 2004 and 2005 storm costs that the, that the company has already expended.

BY MR. McWHIRTER:

Q I've got you. So what you're saying is $400 million goes into the reserve and $600 million is going to go to pay storm damages, and then the balance of the storm damage money is coming from your tax savings. Is that the deal?

A That's a fair, that's a fair characterization. Yes, sir.

Q All right. So on the $250 million, you didn't get that $250 million in cash. It went for storm damage. And so you've set up a deferred tax asset, is that correct, for $250 million?

MR. ANDERSON: Chairman Edgar, I believe this line has been gone through about three times now.

CHAIRMAN EDGAR: Mr. McWhirter, I was actually thinking the same thing. I think we've covered this ground, it seems to me.

MR. McWHIRTER: I'm really on another line of questioning of what the --

CHAIRMAN EDGAR: Well, then that was not clear to me.

MR. McWHIRTER: This is the accounting issue. I was talking about the cash before, and now we're talking about the accounting.

BY MR. McWHIRTER:

Q And I was wondering if you're setting up a regulatory asset, how that regulatory asset is treated in the capital structure. Is that a deferred tax that you get?

A The regulatory asset is separate and apart from the deferred, the deferred taxes, and I would assume that it would be part of, part of rate base.

Q A part of rate base?

A Correct.

Q And do you get a return on the $250 million?

A There -- it would certainly -- it would increase the assets upon which return requirements were, were calculated.

Q But there's no cash. You already told me that the cash went to pay storm damage.

A I'm having trouble following because you're moving back and forth between the, between the 650, which relates to the restoration of the reserve, and the numbers happen to be very similar.

Q I understand.

A If you look at the $1.690 billion, which is on Line 18, 17 or 18, the monies that are associated with the 213 from '04 and the 827 from '05, that will go to reimburse the company for costs it has already expended.

Q Right.

A Therefore, it would be used to pay down short-term debt and things like that.

Q But it wouldn't go into the rate base.

A Not in that sense. That's where you're --

Q That's the capitalized part.

A I will admit confusion there. I thought you were talking about the regulatory asset that remained on FPL's books representing the, the amount due from customers for the taxes associated with the financing requirements. And as I -- I haven't visualized in my mind where, where that would go. I mean, it's an asset. It would sit there. I believe they're offsetting pieces to that, but they don't come to mind right now.

Q Well, the reason I asked you this tedious line of questioning, and I apologize for it, is because it's very difficult for me as well to understand it. And I noticed something that really affects your rates and your allowance for funds used during construction is the amount of deferred taxes you have in your capital structure. And I wondered if any of this money that is going to be accounted for as deferred taxes is going to affect your capital structure, if it's going to give you zero cost of capital or if it's something you're going to ask for a return on.

A I'm not sure I know what the question is. I'm sorry.

Q Well, I was just telling you what my confusion was.

A Well, the --

Q But I want to know how it goes in the capital structure. Is it cost-free capital or something you look to --

CHAIRMAN EDGAR: Mr. McWhirter, I'm sorry, I'm going to jump in here for a minute. Again, just kind of for planning purposes since we do have a long day, can you give me a very rough idea of about how, how long, how much more you have on cross for this witness roughly?

MR. McWHIRTER: 22 minutes.

CHAIRMAN EDGAR: In that case, I would like to take a pause here, it's about that time, for a stretch, I think. My clock says 10:45. We will come back at 11:00. And let's use the break as well to rethink keeping our questions focused and concise. Okay.

MR. McWHIRTER: I promise to do that, Madam Chairman. Thank you.

CHAIRMAN EDGAR: Thank you very much. We will be back at 11:00.

(Recess taken.)

CHAIRMAN EDGAR: We will get started again here in just a moment, and we'll go back on the record.

And, Mr. McWhirter.

MR. McWHIRTER: Thank you, Madam Chairman.

BY MR. McWHIRTER:

Q Mr. Davis, I'm going to attempt to consolidate things by asking you broad general conclusions that we can rely on. And rather than going through the accounting process or how the cash is disbursed, I'll just ask you one question, and that is do you give us your assurances -- give me your title.

A Controller, Chief Accounting Officer.

Q That the deferred taxes and the income taxes connected with this proceeding will in no way result in an increased return requirement that will be imposed on the customers.

If you'd like me to be a little more precise, I'll tell what you my concern is. It has to do with AFUDC rate. And AFUDC is the money that you are able to build up the value of your assets. And if deferred taxes are cost-free capital, it's not going to build up the AFUDC rate. But if there's any way that this money can creep into the rate base and you're entitled a return on it and it's money that customers are putting in, I don't think that would be right and I don't think you would be. Can you give us your assurance that that's not going to happen?

A Okay. I will, I'll try to bring both of those into, into a single answer. I'm always hesitant that I may miss some piece --

Q Yeah.

A -- and then be held accountable for that piece. But number one is the AFUDC rule is, is reset on an annual basis if there's, you know, any significant change in it, so that to the extent that the debt rates change or there are major shifts in capital structure, what have you, you would change the AFUDC rate. We look at it every single year, and I believe we did not make a change this year. There was an insignificant delta in the resulting AFUDC rate, so it wasn't worth the administrative effort of this Commission to do so. If there is a significant change, then we file for it. I think the Commission rules require that an AFUDC rate be in place for a 12-month period. So the annual resetting of it is the appropriate way.

And I guess the final piece of the answer that I think may help you is the fact that as we sit here today, we have more deferred tax credits on the books because we have deducted the storm losses that were incurred in '04 and '05, and we have not been reimbursed, fully reimbursed for those. Therefore, you have to remember taxes, you know, are -- it's not the same as the book income. So because of the difference, we deducted the storm losses for tax purposes. We did not take them as an expense for book because we expected the recovery of them. So we have a deferred tax liability on the books representing the fact that we deducted something for tax purposes before we did for book purposes. That will decline over time.

As the monies are received from customers, they would be received by Florida Power & Light. Florida Power & Light will pay the taxes on those. That will reduce the deferred tax liability associated with those storm losses. So that was my hesitation of saying, you know, won't benefit because, in fact, that zero cost of capital will decline over time as the customers pay the storm bond charge and the storm bond tax charge.

Q Does that mean that the more the customer pays, the more the rate will go up?

A I mean, you can, mathematically you can characterize it that way, all other things being equal, because what's happening is the zero cost capital provided by the government via a tax deduction is declining. It's reversing, if you will.

Q Currently it's right at $2 billion, and there's an inconsistency in your 10K in the surveillance report, but I'm not going to get into that.

Let me give you something to refresh your recollection. I'm not passing this out to save time and I'm only using it to refresh your recollection, but this is an extract from the 2005 surveillance report that your company filed on February 14th of this year.

In the last page of that report it looks to me like the AFUDC rate changed monthly when you do your year-end calculation.

A I believe that that's the result of the, of the compounding that would go on in the calculation of it that's shown in the formula immediately above it.

And if you're looking at the last column, the cumulative AFUDC, that would be the result of showing that the annual calculation which is reflected in the formula of 7.09 percent, that, you know, as it builds over the year, it ends at 7.09 percent at the end of the, at the end of the year. But the changes in the rate there are not the result of changes in the capital structure. They are the result of the compounding of it as it builds over the years so that at the end of the year our effective rate is no more than the amount calculated, properly calculated under Commission rules of 7.09 percent.

Q Well, I go back to the basic question then. All I want you to tell us is that nothing that happens with respect to this bond issue is going to affect the rate of return that customers are required to pay in their base rates, either through the AFUDC charge or through a rate case when we have one.

A Aside from the effects of either increasing or decreasing deferred taxes as monies are, and in this case it would be reducing deferred taxes, as monies are received from customers in payment of the storm bond charge and the storm bond tax charge, it should have no other effects.

Q Well, that's the effect I'm worrying about because this is 200 -- $650 million, and that's a big hunk of money.

A Well, the -- if you look at the books today, you would -- year zero of bonds we have a 250 -- after the securitization assets are created, we'll have a $250 million deferred tax asset related to the storm reserve. That's what I had alluded to earlier. And you'd have 400 in the investment fund and 650 capacity to absorb losses.

We will have on the books approximately $652 million worth of deferred tax liabilities that are associated with the fact that we incurred storm losses in '04. We deducted the losses for tax purposes. We did not deduct them or show them as an expense for book purposes. Same issue for '05. And then you have the capacity to absorb the losses. That 652 will decline over time as we collect monies from our customers.

Q All right. Stop right there. The 652 that goes into the deferred tax liability account, that's zero cost of capital in your capital structure; is that correct?

A That is correct. That is correct.

Q So the customer should benefit from the existence of that.

A And the customer does benefit from the existence of that.

Q And they'll benefit -- we're not having a rate case, so there won't be any immediate rate benefit, but they'll benefit in the AFUDC rate that adds to the value of the assets that you're putting in the ground through your generation construction program.

A I would agree with that.

Q All right. Let's don't -- I'm not going to ask you anymore questions on that.

You also told me, and this is a general, another conclusion, if you'll look at Issue 46. And Issue 46 asks if the income taxes -- financing cost is eligible for income taxes under the securitization law. And my only concern there was that I wanted to make sure that every dime the customers paid to you to create the storm reserve they get credit for in the storm reserve irrespective of taxes, and I think your answers to my questions lead to that conclusion. If customers pay you $650 million for the storm reserve, they get $650 million credit. And that's -- they're not going to get $400 million credit when it comes time to pay for the storm as 650 is there; right?

A As it relates to the replenishment of the storm reserve, yes.

Q All right. Good. That answers my concern with respect to 46. And 47 is kind of a peculiarly worded issue. It says, "If recovery of taxes assessed on the storm recovery charges are not securitized, should the tax charge be included in the irrevocable financing order?" And it seemed to me that there wouldn't be an irrevocable financing order if there's no securitization. Is that correct?

A I think you're getting afield of my ability as an accountant. But let me try to answer the question in a way that I'm comfortable as an accountant.

Q All right.

A And I think what they're getting at here is if we issued the bonds on an after-tax basis, in other words, giving credit to our customers for the zero cost financing, if you will, provided by government through a tax deduction, therefore, you are not including the tax element in the securitization bond bonds.

However, it is also true that when the customers pay the storm recovery bond charge and the storm recovery tax charge, that the combination of those two will be taxable. And FPL will be responsible for paying those taxes and then remitting the after-tax proceeds to the, to the SPE, which means that the monies coming in from customers that are remitted to the SPE is entirely consistent with the manner in which the bond amount to be issued was determined.

Q But Issue 47 talks about a situation in which we don't securitize the bonds. So what -- that's your alternative proposal.

A I do not agree. I think it says, "If recovery of the taxes assessed on the storm recovery charges are not securitized." I interpret that as an accountant to mean they're not covered by the financing --

Q Okay. I see.

A -- should the tax charge be included in the order. My answer to that is yes, because when I receive monies from the customers, I must pay taxes on it. And the only way that I will have the correct amount of, I'll call it after-tax proceeds available to remit to the SPE to pay off the bonds is if I have the same right to, to a nonbypassable charge to receive the tax as well as the bond charge itself.

Q So this question becomes relevant only if the Commission doesn't vote to give customers the benefit of the original customer discount that you've provided?

A Well, the -- I don't want to call it a discount. I'll say the benefit of the tax deduction. Yes, sir.

Q But irrespective of all that, my concern was the storm reserve will not be impacted adversely. It will still stay at $650 million if that's what you're authorized to collect; is that correct?

A That is correct. The reserve will be created at 650, the fund at 400. We have confusion at our own company. That's why I keep repeating that. You know, because it's a funded reserve, the fund is after tax, the reserve is pretax.

Q All right, sir. I'd like to take you back now to your Exhibit KMD-1.

A Yes.

Q For purposes of the record, I believe that is Exhibit 17. Look at the total reserve, revenue requirement on Line 26, and you show how much you're going to collect through this surcharge from customers for every year. And I think there's some confusion. At some places, since you're only asking for a billion dollars in bonds, people might be led to believe you're only asking for a billion dollar rate increase. And the Attorney General yesterday said it was $1.5 or $.7 billion. But Mr. Dewhurst and I calculated that it's really $2.085 billion that you're asking to collect from the customers; is that correct?

A Over the entire 12-year period --

Q Yes?

A -- this is exactly the same way it would work with your home mortgage. You borrow $100,000 to buy a house, you're going to pay back more than 100 because you have to pay interest. Yes, sir.

Q I guess this is, what is it, Regulation D that you get when you buy your house. The government asks the bank to tell you the truth, that's truth in lending. And so for truth in lending, you would tell your customers that that is really a $2 billion rate increase; is that correct?

A No, sir, that is not correct. It is, number one, it is not a billion dollar rate increase. It is, it is a surcharge to be applied on the bill. I forget what the number is now, but it's around a buck fifty or so on an average, on an average basis. It is true if you use someone else's money for a period of time, you are going to incur interest.

Secondarily, you are also going to have to cover the tax charge. I've already given the customer, I say I, Florida Power & Light has given the customer the benefit of the tax deduction, the tax savings via the tax deduction of storm losses.

Q You don't have to go into that.

A When the customer repays it, we have to pay it.

Q $2 billion you want to collect and you want to collect it from the customers; right? Yes or no.

A If you want me to answer that, I'm going to give you the same details.

Q Okay. You're going to ask for less than $2 billion?

A I'm asking for a surcharge on the bill, an average -- well, the revenue requirements are here. $147.91 million in year one and so forth right across the page.

Q If interest rates go up, this amount goes up; correct?

A I would not, I would not think that would be the case unless the bonds are issued on a floating rate basis.

Q Uh-huh. Well, I'm talking about if interest rates between now and the date of the bond issue -- the price will go up.

A That is correct.

Q And this sum does not include gross receipts tax, does it, that customers will be charged?

A No, sir, it does not.

Q And it does not include the franchise fee that you charge for the municipalities where you have streets and charter counties; is that right?

A That is correct.

Q And it does not include the 10 percent municipal utility tax that people, that you put on people's bills.

A Let's examine why we put it on people's bill. The answer is no. And just like the gross receipts tax, it is legislatively established that Florida Power & Light Company will act as a collection agent for a --

Q All I'm trying to do is get a truth in lending and want to know what the customers are going to be asked to pay. It doesn't include the 7 percent sales tax that small businesses have to pay but residential customers are exempt from; is that correct?

A That is correct.

Q And so have you ever calculated what the local tax burden is on customers after they get your bill? I do mine periodically for Tampa Electric, and it runs to something like 15 percent per month and I'm sales tax exempt. Is that a fair --

A I mean, the muni taxes, say a 10 percent gross receipt, 2.5, you're 12.5, and then you have franchise fees which often run about, I'd say, 5 to 6 percent. So actually yours sounds maybe a little low.

Q Okay. I'm about to wind up with you, Mr. Davis. I know you appreciate that, and I know the Commissioners do.

Go to Issue 24, if you would. And that's really Public Counsel's issue, and it wants to know if FP&L has charged any other costs to the storm reserve that should be expensed or capitalized. And FIPUG's approach on this is that if -- is there any money that you collect from any portion that customers ought to receive the benefit from?

And I'd like to dwell a minute on your experience with Edison Electric Institute. You were a major player in that institute for a number of years as I understand it; is that correct?

A I serve on the Accounting Advisory Committee, yes.

Q And utilities have what I think is a wonderful program where they go help one another out in times of storm costs -- I mean storm restoration. And did you get help from other utilities during the 2004, 2005 storm season?

A Yes. I would say we are a net beneficiary of the Mutual Aid Program.

Q The answer is yes?

A I'm sorry. Yes, sir.

Q Can you tell us about how much money your, your company, you're going to ask the customers to pay the storm damage that's going to be paid to those companies?

A I'm sorry. I don't know off the top of my head.

Q Would it be north of --

A It's a substantial amount.

Q -- $300 million?

A For both years?

Q Yeah.

A I -- it would be a guess. I would prefer not to speculate. Hold on one second.

I don't know the number off the top of, off the top of my head. I know -- I think Witness Williams, Geisha Williams would know the answer.

Q Big number; right?

A It's a big number. It's hundreds of millions of dollars.

Q Did you send your crews and trucks and materials to other utilities to help them out during their storm repairs?

A Yes, we did.

Q And did you reduce the pay of your employees during that period of time?

A No. We continued to pay those employees during that period of time.

Q And you paid them from the money you collected for base, through base rate?

A Yes. They -- I don't know, I don't know that I can match a dollar here, a dollar here. We paid them. We charged that -- let's put it this way. The time that the employees spend providing mutual aid assistance to other utilities, a couple of things happen. All of their costs are charged to a, I'll call it a job order or a receivable that we set up so that we collect from those companies the full costs that we incur. There's one, one exception, and that is the cost, the additional costs that we incur to enable us to send those people. Again, it's the notion of backfill and catch-up, which I'm sure you will hear a lot about during these proceedings.

Q Well, my question is do you ever receive more money back from the utilities than you actually incur in paying to your employees?

A No, I don't believe so. There are other costs in there that are not paid to employees. There is their payroll, including overtime, their travel costs. There may be some materials that are involved and what have you. The amount of the bill, under the terms of the Mutual Aid Agreement, may not exceed our actual costs.

Q You advance the money to the employees for their travel expense or reimburse them for their travel expense, and you pay for their fuel, and you pay their salaries while they're gone; is that correct?

A That is correct.

Q All right. And then you're reimbursed by the other utility, just as you have reimbursed those utilities?

A That is correct.

Q Would you have any problem with a regulatory policy that said that any time FP&L collects more money for providing storm assistance to other utilities than it actually pays out, that that additional money will go to increase the storm reserve for the benefit of your company and its customers?

A Yes, I would.

Q You would have no problem with that?

A I would have a lot of problem with that.

Q Oh. What would the problem be?

A I mean, the basic problem, if you want to turn base rates into essentially a clause proceeding where if I spend more money in an area, I receive more money, if I spend less money in an area, I don't, don't include that, then fine.

But there's, you know, there's several basic problems. Number one, it creates a disincentive to send these people off because I do not get reimbursed, as I alluded to earlier, for the overtime costs, the contractor costs that are often incurred to backfill for those people when they are off on those storms. Customer demands do not go down. We're a very cost-efficient utility. I think we rate very highly as a cost-efficient utility. And, therefore, what I will say is that our people are fully committed. We don't have people there, we don't include them in the budget unless we have the work for them to do. So when they go away, you have a choice: Either customer service is seriously eroded or you backfill.

Q I didn't mean to send you off on the soapbox. I just wondered if you would oppose that regulatory policy, and your answer is yes; correct?

A Yes, sir. It certainly is yes.

Q When you get that money, does it come in below the line or do you, does it affect your earnings?

A You're mixing a couple of concepts there. It is -- it does not affect earnings because all I'm being, all that's happening is I am receiving reimbursement for the costs that I incurred.

Q Well, the policy I suggested was that when you receive more money than your actual out-of-pocket costs, will you have any problem with letting that money go into the storm reserve? And your answer was, yes, you'd have a problem with that. So the premise is you're getting more money than you've actually expended. So how do you account for that?

A I guess I will plead not listening carefully to your question. Since the rules preclude us from receiving more money than we incurred, they by definition your situation cannot exist.

Q I see. What rule is that?

A The Mutual Aid Rule that is established by EEI. I think we have some quotes on it in, in my testimony, in my rebuttal testimony.

Q Well, your, your costs include out-of-pocket expenses and a return and taxes and so forth. When you talk about reimbursement in your costs, was a return any component of those costs?

A No, I don't believe that's the case.

Q All right. So in summary, what you've said is you would be opposed to putting the excess revenue into the storm fund, and then you said there is no excess revenue. Correct? Correct?

A There is no revenue, period. It is a reimbursement of a receivable. The amount of that reimbursement is limited to the costs that I incurred, period. I mean, it's, it's that simple.

Q Costs not including return.

A Correct.

Q All right. In this case, in order to balance the incremental cost approach to the other approach that you proposed in 2004, there is an element of lost revenues, and Mr. Green has done a nice job in figuring that for every customer that didn't get service, there's something like $32 a month you didn't collect in base rates. Did anybody in your department or any other department to your knowledge do a test to see how much the other customers paid that weren't interrupted and whether that was more than it was anticipated that they would receive -- that you would receive?

A I've done no, I've done no test. I do know -- well, I'm not going to speculate. I will defer to Mr. Green as to the computation, or Dr. Green. Excuse me.

Q And, in general, would you agree with me that it would be fair, if you're trying to calculate lost revenue, you would look at the amount of money you thought you were going to receive. And if it came in less than that, it would be lost revenue; if it came in more than that, there wouldn't be any lost revenue.

A I'm not sure I understand your question.

Q Okay. If you think you're going to sell 1,000 kilowatt hours and that customer is offline and so you didn't sell that, but another customer that you thought you were going to sell 1,000 kilowatt hours to consumed 2,000 kilowatt hours, is there any lost revenue in that hypothetical example?

A Well, in your hypothetical example, I would, I would submit that there is still lost revenue because I believe that the existence of lost revenue, which, I will add, is only relevant as a means of refuting the presumption of double recovery, which is the premise upon which several, several of the proposed adjustments are being made, it's only relevant to that.

Q I wasn't asking about that. I was just asking about a mathematical calculation. If you're expecting $10 and you get $20, can you say you didn't get your $10?

A No. Because I think by the nature of the adjustment that is proposed, which is why I went off on a bit of a tangent, it's event specific. You have to consider all incremental effects having to do with that event, and, therefore, the usage of the other, the other customer in that sense is not relevant.

Q Okay. I'm not going to explore that with you because I'm not sure I understand it.

I'm going to hand you Exhibit 139, and if you'll take a moment and look at portion two of that exhibit. It has your sales and your revenue -- your sales during the storm months of 2005.

A Okay. Are you talking -- you've got one first request of admissions or --

Q Well, look at the second request for admissions. There's a table that shows what you estimated in 2005 you were going to sell and what you actually did sell during the storm months.

A Okay. I've read.

Q All right. Now in admission number 3 we asked you to admit that actually you collected 25 million some odd dollars more than you anticipated you were going to collect when you filed your fuel filing in November of the preceding year, and you denied that. You said actually you collected $8 more. But under those circumstances did you really collect $25 million odd dollars more during the storm period than you thought you were going to collect the preceding November?

A I need to read three. I have not read three. I looked at two. I thought you were asking about two.

MR. ANDERSON: Chairman Edgar, I'd just like to point out that this is beyond the scope of Mr. Davis's testimony. This is really the subject of Dr. Green's testimony. There are no computations of this type in the direct testimony of Mr. Davis. I don't have a problem with answering this question, but if there's going to be a substantial line, I'd suggest that this would be better directed to the witness Dr. Green, who was responsible for these discovery responses and the relevant computation.

MR. McWHIRTER: This will make you very happy. If he answers this, it's the last question I'm going to ask. But I would like him to answer.

THE WITNESS: I mean, all I -- the only way that I can answer this is by reading to you what is contained on here. I did not compute it. I have not seen it before.

BY MR. McWHIRTER:

Q Read your denial then, please, sir, on Item 3.

A The question and the denial or just the denial?

Q Yes. Read both. Yes.

A "In responding to request for admission number three, please refer to the table in FIPUG's request for admission number two above. Based on the average system-based cents per kilowatt hour charge of $0.0352 in Exhibit Number RM-12, the actual sales over and above the forecasted sales for the period July through November 2005 produced $25,113,462.56," and I assume there should be parentheses here, but it's "$713,450,641."

Q Can you say that just in dollar sums without just reciting each number?

A Okay. If the court reporter can follow me.

Q Like $10 or something like that.

A It's $25 million, which is the product of 713, $713 million, and I'm rounding here, if I may, kilowatt hours, times 3.52 cents per kilowatt hour more revenues than FPL projected that it would receive for this same period. Answer, "Denied."

And, again, I'm going to round the numbers in here to avoid the tedious repetition of commas. "As noted in FPL's response to FIPUG's first request for admissions number two," the $713 million is incorrect, I have to read it, "$713,450,651 is incorrect. The correct number is $713,450,821, which when multiplied by the 3.52 cents equals $25,113,468.90."

Further answering, "While FIPUG's first request for admissions number three states an arithmetic computation which FPL has corrected as noted above, FPL notes that such computation lacks proper foundation and is potentially misleading with respect to the determination of revenues not achieved due to storms for the reasons stated in Dr. Leonardo

Green's rebuttal testimony dated April 10, 2006, in this proceeding."

MR. McWHIRTER: Thank you very much. I'd tender the witness.

CHAIRMAN EDGAR: Thank you, Mr. McWhirter. Before we move on with cross, Commissioner Deason, did you have a question?

COMMISSIONER DEASON: Yes, Madam Chairman. Thank you.

Mr. Davis, I want to refer you back to your Exhibit KMD-2. Are you there?

THE WITNESS: I was at Page 2 of 1, not at KMD-2. Yes, sir, I am there.

COMMISSIONER DEASON: Okay. I'm just trying to understand the mechanics of the storm recovery financing, which is the subject of the last half of this exhibit.

And, first of all, let me ask you this. In relation to Line 14, which is the unrecovered 2004 storm recovery costs, some $213 million, has this amount yet been expensed for regulatory purposes?

THE WITNESS: Has it been expensed?

COMMISSIONER DEASON: Has it been expensed for -- it has not been expensed for regulatory purposes; is that correct?

THE WITNESS: No, sir. It was set up as part of a regulatory asset based upon the 2004 storm docket. We have added to that the projected interest through July 31, and we also have the, the residual of the so-called CIAC adjustment from last year that was, that was charged to the storm reserve. Those are the three components.

COMMISSIONER DEASON: Now since it's not been booked for regulatory purposes, it has been taken as a deduction for income tax purposes; correct?

THE WITNESS: Yes, sir, that is correct.

COMMISSIONER DEASON: So that has created the deferred tax liability account; correct?

THE WITNESS: Yes, sir. That's the reason I, when I alluded to it earlier, that there's a substantial deferred tax liability on the books, and that's because we deducted the '04 and '05 storm costs.

COMMISSIONER DEASON: Okay. Now just for the purposes of my question assume that your requested amount of storm recovery financing is allowed by the Commission and that the special purpose entity does, in fact, issue the bonds and Florida Power & Light receives proceeds of some $1 billion for purposes of my question. Once those proceeds are received, FPL, the operating utility company, receives that billion dollars, does it not?

THE WITNESS: Yes, sir, it does.

COMMISSIONER DEASON: Okay. Now from that billion dollars you will in essence repay yourself for the expenses of the unrecovered 2004 storm recovery less the income tax effect of that; correct?

THE WITNESS: That is correct.

COMMISSIONER DEASON: And when you receive that cash, will there be an entry at that point to eliminate the regulatory asset and the related deferred tax liability at that time?

THE WITNESS: Only -- I'm sorry. Only the deferred -- only the regulatory asset, not the deferred tax liability because this is a nontaxable transaction, the securitization is. And when we, when the securitization repayment charges are collected from customers over the 12-year period, it's at that point in time that the deferred tax liability that's on the books today would, would decline as we pay those taxes. In other words, you've -- the taxes -- it's not like a balanced income statement. In this case we've deducted it, and that deduction effectively reverses because as we're reimbursed by the customers, that's taxable.

COMMISSIONER DEASON: Well, explain to me then when you say "reimbursed by the customers," I thought the special purpose entity actually collects that and remits those funds to the bondholders. So explain to me how you make the statement as the customers pay this amount, that you are made whole.

THE WITNESS: Okay. The -- I'll make an assumption because I don't want to test my mathematical skills here.

Let's assume that the total amount of the bond repayment charge and the tax charge, the two of those total $100. Okay? What will happen is FPL will receive the $100. It will turn around and remit $61 to the, to the SPE that will then be used for benefit of the, of the bondholders. The remaining $38, $39 would then be paid to the government because the collection of the full $100 is taxable to Florida Power & Light Company incurring the tax liability of $39.

COMMISSIONER DEASON: Okay. Thank you for that explanation.

Now I want to refer you then to Line 16, which is the replenishment of the reserve, and you're requesting $650 million for that.

THE WITNESS: Yes, sir.

COMMISSIONER DEASON: Okay. Now I think you've indicated in answers to prior questions that the basic accounting for that is to set up a reserve of $650 million as a liability, and that would be, the corresponding entries would be a deferred tax asset of some $250 million and a fund of some $400 million. Is that basically correct?

THE WITNESS: The -- let me take you through, through the entries. The -- with the financing order what will happen is we'll set up a regulatory asset of 650 and a storm reserve liability of 650. Now because you have a book tax basis difference for each one of those, there is also a deferred tax asset that needs to be set up for the storm, creating a storm reserve. So you create a deferred tax asset for 250 that relates to the storm reserve. You also create a deferred tax liability also for 250 that relates to the regulatory asset.

COMMISSIONER DEASON: Now where does the $400,000 that goes into the fund, where does it fit into the --

THE WITNESS: Okay. Now that was the financing order.

COMMISSIONER DEASON: Okay. That was--

THE WITNESS: Now we go through -- I'm sorry.

COMMISSIONER DEASON: I'm sorry. Those are the entries when you actually, you get the financing order.

THE WITNESS: Correct, from this Commission. Stage two of that would be we'll fast-forward through the financing and we'll issue the -- in this case, since we're limiting it to the 650,in this case we would only be talking about $400 million of financing. So what will happen is the SPE will, will issue the debt for 400. They will receive cash of 400. They will take that cash and they will buy 400 of the 650 million regulatory asset.

So now what we, what FPL has on its books is a, is a $250 million regulatory asset left, has the 650 storm reserve and has the deferred tax asset of 250, the deferred tax liability of 250, and I'm out of balance by 400. And the 400 would be the storm reserve, I'm sorry, the storm -- the fund for the storm reserve, which is the 400 that we receive from the SPE.

COMMISSIONER DEASON: Okay. Then how is that reported on your surveillance report?

THE WITNESS: The 400?

COMMISSIONER DEASON: Yeah. What, what is taken out of rate base? You've already indicated that the fund, since it's a funded reserve and earns interest on its own, it's not part of your rate base. So obviously that would need to come out. And the corresponding source of capital that supports that would need to come out from the liability side. What happens at that point?

THE WITNESS: Okay. The -- I'll take you back through it mechanically because I have to get it straight in my own head.

The 400 would be removed, the storm reserve fund, the storm fund would come out as -- because it's an asset that earns its own return. So it's out of there. The storm reserve, the liability of 650 would also come out. What that would leave you with in rate base would be the 250 regulatory asset. And then that would be supported by the overall capital structure, and the deferred tax asset and the deferred tax liability would fit into that, would fit into the overall capital structure as components of deferred taxes.

COMMISSIONER DEASON: So let me see if I understand.

The fund of 400 would be removed from rate base; correct?

THE WITNESS: The 400. Yes, sir.

COMMISSIONER DEASON: Okay. The reserve itself which is on the credit side, that's going to be removed, which is the 650; correct?

THE WITNESS: That is correct.

COMMISSIONER DEASON: Okay. Now so we're 250 out of balance right now. Where is the other 250?

THE WITNESS: It's the regulatory asset that remains on Florida Power & Light's books representing, I'll say, its right to receive from customers the tax equivalent portion of the monies that are, that are required for the, to repay the financing.

COMMISSIONER DEASON: But you said that stays in rate base?

THE WITNESS: I would think that would stay in rate base.

COMMISSIONER DEASON: Well, if we removed the fund of 400 out of rate base and you're removing the reserve of 650 from the credit side, you've removed 250 more from the credit side than you have the debit side. So where is the other 250, if you're going to keep the regulatory asset of 250 in rate base?

THE WITNESS: It would be supported by the, by the overall capital structure of the company, including, you know, equity, debt, deferred taxes. The only way that the regulatory asset would be removed from rate base would be if the Commission directed that as one of the adjustments that had to be made in the surveillance report.

COMMISSIONER DEASON: Okay. Thank you.

CHAIRMAN EDGAR: Mr. Beck, are you next? Are you going next for cross?

MR. BECK: Yes. Uh-huh. Thank you, Madam Chairman.

CROSS EXAMINATION

BY MR. BECK:

Q Mr. Davis, to conclude your discussion with Commissioner Deason then, the net effect is to increase rate base by $250 million in that transaction, is it not?

A In that specific instance, yes.

Q Could you please turn to Page 11 of your testimony.

A Okay.

Q And at Page 11 you define or cite the definition in the Florida Statutes for storm recovery costs; is that right?

A That is correct.

Q And starting on Line 4, let me read that. You say, "Storm recovery costs means, at the option and request of the electric utility, and as approved by the Commission pursuant to subparagraph (2)(b)1.b., costs incurred or to be incurred by an electric utility in undertaking a storm recovery activity." Do you see that?

A Yes.

Q And then it says that such costs are net of insurance proceeds and includes adjustments, and it goes on and sets them forth; is that right?

A Yes.

Q Okay. Would you agree with me then to understand what storm recovery costs means in the statute, you have to understand what it means to undertake a storm recovery activity?

A Yes. I would think that it would be driven by an activity.

Q All right.

A A storm recovery activity.

Q Because the definition of storm recovery costs, in part of the definition it refers to undertaking storm recovery activities; right?

A Yes. Utility undertaking a storm recovery activity. Yes. So it would, in my judgment, as I would read what's there, is that it would be any cost that would be driven by the fact that the utility undertook a storm recovery activity.

Q Right. And the term "storm recovery activity" is also defined in the statutes, is it not?

A If you have something to show me, that would be helpful.

Q Well, how about Page 23 of your testimony.

A Testimony. It's been a while since I wrote it. Yes. Okay.

Q You cite the definition in the statutes for the term "storm recovery activity" that we just discussed, did you not, or you cite it there in this part of your testimony?

A Correct.

Q And let me read that, please. "The storm recovery activity means any activity or activities by or on behalf of an electric utility in connection with the restoration of service associated with electric power outages affecting customers of an electric utility as the result of a storm or storms, including, but not limited to, mobilization, staging and construction, reconstruction, replacement, or repair of electric generation, transmission, or distribution facilities." Do you see that?

A Yes, sir.

Q Okay. Would you agree with me that the -- that uncollectible accounts receivable expense is not listed as one of the storm recovery activities?

A I would agree that it is not a storm recovery activity. I would not agree that it is not a cost that is incurred by the utility as a result of a storm recovery activity.

Q Well, we've already discussed the cost, and it's included -- and it's defined in terms of storm recovery activities, is it not?

A It says, "Costs incurred or to be incurred by an utility in undertaking a storm recovery activity."

Q And you agree with me that uncollectible accounts receivable expense is not a listed storm recovery activity.

A It is not a listed storm recovery activity. And normally FPL would not charge that into the, into the storm reserve. We did in '05 because it was approved in '04.

Q Okay. Would you agree with me, Mr. Davis, that vacation buybacks is not a listed storm recovery activity?

A Vacation is not a listed storm recovery activity. It is, however, a fallout of people working on the storm and, therefore, being unable to take their vacation. So if you look at it on a productive time basis, it clearly is an incremental cost associated with the storm.

Q But you do agree it's not a listed storm recovery activity as defined by the statute?

A I would say it is not a storm recovery activity.

Q How about backfill and catch-up work? Is that a listed storm recovery activity?

A That is not a storm recovery activity.

Q Okay.

A It is a fallout, if you will, of people going and working on storm-related activities. It is relevant to the determination of storm costs only if someone improperly applies the incremental cost approach.

Q Mr. Davis, let's move on to Page 12 of your testimony, if we could. And this is about the 2004 storm recovery costs. And you stated at Lines 3 or beginning at Line 3 that, "The total amount incurred for the 2004 storms after deducting insurance proceeds was approximately $890 million." Is that right?

A That is correct.

Q And we can find that number in the order issued by the Commission concerning the 2004 hurricane costs, can we not?

A That is correct.

Q Okay. Let me ask if we could pass out an exhibit which is the order from that case. And when you get that, Mr. Davis, I'm going to ask you to turn to Page 22 of the order.

A I'm there.

Q The $890 million that you reference in your testimony is shown on Page 22 of the Commission's order concerning 2004 costs, is it not?

A That is correct.

Q Okay. Now the PSC made certain adjustments to that amount of $890 million, did they not?

A Yes, they did.

Q Okay. And those are shown at the bottom of Page 22 and at the top of Page 23 of the Commission's order, are they not?

A That is correct.

Q For example, one of the adjustments they made to the $890 million was a $10.9 million adjustment for non-management payroll expense. Do you see that?

A Yes, I do.

Q And let me refer you to another part of the order just to describe what the Commission did. Right now I'm just trying to go over again what the Commission did with your 2004 costs.

At the bottom of Page 9 the Commission addresses that adjustment. Could you look at the last paragraph on Page 9 of the order? Do you see where it says, "We agree with OPC Witness Majoros that by moving all O&M expenses associated with the storm repair to the storm reserve, without taking into account the normal level of expenditures funded by base rates that customers pay, requires customers to pay twice for the same costs." Do you see that?

A That's what the order says.

Q And then at the top of the next page it shows the calculation of the adjustment of $10.9 million for, for that issue. Do you see that?

A Yes.

Q Okay. And then again if we go back to Page 22 of the order where it summarizes the Commission's case, that's one of the listed expenses there, is that right, or one of the listed adjustments?

A Yes.

Q Okay. There's a series of other adjustments as well, such as for managerial payroll expense, tree trimming and so forth. Do you see all them?

A I see them.

Q Okay. And it's only after making those adjustments -- or the sum total of those adjustments is $91.9 million?

A That's the total, that's the total system adjustments.

Q And then when adjusted for jurisdictional amounts, it's $794,309,025; is that right?

A That's correct. But I guess I would like to point out that the, that the adjustments that are being made there are not all of the same nature. And, in fact, if you look at the $91.900 million, that really is, represents the so-called replacement of capital costs, the cost of removal and the contributions in aid of construction. Because the Commission recognized in the '04 order that the fundamental premise upon which your 10.9 non-management payroll and other adjustments that were made there, they were founded on a premise of double recovery, and the Commission found that, in fact, the double recovery had not occurred because of lost revenues. Now some people like to focus just on lost revenues. But the reality is the recognition of that was solely as a result of the absence of the premise upon which the adjustment was being made being satisfied.

MR. BECK: Madam Chairman, there's no question that I asked that I believe that Mr. Davis is responding to. I'd ask you to strike his response and ask him to simply answer the questions.

CHAIRMAN EDGAR: Let's do it this way. Mr. Davis, if you will confine your answer to the scope of the question that is posed to you. And, Mr. Beck, why don't you try again with your question.

BY MR. BECK:

Q Mr. Davis, I guess we were on the, the -- let me go back.

We had net storm damage costs of $890 million; is that right? That was on the bottom of Page 22.

A That is correct.

Q And then there's a series of adjustments totaling $91.9 million to get a system -- an adjusted amount for system adjustments of $798.1 million; is that right?

A That is correct.

Q Okay. Now that $91.9 million, that's the sum of the $58 million for replacement costs that are shown above that, $12.2 million for cost of removal, and $21.7 million for contributions in aid of construction; is that right?

A That's what the order says.

Q Okay. Would you agree that the adjustments for payroll expense, tree trimming, vehicle and advertising that are shown in there are exactly offset by adjustments for uncollectible expense and normal O&M costs offset?

A Yes, I would.

MR. BECK: Okay. Okay. I have lost my place, Mr. Davis. Please excuse me.

Could I have a short break, Commissioner?

CHAIRMAN EDGAR: One minute, two minutes, five minutes? What do you need, Mr. Beck?

MR. BECK: Five minutes.

CHAIRMAN EDGAR: We'll take a five-minute break.

MR. BECK: Thank you.

(Recess taken.)

CHAIRMAN EDGAR: We will go back on the record.

Mr. Beck.

MR. BECK: Thank you, Madam Chairman. I appreciate the chance to go over my notes again.

BY MR. BECK:

Q Mr. Davis, when we left, we were on the Commission order on Page 23. I think we had gone through to the adjusted jurisdictional amount of $794,309,025. Do you recall that?

A Yes, sir.

Q Okay. On Page 33 of the order, can I take you there, please?

A I'm there.

Q Okay. There the Commission repeats the figure of $794,309,025; is that right?

A Correct.

Q And they subtract out the 12/31/04 storm damage reserve balance that existed at that time; is that right?

A That is correct.

Q And it comes up with a net unrecovered amount to be recovered or to be collected from retail customers of $441,990,525; is that right?

A Right.

Q Now could you please go to your Exhibit KMD-3.

A I'm there.

Q Are you there? Your exhibit in effect take, or takes that amount from the Commission order, the $441 million figure, and that's the beginning deficiency balance that's included in your Exhibit KMD-3; is that correct?

A That's correct.

Q Okay. And then you take, you take it through July 2006 showing each month what the ending deficiency balance would be; is that right?

A Correct.

Q And on Line 22 you show a balance on July 31st, 2006, of $212,024,000; is that right?

A 220 -- I'm sorry. Which number. $212,024,000 or --

Q $212,024,000.

A Correct.

Q That's on Line 22 of your exhibit.

A Yes.

Q Okay. Now to that, and that's a, a reserve deficiency number, is that right, the 212?

A It's the remaining balance to be collected from the '04 storm costs. Yes, sir.

Q Okay. To that amount on Line 24 you add back in $21.7 million, and then you adjust it for the jurisdictional amount; is that right?

A Correct.

Q Okay. Would you agree with me when we were discussing the Commission's order previously that that $21.7 million figure had already been taken into account in deriving the balance numbers?

A I would ask you to define what you mean by "taken into account." I can answer it with my own definition or explanation, if that's okay.

Q Well, let me ask it this way.

Could you go back to Page 23 of the order?

A Page 23?

Q Yes.

A I'm there.

Q Okay. One of the adjustments listed there is contributions in aid of construction, and it's $21.7 million; is that right?

A That's correct.

Q And that number was taken into account in deriving the numbers that followed from there such as total system adjustments.

A It was, it was taken into account. It was also subject of a follow-up staff recommendation that clarified that the $21.7 million was an amount that would be charged to the storm reserve, left in the storm reserve as a deficit.

Q This order followed the staff recommendation that you're discussing, did it not?

A I believe this order would, would encompass that. And if you look over on Page 21, you will see that the $21.7 is charged to Account 228.1, Storm Damage Reserve, Not Recoverable in Surcharge, which is the reason why I still consider it to be relevant in the, in the instant proceeding.

Q Okay. Let me ask you this, Mr. Davis. Would you agree that the effect of your adding in the $21.7 million on your Exhibit KMD-3, is the effect the same as if you ordered, you added in that amount to the amount shown in the Commission order of the 798,100 or the 794?

A Yes, I would agree with that.

Q Okay.

A And if, if I -- I would like to clarify that. We can do it now, or I can assure you that Mr. Anderson will follow up.

Q How do you know that? I'm kidding. Go ahead.

A I mean, I mean, the main issue that's here is that the 21.7, it was characterized as CIAC. The accounting that we had that we were following back in the, from the '92 period up through the '04 decision was incredibly confusing. The -- it was recognized that the 217 was inadvertently pulled out. Rather than go back and revisit the entire approved amount for the '04 storm order, it was charged, if you will, to a temporary holding place, and that was creating a new deficit in the storm reserve. That means it's still out there to be recovered. That was discussed with all parties. The staff recommendation indicates that staff conducted a meeting in which all parties were invited for the purpose of discussing this proposed accounting treatment, we're talking here about the 21.7 meeting, and that all parties had agreed. I don't even understand why we're dealing with the issue now.

Q I think you agreed with me earlier, Mr. Davis, that the effect of your adjustment on your exhibit is the same as if we added the $21.7 million to the 798.1 shown in the Commission's order; is that right?

A That is correct. And that was precisely what we chose not to do in '04 is go back and revoke that issue. We would leave it in the storm reserve.

Q If you were to do that, Mr. Davis, you would have to account for those costs in your actuals, would you not? In other words, you'd have to have actual costs that would be, that would be used to offset the amount that was granted by the Commission.

A I think you're, with all due respect, you're confusing two sides of it. And one is -- let's -- you're talking now about the input side, the input side being all of the activities that gave rise to costs which were charged to the storm reserve in '04. That's, that's the side that is being referred to right now.

When you're dealing with the 21.7, you are looking at the output side. What did you do with it? Did you capitalize it; did you charge it to the storm reserve as a, I'll say a holding area; or did you allow it to be recovered through the surcharge; or was it already recovered through the existing storm reserve balance? So you're mixing the two.

The 21.7 strictly on the output side, the cost had been incurred. There is no cost CIAC in this case. That represents the cost of labor, materials and so forth that were incurred in the 2004 storm.

Now the question is, what do we do with them? That's all we're talking about with respect to the 21.7.

Q Okay. And so you would have in your KMD-3 that the Commission add that to the deficit amount as of July 2006?

A That --

Q Is that what you're --

A Yes. That is correct. It's offset by the '05 accrual because we still had the storm fund accrual. We accrued $20.3 million in '05, which largely mitigates the effect of that.

Q And that's as opposed to booking it in 2004 or related to 2004; is that right?

A Well, it was booked into the storm reserve in 2004, leaving a deficit there. As an accountant, it's significant that we had moved the '04 costs over and created a regulatory asset, and that regulatory asset was to be recovered through the storm surcharge. The 21.7 was not part of that regulatory asset. It had been carved out and left in the reserve.

Q Okay, Mr. Davis, let's move on to a different topic. Let's talk about lost revenues, if we could.

Page 18 of your testimony, beginning at Line 6.

A Page 18, Line 6. I'm there.

Q Yes. You note that, "FPL believes that the method provided in the 2004 Storm Cost Recovery Order and FPL's proposed method in this proceeding would result in the same total amount of storm restoration costs for the 2005 storm season." Is that right?

A That is what I say.

MR. BECK: Okay. Let me ask that I have an exhibit handed out.

CHAIRMAN EDGAR: Mr. Beck, do we need to number this?

MR. BECK: Yes, please.

CHAIRMAN EDGAR: Okay. And I am showing 146.

MR. BECK: And we've entitled it "Comparison of Incremental Approach to Actual Restoration Cost Approaches."

CHAIRMAN EDGAR: Comparison of Incremental Approach to Actual Restoration Cost Approaches. Thank you.

MR. BECK: Thank you.

(Exhibit 146 marked for identification.)

BY MR. BECK:

Q Mr. Davis, do you recognize this exhibit, this document?

A Yes, I do.

Q Okay. This is a comparison that Florida Power & Light made comparing the incremental approach used by the Commission in its 2004 order and the approach that's being proposed by Florida Power & Light in this case; is that right?

A I think that's loosely -- I don't exactly -- I don't remember exactly what the document request made or, you know, asked for. But practically speaking, yes.

Q But you would agree, would you not, that this shows the very thing that you state in your testimony saying that the

2004 method would produce the same thing used by the Commission, and then you reply the approach you recommend in this case, they come to the same result; is that right?

A Yes.

Q Okay. Now on the exhibit, this goes through many of the same numbers that we looked at earlier in looking at the exhibit's order, would you agree?

A Yes, sir. The first column, Incremental Approach, was, I think, intended to replicate or mirror what was in the '04 order.

Q Okay. And in that there's a, a row for lost revenues of $33.8 million; is that right?

A Yes.

Q And another for uncollectible accounts of $6 million?

A That is correct.

Q So would you agree that your approach as proposed in this case, in order for it to be the same as the Commission's approach in the last case, the Commission would in effect have to give you lost revenues and uncollectible accounts again as adjustments?

A I would agree as with respect to uncollectible accounts. I would not agree with your characterization of lost revenues. I believe that the consideration of lost revenues here, as it was in the '04 docket, was within the pure context of an incremental approach. And the assertion by witnesses for

OPC that costs were being double recovered, the Commission recognized that when you do not realize revenues because of the same event which gave rise to these costs, that you by definition cannot have recovery if you don't have the revenues.

Q Okay.

A So I do not agree it's lost revenues per se. It's basically a recognition that the fundamental criteria for the disallowances was not satisfied.

Q Okay. Looking at the items under the adjustments, the first five of those are, are, are adjustments for incremental costs that the -- and we discussed one of them earlier when referring to the Commission's 2004 order. Do you see those?

A The first three adjustments, the 10.9 and the 21.1?

Q Yes. First five actually.

A Tree trimming and -- yeah. I would agree that the -- I don't know if I would call it the incremental approach. It falls under the incremental approach, but they were removed under the premise that they were already reflected and recovered in base rates. And it's the word "recovery" that I have a problem with.

Q Would you agree that the Commission last time, by allowing adjustments for lost revenues and uncollectible accounts, exactly offset all the other adjustments they made or at least those five shown for incremental costs in your exhibit?

A Yes. And that's what I was trying to explain earlier that -- I guess you had not asked the question at that point.

Q If I may ask one other exhibit to be handed out.

MR. BECK: Madam Chairman, I would like to request that this be marked as Exhibit 147 for identification.

CHAIRMAN EDGAR: Yes. We will mark this as Exhibit 147.

MR. BECK: And it would be entitled "FPL's Base Revenue Variance - July, August, September, October, November 2005."

CHAIRMAN EDGAR: Thank you.

(Exhibit 147 marked for identification.)

BY MR. BECK:

Q Do you have the exhibit in front of you, Mr. Davis?

A Yes, sir, I do.

Q Florida Power & Light prepares monthly reports of variances, among other things, does it not?

A Yes, they do.

Q And one of the things it does, it compares actual results with the budget affecting the time period, does it not?

A Yes, we do.

Q And this exhibit shows the base revenue variances for five months during 2005, does it not?

A That is correct.

Q Okay. Could I -- could you turn first, please, to the month of July, 2005?

A Okay. That's FPL C-2. Yes.

Q Okay. Would you agree that the first hurricane to hit FPL's territory in 2005 was Hurricane Dennis in July of 2005?

A I will accept that, subject to check. The only one I remember is the one I lost my roof in, and that's Wilma.

Q Okay. Was Wilma the last hurricane to --

A That was the last one.

Q And that hit FPL's territory in October of 2005, did it not?

A October 24th.

Q Okay. You'll see under the revenue variances, and getting back to July, and we'll go through the others, there's variances both for weather and for hurricanes. Do you see that?

A As well as a number of other factors. Yes.

Q Yes. And the variance that's listed for weather in July of 2005 is a positive $19,257,000. Do you see that?

A That is correct. And it's on the same line as the year to date variance, which is a negative $17,765,000, reflecting extremely mild weather in the first half of the year.

Q Okay. What does the $19,257,000 figure for July mean in plain language?

A In plain language it means that the kilowatt hour sales that occurred during that month were higher than would have been indicated on the basis of normal, normal weather, meaning that the month of July was an extremely warm month.

Q And when you say compared to normal weather, that would be the amount you budget?

A That would be the amount we budget. The amount you use for rate setting and so forth.

Q Okay. So the $19,257,000 is the amount to which your revenues in July on account of weather exceeded the budget amounts for weather?

A Correct. The same as the $17,765,000 indicates that on a year to date basis we were under normal weather.

Q And, again, the hurricane -- the amount you were under earlier has no -- predates your hurricane season, does it not?

A It's part of the same annual period. We do all of our planning on a calendar year. And the, the longer -- if you look at it on a 12-month basis, I would say that the plan with respect to that 12 months is far more accurate than it is with respect to a specific month when you're dealing with the uncertainties of weather. And I believe that Dr. Green can get into that in a great more detail, a lot more detail.

Q Okay. But you'd agree with me, subject to check, that the first hurricane hit FPL's territory in July, and that was Hurricane Dennis?

A Yes.

Q Hurricane Katrina hit in August of 2005, did it not?

A Yes.

Q Okay. Let's turn to August. For the month of August, that shows a positive revenue variance due to weather, that would be non-hurricane weather events, of $25,804,000, does it not?

A That is correct.

Q And then you also see a negative for hurricanes 2005 of $6.9 million approximately.

A Right. And I would, I would point out that on the regular weather line, that at that point the very warm weather in July and August, this is August, in July and August had wiped out the below normal weather that we had seen in the first half of the year.

Q Would you accept, subject to check, that Hurricane Rita affected or hit your territory in September of 2005?

A Yes.

Q Okay. Let's turn to September. September shows, you know, a positive revenue variance of $14,103,000 and a negative for hurricanes of $1.4 million, does it not?

A That is correct. And it also -- there's another usage line down there, 3.7, which basically indicates it's something that we have not figured out exactly what's causing that variance. It may well be weather, it may well be the interaction of, of the economic factors, price elasticity. So the reason I bring that up is, is just to indicate that, you know, we're working with models here. And they have the same problem as all models; they don't, you know, they don't account for all of the variabilities.

Q Okay. Let's just turn briefly to October and November.

A Okay.

Q October 24th is when Wilma hit your territory; is that right?

A Yes.

Q Okay. And you show a positive variance of about $15.4 million for weather, but a negative $28 million for hurricanes in that month; is that right?

A That is correct. And -- yes, that's correct.

Q Okay. And then in November it shows $1.5 million positive for weather, but a $13.7 million negative for hurricanes; is that right?

A That is correct.

Q Would you agree that FPL had restored power to all of its customers on account of Hurricane Wilma by November of 2005?

A I would say that substantially all the people that could receive power should have received power. But I would, I would defer to, to Ms. Williams, if I'm in error.

Q Would you agree with me that if, subject to check, that if we added up the monthly non-hurricane weather variances for July through November, we would get a positive, a figure of positive $76,203,000?

A I, I have not done the math.

Q But you would accept it, subject to check. Or you'll be back for rebuttal, if I'm wrong on this.

A Yes, sir. Subject to -- I would accept that, subject to check.

Q Okay. Okay. And for hurricane, the negative variance, if we added it up for those monthly amounts, would be $50,168,000. Would you accept that, subject to check?

A Correct. But, again, I'm going to point out that if you go down to the other usage line, which is basically that which we can't totally identify, certainly on a year to date basis in November is a negative $21 million, albeit it's slightly negative in the month and positive. So, again, I'd just caution you against applying a high degree of precision to the weather line.

The hurricane line actually I think is easier to calculate, but --

Q But you do separately identify both hurricanes and other non-weather events. Those are separate line items on there, are they not?

A Absolutely. Yes, sir.

MR. BECK: Thank you, Mr. Davis. That's all I have.

CHAIRMAN EDGAR: Mr. Kise, cross.

MR. KISE: I think Mr. Wright is going to go.

CHAIRMAN EDGAR: Mr. Wright, are you next?

MR. WRIGHT: Thank you, Madam Chair. That's the order we've been following. I just have a very few questions for Mr. Davis.

MR. KISE: I actually tried to sit down on that end, but he wouldn't let me. Charlie wouldn't let me.

CHAIRMAN EDGAR: Well, as we pointed out yesterday, I have a desire for order; however, a little variety in the order is fine as well, so.

MR. WRIGHT: Well, Mr. Kise can surely go before me.

CHAIRMAN EDGAR: Mr. Wright, you're up.

MR. WRIGHT: Thank you, Madam Chair.

CROSS EXAMINATION

BY MR. WRIGHT:

Q Good afternoon, Mr. Davis.

A Good afternoon.

Q I just have a few questions for you.

Following along the lines of questioning and answers that you had with Mr. McWhirter, you were talking about the tax burdens, tax franchise fee, et cetera, burdens. I'm sure you recall that line of discussion.

A Yes, sir.

Q I just want to, I just want to try to get an approximation of the total amount of ratepayer dollars for those things we're talking about. If I may, this will be a little bit compound, but I think it'll be a repeat of what you already said. And if there's a problem, I'll stop.

I think you said municipal utility tax is about 10 percent, gross receipts is 2.5, franchise fees, I believe, are typically in the range of about 5.75. Does that all sound about right so far?

A I would accept that as reasonable.

Q And altogether that adds, that's going to add up to around 17 to 18 percent for a customer, a residential customer who does not have, have to pay sales tax; is that right?

A Correct.

Q Okay. Am I correct that around 70 percent of FPL's revenues are residential revenues?

A 70, 70 sounds a little high.

Q Okay. Well --

A But, you know, 60 to 70, somewhere in there.

Q Okay. Well, you want to use 60?

A It doesn't matter.

Q Ballpark is good enough for my purposes here.

So 60 percent of the $2.085 billion, which is real close to the total revenue requirements that you project you will recover, is -- let's say around $1.2 billion that would be recovered from residential customers over the time period, is that pretty good?

A I'll accept it, subject to someone checking if it's important.

Q Okay. And then if you were to take, say, 17 or 18 percent of, of the $1.2 billion, you're going to be looking at something in the range of $210 million?

A I'm sorry. I didn't follow the --

Q What I'm trying to get at is the total tax burden on residential revenues.

A Okay.

Q And I think if we used the number in the order of magnitude of 17 or 18 percent that we agreed is a fairly accurate representation for taxes and franchise fees and multiply that times 60 percent of $2.085 billion, I'm thinking you're going to get something in the range of $210 million or so. What did you get?

A I would -- I mean, if you, if you just apply -- you have the 1,700 that, you know, when you consider both taxes and the principal on the bonds, that's $1.7 billion, you know, the taxes and the principal, and you add the interest to that and multiply it by 17, 18 percent, you're going to get between $300 million and $400 million.

Q Would you agree that the other 40 percent of FPL's revenues are commercial and industrial revenues and that they will also be subject to sales taxes?

A Yes.

Q Okay. So would you agree, would you agree the number is probably a little north of $400 million, considering all revenues?

A Yes.

Q Thanks.

MR. WRIGHT: Excuse me just one minute.

(Pause.)

Thank you for your indulgence, Madam Chair.

BY MR. WRIGHT:

Q I think that I have two more questions for you, Mr. Davis. The first one is this. Could FPL, consistent with all applicable accounting principles, GAAP, et cetera, and requirements have elected to amortize part of the storm deficit rather than seeking to recover the entire amount through securitization or traditional surcharges?

A The -- what you were talking about there under GAAP is FAS 71, which is the bridge, if you will, between GAAP that would apply to normal commercial companies and GAAP that would apply or would allow the recognition of utility actions. If you, if you were to amortize, say, the full amount, I would think the answer to that would be clearly no because the amounts are, you know, very, very large. There needs to be some rate consideration to provide that, to allow for that amortization because the fundamental criteria in 71 is that a competent regulatory commission, a regulatory commission having the authority orders you to take a particular action or treat something differently, and more often than not that would be accompanied with a revenue consequence.

Q Well, I thought that I was careful to phrase my question by asking you about part of the deficit and also asking whether FPL could have made that election. I was not getting into a scenario involving the Public Service Commission ordering you to do anything.

A Then the answer --

Q If you could answer the question I asked, that would be great.

A Clearly, no.

Q FPL could not have elected to amortize even part of the deficit consistent with generally accepted accounting principles?

A Absolutely not.

MR. WRIGHT: Okay. Thank you.

CHAIRMAN EDGAR: Mr. Kise.

MR. KISE: Madam Chair, do you, in view of the time, do you want me to start now and go -- I could take -- I'm probably not going to be short. I don't think I'm going to be that long. And actually over -- if we take a break, the lunch break, I may be able to streamline it even further.

CHAIRMAN EDGAR: Okay. Mr. Twomey, comment.

MR. TWOMEY: I have a short line of questions, not as long as his, but --

CHAIRMAN EDGAR: Okay. Well, Mr. Twomey, then let's see if we can go ahead and, and take care of your questions. And then, yes, we will plan on taking a lunch break after that.

Thank you, Mr. Kise.

CROSS EXAMINATION

BY MR. TWOMEY:

Q Good afternoon, Mr. Davis.

A Good afternoon.

Q I want to ask you first, was it a conscious strategy or game plan of Florida Power & Light to accentuate the amount of money you were asking to receive permission from the Commission to finance at the expense of avoiding discussion of what the total dollar amounts would have to be paid back by the customers? Do you understand my question?

A I guess -- I think I can interpret your question. And I would say -- there are any number of negative connotations in your question, but what I will point to is that we are seeking a securitization order. The only thing relevant to the securitization order is that which we seek to finance.

The Commission certainly, in deciding the amount that they would approve, may well appropriately consider all of the, you know, all of the other issues in there, but they're not part of the financing order.

Q Okay. If you'd turn to your Exhibit KMD-1, Page 1 of 2.

Now Line 26, total revenue requirements for a series of 12 years; correct?

A That is correct.

Q Okay. I've done the math on that, and I think Mr. Wright mentioned it a minute ago, but I totaled the, the different columns and I came up with $2,086,040,000. Does that sound about right?

A That sounds about right.

Q And that is, that is, in fact, it is the revenue requirement that includes the, especially the taxes and other fees and so forth that my client's members you serve and the other customers would have to pay in toto over the course of 12 years; correct?

A And that's certainly what is represented on Line 26.

Q Okay.

A It includes all of that. It does not, however, include those things which are not reflected in the Commission's tariff, so it would not include gross receipts tax, muni tax, franchise fees and so forth. That's imposed separately.

Q So the -- I take it from that the total actually paid by the customers will be some increment in excess of the two point billion dollars?

A I believe that's what Mr. Wright was just discussing.

Q Okay. The -- I want to look at the same exhibit. In, in Year 1, pardon me, Line 3, the opening balance, $1.050 billion; correct?

A That is the amount of the borrowing, and it does reflect the reduction and the amount that's required to be borrowed by the assumed benefit of income taxes.

Q Okay. If we were to, if we were to take, if we're trying to compare the amount for the reserve fund alone vis-a-vis the $1.050 billion, we would -- the comparative number would be the $400 million, not the 650; correct? That is, the after-tax portion of the 650 for the reserve fund is $400 million; correct?

A That is correct. You would substitute. If you were doing this solely for the, the amount that we're asking to replenish the storm fund with, instead of the $1.050 billion, you would have a number of 400.

Q Okay. Which is something, something just short of, of 40 percent of the total, roughly in the range of 38 point something percent, would you agree? $400 million as compared to --

A 400 divided by 1,050 is about 40 percent. Yes.

Q Right. So if we go down to, if we go down to Line, Line 11, we find in the first year, do we not, that the interest payment, that year alone, if that principal is the, the amount that's financed, is $51.97 million; correct?

A That is correct. Line 11.

Q I mean, this is essentially analogous to a 12-year mortgage on a billion dollars; right?

A That's a good characterization.

Q Okay. Now if we didn't, if we didn't give you -- if the Commission didn't give you a reserve fund at all, if they stripped out the $400 million, which is the after-tax amount, would you agree with me that that finance amount in the first year would be reduced by approximately 40 percent?

A Certainly the Line 10, the principal payment, Line 11, the interest. I do not believe the ongoing costs would be affected. And certainly the bond issuance cost, it would be a less efficient financing, I mean, because your bond costs, aside from the underwriter discount, is not going to vary a whole lot with the principal amount.

Q Right. But it follows, does it not, that the fees and taxes and so forth that are related to the principal would be reduced proportionately, does it not?

A Lines 10 and 11, yes.

Q Okay.

A And also 21, the tax charge, because you would not have, you would not be recouping the taxes payable on that, so it would also go down.

Q Proportionately?

A Yes, sir.

MR. TWOMEY: Okay. That's all I have. Thank you.

CHAIRMAN EDGAR: Thank you, Mr. Twomey.

Just for, for my thinking as to try to plan the afternoon a little bit while we're on the lunch break, Captain Williams, will you have questions for this witness?

CAPTAIN WILLIAMS: We will not.

CHAIRMAN EDGAR: Thank you.

Mr. Kise, we will come back to you after the lunch break. Will there be questions from staff?

MS. GERVASI: Yes, ma'am. We probably have about ten minutes or so.

CHAIRMAN EDGAR: Okay. Thank you very much.

Yes, sir.

MR. KISE: And might I prevail upon the Chair. I hate to bring this up, but if, if the Chair could give some thought today or maybe by tomorrow of what we will do, not to be a pessimist, if we don't make it by Friday, because I'm sure all of us, particularly the Commission, have very busy schedules. And just for planning purposes forward I would just ask --

CHAIRMAN EDGAR: Absolutely. I have been thinking and adjusting my thinking as the hours have gone by. So one of the things that we will do at lunch is, is look ahead, I will do at lunch, and later this afternoon we will try to see if we can establish some alternative plans. Thank you, Mr. Kise, for the question.

It is 12:45. We will come back at 1:45, and we will begin with you, Mr. Kise. And we will see you at 1:45. Thank you.

THE WITNESS: Thank you, ma'am.

(Transcript continues in sequence with Volume 7.)

STATE OF FLORIDA)
: CERTIFICATE OF REPORTER
COUNTY OF LEON)

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

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 21st DAY OF APRIL, 2006.

Linda Boles

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