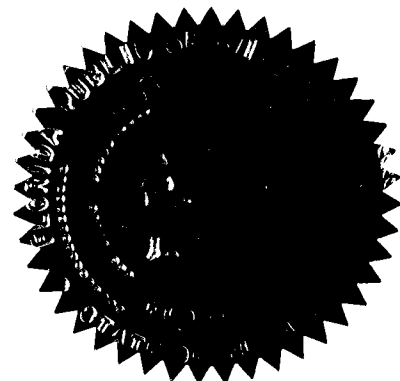


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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 12

Pages 1565 through 1796

PROCEEDINGS: HEARING

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

DATE: Friday, April 21, 2006

TIME: Commenced at 9:15 a.m.

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

REPORTED BY: LINDA BOLES, RPR, CCR
JANE FAUROT, RPR
Official FPSC Hearings Reporters
(850)413-6734/(850)413-6732

APPEARANCES: (As heretofore noted.)

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION

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P R O C E E D I N G S

(Transcript follows in sequence from Volume 11.)

MR. ANDERSON: Florida Power and Light Company would call as its next witness, K. Michael Davis. I believe the record shows that Mr. Davis has been previously sworn.

CHAIRMAN EDGAR: Thank you.

K. MICHAEL DAVIS

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

DIRECT EXAMINATION

BY MR. ANDERSON:

Q Mr. Davis, would you please state your name and business address?

A My name is K. Michael Davis.

Q You have previously appeared in this proceeding?

A Yes, I have.

Q And you have previously stated your address and employment?

A Correct.

Q You have been sworn already?

A I have.

Q Have you prepared and caused to be filed 61 pages of prefilled rebuttal testimony in this proceeding?

A Yes, I have.

1 Q Do you have any changes or revisions to your prefiled
2 rebuttal testimony?

3 A I do not.

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

6 A Yes, they would.

7 MR. ANDERSON: Madam Chairman, we would ask that Mr.
8 Davis' prefiled rebuttal testimony be inserted into the record
9 as though read.

10 CHAIRMAN EDGAR: The prefiled rebuttal testimony will
11 be entered into the record as though read.

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1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **FLORIDA POWER & LIGHT COMPANY**

3 **REBUTTAL TESTIMONY OF K. MICHAEL DAVIS**

4 **DOCKET NO. 060038-EI**

5 **APRIL 10, 2006**

6

7 **INTRODUCTION AND SUMMARY**

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

9 A. My name is K. Michael Davis. My business address is 9250 West Flagler Street,
10 Miami, Florida 33174.

11 **Q. Did you previously submit direct testimony in this proceeding?**

12 A. Yes.

13 **Q. Are you sponsoring an exhibit in this case?**

14 A. Yes. I am sponsoring an exhibit consisting of nine documents, KMD-10 through
15 KMD-18, which is attached to my rebuttal testimony.

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

17 A. The purpose of my rebuttal testimony is to:

- 18 • Rebut the positions taken by OPC Witnesses DeRonne and Larkin
19 concerning FPL's storm accounting and recovery methodology;
- 20 • Support the Company's proposed methodology, the Actual Restoration
21 Cost Approach with an adjustment to remove capital costs;
- 22 • Provide an exhibit listing adjustments FPL proposes to its 2004 and 2005
23 storm costs;

- 1 ● Address adjustments proposed by OPC Witnesses DeRonne and Larkin
2 to FPL's 2004 and 2005 storm costs; and
- 3 ● Address the Audit Findings contained in the Commission Staff's Audit
4 Report issued on February 14, 2006 and the Supplemental Audit Report
5 issued on March 10, 2006.

6

7

STORM ACCOUNTING METHODOLOGY

8 **Q. On page 13 of Ms. DeRonne's direct testimony, she states the following: "It**
9 **is not appropriate to potentially inflate the costs being requested under the**
10 **attitude or premise that it will be trued-up later and excess estimates will be**
11 **used to increase the reserve." Do you agree with this statement?**

12 **A.** No. FPL is not trying to inflate these estimates. FPL is using sound estimating
13 processes to develop the best estimate it can. At the same time FPL believes it is
14 prudent to minimize the risk of having to come back to this Commission and
15 request an increase in storm recoveries. Also, it is important to note that to the
16 extent the storm reserve is increased as a result of the estimates being higher than
17 the actual costs, then there will be additional funds available to cover future
18 storm costs. This would help mitigate future storm cost recovery from our
19 customers.

20

21 Each Business Unit is responsible for preparing estimates for storm damages
22 they have incurred that have not been actualized on the Company's books at the
23 end of each month. In preparing their estimates, it is the Company's requirement

1 that they use the best, most accurate, information available at the time of
2 preparing their estimates, such as known costs, bids, quotes, contracts, invoices,
3 subject matter experts, etc. In addition, they are responsible for considering the
4 uncertainty associated with their estimates and including an appropriate
5 contingency factor to address that uncertainty.

6
7 It is important to remember that a contingency is included to quantify a risk that
8 is more often than not asymmetrical. Cost estimates are often understated
9 because the severity of the damage is underestimated, there is damage that has
10 yet to be identified, or the resources required to repair the damage or their cost is
11 underestimated. If the cost is overestimated, it is readily addressed in the final
12 true-up process; however, the same may not be said for costs that have been
13 underestimated.

14 **Q. On page 14 of Ms. DeRonne's direct testimony, she states that "If the**
15 **amounts are over-estimated, it is the ratepayers who will be locked in to**
16 **paying higher amounts over the next twelve years under FPL's proposal."**
17 **What is your response to her statement?**

18 **A.** The amounts proposed by FPL for securitization are not higher than necessary.
19 Also, what Ms. DeRonne does not point out is that because any amounts
20 securitized in excess of the ultimate actual costs are added to the storm reserve,
21 they will reduce the risk of future storm surcharges or securitizations, and the
22 resulting rate instability that would accompany layered surcharges.

23

1 FPL can not use these funds for any purpose other than storm restoration so there
2 is no advantage to FPL in purposefully overstating the estimates. However, it is
3 clearly in the best interests of FPL and its customers to avoid significant
4 understatements.

5 **Q. On page 4 of Mr. Larkin's direct testimony, he states that "The FPL**
6 **approach essentially is asking the Florida Public Service Commission to**
7 **hold the Company harmless from all business risk." Do you agree with his**
8 **statement?**

9 A. No. Mr. Larkin's statement is incorrect. As illustrated on my Document No.
10 KMD-10, hurricanes adversely affect FPL well beyond the cost recovery issues
11 being addressed in this proceeding. Specifically, the budgeted revenue not
12 realized due to the extensive outages caused by the 2005 storms even considering
13 any related cost savings still had an adverse impact on the Company. This is
14 apparent under both the incremental cost approach and FPL's proposed
15 methodology.

16
17 The risk of not realizing budgeted base rate revenues is a risk FPL has always
18 accepted. It is only when interveners seek to increase FPL's risk beyond lost
19 revenues that FPL has pointed to the fact that the existence of revenues not being
20 realized due to hurricane related outages proves conclusively that there is no
21 double recovery of costs. Under no circumstances has FPL requested
22 reimbursement for lost revenues in addition to costs determined using its
23 proposed methodology. However, if one were to utilize the approach proposed

1 by OPC, under which adjustments are based on the theory that certain storm
2 restoration costs have already been recovered through base rates, then base
3 revenues not achieved due to service interruptions from hurricanes must be
4 considered.

5 **Q. On page 5 of Mr. Larkin's direct testimony, he states that "It is not a**
6 **correct or accurate statement to say that the cost accumulated under the**
7 **Company's storm cost accounting method results in an accurate, reliable**
8 **accounting methodology which will result in the proper recovery of cost**
9 **from ratepayers." Do you agree with his statement?**

10 A. No. Mr. Larkin's statement is factually incorrect. The Company's method for
11 accumulating and recording storm costs in a work order is no different than
12 recording any other costs it incurs in the normal course of its business. In fact,
13 the use of a unique work order for storm costs enables the Company to better
14 identify and track its storm costs. This method has been utilized by the
15 Company for many years and refined over time to enable the Company to fine
16 tune its process of recording costs. Mr. Larkin's implication that it does not
17 provide accurate and reliable results is misleading, and it is revealing that he
18 offers no factual basis for making this allegation.

19 **Q. On page 6 of Mr. Larkin's direct testimony, he provides an example of**
20 **meter reading employees whose costs he alleges are already recovered**
21 **through base rates. Do you agree with his conclusion?**

22 A. No. Mr. Larkin has only addressed the expense side of the ratemaking equation.
23 He discusses how meter readers' payroll is in base rates and ignores the fact that

1 the Company has suffered extensive outages due to the 2005 storms resulting in
2 significant amounts of budgeted revenue not being realized. This is classic
3 example of not applying the entire ratemaking equation. The Company recovers
4 its base rate expenses through base rate revenues. If these base revenues are not
5 achieved, then recovery did not occur. The Commission discussion on page 16
6 of the 2004 Storm Cost Recovery Order (Commission Order No. PSC-05-0937-
7 FOF-EI) supports FPL's position:

8 "This Commission sets base rates on the basis of both projected expenses
9 and the expectation of the utility realizing certain revenues. As set forth
10 above, we have required various adjustments to the amounts FPL charged
11 to its storm reserve in order to preclude FPL from recovering normal
12 operating and maintenance (O&M) costs that are already recovered
13 through base rates. However, this does not take into account the fact that,
14 due to the outages that resulted from these storms, FPL has not realized
15 the level of base rate revenues expected to cover these normal O&M
16 costs."

17 In the case of Mr. Larkin's example of meter readers, the fact that the meters will
18 be read in the future, or were estimated during storm restoration, does not
19 support that the base revenues not achieved due to the 2005 storms will ever be
20 recovered. Therefore, his conclusion that these costs were recovered through
21 base rates is incorrect. Also, the estimated bills were adjusted to account for the
22 length of the outages and customer bills were trued-up to actual usage in the next
23 meter reading cycle. Therefore, contrary to what Mr. Larkin would have the

1 Commission believe, the subsequent reading of meters does not result in FPL
2 somehow realizing revenues for energy that was not delivered due to storm
3 related outages.

4
5 Furthermore, Mr. Larkin's comments appear designed to undermine the notion of
6 backfill and catch-up work. The only costs included in backfill and catch-up are
7 actual out of pocket costs, so they are real incremental costs the Company
8 incurred. In his example, if no backfill or catch-up was necessary, then no
9 overtime time costs would have been paid and FPL would not have claimed
10 backfill and catch-up costs were incurred. Backfill and catch-up costs are
11 discussed in detail later in my testimony.

12 **Q. On pages 7 and 8 of Mr. Larkin's direct testimony, he states that FPL's**
13 **accounting process "does not account or attempt to account for the portion**
14 **of the cost charged to storm work orders that are incremental to the**
15 **Company's normal operating expense." What is your response to his**
16 **statement?**

17 A. FPL accounts for its costs in accordance with the Uniform System of Accounts
18 (USOA) prescribed by the Federal Energy Regulatory Commission and adopted
19 by this Commission. As such, it accumulates costs based on the activity that
20 caused or benefited from that cost. Only through this process can the full cost of
21 performing an activity be determinable.

22

1 Since restoring service following a hurricane is not contemplated in base rates
2 and requires an extraordinary effort, all costs associated with such effort are both
3 incremental and extraordinary. As provided in FPL's response to OPC's Second
4 Set of Interrogatories, Question No. 27 in Docket No. 060038-EI:

5 "FPL does not budget for extraordinary storm costs and such costs are not
6 provided for in base rates. In addition, FPL does not budget for 'normal
7 storm operation and maintenance costs' and accordingly does not have
8 any record keeping or reporting capabilities to separate normal storm
9 operation and maintenance and capital costs from extraordinary storm
10 costs. FPL does accumulate and report storm costs, as defined in the
11 context of this proceeding, consistent with the basic concept of cost
12 accounting by associating activities and their related costs. These costs
13 are a result of storm restoration activities, an extraordinary event, and are
14 accumulated in unique work orders."

15
16 Any attempt to segregate what is in base rates from what is incremental would be
17 extremely difficult and subjective when accumulating and reporting the
18 Company's storm costs. From the standpoint of the work performed, none of the
19 costs are reflected in base rates. From the standpoint of dollars, irrespective of
20 activities performed, any determination would have to be made based on
21 estimates and only done after the fact if one can be made at all. This position is
22 supported by Staff's response to FPL's Third Set of Interrogatories, Question
23 No. 49 in Docket No. 060038-EI:

1 “Because base rates were last reset based on a negotiated stipulation
2 among the various parties, it is unclear what specific costs of any kind are
3 included in base rates.”

4
5 Finally, even if one were to address whether a budgeted cost is reflected in base
6 rates, the issue of whether actual cost recovery occurred would still remain. As I
7 have previously discussed, the 2005 storms caused extensive outages resulting in
8 significant amounts of budgeted revenue not being realized. So the question of
9 whether actual recovery occurred, is very real and very relevant to the issues in
10 this docket.

11
12 If the Company is required to segregate these costs, it will have to develop and
13 implement a tracking system to do so. This additional cost would be borne by
14 our customers and would only be used for storm recovery purposes.

15 **Q. On pages 8 and 9 of Mr. Larkin’s direct testimony, he alleges that FPL only**
16 **uses estimates when it benefits them. What is your response to his**
17 **allegation?**

18 **A.** FPL does not agree with Mr. Larkin’s allegation. The question used by Mr.
19 Larkin to introduce his criticism focuses on the correct issue, using budget
20 variances without adequate analysis, which he then ignores in his response.

21
22 FPL objects to anyone measuring the difference between the budgeted amount
23 and the actual amount, and without further analysis concluding that the whole

1 difference is due to storm. A variance only identifies the amount of a difference;
2 it does not in and of itself indicate why the variance occurred. These variances
3 can and do result from a variety of causes that can only be determined from a
4 critical analysis of business activities and costs, both planned and actual. For
5 example, if a business unit is able to save costs due to improvements that are
6 made during the normal course of business, and as a result comes in under
7 budget, the use of that budget variance to make an adjustment for storm costs
8 makes an incorrect assumption that the under run for that business unit was due
9 to savings from working on storm restoration. This assumption is improper and
10 provides a disincentive to the business unit to make improvements during the
11 normal course of business. This results in bad policy and is not in the best
12 interest of our customers.

13
14 Furthermore, FPL simply has no basis for determining the amount of a year-end
15 budget variance until, at, or very close to the year-end. As such, any estimate of
16 the year-end variance would lack the requisite degree of substantiation that
17 would enable it to be used in financial statements filed with the Securities &
18 Exchange Commission.

19
20 FPL recognizes that estimates must be utilized in determining storm costs to be
21 recovered since the final costs of some completed projects are not known and not
22 all work related to storm restoration has been completed. In fact, Section
23 366.8260, Florida Statutes, allows for the use of estimates in determining the

1 amount of storm costs to be securitized. The critical difference between these
2 estimates and those that FPL objects to are that the estimates used in storm
3 accounting and elsewhere in FPL's financial statements are based on sufficiently
4 definitive information to make the estimate appropriate rather than
5 unsubstantiated predictions of the future. Using these unsubstantiated estimates,
6 would violate Generally Accepted Accounting Principles and would cause FPL
7 to be in violation of the Sarbanes-Oxley Act.

8 **Q. On pages 10 and 11 of Mr. Larkin's direct testimony, he alleges that FPL**
9 **utilizes an incremental cost approach when recording capital costs related to**
10 **the 2005 storms but uses an actual cost approach for expense items. What is**
11 **your response to his allegation?**

12 A. FPL does not agree with Mr. Larkin's allegation. First of all, the costs that FPL
13 capitalized represent the full cost of those property additions and retirements
14 under normal circumstances. The system used to estimate these dollars is the
15 same standard costing system FPL utilizes to calculate and record actual plant
16 costs. As provided in FPL's response to Staff's Second Set of Interrogatories,
17 Question No. 83 in Docket No. 060038-EI, FPL believes it is appropriate to
18 remove capital costs from a storm recovery mechanism since it is provided an
19 opportunity to recover those costs through base rates in the future. However,
20 such recovery is not guaranteed and therefore, the actual risk of recovery now
21 resides with FPL. At a minimum, the capitalized costs will reduce earnings until
22 base rates are adjusted in conjunction with a future rate case.

23

1 Secondly, the Company believes its proposed methodology, the Actual
2 Restoration Cost Approach with an adjustment to remove capital costs, is
3 straightforward, less costly to administer, and in the end yields the same answer
4 as the incremental cost approach when the appropriate adjustments are made.
5 Support for why FPL believes its proposed method is the appropriate approach is
6 included in FPL's response to OPC's Second Set of Interrogatories, Question
7 No. 28 in Docket No. 060038-EI:

8 "FPL's proposed approach accurately captures the cost of repairing
9 damage to the electrical system caused by a hurricane that are neither
10 included nor otherwise provided for in FPL's base rates, follows
11 Generally Accepted Accounting Principles, uses verifiable and reliable
12 cost data, uses well-established FPL cost reporting and cost allocation
13 processes, is auditable, does not unduly increase distribution or other rate
14 base as a result of storm restoration activities, and mirrors an insurance
15 replacement approach."

16
17 The Actual Restoration Cost Approach measures the full cost of repairing the
18 damages caused by the hurricanes. The capital adjustment measures the full
19 normal cost of capital additions and retirements. Reducing the actual restoration
20 costs by the capital adjustment does not create an inconsistency as alleged by Mr.
21 Larkin.

22
23

1 **Q. On page 13 of Mr. Larkin's direct testimony, he indicates that the**
2 **Company's methodology does not replicate cost recovery under a third**
3 **party replacement cost insurance policy because there is no deductible. Do**
4 **you agree?**

5 **A. No. While FPL agrees that a third party replacement cost insurance policy**
6 **would have a deductible, Rule No. 25-6.0143, Florida Administrative Code**
7 **(Rule No. 25-6.0143), requires FPL to charge that deductible and uninsured costs**
8 **to Account 228.1, Accumulated Provision for Property Insurance. FPL's**
9 **proposed methodology, the Actual Restoration Cost Approach with an**
10 **adjustment to remove capital costs, complies with this Rule as the net amount**
11 **charged to this account is exclusive of any insurance recovery and only costs**
12 **directly related to storm restoration are included. Accordingly, except for the**
13 **capital adjustment, FPL's proposed methodology produces exactly the same**
14 **result as would a replacement cost insurance policy where any deductible would**
15 **be charged to the storm reserve and ultimately recovered from customers.**

16

17 If FPL had commercial insurance to cover damages associated with storms, as it
18 did in Hurricane Andrew, it would have charged the associated deductibles to the
19 storm reserve per Rule No. 25-6.0143. In fact, FPL charged \$21.0 million of
20 deductibles associated with Hurricane Andrew to the storm reserve in 1992 as
21 required by the Rule discussed above.

22

1 In addition, what Mr. Larkin does not tell the Commission is that a replacement
2 cost insurance policy does not use an incremental approach. Thus, his statement
3 regarding backfill and catch-up costs is factually accurate but totally misleading.
4 When the Actual Restoration Cost Approach is used, backfill, catch-up, and
5 related costs are not charged to the storm reserve and the costs presented by FPL
6 in this proceeding do not include those costs. Also, while an insurance policy
7 might not directly cover advertising and employee assistance costs, they are
8 often subsumed within the overhead costs allowed in the policy. If not, because
9 there is an obvious customer benefit, they would still be chargeable to the storm
10 reserve.

11 12 **2004 STORM-RECOVERY COSTS**

13 **Q. Does FPL propose any adjustments to its 2004 storm costs?**

14 A. Yes. The adjustments to the 2004 storm costs that FPL believes are appropriate
15 are shown on my Document No. KMD-11. In addition, page 2 of this document
16 addresses revisions to Ms. DeRonne's proposed adjustments. Each of these
17 adjustments will be discussed in detail later in my testimony.

18 **Q. What does FPL suggest that the Commission do with these adjustments?**

19 A. FPL recommends that the Commission address the adjustments through a final
20 true-up process. There are still uncertainties relative to the 2004 and 2005 storm
21 costs. Also, there will be differences between other estimates used in this
22 proceeding and the actual costs as discussed below.

1 **Q. In Audit Finding No. 11 of the Commission Staff's Audit Report issued on**
2 **February 14, 2006, it states the amount of unrecovered 2004 storm costs on**
3 **Document No. KMD-3 of your direct testimony is different than what is**
4 **recorded in the general ledger as of December 31, 2005. Do you agree with**
5 **this finding?**

6 A. Yes. However, as discussed below, FPL does not believe any action is required
7 at this time.

8 **Q. Please explain why this difference exists and how FPL proposes to handle it.**

9 A. As provided in FPL's response to Staff's 3rd Set of Interrogatories, Question No.
10 149 in Docket No. 060038-EI, the amount recorded for unrecovered 2004 storm
11 costs in the General Ledger as of December 31, 2005 of \$293,930,364 and the
12 amount shown on Document No. KMD-3 of \$294,680,000 are different for the
13 following reasons:

- 14 1. The beginning deficiency balance on the General Ledger was
15 \$441,634,351, while the amount shown on Document No. KMD-3 of
16 \$441,990,525 equals what was approved in the 2004 Storm Cost
17 Recovery Order;
- 18 2. The amount of interest shown on Document No. KMD-3 is based on
19 actuals through November 30, 2005, and an estimate for December 31,
20 2005; and
- 21 3. The amount of billed revenues shown on Document No. KMD-3 is based
22 on actuals through November 30, 2005, and an estimate for December 31,
23 2005.

1 The beginning deficiency balance reflected in Document No. KMD-3 in my
 2 direct testimony is different than what was recorded on the general ledger due to
 3 the rounding of actual storm funds available to offset the amount of 2004 storm
 4 costs approved for recovery from \$354,357,874 to \$354,000,000. The
 5 explanation of this difference is explained below:

| | <u>Order</u> | <u>G/L</u> | <u>Difference</u> |
|-------------------------------------|----------------------|----------------------|--------------------|
| 7 Storm Costs Approved for Recovery | \$798,100,000 | \$798,100,000 | \$0 |
| 8 Storm Funds Available | <u>354,000,000</u> | <u>354,357,874</u> | <u>357,874</u> |
| 9 Amount to Recover from Customers | <u>\$444,100,000</u> | <u>\$443,742,126</u> | <u>\$(357,874)</u> |
| 10 Jurisdictional Amount (99.525%) | <u>\$441,990,525</u> | <u>\$441,634,351</u> | <u>\$(356,174)</u> |

11
 12 The amounts of interest incurred and billed revenues recorded on the general
 13 ledger reflect actual amounts whereas the petition reflected estimated amounts as
 14 shown on Document No. KMD-3. These amounts will continue to be different
 15 since the amounts recorded in the general ledger each month will be based on the
 16 actual activity. FPL believes that any difference in the estimated unrecovered
 17 2004 storm recovery costs and the actual amounts should be addressed as part of
 18 the final true-up process.

19 **Q. In Audit Finding No. 5 of the Commission Staff's Audit Report issued on**
 20 **February 14, 2006, it states that FPL has not prepared billings to other**
 21 **companies for repairing the other companies' poles during the 2004 storm**
 22 **restorations. What is FPL's response to this finding?**

23 **A.** The provisions of the joint use agreements between FPL and other companies
 24 that own poles provide that when FPL replaces another owner's pole, FPL is

1 entitled to be reimbursed for all reasonable costs and expenses that would not
2 otherwise have been incurred if the owner had made the replacement. As of
3 March 31, 2006, FPL has completed its survey of the poles replaced in 2004 and
4 has billed the other party a total of \$7.4 million. As a result of issuing the bill,
5 FPL has credited the normal costs charged to capital for these poles of \$2.0
6 million and credited the difference of \$5.4 million to the storm reserve. In the
7 event the amount received by FPL is different than the billed amount, FPL
8 believes it should be addressed through a final true-up process.

9 **Q. On page 36 of Ms. DeRonne's direct testimony, she proposes that an**
10 **adjustment be made to FPL's 2004 storm recovery costs for these**
11 **reimbursements. Do you agree with the \$5,564,858 she is proposing to**
12 **exclude from recovery?**

13 A. No. The amount to remove from the 2004 storm costs should be \$5,432,966.
14 This amount was determined by subtracting the normal cost of capital for these
15 poles of \$1,986,844 from the total amount billed of \$7,419,810. FPL utilized its
16 standard work management system to calculate what the normal cost of these
17 poles would be and as discussed above, has made an adjustment to capital for
18 these amounts. When the normal cost of capital for these poles were removed
19 from the 2004 storm costs per the 2004 Storm Cost Recovery Order, they were
20 recorded to plant-in-service. Therefore, the effect of this adjustment results in
21 the elimination of the capital costs associated with these third party poles from
22 FPL's books and records. As such, they will not be included in FPL's rate base

1 in future rate proceedings. The necessary adjustment to the 2004 storm costs is
2 shown on my Document No. KMD-11.

3 **Q. On page 32 of Ms. DeRonne's direct testimony, she recommends an**
4 **adjustment to remove for all claims outstanding and pending lawsuits FPL**
5 **had estimated and accrued as of July 31, 2005. She goes on to state that**
6 **these costs do not directly relate to storm restoration and are considered**
7 **when base rates are determined. Do you agree with her recommendation?**

8 A. No. Any litigation costs that are directly related to storm restoration should be
9 recoverable. In other words, but for the restoration effort associated with the
10 2004 storms, these costs would not have been incurred. If the Company
11 determines that any of these costs are not a result of storm restoration activities,
12 it will remove them from storm cost recovery.

13

14 FPL is a member of the Edison Electric Institute (EEI), and the Southeastern
15 Electric Exchange (SEE), where the members of these organizations have a
16 mutual aid agreement to help each other when disasters such as hurricanes occur.
17 These organizations have guidelines as to what they can charge each other for
18 this assistance as well as the timing of submitting their costs for recovery via
19 invoices once assistance has been provided. The general framework of the
20 mutual aid assistance agreement is that each company is entitled to recover all
21 reasonable costs incurred for providing assistance to the host utility. It is not a
22 profit making venture.

23

1 Support for including litigation costs in FPL's storm costs is provided in
2 principle 11 of the Edison Electric Institute's "Suggested Governing Principles
3 Covering Emergency Assistance Arrangements Between Edison Electric
4 Institute Member Companies":

5 "Requesting Company shall indemnify, hold harmless and defend the
6 Responding Company from and against any and all liability for loss,
7 damage, cost or expense which Responding Company may incur by
8 reason of bodily injury, including death, to any person or persons or by
9 reason of damage to or destruction of any property, including the loss of
10 use thereof, which result from furnishing emergency assistance and
11 whether or not due in whole or in part to any act, omission, or negligence
12 of Responding Company except to the extent that such death or injury to
13 person, or damage to property, is caused by the willful or wanton
14 misconduct and / or gross negligence of the Responding Company.
15 Where payments are made by the Responding Company under a
16 workmen's compensation or disability benefits law or any similar law for
17 bodily injury or death resulting from furnishing emergency assistance,
18 Requesting Company shall reimburse the Responding Company for such
19 payments, except to the extent that such bodily injury or death is caused
20 by the willful or wanton misconduct and / or gross negligence of the
21 Responding Company."

22

1 Therefore, if an employee of an assisting utility causes an accident or injury
2 during storm restoration, the Company is obligated to reimburse the assisting
3 utility for those costs. Since not all of the cases have been resolved, FPL must
4 maintain an accrual for the ultimate cost of these accidents. If the ultimate costs
5 incurred differ from the estimates, the difference will be reflected in the final
6 true-up process.

7
8 Removal of these costs from storm recovery would in effect attribute them to
9 base rates. Since these litigation costs are extraordinary in nature, it is highly
10 unlikely they would be recognized for recovery when setting base rates. It has
11 been the Commission's practice in setting base rates to eliminate non-recurring
12 costs. To disallow these costs for both storm recovery purposes and in a base
13 rate proceeding would prohibit FPL from recovering prudently incurred costs.

14 **Q. Ms. DeRonne also states on page 32 of her direct testimony that 2004**
15 **litigation costs "were not presented as outstanding storm related costs at the**
16 **time of the prior case." Do you agree with her assertion?**

17 A. No. When FPL presented its 2004 storm costs, it had included an estimate for
18 these costs as part of the \$890.0 million it requested in Docket No. 041291-EI.
19 Nothing has or even could be added to that amount since FPL agreed that \$890.0
20 million was an amount it would not exceed. As shown on my Document No.
21 KMD-12, FPL has not exceeded the total amount of 2004 storm costs of \$890.0
22 million at any point in time.

1 **Q. Has FPL determined if any of the litigation costs related to the 2004 storms**
2 **should be removed from storm cost recovery?**

3 A. Yes. In a supplemental response to OPC's Fifth Set of Interrogatories, Question
4 No. 108 in Docket No. 060038-EI, FPL stated that upon further review of its
5 2004 litigation costs charged to the storm reserve, it has removed \$0.6 million
6 associated with claims that were not a direct result of the restoration effort. This
7 adjustment was made in March 2006. As a result, all of the remaining 2004
8 litigation costs that have been charged to the storm reserve are costs that FPL is
9 required to indemnify foreign utilities for the uninsured portions of any claims
10 that result from their assistance in FPL's storm restoration efforts and would not
11 have been incurred but for the restoration effort associated with the 2004 storms.
12 This adjustment to the 2004 storm costs is shown on my Document No. KMD-
13 11.

14 **Q. On page 32 of Ms. DeRonne's direct testimony, she asserts that FPL is not**
15 **projected to incur the \$21.7 million of 2004 storm costs the Commission**
16 **ordered FPL to charge to its storm reserve in the 2004 Storm Cost Recovery**
17 **Order and, therefore, that amount should be removed from the amount of**
18 **2004 storm recovery costs. Do you agree with this assertion?**

19 A. No. The \$21.7 million is not in addition to the total amount of storm costs FPL
20 requested in Docket No. 041291-EI. Rather, it was included in the total amount
21 of uninsured storm costs requested of \$890.0 million. As such, the \$21.7 million
22 was incurred in 2004.

23

1 The Commission did not include the \$21.7 million in the amount being
 2 recovered through the 2004 storm restoration surcharge and ordered FPL, as
 3 shown on page 20 of the 2004 Storm Cost Recovery Order, to charge this
 4 amount to the storm reserve:

5 "The fifth, and last, entry is a debit to the storm reserve to transfer
 6 \$21,700,000 from restoration costs that are recoverable through the
 7 surcharge to restoration costs that are not recoverable through the
 8 surcharge."

9

10 The following schedule reconciles FPL's total 2004 total system storm costs to
 11 the net system amount approved by the Commission in the 2004 Storm Cost
 12 Recovery Order:

13

| | | |
|----|---|-----------------|
| 14 | Total 2004 Storm Costs Identified in Docket No. 041291-EI | \$ 999.0 |
| 15 | Insurance Proceeds | <u>(109.0)</u> |
| 16 | Total 2004 Uninsured Storm Costs | \$ 890.0 |
| 17 | Commission Adjustments per Order – Recorded in 9/05: | |
| 18 | Storm Costs Charged to Capital | (70.2) |
| 19 | Storm Costs Charged to Storm Reserve | <u>(21.7)</u> |
| 20 | Net System Amount of 2004 Storm Damage Costs | <u>\$ 798.1</u> |

21

22 Since the \$21.7 million was approved but not included in amount of costs being
 23 recovered in the 2004 storm restoration surcharge, FPL believes that this amount

1 should be included for recovery at this time. Therefore, it has appropriately
 2 included the remaining balance of \$1.3 million of the \$21.7 million, as shown on
 3 my Document No. KMD-3, as part of the total costs to be securitized in this
 4 proceeding.

5 **Q. Did FPL stop charging 2004 storm costs to the storm reserve by July 31,**
 6 **2005 as required in the 2004 Storm Cost Recovery Order?**

7 A. Yes, only the costs resulting from 2004 storm restoration activities that had been
 8 identified as of July 31, 2005 are included in the amount of 2004 storm costs. As
 9 of that date and as shown on my Document No. KMD-12, the total storm costs of
 10 \$890.0 million were charged to the storm reserve in FPL's accounting records.
 11 This amount consisted of the following (in millions) as of July 31, 2005:

| | | |
|----|---|-----------------|
| 12 | | |
| 13 | Actual Expenditures | \$ 852.6 |
| 14 | Accruals - Work Completed but Not Billed | 8.8 |
| 15 | Accruals - Work to be Performed after 7/31/05 | <u>28.6</u> |
| 16 | Total 2004 Uninsured Storm Costs | <u>\$ 890.0</u> |

17

18 FPL has committed to limit its 2004 storm costs to \$890.0 million. Therefore, if
 19 the actual amount is greater than what was charged to the storm reserve as of
 20 July 31, 2005, the difference will be absorbed by the Company, and if the actual
 21 amount is less than the amount charged to the storm reserve, FPL recommends
 22 the difference be addressed as part of a final true-up process.

1 **Q. Why did FPL include accruals for 2004 storm costs not actualized as of July**
2 **31, 2005?**

3 A. FPL acted with due diligence in completing as many projects as possible before
4 July 31, 2005; however, FPL had to balance its obligation to serve its customers
5 with available resources and the proper utilization of those resources. Therefore,
6 FPL made every effort to evaluate and accurately estimate the costs associated
7 with the remaining work to be completed as of July 31, 2005, and to ensure that
8 these costs were appropriately associated with the 2004 storms.

9
10 For example, if a power plant has been brought back online after a storm without
11 any safety concerns but is still in need of repairs due to storm damage, it is more
12 cost efficient for customers if FPL makes necessary repairs during the plant's
13 next scheduled outage. If FPL were to bring that power plant down to make
14 repairs by an arbitrary cut-off date, then the load the plant serves would have to
15 be met from an alternate source of generation, possibly with higher fuel costs,
16 which would adversely affect customers.

17 **Q. Ms. DeRonne asserts that \$21.5 million related to Nuclear storm damages**
18 **were not identified for recovery by FPL during the prior case and should be**
19 **removed from the 2004 storm costs. Do you agree with this assertion?**

20 A. No. When FPL presented its 2004 storm costs, it had included an estimate for
21 these costs as part of the \$890.0 million it requested in Docket No. 041291-EI.
22 As shown on my Document No. KMD-12, FPL has not exceeded the total
23 amount of 2004 storm costs of \$890.0 million at any point in time.

1

2 The \$21.5 million amount was reduced in February 2006 due to the correction of
3 an error in recording storm costs in 2005. A storm related payment was
4 incorrectly charged to a non-storm work order due to a transposition error in the
5 work order number. The effect of correcting this error is to reduce the balance
6 available for uninsured nuclear costs to \$20.5 million.

7

8 The \$20.5 million represents a net uncertainty due to the possibility that a portion
9 of the gross costs associated with repairing damage at the St. Lucie Nuclear Plant
10 will not be covered by insurance. When FPL estimated and removed \$109.0
11 million in insurance proceeds from its total amount of 2004 storm costs, there
12 still was an uncertainty regarding the recovery of storm costs associated with the
13 St. Lucie Nuclear Plant. This uncertainty still exists today because there is still a
14 question of resolving both the total costs and insurance reimbursements
15 associated with this plant. As a result, all remaining 2004 contingency amounts
16 have been assigned to nuclear to address this uncertainty. FPL is currently in the
17 claim process with the insurance carrier and the amount of any loss will not be
18 known until the claim is resolved. Further details of this estimate are addressed
19 by Mr. Warner in his rebuttal testimony.

20

21 In the event the Commission determines an adjustment should be made to
22 remove this amount from storm recovery, FPL requests that the Commission

1 make specific provision for charging any amount not recovered through
2 insurance to the storm reserve.

3 **Q. Has FPL revised its estimate for uninsured 2004 storm costs related to the**
4 **St. Lucie Plant?**

5 A. Yes. FPL met with Nuclear Electric Insurance Limited (NEIL) on March 9,
6 2006 and has estimated that \$15.4 million of storm damages associated with the
7 2004 storms will not be insured. This revised estimate was recorded on FPL's
8 books in March 2006 and is further addressed by Mr. Warner in his rebuttal
9 testimony. The necessary adjustment of \$5.1 million (\$20.5 million less \$15.4
10 million) is shown on my Document No. KMD-11. Since this estimate is still
11 subject to uncertainty, FPL will address any difference between the \$15.4 million
12 estimate and actual costs in a final true-up process.

13 **Q. What is the amount of 2004 storm costs that have not been actualized as of**
14 **March 31, 2006?**

15 A. At the end of each month, each Business Unit evaluates the actual charges
16 related to the 2004 storms for their department and accrues for any remaining
17 work to be completed. As of March 31, 2006, the 2004 storm costs that have not
18 been actualized relate solely to the portion of 2004 costs at the St. Lucie Nuclear
19 Plant not covered by insurance, as previously discussed, of \$15.4 million and an
20 obligation to reimburse foreign utilities for uninsured claims, as previously
21 discussed, of \$1.0 million. Because the timing of the resolution of these matters
22 is not exclusively under FPL's control and since these items could take a
23 prolonged period of time until they are finalized, it is difficult for FPL to state

1 with certainty what the actual amounts might be or when they will be actualized.
2 However, FPL will not adjust the total amount to be recovered to be more than
3 the amount approved in the 2004 Storm Cost Recovery Order.
4

5 **2005 STORM-RECOVERY COSTS**

6 **Q. Does FPL propose any adjustments to its 2005 storm costs?**

7 A. Yes. The adjustments to the 2005 storm costs that FPL believes are appropriate
8 are shown on page 1 of my Document No. KMD-13. In addition, page 2 of this
9 document addresses revisions to Ms. DeRonne's proposed adjustments. Each of
10 these adjustments will be discussed in detail later in my testimony.

11 **Q. What does FPL suggest that the Commission do with these adjustments?**

12 A. FPL recommends that the Commission address the adjustments through a final
13 true-up process. There are still uncertainties relative to the 2004 and 2005 storm
14 costs. Also, there will be differences between other estimates used in this
15 proceeding and the actual costs, as previously discussed.

16 **Q. Audit Finding No. 1 of the Commission Staff's Audit Report issued on**
17 **February 14, 2006 notes there is \$26.1 million of regular payroll included in**
18 **FPL's 2005 storm costs. Should this amount be included in the amount of**
19 **storm costs to be recovered from customers?**

20 A. Yes, this amount should be included in storm costs to be recovered by customers
21 because these costs were incurred by personnel performing restoration work.
22 This amount includes all regular payroll for exempt, non-exempt, and bargaining
23 personnel that worked in the restoration effort associated with the 2005 storms.

1 Included in this are amounts for Nuclear payroll that may be recoverable from
2 insurance, payroll related to capital work, and payroll that would have otherwise
3 been charged to clauses or capital.

4
5 In FPL's proposed methodology, the Actual Restoration Cost Approach with an
6 adjustment to remove capital costs, regular payroll is an appropriate cost to
7 charge to the storm reserve and therefore, should be recoverable from customers.
8 Under this approach, which mirrors a replacement cost insurance approach, all
9 costs that are a direct result of storm restoration are appropriately charged to the
10 reserve.

11 **Q. Should this amount be split between managerial and non-managerial?**

12 A. No. FPL does not track payroll costs between managerial and non-managerial
13 personnel in its normal course of business, therefore, requirements to do so
14 would impose additional system costs that would be unnecessary since this split
15 would only be used for storm recovery purposes. FPL does track payroll costs
16 by exempt, non-exempt, and bargaining unit personnel. The exempt category
17 includes all professional personnel that are paid overtime under approved
18 circumstances, such as storm restoration. The non-exempt and bargaining unit
19 categories include all personnel that, by law or contract terms, must be paid for
20 any overtime they work.

21 **Q. On page 7 of Ms. DeRonne's direct testimony, she recommends an**
22 **incremental approach adjustment for regular payroll of \$26.1 million from**

1 **the 2005 storm costs since she alleges these costs are already recovered**
2 **through FPL's base rates. Do you agree with this adjustment?**

3 A. No. First of all, the adjustment Ms. DeRonne proposes ignores the fact that the
4 budget which contemplated these normal payroll amounts also contemplated that
5 there would not be service interruptions due to hurricanes. Unfortunately, there
6 were interruptions due to hurricanes resulting in a significant amount of
7 budgeted costs not being recovered in base rates. Therefore, her proposal is
8 asymmetrical and only addresses the expense side of the ratemaking equation.
9 Further details of this concept were discussed earlier in my rebuttal testimony.

10

11 Second, if the Commission determines that an adjustment to remove regular
12 payroll is necessary, then it should consider the types of payroll previously
13 discussed as well as backfill, catch-up, and vacation buy-back as offsets to this
14 amount.

15 **Q. Does Ms. DeRonne agree that some of these costs should be considered?**

16 A. Yes. Ms. DeRonne recognizes the necessity for adjusting normal payroll for
17 amounts that normally would have been charged to clauses of \$2.7 million and
18 capital of \$8.0 million. These amounts were determined by having each
19 Business Unit analyze the normal payroll distribution for any of their employees
20 that worked on storm restoration during 2005. For those employees that would
21 normally have charged clauses or capital, a calculation of the amounts for those
22 time periods was made. A summary of these amounts by Business Unit are
23 included on my Document No. KMD-14.

1 **Q. On page 25 of Mr. Larkin's direct testimony, he asserts that backfill and**
2 **catch-up work are not directly related to storm restoration. Do you agree**
3 **with this assertion?**

4 A. No. First of all, backfill and catch-up costs are incurred as a direct result of
5 storm restoration. Personnel that do not have storm assignments must work
6 overtime or temporary labor must be employed to ensure essential activities are
7 carried out (backfill). Even with this additional effort and its associated cost,
8 backlogs are created and must be reduced using overtime or contract labor to
9 clear backlogs while at the same time ensuring that on-going customer needs are
10 met. Moreover, OPC's claim that FPL should incur normal labor plus backfill
11 and catch-up costs without any additional recovery creates a disincentive to FPL
12 using its own personnel for storm restoration. OPC's position is also
13 fundamentally unfair because it requires FPL to bear uncompensated costs twice,
14 once through normal payroll and then again through backfill and catch-up costs.

15
16 Secondly, OPC's claims are internally inconsistent. If one accepts OPC's
17 incremental cost approach, it is illogical that OPC would recommend an
18 adjustment under an argument that only incremental costs to base rates should be
19 considered, and at the same time recommend denying an offset for backfill and
20 catch-up work, which is an incremental cost. Backfill and catch-up costs have a
21 direct correlation to storm restoration. That is, the reason these categories of
22 costs exist is due to resources being deployed to restore service.

23

1 On page 18 of the 2004 Storm Cost Recovery Order, the Commission addressed
2 the consideration of backfill and catch-up in relation to incurred storm costs:

3 “Although we do not believe that these types of costs fall into the
4 category of ‘extraordinary,’ we believe that these costs could be
5 considered incremental if we could determine that the specific
6 expenditures supporting the \$9.0 million and \$7.0 million amounts
7 quoted by witness Davis were beyond regularly budgeted amounts. We
8 also believe that these types of costs may have been incurred to facilitate
9 restoration activities. However, the record in this case discloses no
10 information regarding regularly budgeted costs for these expenditures and
11 no calculations in support of the proposed amounts. Furthermore, we do
12 not believe that FPL has proven that the catch-up work and backfill work
13 could not be performed by employees during regular hours or by
14 contractors within the normal amount of budgeted contract work. The
15 burden is on FPL to demonstrate and document that there was such
16 overtime, that it was caused directly by loss of personnel to storm
17 assignments, and that it was not budgeted for. We find that FPL has not
18 provided sufficient information to carry its burden to demonstrate that the
19 catch-up and backfill amounts were incremental to those the utility would
20 incur under normal circumstances.”

21
22 On page 17 of the same Order, the Commission addresses OPC’s position on
23 catch-up and backfill:

1 “According to OPC, ‘catch-up, backfill, and incremental contractor work
2 may be consistent with OPC guidelines if the catch-up, backfill, and
3 incremental contractor work is an extraordinary expenditure that is
4 incremental to those the utility would incur under normal circumstances.’
5 OPC witness Majoros stated that to be recoverable through the storm
6 reserve, costs should be incurred to facilitate restoration activities.”

7 Therefore, the relationship of backfill and catch-up work to storm restoration
8 appears to have been well established in FPL’s 2004 storm docket (Docket No.
9 041291-EI).

10 **Q. If the Commission determines that regular payroll should be removed from**
11 **the 2005 storm costs for recovery, what is the amount of backfill and catch-**
12 **up costs FPL proposes to partially offset the \$26.1 million regular payroll**
13 **adjustment?**

14 A. As shown on page 2 of my Document No. KMD-13, the total amount of backfill
15 and catch-up costs that partially offset the \$26.1 million regular payroll
16 adjustment is \$8.7 million, of which \$7.9 million is for 2005 backfill and catch-
17 up work and \$0.8 million is for 2006 catch-up work. These costs represent
18 compensated overtime, temporary labor, and/or contractors to catch-up or reduce
19 backlogs created by resources being assigned to storm restoration activities. The
20 work can not be performed during regular working hours or by contractors
21 within the normal amount of budgeted work because all of that time is already
22 assigned to activities necessary to meet current customer demands. If those
23 demands did not exist, FPL would not have budgeted the cost in the first place.

1 **Q. How did FPL determine the amount of backfill and catch-up costs related to**
2 **the 2005 storms?**

3 A. The amount of the backfill and catch-up costs related to storm restoration during
4 2005 were determined by each Business Unit. These amounts were identified as
5 the unbudgeted cost associated with compensated overtime, temporary labor,
6 and/or contractors and which was incurred to satisfy job accountabilities of other
7 employees while they were assigned to storm or to reduce backlog created by
8 employees working on storm restoration. A summary of these amounts by
9 Business Unit are included on my Document No. KMD-14.

10

11 The documents which support these costs were provided in FPL's response to
12 OPC's Third Request for Production of Documents, Question No. 43 in Docket
13 No. 060038-EI, and FPL stands ready to defend them. Ignoring these
14 incremental costs makes no sense and is inconsistent with OPC's position that
15 only incremental costs not recovered in base rates should be allowed.

16 **Q. On page 8 of Ms. DeRonne's direct testimony, she states that she does not**
17 **agree that an offset of \$2.5 million related to Nuclear payroll that is**
18 **expected to be recovered through insurance should be an offset to regular**
19 **payroll. Do you agree with her statement?**

20 A. No. Under an incremental cost approach, nuclear payroll expected to be
21 recovered through insurance should not be included in the regular payroll
22 adjustment. If it is, then it will be subtracted twice from the total amount of 2005
23 storm costs to be recovered; once through the regular payroll adjustment and

1 then again when insurance proceeds are removed from the total amount of 2005
2 storm costs. This amount which partially offsets the regular payroll adjustment
3 is shown on page 2 of my Document No. KMD-13.

4 **Q. Mr. Larkin states on pages 26 and 27 of his direct testimony that vacation**
5 **buy-backs are the result of the Company's vacation policy and are not "a**
6 **direct result of storm restoration activities." Do you agree with this**
7 **statement?**

8 A. No. FPL purchased vacation from employees involved in the 2005 storm
9 restoration activities since they were unable to take advantage of their earned
10 vacation due to the timing and length of storm restoration efforts. Hurricane
11 Wilma caused severe damage to FPL's service territory on October 24, 2005 and
12 many employees worked through November to make repairs to FPL's damaged
13 infrastructure. As such, they were unable to take all the vacation they were
14 entitled to and normal workloads will not enable employees to take these days in
15 the future. Thus, customers benefited from having these employees perform
16 storm restoration duties instead of taking vacation. Therefore, these payments
17 are a direct result of the 2005 storms and should be allowed as an offset to the
18 \$26.1 million regular payroll adjustment, if the Commission determines this
19 adjustment is necessary.

20

21 In addition, if the Company did not purchase the vacation from the employees,
22 then they would have been entitled to roll this vacation over into the next year.
23 This would have resulted in the employee potentially taking additional vacation

1 in the subsequent year and not being available for service to customers. In order
2 to meet customers needs, FPL would then have had to either fill this void with
3 overtime or contractors, which would impose an incremental cost on the
4 Company and potentially its customers. The implementation of the buy-back
5 policy was specifically directed to avoid an extraordinary loss of trained
6 employees in 2006 due to excessive amounts of carryover vacation.

7 **Q. If the Commission determines that regular payroll should be removed from**
8 **the 2005 storm costs for recovery, what is the amount of vacation buy-backs**
9 **FPL proposes to offset the \$26.1 million regular payroll adjustment?**

10 A. As shown on page 2 of my Document No. KMD-13, the total amount of vacation
11 buy-backs to offset the regular payroll adjustment is \$1.2 million. This amount
12 was determined by identifying vacation buy-backs for employees that worked on
13 storm restoration.

14 **Q. If the Commission determines that regular payroll should be removed from**
15 **the 2005 storm costs for recovery, are there any other offsets FPL believes**
16 **should be taken into consideration?**

17 A. Yes. Under FPL's adjustments to the approach approved in the 2004 Storm Cost
18 Recovery Order shown on page 2 of my Document No. KMD-13, there is an
19 adjustment to remove regular payroll of \$26.1 million and another adjustment to
20 remove the normal capital costs of \$63.9 million from the amount of storm costs
21 to be recovered. Because the adjustment for normal capital costs includes a
22 component for regular payroll, if both the regular payroll and capital adjustments

1 are made, then the amount of regular payroll charged to capital will have been
2 subtracted from the amount of storm costs to be recovered twice.

3

4 As shown on my Document No. KMD-15, the total amount of estimated capital
5 expenditures of \$72.6 million has been recorded by FPL as of March 31, 2006
6 under the following categories: FPL regular payroll, contractors, materials,
7 vehicles, and other, including applied engineering. Of this amount, \$2.2 million
8 has been categorized as FPL regular payroll which is shown as an offset to the
9 \$26.1 million regular payroll adjustment on page 2 of my Document No. KMD-
10 13.

11 **Q. In Audit Finding No. 1 of the Commission Staff's Audit Report issued on**
12 **February 14, 2006, it notes that FPL has included \$60.3 million in overtime**
13 **payroll in its 2005 storm costs. Do you agree that these should be included**
14 **in storm costs?**

15 A. Yes. Consistent with FPL's proposed methodology, these costs are directly
16 related to storm restoration and are therefore appropriate for recovery. In
17 addition, under the incremental cost approach, these costs are also appropriate as
18 they are an incremental unbudgeted cost to the Company.

19 **Q. Ms. DeRonne states on pages 8 and 9 of her direct testimony that FPL has**
20 **included \$9.2 million in "Applied Pensions and Welfare." She goes on to**
21 **state that these costs are already included in base rates and "would not**
22 **increase as a result of a storm event," and therefore, should not be included**
23 **in the 2005 storm costs. Do you agree with her statements?**

1 A. No. Even if one were to accept an incremental cost approach, which FPL does
2 not, the \$9.2 million adjustment is incorrect and the supposition upon which it is
3 based is faulty.

4

5 The \$9.2 million represents payroll overheads consisting of pension, welfare,
6 payroll taxes and insurance, which is appropriately related to the regular payroll
7 and overtime pay included in FPL's 2005 storm costs. This amount is the sum of
8 all line items with footnote (a) identified in Attachment 1 of FPL's response to
9 OPC's Ninth Set of Interrogatories, Question No. 184 in Docket No. 060038-EI.
10 Footnote (b) of this attachment should have also been identified as payroll
11 loadings. The sum of the amounts identified with footnote (b) are \$0.3 million.
12 In addition, there was \$0.04 million of payroll loadings which fell below the
13 threshold of this interrogatory request and \$1.2 million required to adjust payroll
14 overheads to the correct amount. Therefore, the sum of payroll loadings
15 included in the 2005 storm costs is \$8.4 million. These amounts are shown on
16 my Document No. KMD-16.

17

18 The payroll overhead applicable to regular payroll included in the 2005 storm
19 costs is \$4.4 million (\$26.1 million at 16.69%). The overhead rate used is the
20 same overhead rate applied to regular payroll in the ordinary course of business.
21 This amount is shown on my Document No. KMD-16. Any difference between
22 the actual payroll overhead applicable to the final actual regular payroll and the
23 \$4.4 million will, if necessary, be addressed in the final true up process.

1

2

The payroll overhead applicable to overtime payroll included in the 2005 storm costs is \$4.0 million (\$60.3 million at 6.69%). The lower overhead rate applicable to overtime payroll is based on the assumption that only social security taxes would apply to overtime payroll. This amount is shown on my Document No. KMD-16. Any difference between the actual payroll overhead applicable to the final actual overtime payroll and the \$4.0 million will, if necessary, be addressed in the final true up process.

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Consequently, if the Commission disallows recovery of any portion of the regular payroll, then the applicable payroll overheads associated with this amount should be computed using the appropriate percentage above instead of removing the entire amount. The applicable percentage should also be applied to any regular payroll offsets approved by the Commission.

11

12

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15

Q. On page 10 of Ms. DeRonne's testimony, she recommends that an offset to fleet vehicles for the capital portion of \$2.8 million not be considered in determining the total amount of fleet vehicles that should be charged to the 2005 storms. Do you agree with this recommendation?

16

17

18

19

A. No. Under the incremental cost approach, there is an adjustment to remove fleet vehicle costs that are already included in base rates and another adjustment to remove the normal cost of capital from the amount of storm costs to be recovered. Included in both of these adjustments is an amount for the estimated capital portion of fleet vehicle costs. Therefore, if both the total amount of fleet

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21

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23

1 vehicle costs and capital adjustments are made, then the estimated amount of the
2 capital portion of fleet vehicle costs has been subtracted from the amount of
3 storm costs to be recovered twice.

4
5 Once FPL determined the total amount of company-owned fleet vehicle costs
6 related to the 2005 storms, which was provided in FPL's response to Staff's
7 Second Set of Interrogatories, Question No. 96 in Docket No. 060038-EI, FPL
8 applied the same capital/operations and maintenance split for vehicles utilized by
9 the Company in the normal course of business to determine the \$2.8 million
10 amount related to capital.

11
12 In addition, if the Commission adopts the budget based-incremental cost
13 approach advocated by OPC, a portion of the year-end operations and
14 maintenance budget variances for Fleet Services must be considered. As
15 discussed in Ms. Williams' rebuttal testimony, FPL exceeded its 2005 Fleet
16 Services operations and maintenance budget by \$3.2 million of which \$1.2
17 million for additional maintenance on its vehicles due to extraordinarily high
18 usage of the vehicles during storm restoration. This amount which partially
19 offsets the fleet vehicle costs is shown on page 2 of my Document No. KMD-13.

20 **Q. On page 10 and 11 of Ms. DeRonne's direct testimony, she recommends that**
21 **the 2005 storm costs be reduced by the year-end variance for**
22 **telecommunications costs of \$0.5 million, since FPL came in under budget.**
23 **Do you agree with this recommendation?**

1 A. No. This amount represents variances for multiple Business Units for local and
2 long distance service, cellular service, leased lines, pagers, and equipment
3 maintenance that were either greater or less than plan. These variances were not
4 due to savings from storm restoration during 2005. Two examples of factors
5 contributing to the variance are as follows: the Company was able to negotiate a
6 lower contract rate with its long distance carrier and revised its cellular phone
7 policy in mid-year 2005. FPL should not be penalized for its efforts at managing
8 costs solely because storms affected its service territory.

9
10 This is a good illustration of why FPL objects to making storm restoration cost
11 adjustments based solely on budget variances without further analysis. This
12 concern was discussed in more detail earlier in my testimony.

13 **Q. Ms. DeRonne states on page 12 and 13 of her direct testimony that FPL has**
14 **included \$0.3 million of repairs for cooling fans at Martin Unit 8 “even**
15 **though a warranty claim is being pursued.” She further states that this**
16 **amount should not be included in the 2005 storm costs. Do you agree?**

17 A. No. FPL has included this amount in its 2005 storm costs because the warranty
18 claim is being contested by the manufacturer. If FPL is successful in recovering
19 an amount under the warranty, then FPL will adjust the 2005 storm costs by this
20 amount. Until this has been finalized, FPL believes this amount has been
21 appropriately included in the 2005 storm costs and should not be adjusted at this
22 time.

23

1 If the Commission determines that this amount should be removed from storm
2 cost recovery, then FPL requests that specific provision be made to allow FPL to
3 charge the storm reserve to the extent any of the costs are not recovered through
4 the warranty.

5 **Q. On pages 18 and 19 of Ms. DeRonne's direct testimony, she recommends**
6 **that \$2.4 million related to the condenser tube repair at Martin Units 1 and**
7 **2 be removed from the 2005 storm costs. Do you agree that an adjustment**
8 **for this repair should be made at this time?**

9 A. Yes, however the effect of this adjustment should be addressed in the final true-
10 up process.

11

12 As provided in FPL's response to Staff's Third Set of Interrogatories, Question
13 No. 147 in Docket No. 060038-EI, the amount related to Martin Plant Unit 2
14 condenser tubes will be removed from the storm estimate since FPL was unable
15 to identify the necessary repairs as a direct result of 2005 storm damage. In
16 addition, FPL also stated that further analysis indicates the Martin Plant Unit 1
17 condenser tubes need to be completely replaced, not partially replaced as initially
18 estimated. A complete tube replacement is identified as a capital project. As
19 such, the revised estimate as of March 31, 2006 for condenser tube repair at the
20 Martin Units is \$2,785,364. This amount was then subsequently removed from
21 the 2005 storm costs and identified as capital. This adjustment is shown on page
22 1 of my Document No. KMD-13.

1 Q. On pages 19 and 20 of Ms. DeRonne's direct testimony, she states that
2 hydrolasing for the Martin Units "is a normal, recurring maintenance item"
3 and was projected to be performed during the next scheduled outages for
4 these units. Do you agree with Ms. DeRonne that \$0.2 million for these
5 costs should be removed from the 2005 storm costs?

6 A. No. Although hydrolasing may be a normal maintenance activity, the
7 hydrolasing performed at this time was not part of normal maintenance. Rather,
8 it was specifically the result of storm debris passing through the tubes and was
9 necessary to enable a proper assessment of the condition of the tubes after the
10 hurricane. As such, it is not a "normal, recurring maintenance item."

11 Q. On pages 20 and 21 of Ms. DeRonne's direct testimony, she recommends
12 that \$2.5 million for advertising costs and \$0.1 million for public relations
13 should be removed from the 2005 storm costs. Do you agree with Ms.
14 DeRonne's recommendation?

15 A. No. Public outreach advertising, including communications designed to keep
16 customers informed of the status of FPL's restoration efforts and to inform
17 customers of the extraordinary dangers that exist during storm restoration, should
18 be encouraged, not discouraged. These communications meet a critical customer
19 need for restoration and safety-related information after a natural disaster. As
20 such, public safety and public outreach advertising costs should be allowed.

21

22 Also, thank you advertising designed to recognize foreign crews who assist in
23 restoration efforts should be allowed in order to encourage their continued

1 support. These reasonable and necessary expenses are highly volatile and
2 extraordinary and would ordinarily not be included in the cost of service for
3 purposes of setting base rates.

4
5 Of the costs FPL has included in its 2005 storm costs, FPL has determined that
6 \$404,627 associated with the employee campaign radio and web advertisement
7 was image enhancing and that amount has been reversed from the storm reserve
8 during March 2006. FPL also removed \$17,949 related to conservation
9 advertising in March 2006. These adjustments are shown on my Document No.
10 KMD-13.

11 **Q. Mr. Larkin asserts on page 27 of his direct testimony that employee**
12 **assistance costs should not be recovered since they “are no different than**
13 **any other customer or employee of a non-utility company.” Do you agree**
14 **with his assertion?**

15 **A.** No. Our employees are fully committed to storm restoration and report to work
16 immediately after a storm passes. They can do so only because the Company
17 provides assistance for things such as roof tarps, ice, water, etc. that allow the
18 employee to immediately leave his or her home and report to work. If the
19 Company does not provide this assistance, the employee is going to have to take
20 care of these issues before reporting for storm duty which could impact their
21 ability to report to work as quickly as they otherwise would delaying the start of
22 restoration. These costs would not have been incurred, but for the need to restore
23 service due to outages caused by the 2005 storms as soon as possible. Therefore,

1 under either an incremental cost approach or FPL's proposed methodology, these
2 costs are appropriate for recovery as they are directly related to storm restoration
3 and are not a cost that would be budgeted or reflected in base rates.

4 **Q. Mr. Larkin states on page 28 of his testimony that uncollectible accounts**
5 **expense should not be included in the 2005 storm costs, as they are difficult**
6 **to directly relate to the effects of a storm. Do you agree with his statement?**

7 A. No. Since FPL mobilizes a large portion of its workforce to restore service to
8 customers as quickly and safely as possible, a majority of the resources that
9 would be utilized to mitigate uncollectible bills are reassigned to storm
10 restoration. Base rates assume that these mitigation efforts are in place and are
11 working. Therefore, delinquent customers receive additional days to pay and if
12 they do not ultimately pay, the amount of uncollectible write-off expense
13 becomes higher as a direct result of hurricane activity. Again, but for the
14 restoration effort resulting from the storms, these additional costs would not have
15 been incurred.

16

17 Furthermore, on page 16 of the 2004 Storm Cost Recovery Order, the
18 Commission stated the following:

19 "Further, we find that there is a direct relationship between hurricane
20 activity and the amount of uncollectible, or bad debt, expense incurred.
21 We believe that bad debt expense is not excludable from recovery
22 through the storm reserve simply because it is not a cost of repairing
23 FPL's system and restoring service."

1 Therefore, the Commission has acknowledged the cause and effect relationship.

2 **Q. How did FPL determine the amount of uncollectible accounts expense**
3 **related to the 2005 storms?**

4 A. The process used to determine and calculate the amount of uncollectible
5 accounts expense was provided in FPL's response to Staff's Second Set of
6 Interrogatories, Question No. 92 in Docket No. 060038-EI. This response is
7 provided as my Document No. KMD-17.

8 **Q. On page 21 of Ms. DeRonne's direct testimony, she recommends an**
9 **adjustment to remove \$2.8 million for estimated property damage and**
10 **personal injury costs under the General Counsel Business Unit, which was**
11 **noted in FPL's response to OPC's Ninth Set of Interrogatories, Question**
12 **No. 184 in Docket No. 060038-EI. She goes on to state that these costs do not**
13 **directly relate to storm restoration and are considered when base rates are**
14 **determined. Do you agree with her recommendation?**

15 A. No. Any property damage and personal injury costs that are directly related to
16 storm restoration should be recoverable. In other words, but for the restoration
17 effort associated with the 2005 storms, these costs would not have been incurred.

18

19 As I have previously stated, removal of these costs from storm recovery would in
20 effect attribute them to base rates. Since these costs are extraordinary in nature,
21 it is highly unlikely they would be recognized for recovery when setting base
22 rates. It has been the Commission's practice in setting base rates to eliminate
23 non-recurring costs. To disallow these costs for both storm recovery purposes

1 and in a base rate proceeding would prohibit FPL from recovering prudently
2 incurred costs.

3 **Q. Has FPL determined if any of its 2005 property damage and personal injury**
4 **costs should be removed from storm cost recovery?**

5 A. Yes. Upon further review of its 2005 property damage and personal injury costs
6 charged to the storm reserve, FPL has removed \$2.2 million of these costs from
7 recovery during March 2006. In addition, it has ensured that the remaining \$0.6
8 million of estimated 2005 property damage and personal injury costs are a direct
9 result of storm restoration. This adjustment is shown on my Document No.
10 KMD-13.

11 **Q. On page 14 of her direct testimony, Ms. DeRonne recommends that FPL**
12 **remove \$26.3 million in remaining contingencies from the 2005 storm costs.**
13 **Do you agree with this recommendation?**

14 A. No. FPL included contingencies in the 2005 storm cost estimate due to the
15 uncertainty regarding the ultimate cost of repairing the 2005 storm damages.
16 This is a normal practice when estimating the costs of any major project such as
17 a construction project. Because there are varying degrees of uncertainty, you do
18 the best job possible in identifying the work to be performed and in estimating
19 the cost of performing that work. Nevertheless, any prudent manager would
20 insist on including a contingency factor in any large estimate until the
21 uncertainties associated with the job are resolved. Perhaps the most important
22 thing to remember about contingencies, is that they are intended to address the
23 unknown. What ever you know has already been factored into the basic job

1 estimate, what you don't know obviously can't be included. This factor will
2 change as actual costs become known and will be eliminated when all costs are
3 known.

4
5 In a like manner, FPL estimates the costs of restoration projects based on the best
6 available information at the time the estimate is prepared, and a contingency is
7 included to account for uncertainty. As better information becomes known
8 and/or projects become actualized, the amount of contingencies FPL includes in
9 its filing will change. This has already occurred for the 2005 costs. As noted in
10 FPL's response to OPC's Ninth Set of Interrogatories, Question No. 183 in
11 Docket No. 060038-EI, the original amount of contingency included in FPL's
12 filing was \$44.5 million and the amount as of February 28, 2006 was \$26.3
13 million. This reduction was a result of costs being actualized, which is
14 consistent with the function of a contingency.

15
16 Also in March 2006, the accrual for corporate contingencies associated with
17 Hurricanes Dennis and Rita have been eliminated further reducing the
18 contingency to \$7.5 million. This adjustment is shown on page 1 of my
19 Document No. KMD-13. As I have previously stated, the amount of
20 contingencies FPL estimates at this time will change when actual costs become
21 known. Therefore, FPL recommends that this adjustment along with any unused
22 contingency for Hurricanes Katrina and Wilma be reflected in the final true-up
23 process.

1 **Q. On pages 28 and 29 of Mr. Larkin’s direct testimony, he states that exempt**
2 **employee overtime incentives should not be included in the 2005 storm costs**
3 **since their normal pay is “full compensation for all time that they are**
4 **required to put in.” Do you agree with this recommendation?**

5 **A.** No. The salaries of these employees are based on the time required for their
6 normal job requirements, not storm restoration. Prohibiting any incentive
7 payments made to employees who are involved in storm restoration that do not
8 get paid overtime to do so is inappropriate. This payment was determined in a
9 manner consistent with the manner in which overtime payments were computed
10 for other employees and was limited to the amount necessary to avoid inequities.

11

12 The exclusion of incentives provides management level personnel with a
13 disincentive to work storm restoration. These employees frequently work long
14 hours along side other employees who are not exempt from receiving overtime
15 pay which is unfair. The nature of storm restoration is such that all available
16 personnel are asked to report for storm duty to ensure the prompt restoration of
17 service to our customers.

18

19 It is important to note that of the \$60.3 million of overtime payroll FPL included
20 in its filing, only approximately 1.3%, or \$0.8 million, related to exempt
21 employee overtime incentives. This is a small amount of compensation to
22 ensure fairness for the long hours worked by these employees.

1 **Q. On pages 23 and 24 of her direct testimony, Ms. DeRonne recommends that**
2 **FPL offset its 2005 storm costs for amounts received from other power**
3 **companies for storm recovery assistance provided. Do you agree with this**
4 **adjustment?**

5 A. No. Those amounts have nothing to do with FPL's 2005 restoration efforts and
6 as such it is inappropriate to raise them in this proceeding. FPL does not seek to
7 recover its additional incremental cost for providing mutual aid assistance to
8 other companies and it therefore would be inappropriate to require FPL to credit
9 reimbursements for mutual aid against storm costs.

10

11 As previously discussed, FPL is a member of the Edison Electric Institute (EEI),
12 and the Southeastern Electric Exchange (SEE), where the members of these
13 organizations have a mutual aid agreement to help each other when disasters
14 such as hurricanes occur, and are entitled to recover all reasonable costs for
15 providing assistance to the host utility. It is not a profit making venture.

16

17 When FPL sends its personnel to assist others, it captures actual costs incurred in
18 a job order. When the assistance is complete, FPL applies appropriate loaders to
19 the job order, as it would for any third party billing, and then provides an invoice
20 to the host utility. Under the terms of the mutual aid agreements, FPL is not
21 allowed to bill the host utility for overtime it pays its remaining crews to
22 maintain work schedules due to the absence of personnel sent to assist the host

1 utility. These costs are charged to normal operations and maintenance expenses
2 by FPL and offsets the payments received from other utilities.

3

4 The adjustment proposed by Ms. DeRonne would create a disincentive to FPL's
5 participation in mutual aid arrangements. Any disincentive to participate when
6 other utilities are impacted by natural disasters is not in the best interest of FPL's
7 customers who rely on these utilities to provide assistance in return. It is
8 unlikely these utilities would provide assistance to FPL if we are unwilling to do
9 so when they are in need.

10 **Q. If the Commission determines that an adjustment for amounts received**
11 **from other power companies for recovery assistance provided is**
12 **appropriate, do you agree with Ms. DeRonne that \$6.9 million should be**
13 **adjusted?**

14 A. No. The amount computed by Ms. DeRonne is wrong. As provided in response
15 to OPC's Seventh Set of Interrogatories, Question No. 156 in Docket No.
16 060038-EI,

17 "The breakdown of the \$9,095,845 charged for the loan of FPL
18 employees and equipment to other power companies for storm restoration
19 is as follows: Base Payroll \$2,080,517; Overtime Payroll \$3,300,152;
20 Bonuses \$0; Travel and Other \$2,227,252; Materials \$75,819; Vehicle
21 \$659,404 and Administrative & General Expenses \$752,701."

22

1 Based on this information, other incremental costs should be added to the travel
 2 and other of \$2.2 million Ms. DeRonne agrees is incremental. Specifically, the
 3 \$3.4 million of overtime payroll and materials are incremental since they were
 4 not included in base rates or in the 2005 budget. In addition, FPL has calculated
 5 an amount of \$0.3 million in overtime for backfill work for the crews sent to
 6 assist the other utilities for Hurricane Rita. No computations are available for
 7 the other storms. Therefore, if the adjustment is made, the appropriate amount
 8 would be \$3.2 million, not the \$6.9 million Ms. DeRonne is recommending. The
 9 following schedule shows how the adjustment was determined:

| | | |
|----|-------------------------------------|--------------|
| 11 | Total Costs for Assistance Provided | \$9.1 |
| 12 | Less Incremental Costs: | |
| 13 | Travel and Other | (2.2) |
| 14 | Overtime and Materials | (3.4) |
| 15 | Backfill for Crews Sent to Assist | <u>(0.3)</u> |
| 16 | Net Adjustment to 2005 Storm Costs | <u>\$3.2</u> |

17 **Q. In Audit Finding No. 5 of the Commission Staff's Audit Report issued on**
 18 **February 14, 2006, it states that FPL has initiated the survey for repairing**
 19 **the other companies' poles during the 2005 storm restorations, but it is not**
 20 **completed. What is FPL's response to this finding?**

21 A. As I have previously discussed, the provisions of the joint use agreements
 22 between FPL and other companies that own poles provides that when a pole
 23 owner replaces another's pole, it is entitled to be reimbursed for all reasonable

1 costs and expenses that would not otherwise have been incurred if the owner had
2 made the replacement. Preparation of this billing requires FPL to complete
3 survey of the actual poles that were replaced. As of March 31, 2006, FPL has
4 not completed its survey of the poles replaced in 2005 but has estimated that the
5 amount to be reimbursed by third parties will total \$10.6 million. As such, FPL
6 has identified the estimated capital amount at normal cost associated with these
7 poles to be \$4.2 million and credited the estimated difference of \$6.4 million to
8 the 2005 storm costs. This adjustment is shown on page 1 of my Document No.
9 KMD-13. When the survey has been completed, any difference between the
10 estimated and actual amounts will be adjusted accordingly. The effect of any
11 adjustment will be reflected during the true-up of 2005 storm costs.

12 **Q. On page 17 of Ms. DeRonne's direct testimony, she states that an**
13 **adjustment should be made to FPL's 2005 storm recovery costs for these**
14 **estimated reimbursements. Do you agree with the \$7,923,288 she is**
15 **proposing to exclude from recovery?**

16 **A.** No. The amount to remove from the 2005 storm costs should be \$6,407,769.
17 This amount was determined by subtracting the estimated normal cost of capital
18 for these poles of \$4,156,615 from the total estimated amount of reimbursement
19 of \$10,564,384. FPL utilized its standard work management system to calculate
20 the normal cost of these poles would be and as discussed above, has made an
21 adjustment to capital for these estimated amounts.

22

1 When the actual amount of normal cost of capital for all capital projects is
2 determined, they will be recorded to plant-in-service. Therefore, when the
3 normal cost of capital related to the actual reimbursement from third parties is
4 determined, it will be credited to plant-in service. The effect of this adjustment
5 will result in the elimination of the capital costs associated with these third party
6 poles from FPL's books and records. As such, they will not be included in
7 FPL's rate base in future rate proceedings.

8 **Q. On page 22 of Ms. DeRonne's direct testimony, she recommends that an**
9 **adjustment be made to remove \$3.0 million due to an increase in FPL's**
10 **estimated capital costs. Do you agree with this recommendation?**

11 A. No. FPL acknowledges there is in an increase in estimated capital costs but
12 recommends that the adjustment be included in a final true-up process.

13

14 As stated on lines 4 through 9 of my direct testimony on page 27,

15 "The capital estimates may change for various reasons, including but not
16 limited to, true-up of material issuances/returns, true-up of actual costs
17 for assets other than Transmission and Distribution, and/or true-up arising
18 from subsequent processing required to allocate the capital costs at the
19 county level for property tax purposes. Any difference between what was
20 estimated and the actual capital costs will be charged or credited to the
21 Reserve."

22 The necessary adjustments are reflected in the amounts shown on line 12 on page
23 1 of my Document No. KMD-13 under the heading of "Capital Expenditures."

1 Q. On page 7 of Mr. Larkin's direct testimony, he alleges that a certain level of
2 materials and supplies function the same way and they are already
3 recovered through base rates. Do you agree with his conclusion?

4 A. No. It is apparent that Mr. Larkin does not understand how FPL handles
5 materials and supplies related to storm restoration. FPL establishes staging sites
6 to coordinate storm restoration activities, which facilitates those restoring power
7 ability to access materials and supplies. Available materials and supplies are
8 transferred out of inventory to these staging sites and where necessary, additional
9 materials and supplies required for storm restoration are purchased and shipped
10 directly to the staging sites. When storm restoration is complete, all unused
11 materials and supplies are transferred back to inventory or if not needed, are
12 returned to vendors for credits. In any event, only the materials and supplies that
13 are directly related to storm restoration are included in the Company's storm
14 costs. Furthermore, the Company does not charge replenishment of the materials
15 and supplies it used for storm restoration to its storm costs, but rather to
16 inventory.

17 Q. In Audit Finding No. 2 of the Commission Staff's Audit Report issued on
18 February 14, 2006, it notes that FPL included \$1.4 million for substation
19 landscaping and \$0.09 million in service center landscaping in its 2005 storm
20 costs. Does FPL believe landscaping costs should be included?

21 A. Yes. These costs are necessary to return landscaping to its pre-storm condition
22 in order to be in compliance with local code requirements. FPL was in
23 compliance with these requirements before the storms, and but for the 2005

1 storms, these costs would not have been incurred. As such, these costs should
2 qualify under both FPL's proposed methodology and the incremental cost
3 approach. Failure to comply with code requirements would result in the local
4 jurisdictions initiating code enforcement actions.

5 **Q. In Audit Finding No. 6 of the Commission Staff's Audit Report issued on**
6 **February 14, 2006, it notes that FPL included \$10.1 million in Nuclear**
7 **Preparation costs in its 2005 storm costs. Does FPL believe storm**
8 **preparation costs should be included?**

9 A. Yes. These costs are necessary in order to safely prepare nuclear sites for
10 approaching storms. The need for and nature of these activities are further
11 discussed by Mr. Warner in his rebuttal testimony.

12

13 Further, as illustrated on Document No. MW-3 of Mr. Warner's rebuttal
14 testimony, the total amount of the amount of Nuclear storm preparation costs
15 includes regular and overtime payroll of \$1.7 million and \$1.8 million,
16 respectively. Therefore, if the Commission requires an adjustment to remove
17 Nuclear storm preparation costs from the 2005 storm costs in addition to an
18 adjustment for regular payroll or overtime, the payroll costs included in the
19 Nuclear storm preparation costs should not be included in any such adjustment.
20 Otherwise, it will be subtracted from the total amount of 2005 storm costs twice.

21 **Q. In Audit Finding No. 10 of the Commission Staff's Audit Report issued on**
22 **February 14, 2006, it notes that FPL's supporting documentation for the**
23 **Power Systems Business Unit does not support the accrual on its books as of**

1 **December 31, 2005 for this Business Unit. What is FPL's response to this**
2 **finding?**

3 A. As indicated in FPL's response to Staff's Third Set of Interrogatories, Question
4 No. 148 in Docket No. 060038-EI, the difference of \$2.6 million between the
5 Power Systems Business Unit accrual recorded on the general ledger as of
6 December 31, 2005 and the supporting documentation provided was due to the
7 following:

- 8 • \$2.0 million for payroll overheads applied to Power Systems' accrued
9 costs for Hurricane Wilma which was recorded in the Power Systems
10 Business Unit cost rollup rather than the Accounting/Financial Other cost
11 rollup. The support for this should have been included along with the
12 supporting documentation submitted for the Power Systems Business
13 Unit; however, since payroll overheads are typically recorded in the
14 Accounting/Financial Other cost rollup, it was inadvertently omitted
15 when the supporting documentation was supplied to Staff.
- 16 • \$0.6 million for over/under fluctuations for Business Units other than
17 Power Systems. The monthly storm accrual process is based on a
18 Business Unit aggregation of estimated storm restoration costs which is
19 compared to actuals-to-date to derive the current accrual amount. The
20 Company has not adjusted its total accrual each month as the difference
21 has been immaterial, but reviews the estimate in order to determine if
22 adjustments to the accrual should be made. Since this difference was not
23 significant, they were not adjusted. However, these differences were

1 adjusted in the amounts included on line 12 titled "Other Changes in
2 Storm Cost Estimates" on page 1 of my Document No. KMD-13.

3 **Q. As indicated in Ms. Williams' rebuttal testimony on Document No. GJW-10,**
4 **there is still an amount estimated for the Power Generation Business Unit's**
5 **2005 storm costs. Why is this so?**

6 A. The reasons for the estimated amount is due to the unavailability of contractor
7 resources, and FPL's desire to meet its obligation to serve its customers in a cost
8 effective manner. This consideration was discussed in more detail earlier in my
9 testimony. Specifically, if a plant can continue to operate safely, FPL will delay
10 making storm repairs until a scheduled outage takes place rather than paying a
11 premium for contractors or causing higher cost generation to be used while the
12 plant is down.

13 **Q. If FPL brought the fossil units back online after the 2005 storms, why are**
14 **the estimated repairs still necessary?**

15 A. FPL sends out damage assessment teams to evaluate damages at its power plants
16 immediately after a storm passes. Damages which require immediate repair in
17 order to get the unit safely back online are done first. For any remaining work
18 identified, the repairs still need to be completed to ensure the efficiency and
19 reliability of the units, returning them to pre-storm condition. If these repairs are
20 not ultimately made at some point in time, the unit may be forced into an
21 unscheduled outage and the repairs would have to be completed at a premium,
22 and the load the plant serves would have to be replaced possibly with a higher
23 fuel cost, which will ultimately impact our customers.

1 **Q. As indicated in Ms. Williams' rebuttal testimony on Document No. GJW-10,**
2 **there is still an amount estimated for 2005 storm costs for Other FPL**
3 **Facilities. Why is this so?**

4 A. There is still an estimated amount due to the availability and cost of contractor
5 resources. FPL believes that it is not in the best interests of FPL or its customers
6 to pay premium rates for contractors unless absolutely necessary. As demand for
7 these resources begin to decline, FPL will be able to begin contracting for the
8 required work at a more reasonable cost.

9 **Q. On page 38 of Ms. DeRonne's direct testimony, she recommends that FPL**
10 **stop charging 2005 storm costs to the reserve as of December 31, 2006. Do**
11 **you agree with this date?**

12 A. No. As shown on Document No. GJW-10 of Ms. Williams' rebuttal testimony,
13 there are still projects remaining to be completed as of March 31, 2006 that
14 would fall past this cut-off date. There are many reasons for the extended timing
15 including when plants come down for outages, and availability of contractors or
16 other resources. The establishment of any arbitrary cut-off date for 2005 storm
17 charges to the reserve should recognize the projects listed on Document No.
18 GJW-10. In addition, when the actual costs for these projects are known, any
19 necessary adjustments to true-up these estimates should be allowed.

20 **Q. Are there any additional exhibits you are sponsoring?**

21 A. Yes. I have attached FPL's filed responses to Commission Staff's Audit Report
22 issued on February 14, 2006 and Supplemental Audit Report issued on March
23 10, 2006 as my Document No. KMD-18.

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CONCLUSION

Q. Please summarize your rebuttal testimony.

A. FPL has properly determined the amount of costs it incurred in restoring service to its customers following the 2005 hurricanes. These costs have been determined using the Actual Restoration Cost Approach. An adjustment to remove normal capital costs has been made.

My rebuttal testimony demonstrates that the Actual Restoration Cost Approach with an adjustment for normal capital costs is the appropriate way to measure restoration costs for recovery because it is straight forward and uses the same work order process to capture costs that it uses on a day-to-day basis.

Contrary to the allegations made by witnesses for OPC, there is no double recovery of storm costs because a significant amount of budgeted revenues were not realized due to service interruptions caused by the hurricanes, as shown on my Document No. KMD-10.

FPL has made a number of estimates in determining its storm costs, including those designed to address contingencies. Estimates are an inherent part of the accounting process and must be based on reliable information, not mere speculation regarding future events. FPL's estimates meet that criteria. Contingencies are a standard practice used to account for a range of unidentified

1 but likely additional costs associated with the restoration process. When costs
2 are fully actualized, all amounts for contingencies will be eliminated.

3

4 My rebuttal testimony rebuts the notion that FPL somehow profits from
5 hurricanes and the related restoration process. In fact, it suffers a significant loss
6 of revenue and ongoing additional resource demands due to the storm event.
7 Because personnel that ordinarily are engaged in work that would be considered
8 appropriate for base rate recovery are reassigned to storm restoration activities,
9 their costs are charged to the storm work orders for recovery by other means.
10 The work that they would otherwise be performing does not go away, nor do
11 base revenues get collected to pay these ongoing costs during the outages.

12

13 My rebuttal testimony also addresses certain of the adjustments proposed by
14 OPC witnesses DeRonne and Larkin and the Staff Audit Findings, and either
15 shows them to be improper adjustments, or provides corrected amounts as
16 appropriate.

17

18 Finally, my rebuttal testimony presents the latest updates to the Company's
19 storm estimates for 2004 and 2005 which are based on better information than
20 that available at the time the petition was filed. The Commission needs to
21 recognize that storm restoration and the resulting costs significantly lag the
22 actual storm event; therefore, true-ups will be necessary in order to ensure that
23 customers pay only the actual, full storm restoration costs. In addition, my

1 rebuttal testimony shows that the previously filed amount for securitization is
2 reasonable to utilize in establishing the securitization amount today and that the
3 ultimate amount of costs should be trued-up in a final true-up process.

4 **Q. Does this conclude your rebuttal testimony?**

5 **A. Yes.**

1 BY MR. ANDERSON:

2 Q You are also sponsoring some exhibits to your
3 rebuttal testimony?

4 A Yes, I am.

5 Q Could you tell us what those are?

6 A I'm sorry?

7 Q One moment. Those are KMD-10 through KMD-18, which
8 have been previously marked and admitted as Exhibits 118 to 126
9 on staff's master exhibit list.

10 A Yes.

11 Q Have you prepared a summary of your testimony?

12 A Yes, I have.

13 Q Would you please provide your rebuttal testimony
14 summary to the Commission?

15 A Yes, I will. Commissioners, FPL has properly
16 determined the amount of costs occurred in restoring service to
17 customers following the 2005 hurricanes. Those costs have been
18 determined using the actual restoration cost approach and an
19 adjustment to remove normal capital costs has been made. Use
20 of the actual restoration cost approach results in recognition
21 of the full cost of restoring service and is consistent with
22 the requirements of the Uniform System of Accounts adopted by
23 this Commission.

24 Witnesses for the Office of Public Counsel have
25 alleged that certain 2004 nuclear and legal claims had not been

1 identified as of July 31, 2005, which was the cutoff date
2 reflected in the 2004 storm order. My rebuttal testimony
3 establishes that both nuclear claims costs -- both nuclear and
4 claims costs had been identified and accrued before that date.

5 They also allege that the 21.7 million the Commission
6 ordered FPL to charge to the storm damage reserve in the 2004
7 order will not be incurred. Again, my rebuttal testimony
8 establishes that those costs had already been incurred at the
9 time the order was issued.

10 Turning now to the 2005 restoration costs, witnesses
11 for OPC proposed disallowances based on allegations of double
12 recovery or their perceptions as to what qualifies as a storm
13 restoration cost. My rebuttal testimony shows that contrary to
14 those assertions there has been no double recovery of costs.
15 In fact, FPL's pretax operating income declined by nearly \$47
16 million due to the hurricanes. Costs incurred in keeping the
17 public informed and warning them about safety hazards as well
18 as the increase in uncollectible accounts expense that results
19 from assigning collections personnel to storm restoration
20 duties are valid costs that would not have been incurred but
21 for the storm restoration effort.

22 Further, my rebuttal testimony highlights
23 inconsistencies in position taken by the OPC witnesses,
24 including advocating the use of the incremental method of
25 determining storm restoration costs while ignoring other real

1 incremental costs, such as backfill and catchup, and higher
2 vehicle maintenance due to higher vehicle usage in the storm.
3 Also recommending removal of estimated costs designed to
4 address contingencies while at the same time advocating the
5 development of estimates of year end budget variances. None of
6 the adjustments proposed by OPC Witnesses Larkin and DeRonne
7 should be made.

8 Finally, my rebuttal testimony provides updated
9 information on FPL's 2004 and 2005 storm costs and identifies
10 certain adjustments to the amounts reflected in our petition.
11 Due to the uncertainty of the amounts that remain for both '04
12 and '05, FPL recommends that such adjustments not be made until
13 the final update for each years storm cost is made. Even
14 considering the adjustments that are reflected in my testimony,
15 the amounts reflected in FPL's petition remain reasonable for
16 use in determining the amount to be securitized.

17 That concludes my summary.

18 MR. ANDERSON: Before making Mr. Davis available for
19 cross-examination, earlier today we asked some questions of
20 Ms. DeRonne concerning an exhibit that Mr. Davis actually
21 prepared. I had withdrawn it at that time and said that it is
22 correct, she is not the person who prepared it or has that
23 knowledge. What I would like to do prior to cross-examination
24 is ask a few questions laying the foundation for that exhibit
25 so the Commission knows what it is, the parties know what it

1 is, and then I will ask that it be admitted. And the purpose
2 of doing it now is to make sure that people have an opportunity
3 to ask questions about it during cross-exam.

4 CHAIRMAN EDGAR: Mr. Harris.

5 MR. BECK: Madam Chairman, may I respond before you
6 get advice?

7 CHAIRMAN EDGAR: Mr. Beck, you may.

8 MR. BECK: Madam Chairman, the company filed its
9 rebuttal testimony on Monday of last week. It is just entirely
10 improper for them to come in here the day of the hearing with
11 new evidence, new testimony, when their rebuttal was filed was
12 recently as last week and ask that it be put in. We haven't
13 had a chance to review it. We haven't had a chance to prepare.
14 I object to, once again, FPL coming in here at the last moment
15 with new evidence. There is a procedure set out in the
16 prehearing order for the parties to file testimony and people
17 to respond and this is a violation of that procedure.

18 MR. KISE: Madam Chair.

19 CHAIRMAN EDGAR: Just a moment, Mr. Kise. And thank
20 you. And I wanted to make sure, Mr. Anderson, are we
21 discussing what had previously been identified as Exhibit
22 Number 156?

23 MR. ANDERSON: I'm sorry?

24 CHAIRMAN EDGAR: So we are all clear, are we
25 discussing what had previously been identified as Exhibit

1 Number 156?

2 MR. ANDERSON: Yes. And in view of the lateness of
3 the hour and things, if parties don't believe this should be
4 the record, we were offering this because it is the latest most
5 accurate information. It only became available through our
6 accounting system as of April 11th. But if the parties don't
7 wish it in, the Commission do not wish it, it is certainly I
8 believe good and valuable information for the record, but we
9 don't wish to argue with anyone about it. I don't think it is
10 unfairly prejudicial, but it would be helpful for the record.

11 CHAIRMAN EDGAR: Mr. Kise.

12 MR. KISE: We would object on the same basis to the
13 exhibit. As Mr. Anderson just indicated, they have had it for
14 at least ten days now, this information. It is highly
15 inappropriate to allow the information into the proceeding that
16 we have no ability to take discovery on, test the veracity of,
17 inquire about other than with this witness who is here at 7:15
18 through no fault of his own. And we are all trying to move
19 along, but I think it is just inappropriate to accept this at
20 this point.

21 MR. ANDERSON: We will just withdraw it.

22 CHAIRMAN EDGAR: Mr. Anderson, I tend to agree.

23 Thank you.

24 MR. ANDERSON: Okay. Mr. Davis is available for
25 cross-examination.

1 CHAIRMAN EDGAR: Mr. Beck.

2 MR. BECK: Thank you, Madam Chairman.

3 CROSS EXAMINATION

4 BY MR. BECK:

5 Q Hello, Mr. Davis.

6 A Mr. Beck.

7 Q Mr. Davis, you filed your direct testimony in January
8 of this year, did you not?

9 A I believe so, yes. January 13th.

10 Q And your rebuttal testimony was filed Monday of this
11 past week, was it not?

12 A April 10th.

13 Q You have made a number of changes to your direct case
14 in your rebuttal testimony, have you not?

15 A No, I would -- I'm not sure I know how to answer that
16 question. As an accountant -- may I answer it as accountant?
17 I have changed numbers if that is what you are indicating.

18 Q Let my question be more precise if I could. Could
19 you turn to Page 21 of your testimony. Again, all of this is
20 your rebuttal testimony.

21 A I'm there.

22 Q And on the top half of Page 21 you discuss the
23 removal of \$.6 million in litigation costs related to 2004. Do
24 you see that?

25 A That is correct.

1 Q And you made that adjustment in March of 2006, is
2 that right?

3 A That is correct. It was done in the March closing as
4 part of the normal update that we would do of these costs.

5 Q What happened between January of 2006 and April of
6 2006 when you filed this rebuttal testimony causing you to
7 revise your 2004 litigation costs?

8 A The time period actually was December, because the
9 actions that I take typically are based upon focussing on a
10 quarter end close, which is very relevant and very significant
11 to a public company. The issue that came up is our attorneys
12 questioned whether or not that satisfied the criteria that we
13 were using. It is fundamentally I will say a but for criteria.
14 But for storm restoration these costs would not have been
15 incurred. And they looked at these and the particular ones, I
16 think there is confidentiality about the specific item, but
17 they concluded it did not satisfy that. And as a result, in
18 the March time period I removed them. I did the same thing
19 with respect to some legal costs that were included for 2005.
20 I think that was 2.2 million.

21 Q I don't understand, Mr. Davis. You applied a but for
22 in quotes test to determine whether litigation costs should be
23 charged against the hurricane?

24 A That is the criteria that I discussed with the
25 attorneys as to whether it was -- just a little bit of

1 background. The incident that had been reflected in the legal
2 accruals occurred as a result of downed wires in the hurricane.
3 The decision at the time was that it was related to the
4 hurricane. In coming through and discussing this, we reached a
5 different conclusion and we removed dollars from both the '04
6 costs and the '05 costs. We did not think that it was
7 appropriate. It was related to a condition which could
8 otherwise have existed outside of a storm.

9 Q Mr. Davis, what I'm trying to understand is what
10 happened subsequent to the December 2005/January 2006 time
11 period that changed your analysis that it didn't meet the but
12 for test that you have applied?

13 A I can only answer that discussing it with the
14 attorneys, the attorneys raised the issue, I looked at it, I
15 talked to them about it, and I concluded they were right.

16 Q The facts didn't change, did they?

17 A Absolutely not.

18 Q You just made a change in whether to charge it
19 against the reserve?

20 A I think that is fair.

21 Q Did you remove this because parties started asking
22 questions about the legal costs that you were charging to the
23 storm reserve?

24 A Absolutely not. I have no idea what motivated the
25 attorneys to raise the question. I removed it from the reserve

1 because in looking at the specific item, I felt the attorneys
2 were correct, that this risk existed outside of a storm
3 restoration situation.

4 Q Could you turn to Page 46. And on Lines 3 through 9,
5 or 10 I should say on Page 46 you discuss the removal of
6 \$2.2 million of costs during March 2006 related to legal
7 charges, is that right?

8 A That is what I alluded to a few moments ago.

9 Q This is for 2005 hurricane costs?

10 A Right. I alluded to it before I said -- when you
11 were asking me questions about '04, I said I made a comparable
12 adjustment for legal costs in '05. I had better information
13 and we undertook a search to say do we have a similar type
14 situation in the '05 storm costs, and the answer to that was,
15 yes, we did, and we took the appropriate action at the time.

16 Q And did the facts change subsequent to your filing of
17 your direct case that caused this, or it was just you relooked
18 at the analysis?

19 A In my mind, the facts that I was aware of changed and
20 that was that the attorneys brought to me specific information
21 where they questioned it. I looked at it and said you are
22 correct. So I suppose I moved from an ignorant state to an
23 informed state, and I made an appropriate adjustment. I don't
24 know how else to answer.

25 Q And did this have anything -- again, did this have

1 anything to do with the intervenor parties asking questions
2 about the charges that had been applied, or was this
3 independent analysis on FPL's part?

4 A Their testimony had not been filed at that point.
5 Certainly there was discovery going on through that time
6 period. I'm not even -- whether the attorneys were aware of
7 that testimony, I couldn't tell you. Not testimony, but the
8 interrogatories.

9 Q Would you turn to Page 43 of your rebuttal, please?

10 A I'm there.

11 Q And on Lines 5 through 10 you discuss a change you
12 made to your initial filing where you determined that \$404,627
13 associated with employee campaign radio and web advertising was
14 image enhancing, do you see that?

15 A Yes, I see that.

16 Q What changed between the time that you filed the case
17 in January of this year and March 2006 that made you change
18 your position on that?

19 A I would say it would be an ongoing review of the
20 costs. The company suffers from the same malady that I think
21 all businesses and government as well suffer from, and that is
22 that human beings are involved in the process, and human beings
23 make mistakes. Whether this actually constituted a mistake,
24 the person made a judgment that an employee campaign that was
25 related to storm, did that qualify, and the conclusion that was

1 reached was no, it did not.

2 What we have left in here now is safety advertising.
3 I think there is about 2.1 million left in there. It is safety
4 advertising. Is also information about when restoration would
5 be performed and we think those are appropriate.

6 Q Would you turn to the bottom of the previous page.
7 It is Page 42 beginning at Line 22.

8 A I'm there.

9 Q In addition to safety type advertising, you also
10 wished to charge customers through an extraordinary surcharge
11 the costs for thank you advertising designed to recognize
12 foreign crews who assist in the restoration efforts. Is that
13 right?

14 A Yes, that is correct.

15 Q Could you tell me why your customers should pay
16 through an extraordinary storm surcharge thank you advertising
17 that you have placed in newspapers?

18 A I mean, as a customer myself, I am darned thankful
19 that they are there. As to whether or not a relatively minor
20 cost like that should be in here, I think it is related to the
21 storm effort. I think we owe these people a debt of gratitude
22 for moving away from those families. I think we are all
23 feeling it being here the hours that we are. I certainly don't
24 like to be in Tallahassee that long. Aside from that, I think
25 it is a -- you have to remember, I'm a Gator. I mean, I think

1 it is something that is related to that effort. That's all I
2 can tell you.

3 Q And was that an ad that was placed in the Wall Street
4 Journal?

5 A I don't know exactly which ad that is.

6 Q Do you know whether that ad appears in the staff
7 audit, in the papers associated with that?

8 A It may. I mean, I have that back. I can look for it
9 if you would like.

10 Q I don't think it is necessary. Do you want to
11 respond?

12 A No. At this hour I'm not going to debate that issue
13 very long.

14 Q Mr. Davis, could you turn to Page 23 of your rebuttal
15 testimony.

16 A I'm there.

17 Q Okay. Beginning at Line 5 you address the, the
18 ceasing to charge 2004 storm costs to the storm reserve by
19 July 31st, 2005. Do you see that?

20 A Yes, I do.

21 Q Do you still have a copy of the Commission's order
22 regarding your 2004 costs that's been entered into evidence?

23 A I believe I do.

24 Q I believe it's Exhibit 150.

25 A It's Order 050937.

1 Q Yes. Could you go to the order at Page 21?

2 A I'm there.

3 Q Okay. And this is the section of the order that is
4 directed toward the cutoff point for charges to the storm
5 reserve, would you agree with that, that it starts on
6 Section C?

7 A Yes.

8 Q Okay. OPC's position in the 2004 case was that
9 Florida Power & Light should stop charging items to the storm
10 reserve once normal operations have resumed, outside
11 contractors have been sent home and employees are back working
12 a normal work week; is that correct?

13 A That's my general recollection. I wouldn't want to
14 be held to it. It's --

15 Q Well, it says that in the first paragraph in the
16 first sentence, does it not?

17 A I have not had an opportunity to read it all. Do you
18 want me to read it?

19 Q Sure. Please, to yourself.

20 A Okay. Okay. I've read that sentence.

21 Q The Commission rejected that approach, did it not?

22 A Yes, they did.

23 Q And they decided that a case-by-case review was a
24 better policy, did they not? It would be the last sentence on
25 Page 21.

1 A Right. I think the, the sentences which immediately
2 precede that particular sentence are very relevant to the
3 consideration because there was quite a discussion about
4 establishing an arbitrary cutoff date, and I think there's
5 already been testimony in here about some of the effects. I
6 think the, Mr. Warner talked about it. If, if --

7 Q Mr. Davis, all I asked was that they decided if a
8 case-by-case review is a better policy.

9 A And that, that is correct. That is what that says in
10 the -- and I think it's relevant to look at the preceding
11 sentence, which says that setting an arbitrary cutoff date may
12 give a perverse incentive for utilities to rush work and so
13 forth.

14 Q Okay. Could you turn to the next page, please.

15 A I'm there.

16 Q Okay. The third paragraph down, the first sentence
17 says, "In conclusion, we find that FPL shall stop charging
18 costs to the storm reserve no later than July 31st, 2005, for
19 restoration work related to the 2004 season." Do you see that?

20 A I see that sentence. I also see the first paragraph
21 on the page which appears to be the basis for that particular
22 cutoff date where they talk to Witness Williams, who is, I
23 would emphasize, the power systems person. She is not the
24 nuclear individual. It has long been recognized that the
25 nuclear work would extend well beyond July 31st, 2006 -- or

1 2005.

2 Q So you would agree then that the Commission's
3 conclusion was, was predicated on the information provided by
4 Witness Williams that precedes that conclusion in the
5 Commission's order?

6 A That appears to be what -- I'm just trying in the two
7 dates.

8 Q All right.

9 A That, that she indicated that the estimate, estimated
10 dates for feeder and lateral work, which, again, indicate to me
11 that it is only the power systems work and that's a --

12 Q Go ahead. I'm sorry.

13 A And that's the linkage that I see there.

14 Q It's based on actual work though, is it not?

15 A I wouldn't necessarily agree with that. The -- it
16 says "stop charging costs."

17 Q No. No.

18 A Well, fundamentally I had accrued the full amount of
19 the estimated loss associated with the storm of \$890 million.
20 That's net of insurance. The total amount was 999 million, 109
21 insurance, leaving 890, which was the subject of the 2004 storm
22 docket. All of those costs have been charged in there. Had
23 the work been performed? No. The work was being done in a
24 manner which we think was in the very best interest of our
25 customers.

1 Q You agree that the analysis that precedes the
2 Commission's conclusion is, is concerning the completion dates
3 of work, and the term, the word "work" is used in there, is it
4 not?

5 A I would agree that that is, that is what the order,
6 what that paragraph of the order there quoting Ms. Williams
7 says.

8 Q And so when the Commission concludes that FPL shall
9 stop charging costs to the storm reserve, wouldn't it be
10 reasonable to conclude they're talking about work?

11 A No, I don't -- I would not agree with that at all.
12 If they intended that, they should say, in conclusion, we find
13 that FPL shall stop doing any work that's chargeable to the
14 storm reserve. There's two elements to that: One is an
15 accounting, one is an actual performance of procedures.

16 Q On Page 24 of your rebuttal, at Line 17, you dispute
17 Ms. DeRonne's assertion that \$21.5 million related to the
18 nuclear storm damages were not identified for recovery by FPL
19 during the prior case; is that right? You take issue with her
20 statement to that effect?

21 A Yes, I do.

22 Q Okay. By the way, nuclear would include work on the
23 canal to St. Lucie, would it not, as part of that?

24 A Yes. That would be, that would be part of that work.

25 Q Okay. I have two exhibits I'd like to hand out.

1 These are responses by Florida Power & Light to OPC
2 interrogatories 109 and 107.

3 CHAIRMAN EDGAR: Okay. Mr. Beck, OPC interrogatory
4 number 107 will be numbered Exhibit Number 168.

5 MR. BECK: I'm sorry. Madam Chairman, which number?

6 CHAIRMAN EDGAR: Yes. Response to interrogatory
7 number 107 will be labeled as Exhibit Number 168, 168.

8 (Exhibit 168 marked for identification.)

9 MR. BECK: All right.

10 CHAIRMAN EDGAR: And FPL response to OPC
11 interrogatory number 109 will be labeled as Exhibit Number 169,
12 169.

13 (Exhibit 169 marked for identification.)

14 MR. BECK: Thank you, Madam Chairman.

15 BY MR. BECK

16 Q Mr. Davis, let me ask you to first look at the
17 response to interrogatory 109.

18 A I picked the wrong one. 109?

19 Q The answer there indicates that Florida Power & Light
20 has not included in the true-up estimate in this docket any
21 project which was not reflected in the testimony exhibits in
22 Docket 041291-EI and comprehended in FPL's estimate of storm
23 restoration costs, which estimate FPL agreed not to exceed; is
24 that right?

25 A I've not seen this before, but that is, that is an

1 accurate reading.

2 Q Okay. Let me ask you this. Do you know whether
3 that's a true statement to your own knowledge?

4 A I have some concerns about the statement. The reason
5 that I have concerns about the statement is the precise reason
6 why we have had all of the debate about -- I think it's -- is
7 it 156 that we've been having all the debate about? That
8 exhibit, what was missing in the 2004 storm docket, and it was
9 the -- and the reason why was that the docket occurred before
10 the July cutoff date. There was not a, what I would consider
11 to be a compilation of all amounts that were accrued in the
12 general ledger as of July 31st, which was the cutoff date.
13 That to me is the definitive record in all cases. I do not
14 know that such a, even a comparable document was, was produced
15 in the '04 docket.

16 Q Okay. So, let me, let me make sure I understand.
17 You're telling me that you do not agree with the company's
18 response in 109 that FPL has not included in the true-up
19 estimate in this docket and so forth?

20 A I neither agree or disagree. I'm saying I have
21 concerns because I am not sitting here and willing to tell you
22 that I know every single document that was produced in the 2004
23 docket. And the only way that I can answer that again, falling
24 back on being an accountant, is if I have something that ties
25 into the general ledger, and, again, that was the purpose of

1 the 156, not to spring a surprise, then I know conclusively
2 what's there. There is -- there was no such item that I was
3 aware of in the '04 docket and, therefore, I have a concern.

4 And I will tell you that that kind of information was
5 provided to Public Counsel in response to the interrogatory
6 which falls between the two you have given me. Interrogatory
7 number 108 provides that detail, and you'll get irritated at me
8 if I go into more information.

9 Q Yeah. You're going way beyond my question.

10 A Okay. I will stop then.

11 Q The other interrogatory which I gave you, number 107,
12 asks about the 2004 storm cost recovery projects included, or
13 that are referred to in your response.

14 A Okay.

15 Q Do you see that?

16 A I see it.

17 Q Are you familiar with this response?

18 A I am not. I believe that this was offered by the
19 power systems people. I'm going to look to see if I'm
20 incorrect.

21 It was, it was -- I think if you check back, that it
22 was supported by the power systems people. And what I will
23 point out to you is that this particular document -- I, I know
24 what the document is. I don't mean to imply that I do not
25 know.

1 Q Okay.

2 A But I did not sponsor the interrogatory. But if you
3 will look at the document, it says, "Projects greater than one
4 100,000 not completed as of 12/31/04." Therefore, it
5 constitutes future work, which is very consistent with the
6 information that is attached to Ms. Williams' testimony in this
7 particular docket, which, again, is the reason that led me to
8 put together the document, the debated document number 156.

9 Q You'll agree that the \$21.5 million that you mention
10 in your testimony on Page 24 where you're rebutting
11 Ms. DeRonne's assertion that that 21.5 was not identified for
12 recovery during 2004, you'll agree that that's not identified
13 on the, in the response to interrogatory number 107, will you
14 not?

15 A I would agree that it is -- the answer is, yes, I
16 would agree it is not in 107. I will tell you it is in 108,
17 which is a compilation of the accounts payable as of July --
18 accruals, storm accruals as of July 31, 2005.

19 Q Okay. Mr. Davis, could you turn to Page 52 of your
20 testimony?

21 A I'm there.

22 MR. BECK: I take my question back. I'm finished.
23 Thank you very much, Mr. Davis.

24 THE WITNESS: Thank you. I was going to jump up and
25 run out of here.

1 CHAIRMAN EDGAR: Not yet. We're getting there. Not
2 yet.

3 Mr. Kise, do you have --

4 MR. KISE: Well, until he said he was a Gator, I
5 didn't. But maybe I ought to ask him a few questions. No, I
6 don't have any questions.

7 CHAIRMAN EDGAR: Thank you. Mr. Twomey? No, he's
8 saying none. Okay. Staff.

9 MS. GERVASI: Thank you. Very briefly.

10 CROSS EXAMINATION

11 BY MS. GERVASI:

12 Q Mr. Davis, I'd like to pose a hypothetical question
13 to you that I asked Ms. Williams, and she deferred her answer
14 to you.

15 And this is for the purposes of understanding FPL's
16 storm cost tracking methodology. And I'd like you to consider
17 a hypothetical: Assuming that in 2004 FPL repairs an FPL-owned
18 pole, and also assume that FPL scheduled a replacement prior to
19 the 2005 storm season, would I be correct to conclude that the
20 cost for repairing the pole and the planned replacement would
21 have been included in FPL's estimate of 2004 costs?

22 A Partly yes and partly no.

23 Q Could you explain, please?

24 A Yes, ma'am, I will.

25 The initial estimate, recognizing that the pole was

1 damaged -- and I assume you're using the example that you were
2 using earlier, I guess, where it had a brace or something on
3 it.

4 Q Yes, sir.

5 A Okay. The, at the time of the initial work, they
6 would have done the temporary repair. They would have included
7 in their initial storm estimates the fact that this follow-on
8 work would need to be done. I would say at this point in time
9 they would have recognized that they did not do that work. It
10 would have produced a, I'll say an underspend, and we have
11 adjusted the, basically adjusted the -- there's no real
12 contingency left there, I believe. It's all assigned to
13 nuclear based upon -- and specific uninsured items. So what --
14 I'm not saying it well. It would have been in the original
15 estimate. It would have been corrected out because the work
16 was not done.

17 Q Okay. So that is -- that second estimate then is
18 FPL's means to document and to assure that customers don't pay
19 twice for those kinds of replacements that are scheduled in one
20 year but not actually repaired until the next?

21 A I guess the way I would say it, it would be in the
22 original estimate. We anticipated the work being done.
23 Somehow in your hypothetical it was missed, it was not done.

24 Q Right.

25 A That means there were no costs incurred; therefore,

1 there would be no cost charged to it, there would be an
2 underspend, and it would be taken out of, out of the storm
3 estimate.

4 Q Okay. Are you finished?

5 A Yes, ma'am.

6 MS. GERVASI: Thank you, sir. I have no further
7 questions.

8 CHAIRMAN EDGAR: Thank you. Commissioners? No?
9 Mr. Anderson.

10 MR. ANDERSON: If I could just take a moment to check
11 with my colleagues here.

12 May we proceed?

13 CHAIRMAN EDGAR: You may.

14 MR. ANDERSON: Thank you.

15 REDIRECT EXAMINATION

16 BY MR. ANDERSON:

17 Q Mr. Davis --

18 A Yes, sir.

19 Q -- you were asked a minute ago about data request
20 answers, interrogatories number 106 and -- it was 105 and --
21 I'm sorry. I'm losing track of my notes here.

22 A 107 and 109.

23 Q 107 and 109. You weren't asked about number 108,
24 which is Exhibit 155 in evidence; right?

25 A I don't know about the 155, but I was not asked about

1 108. I did volunteer information about 108.

2 Q Okay. Just please tell us the significance of OPC
3 fifth set of interrogatories, interrogatory number 108.

4 MR. BECK: Objection. It's beyond the scope of the
5 cross-examination. I mean, they essentially asked it.

6 MR. ANDERSON: It's entirely within the scope. He
7 asked about two interrogatories. We're asking about the one
8 he, he skipped over, which was Mr. Davis's point. We were
9 cutoff on it. He started to talk about it and it's my turn to
10 ask.

11 MR. BECK: No. No. I asked about interrogatories
12 107 and 109. And, and you can't say because there's an
13 interrogatory in-between them that I didn't ask about that it's
14 included within the scope of cross. That's silly.

15 CHAIRMAN EDGAR: Mr. Anderson, can you point to where
16 this falls within the scope?

17 MR. ANDERSON: How about this? I'll ask a different
18 question.

19 BY MR. ANDERSON:

20 Q Mr. Davis, would you please comment in reference to
21 interrogatories number 107 and 109 whether that portrays a fair
22 and complete picture of the, of the facts that, involving the
23 accounting for accruals for storm costs?

24 MR. BECK: I object.

25 CHAIRMAN EDGAR: Mr. Beck.

1 MR. BECK: That's not what 107 and 109 do. They
2 ask -- they're specifically about 2004, and it's not just
3 generally accruals of storm costs, as counsel said. I object
4 to the question. It goes beyond the scope of my
5 cross-examination.

6 CHAIRMAN EDGAR: That's what I was looking for. I
7 sustain the objection. Let's move along.

8 BY MR. ANDERSON:

9 Q Was it comprehended within FPL's case last year in
10 Docket 041291-EI that amounts not covered by insurance would be
11 charged to the reserve?

12 A They very definitely were in there. The 999 number
13 --

14 MR. BECK: Pardon me, Mr. Davis. I object. That's
15 beyond the scope of cross. Nobody asked him about whether he's
16 contemplated the amounts not covered by insurance were, were
17 included in that. That's not an area we even cross-examined at
18 all.

19 MR. ANDERSON: This is going specifically to the July
20 31 cutoff point. There are two other questions in this series
21 and they're very short. I'd ask the indulgence that we be
22 permitted to finish the line of questions.

23 CHAIRMAN EDGAR: Mr. Anderson, you may proceed.

24 MR. ANDERSON: Thank you.

25 BY MR. ANDERSON:

1 Q Did you hear the question, Mr. Davis?

2 A Not anymore.

3 Q Okay. Was it comprehended within FPL's case last
4 year, which docket number I just read, that amounts not covered
5 by insurance would be charged to the reserve?

6 A Yes, it, it clearly was contemplated that they would
7 be charged to the reserve.

8 Q Was about \$21.5 million associated with the nuclear
9 work, et cetera, amounts not covered by insurance?

10 A Yes. Basically we knew at the time that certain
11 amounts would not be covered by insurance, there had been no
12 meetings with NEIL, and we carried that as we used the
13 contingency to basically support that effort. The underlying
14 work was all identified and included in the full 999. The
15 question is what, you know, what would be covered by insurance
16 and what would not?

17 Q Was that charged to the reserve before July 31, 2005?

18 A Yes. As of July 31, 2005, the \$20.5 million had been
19 specifically identified to nuclear. A review of the documents
20 supporting the July 31, 2005, journal entry for the accruals,
21 which is exactly what that 108 does, it's based on a review of
22 the documents supporting the journal entry.

23 MR. ANDERSON: No further questions. Thank you.

24 CHAIRMAN EDGAR: Thank you. Let's take up the
25 exhibits. Mr. Beck.

1 MR. BECK: I move exhibits 168 and 169 into evidence.

2 MR. ANDERSON: No objection.

3 CHAIRMAN EDGAR: Seeing no objections, Exhibit
4 Numbers 168 and 169 will be moved into evidence.

5 (Exhibits 168 and 169 admitted into the record.)

6 I think we're in the homestretch. The witness may be
7 excused. Thank you.

8 THE WITNESS: Thank you.

9 MR. LITCHFIELD: Madam Chairman --

10 CHAIRMAN EDGAR: Mr. Litchfield.

11 MR. LITCHFIELD: -- I am indeed pleased to present
12 FPL's final rebuttal witness and the last witness in this case.

13 CHAIRMAN EDGAR: First and last.

14 MR. LITCHFIELD: Mr. Dewhurst, he was first and he is
15 now last. And, again, I would remind the bench that a portion
16 of Mr. Dewhurst's testimony is subject to stipulation, the
17 waiver of cross, excepting, of course, questions from, from the
18 Commission. And that --

19 MR. KISE: Madam Chair -- I'm sorry. I thought he
20 was done.

21 MR. LITCHFIELD: And that essentially, just for ease
22 of reference, a portion to which the stipulation applies, I
23 believe we have consensus among all the parties on this, is
24 beginning at Page 24, Line 20, through the balance of the
25 direct testimony, and that would include the corresponding

1 exhibits to that portion of the testimony. So, therefore, he
2 would be available for cross-examination once I present him and
3 he delivers his summary on just those first 23 and some odd
4 pages.

5 CHAIRMAN EDGAR: Mr. Kise.

6 MR. KISE: I was just going to ask if since we'd been
7 going a while just to take a five-minute break. It's the
8 Chair's pleasure.

9 CHAIRMAN EDGAR: We can take a five-minute break.

10 MR. KISE: Thank you.

11 CHAIRMAN EDGAR: Well, in fact, we'll go ahead and
12 make it eight and a half and we'll come back at 8:00.

13 MR. KISE: Thank you.

14 (Recess taken.)

15 CHAIRMAN EDGAR: And we'll go back on the record.
16 Mr. Litchfield.

17 MR. LITCHFIELD: Thank you. Mr. Dewhurst has been
18 sworn in this proceeding.

19 MORAY P. DEWHURST

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

23 DIRECT EXAMINATION

24 BY MR. LITCHFIELD:

25 Q Mr. Dewhurst, have you prepared and caused to be

1 filed 54 pages of rebuttal testimony in this proceeding?

2 A I have.

3 Q Do you have any changes or revisions to that prefiled
4 rebuttal testimony?

5 A I do not.

6 Q If I asked you the same questions reflected in your
7 rebuttal testimony this evening, would your answers be the
8 same?

9 A Yes.

10 MR. LITCHFIELD: Madam Chairman, I would ask that
11 Mr. Dewhurst's rebuttal testimony be entered into the record as
12 though read.

13 CHAIRMAN EDGAR: The prefiled rebuttal testimony will
14 be entered into the record as though read.

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1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**
2 **FLORIDA POWER & LIGHT COMPANY**
3 **REBUTTAL TESTIMONY OF MORAY P. DEWHURST**
4 **DOCKET NO. 060038-EI**
5 **APRIL 10, 2006**

6

7 **I. INTRODUCTION**8 **Q. Please state your name and business address.**

9 A. My name is Moray P. Dewhurst. My business address is Florida Power &
10 Light Company, Finance Division, 700 Universe Boulevard, Juno Beach,
11 Florida 33408-0420.

12 **Q. Did you previously submit direct testimony in this proceeding?**

13 A. Yes.

14 **Q. Are you sponsoring an exhibit in this case?**

15 A. Yes. I am sponsoring an exhibit consisting of seven documents, MPD-4
16 through MPD- 10, which is attached to my rebuttal testimony.

17 **Q. What is the purpose of your rebuttal testimony?**

18 A. My testimony responds to proposals and assertions raised by Florida Public
19 Service Commission Staff (Staff) witness Jenkins, AARP/ Office of Public
20 Counsel (OPC) witness Stewart, OPC witness Larkin, and Staff witnesses
21 Fichera, Klein and Noel. For ease of reference, I provide below a list of the
22 main topics addressed in my rebuttal testimony and their corresponding
23 location in my testimony.

| | | |
|----|--|-----------|
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1 **Q. Please summarize your response to Staff witness Jenkins.**

2 A. Mr. Jenkins proposes that the Commission disregard the 2005 rate agreement
3 and require that FPL not be permitted to recover up to 20% of its prudently
4 incurred storm restoration costs. If adopted, this proposal would contravene
5 longstanding and well-founded regulatory policy; be grossly unfair to FPL;
6 raise investors' perceptions of regulatory risk and hence FPL's cost of capital;
7 interfere with incentives for the safe and rapid restoration of power after
8 hurricanes; and, finally, have a chilling effect on the possibility of any future
9 negotiated settlement between utilities and other interested parties, which
10 would be bad public policy.

11 **Q. Please summarize your response to witnesses Stewart and Larkin.**

12 A. Mr. Stewart proposes that the Commission approve a storm reserve in these
13 proceedings of \$150 to \$200 million, compared with FPL's proposal of \$650
14 million. I believe this would be shortsighted and would ultimately lead to
15 greater rate volatility and higher costs for customers.

16

17 Second, Mr. Larkin cites a recent Gulf Power filing and metaphorically puts
18 words into Gulf Power's mouth by claiming that Gulf Power supports his
19 preferred method of storm accounting. This is inappropriate and ignores the
20 fact that Gulf Power's situation and circumstances are quite different from
21 FPL's, and that their method is an outcome of a negotiated settlement as I will
22 explain.

1 Q. **What are the issues raised by Mr. Fichera's, Ms. Klein's and Mr. Noel's**
2 **testimony that you believe the Commission should consider?**

3 A. These three Staff witnesses broadly address the bond issuance process under
4 the securitization alternative and Mr. Fichera specifically asserts deficiencies
5 in FPL's proposed process. In addition to responding to specific assertions of
6 deficiencies, I will respond to a number of key issues raised by these
7 witnesses.

8
9 First, the Commission should not adopt Mr. Fichera's proposal for "co-
10 leadership" of the bond issuance process. Instead, the Commission should
11 make clear whether FPL will have final decision making authority, as it would
12 with any other bond issuance for which it is responsible, and which I
13 recommend, or alternatively, whether the Commission wishes to exercise final
14 decision making authority either directly or through an appointed
15 representative, which I do not recommend.

16
17 Second, the Commission should reject Mr. Fichera's and Ms. Klein's proposal
18 to adopt a so-called "lowest cost" standard for the securitization process.
19 Such a standard is inherently unverifiable, ignores other important interests, is
20 not required by the securitization statute, and was indeed explicitly considered
21 and rejected during the legislative process. Instead, a more appropriate
22 definition of cost should be used, which I describe in detail later in my
23 testimony.

1 Third, contrary to Mr. Fichera's testimony, FPL welcomes the involvement
2 and input of the Commission, its staff, and its financial advisor in this process.
3 However, our proposed process seeks to have all input relevant to a given
4 decision provided before that decision is made, whereas Mr. Fichera's
5 preferred process leaves open the possibility of "second guessing" after a
6 decision is made, which I believe opens the door to possible misunderstanding
7 and abuse.

8
9 Fourth, Mr. Fichera and Mr. Noel make the assertion that FPL's interests are
10 not adequately aligned with customers' and only Mr. Fichera's proposed
11 process, with Saber Partners effectively having veto power over every minute
12 detail, can adequately protect customers. FPL's interests are in fact well
13 aligned with customers' long-term interests.

14
15 **II. ARBITRARY 20% COST DISALLOWANCE PROPOSAL**

16 **Q. Please summarize Mr. Jenkins' proposal.**

17 A. Mr. Jenkins proposes that the Commission should arbitrarily order that FPL
18 not be permitted to recover up to 20% of its 2005 prudently incurred storm
19 restoration costs. Mr. Jenkins admits that such an action would be a departure
20 from the historical regulatory framework followed by the Commission which
21 has allowed the recovery of prudently incurred costs to provide electric
22 service. This departure, he asserts, is justified in part because customers have
23 been significantly impacted by rising fuel prices unrelated to storm-recovery

1 costs. Mr. Jenkins also suggests that the cost sharing will provide further
2 incentive to FPL to harden its transmission and distribution system. Finally,
3 Mr. Jenkins concludes by reminding the Commission that they have no
4 obligation to honor the Stipulation and Settlement Agreement that was
5 negotiated and agreed to among all parties and approved by the Commission
6 on August 24, 2005. The parties were the Office of the Attorney General, the
7 Office of Public Counsel, the Florida Industrial Power Users Group, AARP,
8 Florida Retail Federation, the Commercial Group, the Federal Executive
9 Agencies, South Florida Hospital and Healthcare Association, and Common
10 Cause.

11 **Q. Do you agree with Mr. Jenkins that the Commission should impose a**
12 **“sharing” of prudently incurred 2005 storm restoration costs?**

13 A. No. I believe this would be poor regulatory policy, grossly unfair to FPL and
14 highly detrimental to long run customer interests. I have five principal
15 concerns with Mr. Jenkins proposal.

16

17 First, it denies FPL the opportunity ever to recover a portion of its previously
18 incurred costs without regard to reasonableness and prudence and in so doing
19 violates one of the most basic principles of sound ratemaking. As such, it is
20 grossly unfair and poor regulatory and public policy.

21 Second, it is completely inconsistent with past practice in Florida, and in
22 particular it is completely inconsistent with the outcome of the 2004 storm
23 cost recovery proceedings, which included extensive presentation of fact and

1 analysis by all interested parties, culminating in evidentiary hearings and a
2 definitive ruling by the Commission regarding prudence.

3

4 Third, the proposal would be highly detrimental to our customers' long run
5 interests because it would have an extremely negative impact on investor
6 perceptions of risk associated with the State of Florida. The proposal would
7 fundamentally change –clearly for the worse – the terms upon which investor
8 owned utilities could be expected to raise capital, ultimately increasing costs
9 for customers.

10

11 Fourth, it would create incentives for utilities that are counter to the goal of
12 safe and rapid restoration of service following a storm and that would clearly
13 be detrimental to customers' interests.

14

15 Fifth, it is completely inconsistent with last year's rate Settlement and
16 Stipulation (as Mr. Jenkins himself acknowledges), on which the Commission
17 had every opportunity to comment (and on which it did in fact comment prior
18 to approval) in the full knowledge that future tropical storms could have a
19 significant impact on FPL's service territory. Ignoring an agreement, signed
20 and publicly endorsed by numerous parties and approved unanimously by the
21 Commission, is poor public policy, would send negative signals to the
22 financial community and have a chilling effect on any future negotiated
23 settlements.

1 **Q. How does Mr. Jenkins' proposal violate the principles of sound**
2 **ratemaking?**

3 A. It is axiomatic under Florida law and well established principles of utility
4 regulation that regulated utilities are entitled to the opportunity to earn a
5 "reasonable" rate of return on their investment. The practical manifestation of
6 this principle in ratemaking is that *expected* levels of revenue are set such that
7 they exceed *expected* levels of cost by an amount necessary to yield a
8 reasonable rate of return on the appropriate investment base. In the case of
9 storm restoration costs, rates are not set and have never been set on the basis
10 of the full value of expected future storm restoration costs. Instead, the
11 Commission has explicitly recognized that, in the event costs are incurred,
12 they would have to be recovered through alternative means. In the 2005 Rate
13 Stipulation and Settlement (attached as Document No. MPD-4), this was
14 reinforced, and the parties agreed that during the term of the settlement *zero*
15 value of expected restoration costs would be reflected in base rates and that
16 100% of prudently incurred costs would be recovered through alternative
17 means in the event they were incurred (paragraph 10, 2005 Rate Case
18 Stipulation and Settlement.)

19
20 Mr. Jenkins' proposal would leave one side of this equation intact: he would
21 not change FPL's revenues that, if realized through sales of electricity,
22 provide us the opportunity to earn the revenue that might be used to pay for a
23 portion of restoration costs; but he would arbitrarily assign 20% of the costs to

1 FPL's shareholders. In so doing he would clearly violate the principle that
2 prudently incurred costs are recoverable, even putting aside the propriety of
3 overturning the 2005 Rate Stipulation and Settlement.

4 **Q. Does Mr. Jenkins recognize this violation?**

5 A. Yes. He states that "ordering some of the costs to be shared . . . is a departure
6 from the concept that 100 percent of prudently incurred costs are always to be
7 borne by a utility's customers."

8 **Q. What justification does Mr. Jenkins provide for this violation?**

9 A. Mr. Jenkins proposes three justifications. First, he simply believes that a
10 utility's earnings "should" be affected by hurricanes, offering no justification;
11 second, he notes that FPL's customers have seen their bills increase since
12 2000; and, third, he asserts that "cost sharing will incent FPL to harden its
13 transmission and distribution system."

14 **Q. Should any of these considerations override the basic principle of
15 ratemaking that you discussed?**

16 A. No. In the first case, as discussed by Mr. Davis, FPL revenues and costs are
17 already negatively affected by hurricanes and other weather events, and Mr.
18 Jenkins is disingenuous in implying that his proposal is consistent with this
19 fact. Mr. Jenkins is not proposing that FPL bear the risk of variations around
20 an *expected* level of future costs; rather, he would deny FPL the chance to
21 recover its *expected* level of future costs, which is a completely different
22 matter. Unlike operating cost variations, which can be positive or negative,
23 storm restoration cost variances are always negative.

1

2 Second, while it is true that market driven increases in fuel costs have caused
3 FPL's overall bills to go up, the mere fact that rates have increased is not a
4 legitimate justification for such a radical departure from the basic principle
5 that prudently incurred costs are recoverable. In fact, the two issues are not
6 logically connected. FPL's prices are not and should not be set on the basis of
7 what customers would *prefer* to pay – if they were, we would all ask for them
8 to be set at zero. Customers receive from FPL a service that they value – just
9 how highly they value it is obvious in the wake of a tropical storm – in
10 exchange for a payment that is “just, reasonable and compensatory.” Whether
11 the cost of an independently determined and billed component of the
12 Company's service is rising or falling should not affect this fundamental
13 relationship.

14

15 Finally, Mr. Jenkins' argument with respect to hardening lacks a logical
16 underpinning, and his proposal, if carried forward, could actually have
17 perverse effects. As stated, it applies only to the current proceedings, and an
18 arbitrary, ex post decision to shift costs from customers to FPL would have no
19 impact on FPL's decision-making going forward – instead, it would merely be
20 punitive. If applied as a policy going forward, it could well have the perverse
21 effect of causing FPL to *over-invest* in system hardening. Mr. Jenkins seems
22 to ignore that a system that has complete immunity to tropical storm activity
23 (hence zero expected restoration costs), even if it were technically attainable,

1 would come at a substantial cost, which ultimately is borne by customers. As
2 a matter of policy, the Commission should want FPL to make future
3 hardening decisions on a rational basis of expected total system cost and
4 reliability or as a matter of Commission-directed public policy. Mr. Jenkins'
5 proposal, if applied as a future policy, would contravene this.

6 **Q. Have the issues addressed by Mr. Jenkins' testimony been raised in any**
7 **earlier proceedings?**

8 A. Yes. The Commission conducted evidentiary hearings in 2005 to determine
9 the appropriate treatment of FPL's 2004 storm restoration costs. Indeed, the
10 principle of so-called "sharing" was raised then and rejected in the final order.
11 The Commission was very clear in its final order, and the fundamental
12 principle of recoverability of prudently incurred costs continued to be applied.
13 FPL reasonably relied on the outcome of that docket, as well as prior instances
14 where the same principle was clearly recognized, in planning its operations.
15 Thus, any change at this point would in my view be retrospective and punitive
16 in nature and thus grossly unfair to FPL.

17 **Q. Mr. Jenkins claims his proposal is consistent with past regulatory policy**
18 **and compares his proposal to sharing mechanisms for gains on utility off-**
19 **system wholesale sales and the Generating Performance Incentive Factor.**
20 **Do you agree with his comparison?**

21 A. Not at all. Both the sharing of off-system sales and the Generating
22 Performance Incentive Factor are designed to provide an appropriate incentive
23 for the Company to choose to take positive steps that provide benefits to

1 customers. Mr. Jenkins' proposal is merely a shifting of a normal cost of
2 providing electric service to shareholders.

3 **Q. In what way would Mr. Jenkins' cost-shifting proposal affect investors'**
4 **perceptions of risks associated with committing capital to FPL?**

5 A. The impact would be twofold. First, investors would simply require a higher
6 rate of return to compensate for the cost shifting that Mr. Jenkins proposes.
7 Because investors compare the net return they can expect to receive from a
8 particular investment with those competitively available elsewhere in the
9 capital markets they would obviously require a greater "gross return" (i.e.,
10 expected return prior to the shift of 20% of expected future storm costs) in
11 order to achieve a competitive net return. Thus, after an initial shift of cost
12 from customer to shareholder, over time the customers would end up bearing
13 roughly the same cost – but they would do so through higher costs of capital.
14 Over the long haul, it is not possible to consistently impose costs on investors,
15 since capital is readily transferable and investors have many other competing
16 alternatives for capital allocation.

17
18 Second, and more important, Mr. Jenkins' proposal would actually make the
19 situation worse for customers than this analysis suggests, because there would
20 likely be a significant increase in risk associated with investor's assessment of
21 the stability of the regulatory climate. If the basic principles of regulation are
22 changed and negotiated settlements disregarded to the utilities' disadvantage
23 after the fact, investors will sense a significant increase in risk in the

1 regulatory environment in Florida. Investors are generally able to evaluate the
2 risks of pre-defined frameworks quite well. They are quite unable to evaluate
3 the risks of arbitrary, ex post changes in framework, and where they suspect
4 the probability of such changes may be significant they discount 'promised'
5 outcomes severely. This effect would serve to increase the net cost of capital,
6 in addition to the "gross up" effect noted earlier. Thus, the long-term effect
7 would be to increase cost not only for FPL's customers, but for all customers
8 within the state.

9 **Q. Does Mr. Jenkins' proposal support the goal of safe and rapid**
10 **restoration of service following a storm?**

11 A. No. In prior testimony I have noted that customers' interests differ in post-
12 storm periods from those that govern normal times. In the immediate
13 aftermath of a storm with extensive outages, customers' interests are best
14 served by focusing on the safe and rapid restoration of power. Thus, while
15 cost is always important, the goal of storm restoration is *not* cost efficiency.
16 In practice, a trade-off often exists between rapid restoration and restoration
17 cost. For example, in general, the greater the number of outside crews
18 brought in to assist with restoration efforts, the faster service can be restored
19 to our customers, but the higher the unit cost. Many other practical techniques
20 are used to speed up restoration activities that also involve incremental cost
21 compared to normal operations. Under Mr. Jenkins' proposal, a utility's
22 financial incentives would suggest interests that diverge significantly from
23 those of customers. While it will never be possible to completely harmonize

1 customer and utility interests, I believe it is poor public policy to deliberately
2 introduce a significant financial incentive to act contrary to customers' best
3 interests, particularly at such a critical time.

4 **Q. Do other protections exist to ensure that utilities pay attention to**
5 **cost during restoration?**

6 A. Yes. However, the Commission already has a powerful tool to ensure that
7 utilities are speedy but not wasteful, and that is prudence reviews. Both the
8 current proceedings as well as those last year demonstrate that there is ample
9 opportunity for intervenors and Staff to investigate and challenge every dollar
10 that FPL commits to storm restoration. They are free to challenge costs that
11 FPL believes assist the goal of safe and rapid restoration, and the Commission
12 can make final determinations. To these existing protections, Mr. Jenkins'
13 proposal adds nothing helpful, but instead merely punishes a utility for acting
14 prudently and in good faith to meet its customers' needs.

15 **Q. How is Mr. Jenkins' proposal inconsistent with the 2005 Rate Stipulation**
16 **and Settlement Agreement?**

17 A. The 2005 Settlement explicitly acknowledges that prudently incurred storm
18 restoration costs are recoverable and provides two alternatives for recovery: a
19 surcharge or the use of securitization.

20 **Q. Mr. Jenkins states that the Commission is not bound to observe the terms**
21 **of the Settlement. Do you agree?**

1 A. Yes. My concern is not whether the Commission has the authority to override
2 the Settlement but whether it is wise to do so. I believe it would be extremely
3 unwise in this instance.

4 **Q. What has been the Commission's policy regarding the importance of**
5 **honoring negotiated settlements?**

6 A. Generally speaking, it has been to give a great deal of deference to agreements
7 voluntarily entered into by parties in full knowledge of the facts and after
8 reasoned argument and negotiation. Those conditions clearly apply here. It
9 would be a drastic departure from Commission precedent to issue an order
10 that had the effect of undermining a negotiated settlement. In fact, as
11 Commissioner Deason pointed out at the August 24, 2005 Special Agenda
12 Conference at which the Stipulation and Settlement was approved (Docket
13 No. 050045-EI, Hearing Volume 10, Tr. 1649-1650):

14

15 ... I think that this Commission has an overriding and ongoing
16 obligation to make sure that rates are fair, just, and reasonable,
17 and I don't think that we are going to abdicate that. But having
18 said that, at the same time I think this Commission has a long
19 history of giving great weight to settlements, to the sanctity of
20 the settlements, trying to make sure that everybody abides by the
21 settlement and that we administer those in the spirit in which
22 they were agreed to by the parties. And I don't see any deviation

1 from that if this one is approved like the others have been
2 approved.

3

4 I think the Commission has had a long history of encouraging
5 settlements, and through the very hard work of some very
6 dedicated officials and management that sees the advantages of
7 removing risk and uncertainty have entered into these
8 agreements, which I think have well served the people of Florida.
9 And I don't think there is going to be – I mean, you can't know
10 what a future Commission is going to be, but I just know that the
11 tradition and the history of this Commission is to give great
12 weight to those settlements and enforce them with the spirit in
13 which they were agreed to.

14 **Q. In the negotiations leading up to the 2005 Rate Settlement, were**
15 **considerations of storm cost treatment addressed?**

16 **A.** Yes. This is clearly reflected in the plain language of the agreement, and it
17 represented a significant component of the discussions leading up to the final
18 agreement. In the rate case, FPL had formally requested an increase in the
19 annual storm accrual from \$20.3 million to \$120.3 million, which if granted
20 would have been reflected in higher base rates. As an integral part of an
21 overall settlement, FPL agreed to withdraw its request for an increase and
22 even to eliminate the previously existing accrual, since those actions would
23 enable base rates to be held down. In exchange, FPL required, and

1 intervenors agreed to, the language contained in the agreement. All we are
2 now asking is for the Commission to uphold the plain language of the
3 agreement.

4 **Q. If the Commission were to adopt Mr. Jenkins' proposal, do you think it**
5 **would have an impact on future negotiated settlements?**

6 A. Yes, I think it would have an extremely chilling effect. Since this issue is so
7 significant and goes to the heart of the trade-offs that were made in reaching
8 agreement, it would clearly have an impact that reaches far beyond the current
9 agreement. Mr. Jenkins obviously realizes that this is not a matter of
10 interpreting an unclear part of an agreement one way or the other; it is a
11 complete gutting of a key provision. I cannot help but believe every utility
12 would be concerned that any future agreement it might reach would potentially
13 be subject to future unwinding or repudiation using later information and
14 arbitrary criteria. This would clearly reduce the potential value of entering into
15 any agreement.

16

17 **III. STORM DAMAGE RESERVE**

18 **Q. Please summarize Mr. Stewart's recommendation for the appropriate**
19 **level of the Reserve.**

20 A. Mr. Stewart believes "it is prudent for the Commission to approve a Reserve
21 that meets the historically-stated threshold of covering the costs of most, if not
22 all, storms," so he calculates FPL's average annual storm damage for the years
23 1990-2005 as \$147.120 million. He then examines if a \$150 million Reserve

1 would be consistent with past Commission policy. He concludes that since a
2 \$150 million Reserve would cover the expense level of thirteen of the last
3 sixteen years, it is “consistent with the Commission doctrine of most, but not
4 all storm seasons.” Based on his analysis, Mr. Stewart thinks an appropriate
5 Reserve level is \$150 million; however, due to the projected increase in
6 hurricane activity over the next decade or so, he believes the “Commission
7 could reasonably include a ‘safety margin’ raising the approved reserve to
8 \$200 million.” Mr. Stewart recommends that any Storm Damage Reserve
9 Deficiencies resulting from excessive losses could be handled by a separate
10 surcharge or an additional securitization.

11 **Q. Do you agree with Mr. Stewart’s recommendation?**

12 A. No. I believe his application of the historical regulatory policy in this area is
13 flawed. I will defer to Mr. Harris to rebut the specifics of Mr. Stewart’s
14 analytical approach and will address the policy implications.

15 **Q. Is Mr. Stewart’s conclusion that an adequate and appropriate Storm
16 Damage Reserve should be \$150 to \$200 million consistent with past
17 Commission conclusions?**

18 A. I don’t believe so. I believe Mr. Stewart misunderstands the sense in which
19 the phrase “adequate to cover most but not the most extreme years” has been
20 interpreted. In Order No. PSC-98-0953-FOF-EI, the Commission agreed that
21 the reserve level should be large enough to absorb another ‘Andrew type
22 event,’ and that “a reasonable level for the reserve is \$370 million in 1997
23 dollars.” The Commission recognized that even this level would not cover all

1 realistically possible events but would afford a high degree of protection
2 against any one bad year.

3
4 Simply escalating the cost of Hurricane Andrew from \$370 million in 1997
5 dollars would be equivalent to a reserve level of approximately \$460 million
6 in 2006 dollars, when adjusted for actual historical inflation. Additionally,
7 this historical target reserve level assumed an ongoing \$20.3 million annual
8 accrual to help maintain the target reserve level. My recommendation of a
9 reserve level for now of approximately \$650 million recognizes that under the
10 current rate agreement there is no ongoing accrual, that FPL's system has
11 grown in extent by 30-40% since 1997 and gives some recognition to the
12 conclusion of many meteorological experts that we are in a phase of a multi-
13 decade cycle with more frequent incidence of tropical storms.

14 **Q. What impact would Mr. Stewart's recommendation have on customer**
15 **rates?**

16 A. Clearly, the level of the reserve has no impact on FPL's hurricane exposure.
17 Accordingly, a lower reserve will simply shorten the expected time before it
18 becomes necessary to return to the Commission and seek recovery of
19 additional restoration costs. Other things equal, this will lead to greater rate
20 volatility. In the extreme, with no reserve and an annual process with an
21 annual surcharge, customers could see rates fluctuate from year to year by the
22 equivalent of \$0 to \$8 or so per month on the typical 1,000 kWh bill. In
23 addition, a smaller reserve will, other things equal, mean more frequent
24 regulatory proceedings, each of which carries an administrative cost and

1 burden for all parties.

2 **Q. Assuming you agreed with Mr. Stewart that the reserve level should be**
3 **set by analyzing storm losses over the past 16 years, how long would a**
4 **\$150 to \$200 million reserve last assuming average annual storm losses**
5 **over the past 16 years?**

6 A. With an average annual loss of \$147 million per year, as calculated by Mr.
7 Stewart, the Storm Reserve would last approximately one year, on average.

8 **Q. Does the passage of securitization legislation change the overall**
9 **framework for recovery of storm restoration costs?**

10 A. Not fundamentally. It clearly provides the Commission with an additional
11 tool to use, which can be very helpful in certain situations. On the positive
12 side, securitization provides the ability to replenish the Storm Reserve more
13 rapidly than through an annual accrual or a surcharge. However, transaction
14 costs associated with securitization bonds are higher than those associated
15 with a surcharge. Thus, securitization is not as efficient as a surcharge
16 coupled with an existing reserve to cover ongoing costs, and in the extreme it
17 clearly would not be cost effective to issue bonds in small amounts on a
18 continuing basis. Accordingly, I believe it is more appropriate to use
19 securitization as a catch up and replenishment for catastrophic storm seasons.
20 If we are to securitize, it makes a great deal of sense to take advantage of this
21 opportunity to replenish the reserve to a reasonable level.

22 **Q. Mr. Stewart states that the passage of securitization legislation provides**
23 **statutorily guaranteed recovery of its storm expenses as long as they are**

1 **deemed prudent by the Commission. Does his position alter your view**
2 **regarding the appropriate amount of the reserve?**

3 A. No. Securitization merely gives the Commission an additional tool, to be
4 employed at the Commission's discretion, to reduce the immediate rate impact
5 of a storm reserve deficit by spreading the costs out relatively efficiently over
6 time. The funding of securitization bonds is a lengthy process, and requires
7 separate and specific Commission approval.

8
9 Furthermore, Mr. Stewart misunderstands the existing regulatory construct
10 when he says that prior to the passage of the securitization legislation ". . .
11 utilities might only recover storm damage expenses that caused them to earn
12 less than a fair rate of return." (p.8) This issue was extensively discussed at
13 last year's storm hearings and proper reading of the regulatory history shows
14 that it is incorrect. Because Mr. Stewart misunderstands this point, the
15 remainder of his analysis of the impact of the securitization legislation is
16 flawed.

17 **Q. Mr. Stewart claims that replenishment of the Reserve is inconsistent with**
18 **the method FPL's customers have to use when recovering storm damage**
19 **expenses to their own property. Do you agree with this statement?**

20 A. In part, but this issue is irrelevant to the current discussion. The Storm
21 Reserve, whatever its level, operates to the benefit of customers – all earnings
22 on the fund accrue to the fund. The Storm Reserve operates to customers'
23 benefit primarily by smoothing out the impact of storm costs on rates. That

1 this process is not exactly the same as the way individual personal property
2 insurance works is simply not relevant here.

3 **Q. Is Mr. Stewart's statement that keeping the Storm Damage Reserve level**
4 **as low as is reasonably possible will reduce interest and bond issuance**
5 **costs accurate?**

6 A. No, quite the reverse. Other things equal, FPL will need more frequent bond
7 issuances to cover future weather events if the Storm Reserve is set at \$150 -
8 \$200 million as suggested by Mr. Stewart and securitization is used to recover
9 restoration costs. Because large debt issuances tend systematically to be
10 cheaper (per dollar issued), more frequent, smaller issuances will result in
11 higher, not lower costs to customers over the long run.

12

13 IV. STORM ACCOUNTING METHODOLOGY

14 **Q. Did Gulf endorse the removal of expenses normally recovered through**
15 **base rates as an appropriate accounting method in their storm recovery**
16 **filing as Mr. Larkin contends?**

17 A. Not at all. As stated on page 8-9 of the testimony of Mr. McMillan from the
18 Gulf Power's case In Support of Recovery of Storm Recovery Financing in
19 Docket No. 060154-EI, which is attached as Document No. MPD-5, "These
20 exclusions were made voluntarily by the Company consistent with the
21 treatment in the negotiated Stipulation and Settlement..." Mr. McMillan
22 confirms again on page 9 of his testimony that "the Company has voluntarily
23 made an adjustment to deduct \$1.6 million from the **recoverable** [emphasis

1 added] costs charged to the Reserve for Hurricanes Dennis and Katrina.”
2 Clearly the record does not show that Gulf Power believes this method of
3 accounting is appropriate for any other purpose other than to be consistent
4 with their existing settlement agreement.

5 **Q. Does the fact that Gulf Power made certain concessions in their storm**
6 **cost recovery filing to be consistent with their settlement agreement**
7 **impact the appropriate accounting for FPL’s prudently incurred storm**
8 **costs?**

9 A. No. It is unfair and improper to take concessions agreed to as part of an
10 overall stipulation and settlement agreement for one company and arbitrarily
11 conclude that those provisions should become policy and apply to all utilities.
12 FPL and Gulf Power are under completely different circumstances and have
13 been parties to vastly different agreements.

14
15 Gulf Power was a signatory on a Stipulation and Settlement Agreement with
16 Office of Public Counsel and Florida Industrial Power Users Group in
17 February 2005 regarding Gulf Power’s 2004 storm costs and property
18 insurance reserve deficit associated with Hurricane Ivan. Along with the
19 storm issue, Gulf also had other matters, including overearnings of the
20 company for 2004. In order to resolve these issues, and as a give and take that
21 is part of all negotiated settlements, Gulf agreed not to seek cost recovery of
22 certain amounts reflected in its \$96.5 million property insurance reserve

1 deficit. The below language from Order No. PSC-05-0250-PAA-EI in Docket
2 No. 050093-EI describes the resolution of the Stipulation.

3
4 We find that the Stipulation represents a reasonable resolution of
5 the issues regarding the impact of Hurricane Ivan on Gulf's
6 property insurance reserve. The Stipulation avoids the potential
7 filing of a separate cost recovery petition, saving all parties the
8 time and expense that would be incurred in processing a cost
9 recovery petition. The Stipulation also resolves the apparent
10 overearnings of Gulf for 2004. Further, the Stipulation resolves
11 many of the issues that have been raised by our staff and other
12 parties in storm cost recovery dockets involving other utilities.
13 These issues include the exclusion of costs normally attributable
14 to base rates, such as normal O&M expenses, normal cost of
15 removal, and normal capitalized amounts. Finally, the
16 Stipulation recognizes a sharing of restoration costs between
17 Gulf's ratepayers and Gulf's stockholders, as Gulf has agreed to
18 absorb \$14 million of these costs in earnings.

19
20 **V. FINANCING ORDER AND BOND ISSUANCE PROCESS**

21 **Q. Mr. Fichera and Ms. Klein both propose that the Commission adopt a**
22 **“lowest cost” standard in evaluating the structuring and pricing of the**
23 **storm recovery bonds. Do you agree?**

1 A. No. While everyone will agree that low cost is a desirable objective, there are
2 three principal reasons why “lowest cost” is not the right standard to seek to
3 apply to FPL’s securitization proceedings, notwithstanding its use in other
4 instances. First, it is an absolute test (the term lowest by definition means that
5 it is not possible to have a lower), but it is not verifiable – that is, given the
6 practical circumstances of securities issuance, it will be impossible to know
7 with absolute assurance that the lowest possible cost has been achieved.
8 Second, it fails to recognize that lowest cost, while the most important single
9 objective in the process, is not the only one. Third, it fails to recognize that
10 mechanical application of a lowest cost standard could result in inappropriate
11 and unfair transfer of economic risk to FPL.

12 **Q. Please explain what you mean by “not verifiable.”**

13 A. Every financing transaction is a unique occurrence. Its relative success or
14 failure is determined in part by the outcome of a series of decisions primarily
15 made prior to launching the transaction in the marketplace and to a limited
16 extent during the actual marketing and book building. It is literally impossible
17 to know how a deal would have priced had any one of those decisions been
18 made differently. Because each deal is unique and is brought to market at a
19 unique moment, even very similar deals price differently. There is no way of
20 knowing precisely whether, assuming two generally similar deals price
21 differently, it is because of differences in execution, differences in the specific
22 inherent characteristics of the deals, or differences in market conditions at the
23 exact moment they were brought to market. Thus no one can honestly be sure

1 that the particular approach they took to issuance and pricing actually
2 produced the lowest cost, or whether a slightly different approach might have
3 achieved even better results. It is certainly possible to make reasoned
4 assessments, *ex ante*, as to whether a proposed issuance approach holds
5 expectation of producing an efficient and low priced deal and whether the
6 issuer has taken measures reasonably designed to achieve that objective. But
7 it is not humanly possible to know whether it will produce *the lowest cost*.
8 For this reason, I do not believe it is a good test to apply to FPL's proposed
9 securitization offering.

10

11 In fact, Mr. Fichera's own testimony strongly suggests that the "lowest cost"
12 standard, though it may have been certified to, has not in fact been met in past
13 transactions. Mr. Fichera's Exhibit JSF-3 shows that even the best
14 securitization transactions recently have priced at the high end of comparable
15 credits. Mr. Fichera uses this observation to suggest that "with investor
16 education and market expansion, the pricing of ratepayer-backed bonds can
17 improve . . ." (p.35). If pricing can improve with additional investor
18 education, it would be difficult to assert that any historical deal had attained
19 the lowest cost standard, since presumably additional effort could have been
20 devoted to additional investor education. This does not mean that I believe
21 the historical issuances were not very efficient and low cost transactions,
22 merely that an absolute lowest cost standard is neither realistic nor helpful.

1 **Q. You state that cost is not the only consideration. What factors are**
2 **important in judging the success of securitization issuance in this specific**
3 **instance?**

4 A. Without question, attaining low *total* cost (i.e., including both upfront and
5 ongoing costs) is the single most important objective. However, there are two
6 other factors of some significance that the Commission should consider. The
7 first of these, and the more important, is timing. I agree with Mr. Fichera
8 (p.46) that the length of time it takes to complete a transaction is not a
9 “measure of success,” but it is important that the process be conducted
10 expeditiously and not allowed to drag on unnecessarily. With many
11 transaction participants paid by the hour, one cannot ignore the cost of
12 negotiation, procrastination and posturing. But of paramount importance is
13 the impact of delay upon FPL’s financial condition and operation. Given
14 pressure on our liquidity situation and the prospect of another active storm
15 season being soon upon us, an expeditious financing is crucial.

16
17 Sensible judgments have to be made here. Adding a day or two to the
18 marketing period for the debt issuance if it brings in additional investors and
19 creates pricing pressure to gain five or ten basis points is obviously an
20 excellent trade-off. In contrast, dragging the process out for several weeks for
21 a basis point or two would not be, in my judgment. Rigid application of a
22 lowest cost standard clearly has the potential for bad results here. In this
23 respect I concur with Commissioner Smitherman of the Texas Commission

1 who stated: "All things being equal, price matters the most," followed by
2 "Sooner is better than later." (Public Utility Commission of Texas
3 Memorandum dated September 21, 2005 from Commissioner Barry T.
4 Smitherman to Commissioner Julie Parsley and Chairman Paul Hudson, RE:
5 September 21, 2005 Open Meeting Item No. 27, Discussion Regarding the
6 Issuance of Transition Bonds by Centerpoint Authorized by Docket No.
7 30485, attached as Document No. MPD-6)

8

9 The concern about timing will be substantially mitigated if the Commission
10 adopts FPL's proposal for an interim surcharge in the event that securitization
11 is delayed.

12

13 The second factor to be considered is the impact of any one transaction on the
14 terms of FPL's continued access to the capital markets. While the storm
15 recovery bond issuance will be a slightly different transaction for FPL, it will
16 still involve many of the same participants, particularly on the investor side,
17 with whom FPL needs to maintain ongoing relationships. This is important as
18 it sometimes occurs that in the pricing process it is possible to "jam" investors
19 – that is, extract last minute concessions from them on terms and conditions or
20 pricing. Investors have long memories. If they perceive that the final
21 transaction pricing was not conducted fairly and above board it can lead to
22 less willingness to participate in future transactions. In addition, investors
23 judge the success of a transaction in part by how well the debt trades *after*

1 execution. A transaction that is priced too aggressively tends to trade poorly,
2 may leave large blocks in the hands of the underwriters, and can be perceived
3 negatively, leading to *wider* spreads on subsequent deals, not only by FPL and
4 its affiliates but potentially of the issuers of other storm-recovery bonds in
5 Florida. FPL and its customers (and perhaps other Florida utilities and their
6 customers) will bear the burden of this, while any transaction participant
7 whose involvement is limited to the specific deal would have no interest at
8 stake. For this reason, too, I believe the rigid application of a “lowest cost-at-
9 all-costs” approach is poor.

10 **Q. Please describe your third general concern with the use of the “lowest**
11 **cost” standard.**

12 A. Mr. Fichera notes in his testimony the fact that customers have an interest in a
13 lowest cost transaction. But one fundamental area in which the interests of
14 Mr. Fichera and FPL diverge is with respect to whether to aggressively push
15 for a lower market price measured by as little as a single basis point, at the
16 risk of incremental securities law liability and potentially very high costs to
17 FPL through disclosures and representations that are not warranted.
18 Fundamentally, such a result is no different than if, in order to lower costs to
19 customers, the Commission were to require FPL to pay all of the issuance
20 costs (or even more extremely, to subsidize 50% percent of the interest cost).
21 Clearly the interest in low cost should not be pursued at “any and all costs.”
22 My concern here is that the mechanical application of a “lowest cost” standard
23 has the potential to ignore such considerations and relevant interests. FPL is

1 prepared to securitize its prudently incurred and presently unrecovered storm
2 restoration costs, but would do so with the expectation that the resulting
3 process will not be used as a backhand way to extract economic “concessions”
4 from, or impose incremental legal liability on, the Company under the pretext
5 of meeting a “lowest cost” (to the customer) standard.

6 **Q. How would the application of a “lowest cost” standard affect the basic
7 choice between securitization and surcharge?**

8 A. Applied strictly, the “lowest cost” standard would lead one to conclude that
9 the surcharge approach should be adopted, as it results in the customer having
10 to pay fewer dollars than in the securitization approach. If Ms. Klein’s
11 standard (“Every dollar is a dollar, and in this case every dollar is a ratepayer
12 dollar” p.6) were taken literally, then it would preclude adopting the
13 securitization approach. For reasons stated in my direct testimony, I do not
14 believe this is the right approach under the present circumstances. The
15 Commission is fully entitled to look beyond an absolute “lowest cost”
16 standard, and it should do so.

17 **Q. Is a “lowest cost” standard required by the Florida Statute?**

18 A. No, in contrast to certain other states, Florida’s legislation is better, since it
19 does not require the application of an unverifiable standard. Instead, it
20 implicitly acknowledges the existing powers of the Commission to protect
21 customers.

22 **Q. Was a lowest cost standard considered by the Florida Legislature?**

1 A. Yes. It is my understanding that the legislature expressly considered and
2 rejected language almost identical to the Texas statute during the course of the
3 legislative process. I have attached documents to my testimony (Document
4 Nos. MPD 7 and 8 which, I believe evidences this. Although I am not an
5 attorney, I believe that this legislative history may be important for the
6 Commission to consider.

7
8 As can be seen on Document No. MPD-7 [Committee Substitute 1 for House
9 Bill 303, p. 11 of 32, from the Florida Legislature website www.leg.state.fl.us]
10 Section 2(b)2.c. of this version of the bill provided that the Florida Public
11 Service Commission in a financing order was to "[e]nsure that the marketing,
12 structuring, pricing, and financing costs of the storm recovery bonds will
13 result in the lowest cost of the funds and the lowest storm recovery charges
14 that are consistent with market conditions and the terms of the financing
15 order." This language is very similar to the language in the Texas statute
16 referenced by Ms. Klein in her testimony. In the next version of the
17 legislation, however, shown in Document No. MPD-8 [Committee Substitute
18 2 for House Bill 303, p. 10 of 31] the section including this "lowest cost"
19 standard is gone. The "lowest cost" standard is also not present in Senate Bill
20 1366 (a companion to House Bill 303), which ultimately passed the House
21 and Senate and was signed by the Governor. Senate Bill 1366 is codified at
22 Section 366.8260, Florida Statutes, the securitization statute.

1 **Q. What standard instead of "lowest cost" was adopted by the Florida**
2 **Legislature?**

3 A. Instead, the legislature adopted a more reasonable standard. The Commission
4 is to "[d]etermine that the proposed structuring, expected pricing, and
5 financing costs of the storm-recovery bonds are reasonably expected to result
6 in lower overall costs or would avoid or significantly mitigate rate impacts to
7 customers" Section 366.8260(2)(b)2.b.

8 **Q. Ms. Klein asserts on page 9, lines 10-16, of her testimony that even though**
9 **the statute authorizing securitization of storm-recovery costs does not**
10 **have an expressly stated lowest-cost requirement, it can be applied. Do**
11 **you believe the Commission should apply a lowest cost standard even if it**
12 **is not required?**

13 A. No. If the legislative history would indicate that the Florida Legislature
14 expressly considered but rejected the standard advocated by the witnesses for
15 Saber, I don't know why this Commission would accept its application
16 through some other construct or interpretation of another subsection of the
17 legislation. The statutory standard adopted in Florida is a forward-looking
18 standard, whereas the lowest cost standard suggested by Ms. Klein is one that
19 cannot practicably be determined in advance of the financing -- or ever. The
20 two standards simply are not consistent one with the other.

21 **Q. Is the Commission abrogating a general duty to act in the public interest**
22 **if it does not apply a "lowest cost" standard?**

1 A. No. The Commission is not required by statute to achieve, and would never
2 know regardless of any certification required or provided, whether in fact the
3 financing had achieved the lowest cost.

4 **Q. What standards would you suggest the Commission consider in**
5 **evaluating the success of FPL's financing?**

6 A. I don't believe it is appropriate to use a single criterion to measure the
7 success of the financing. I would propose a multi-part assessment designed to
8 encompass the overall objectives I believe the Commission should consider in
9 evaluating the success of the transaction. The best measure of success is
10 clearly cost and the test should be: has the Company taken all reasonable steps
11 that, based on the knowledge available at the time, and consistent with good
12 financial market practice, would reasonably be expected to produce the lowest
13 cost transaction. However, this test must be balanced by two other
14 considerations. To be considered successful, a transaction must also (1) be
15 executed efficiently without undue delay and its attendant inefficiencies, risks
16 and increased costs, and (2) not unduly create incremental liability to the
17 Company or prejudice to future transactions using "lowest cost" as a
18 predicate). My proposal is thus "forward looking" and takes into account the
19 additional appropriate policy objectives of the Commission – efficiency and
20 balance. In sum, I propose a more rational and comprehensive definition of
21 "lowest cost", and this is the standard by which the financing and Company
22 should be judged, not by an arbitrary, unverifiable standard.

1 **Q. Do you have a reaction to Mr. Fichera's, Ms. Klein's and Mr. Noel's**
2 **observations about FPL's motivations in securitization issuances?**

3 A. Mr. Fichera and Mr. Noel both argue that securitization deals are different
4 from other financings, since customers directly rather than indirectly bear the
5 burden of their economic impact, and that this difference in some way lessens
6 FPL's interests in getting a good deal done. Mr. Noel explicitly states: "FPL's
7 highest priority in this transaction likely will be to get the issuance done
8 quickly, with cost taking a lower priority," and implies that ". . . there are no
9 adverse consequence to management and its shareholders for a mediocre
10 result." (pp. 7-8). Mr. Fichera similarly states ". . . FPL has no stake in the
11 outcome other than to receive the cash and improve its balance sheet as
12 quickly as possible." (p. 28) I strongly disagree and will explain why.

13 **Q. What are FPL's interests in a securitization issuance and how do they**
14 **compare with customers'?**

15 A. I agree with Mssrs. Fichera and Noel to the extent that FPL shareholders will
16 not directly bear the burden of issuance costs or the actual financing charges.
17 However, it does not follow that FPL has no interest in a successful financing.
18 In fact, FPL has a very strong interest in this process being successful, as
19 measured by an efficient, low cost transaction that trades well and leaves all
20 participants with a positive after-reaction. This is true for several reasons.

21

22 First, although the proposed storm recovery bonds are not particularly
23 complex or difficult to comprehend for financial market participants, they do

1 have some special characteristics, and this will be the first time that this
2 particular type of bond has been issued. FPL is both the sponsor of the
3 transaction and the parent of the issuer, or SPE. Our reputation in the markets
4 will be directly affected by how well this transaction succeeds, and this will
5 affect future transactions, which collectively will be much larger than the
6 storm recovery bonds.

7
8 Second, although this is the Company's first securitization, it is well within
9 our competency. In contrast to Mr. Noel's contention, we have assigned
10 senior level treasury management and have retained experts who are among
11 the most experienced in this area to assist us in this process. We always
12 strive for efficiency and low cost in our execution (and generally achieve it, as
13 witnessed by the spreads at issuance on our first mortgage bonds).

14
15 Third, we are well aware that our performance in issuing the storm recovery
16 bonds will be closely scrutinized by the Commission and intervenors in this
17 case. While we cannot control the final outcome, we clearly have a strong
18 reputational interest in seeing that we enter the final pricing phase well
19 positioned for a low cost outcome.

20
21 Fourth, it is entirely possible that we may need to come to the Commission in
22 the future with a subsequent request to authorize the issuance of additional

1 storm-recovery bonds. Therefore, we have a keen interest in ensuring this
2 deal is considered successful for both customers and the Company.

3

4 Finally, FPL has a keen interest in keeping overall rates as low as possible and
5 mitigating rate impacts to our customers.

6

7 Thus, our interests with customers are in fact very well aligned. Customers
8 want a low cost, efficiently executed deal, and so do we. Customers' interests
9 are not served by an unnecessarily protracted execution process, and nor are
10 ours. Customers' interests are not served if this one deal adversely affects
11 future capital access, and nor are ours.

12 **Q. Does FPL's proposed process allow the Commission to assure itself that**
13 **the customer will receive the benefits of an efficient, low cost deal while**
14 **properly balancing the secondary considerations that you mentioned**
15 **earlier?**

16 **A.** Yes. FPL's proposed process provides full scope for the Commission,
17 directly or through its representative, to assure itself that each step of the
18 structuring and marketing process is reasonably designed to produce the result
19 we all want. Depending upon exactly what form the Commission desires its
20 participation and oversight to take, the specifics of the process can be
21 modified accordingly.

22 **Q. Mr. Fichera states that he finds some of the FPL proposed procedures**
23 **"troubling" and suggests that FPL's proposed process "seems designed to**

1 **limit the ability of the Commission's staff and financial advisor to**
2 **participate actively and in advance in all aspects of structuring,**
3 **marketing and pricing storm recovery bonds.” (p. 54) Do you agree?**

4 A. No. FPL's proposed process contemplates active involvement and extensive
5 input from the Commission's representative and its advisors all through the
6 development of the structuring, marketing and pricing process. The process is
7 designed for efficient execution, however, so that all input will be received
8 and evaluated *prior* to moving to the next step. While the process outlined in
9 the financing order does not include all of the interaction contemplated by
10 FPL for the structuring, marketing and pricing process, I have included on
11 Document no. MPD- 9 a time line which lays out with greater specificity each
12 of the transaction steps on which FPL would intend to confer with the
13 Commission and its representatives. I believe it is crucial to have agreement
14 on each decision (or notice of disagreement, if that were to occur) *prior* to
15 implementation. In contrast, we see no such clarity in Saber's proposed
16 process, nor do we observe that it is listed as a best practice.

17
18 For example, with respect to pricing, to which Mr. Fichera specifically refers
19 in his testimony, our proposal contemplates consultation with Staff forty eight
20 hours in advance of expected pricing, at which time market conditions will be
21 clear enough that a reasonable range of pricing can be estimated. We would
22 expect to have the Commission, acting through its staff, agree that, if we are
23 able to execute within that range, that we should execute the transaction, or if

1 not, to indicate what alternative they propose. Our intent here is to preclude
2 the possibility of “second guessing” – i.e., waiting until we see how the deal
3 prices before determining whether or not it meets the Commission’s chosen
4 standard – which we do not believe is in either customers’ or FPL’s interests.
5 If the Commission feels that forty eight hours is not close enough to be able to
6 make a fair assessment of the expected pricing range we would be happy to
7 move it up to twenty four hours. The amount of lead time is not so important
8 as ensuring that everyone is in agreement *prior* to actual pricing.

9 **Q. Are there substantive differences between FPL’s approach and Saber’s?**

10 A. Yes. Although our proposed approach contemplates extensive and active
11 involvement on the part of the Commission and its representatives, it does
12 differ fundamentally from that proposed by Saber in one key respect. The
13 critical issue relates to the definition of “active involvement” – a term that
14 recurs throughout Mr. Fichera’s testimony but remains undefined. I believe it
15 will be helpful if we clarify this term and illuminate the main difference
16 between FPL’s proposed approach and Saber’s by focusing specifically on the
17 crucial issue of decision-making.

18 **Q. How would decision-making occur under FPL’s proposed approach?**

19 A. We propose to consult with Staff and the Commission’s financial advisor on
20 all relevant matters prior to making decisions. As shown on the time line
21 attached as Document No. MPD-9 we will do so at all critical junctures of the
22 structuring, marketing and pricing process. But we expect to have ultimate
23 decision-making authority for all aspects of the execution of the financing,

1 just as we do with other financings for which FPL is the issuer or controls the
2 issuer. We have an experienced capable staff and are fully able to execute a
3 transaction of this nature. We expect to be able to execute a transaction that is
4 very efficient and results in a tight (low) credit spread, taking advantage of
5 many of the specific techniques successfully utilized by Saber in other
6 transactions, as well as of our own extensive experience in executing
7 financing transactions.

8
9 Under this approach, where Staff's or Saber's input differs from FPL's (and if
10 it never differed then no purpose would be served by incurring the expense of
11 hiring a financial advisor), the burden is on FPL to evaluate the differences
12 and, where it chooses to depart from the input, to justify its choice. We will
13 be ultimately accountable to the Commission if we exercise poor judgment.
14 Under these circumstances it would be foolish, I believe, for FPL to overlook
15 and fail to implement any proposal which holds out the prospect of a lower
16 cost deal without adversely affecting any other interest. But the responsibility
17 for moving forward should rest, appropriately, with FPL, the sponsor of the
18 financing and the legal owner of the issuer.

19 **Q. How would decision-making occur under Saber's proposed approach?**

20 A. According to Mr. Fichera's recommendation, p. 58, Saber, acting on behalf of
21 the Commission, would have "oversight for participation in real-time on all
22 matters related to the structuring, marketing, and pricing of the storm recovery
23 bonds." Elsewhere, (p. 29) Mr. Fichera refers to a "joint and collaborative

1 effort” and a “co-leadership” role for the Commission with FPL. However,
2 when specifically addressing the question of how decisions will be made if
3 FPL and Staff and/or Saber disagree, which is obviously the critical question,
4 Mr. Fichera proposes that “Saber, staff and FPL will make written
5 presentations of their views to the FPSC.” (p. 46) Logically, therefore, this
6 means that final decision-making authority for all aspects of structuring,
7 marketing and pricing would reside with the PSC. Elsewhere in his testimony
8 Mr. Fichera confirms this: “. . . the only way to protect ratepayers is to
9 provide for Commission approval of all future decisions affecting ratepayers
10 before they are made final.” (p.52) If the Commission has to approve
11 decisions it is in effect making them.

12 **Q. Does the current contract between Saber and the Florida Public Service**
13 **Commission provide for the extent of authority and scope of work**
14 **advocated by the Saber representatives that have filed testimony in this**
15 **docket?**

16 A. No. Mr. Fichera indicated in his deposition that his contract and
17 compensation would have to be revised to accommodate Saber’s role if his
18 recommendations in this case are accepted. (Saber Partner’s contract with the
19 Florida Public Service Committee is attached as Document No. MPD-10.)

20 **Q. What impact would this proposed decision-making approach have in**
21 **practice?**

22 A. I believe it would be unworkable as a practical matter. In some cases, issues
23 on which we might reasonably disagree would be too detailed to warrant the

1 direct involvement of Commissioners, and during the actual pricing process it
2 would very likely be impossible to obtain the Commission's decision in a
3 timely fashion. As a practical matter, I believe the Commission needs to
4 decide either to vest, within applicable limits, final decision-making with an
5 appointed representative, or to leave it where it would normally reside for any
6 financing execution, which is with FPL. Nevertheless, the ability to appeal to
7 the Commission to obtain additional input in the event of differences will be
8 useful.

9 **Q. Do you believe "active" in the sense of decision-making in the hands of**
10 **PSC acting through its representative is a better approach than FPL's**
11 **proposal?**

12 A. No. I believe it is neither necessary nor desirable. It is not necessary,
13 because: (1) FPL has an experienced, capable staff and is well able to handle
14 the mechanics of the proposed transaction; (2) FPL's proposed process will
15 benefit from the input and practical experience of the Commission's financial
16 advisor; and (3) the Commission already has all the tools and oversight it
17 needs to assure that customers' interests are properly represented and
18 protected. It is not desirable, because it places the Commission, directly or
19 indirectly, in the role of accepting specific responsibility for execution – a
20 precedent which, I submit, may not represent good public policy.

21

22 Mr. Fichera's proposed standard – that the only way to protect customers is to
23 provide for Commission (i.e., Saber's) approval of all future decisions before

1 they are made final – could just as well be applied to every other aspect of
2 utility operations. I do not believe the Commission should want to put itself --
3 particularly by extension through an independent consultant -- in the position
4 of making final decisions on operational matters, whether in day-to-day
5 operations or in financing matters.

6 **Q. What implications would there be if, notwithstanding your**
7 **recommendation, the Commission chooses to make itself, by acting**
8 **through its financial advisor, responsible for the decision-making?**

9 A. Although I believe it is neither necessary nor desirable, FPL remains
10 committed to executing a low cost, efficient transaction, and we will work
11 productively and cooperatively whichever way the Commission chooses to go.
12 Obviously, if FPL is not in a position to make the final decisions it cannot be
13 held accountable for the final result, and it is conceivable that we might in
14 good faith conclude that better results could have been achieved if different
15 decisions had been taken. However, we will do all we can, consistent with
16 observing the law and with maintaining our fiduciary obligations to our
17 shareholders, to make the process a success even if that process is not
18 precisely the one we would have chosen. But clarity in where final decision-
19 making authority (and hence accountability) rests is crucial.

20 **Q. If the Commission chooses to reserve to itself, acting through its**
21 **representative, final decision-making authority, are there limits to this**
22 **authority?**

- 1 A. Yes. Under federal securities law, FPL as the parent of the issuer bears
2 ultimate responsibility for the accuracy and completeness of the disclosures
3 and representations made in bringing the debt to market. Accordingly, under
4 all circumstances, FPL must have final authority to determine the exact
5 wording of disclosure, and this should be made clear in any final order the
6 Commission issues deciding how decision-making authority will be executed.
- 7 **Q. Mr. Fichera in his testimony proposes a set of “best practices.” Do you**
8 **concur with these?**
- 9 A. Not entirely. Mr. Fichera presents no evidence that his proposed practices do
10 in fact lead to the best result and states only that they are based on his and
11 Saber’s experience. Reasonable people can disagree as to whether or not a
12 particular practice is “best” in the context of the specifics of FPL’s financing
13 application.
- 14 **Q. Do you concur with practice #1?**
- 15 A. In part, yes, subject to my observations about decision-making authority noted
16 earlier. I believe it will be useful to have the Commission’s representative
17 participate in the selection of the underwriters and underwriters’ counsel,
18 since this drives the largest single issuance cost. I see no value in having the
19 Commission involve themselves, directly or indirectly, in selecting and
20 negotiating with minor participants, such as printers, auditors or trustee.
21 Moreover, the Commission should not select company counsel, or what Mr.
22 Fichera has described as “deal” counsel.
- 23 **Q. Do you concur with practice #2?**

1 A. Yes, in part. In (2), Mr. Fichera recommends that the Commission carefully
2 review and negotiate all transaction documents and contracts that could affect
3 future customer costs to ensure accuracy and compliance with all laws, rules
4 and regulations. I agree that it is important for the Commission to review all
5 significant transaction documents. For this reason, FPL filed all of the
6 significant transaction documents in substantially final form on January 13,
7 2006 with its petition. The only changes expected to be made to these
8 documents would be those required to conform with rating agency
9 requirements to obtain "AAA" ratings, to conform to any requirements of
10 Regulation AB recently adopted by the Securities and Exchange Commission
11 (which relate principally to servicer reporting requirements), or clerical or
12 conforming corrections. FPL's proposed issuance process also provides that
13 the Commission's representative and its advisor be provided revised
14 transaction documents at least 30 days prior to launching the transaction and,
15 if requested, all other documents and legal opinions at least 10 days prior to
16 launching the transaction for comment and to determine if the final form of
17 documents remain in compliance with the financing order. If the Commission
18 staff has any comments to the forms of financing documents submitted with
19 the Company's petition, we would welcome receiving them as soon as
20 possible.

21 **Q. Do you agree with practice #3?**

22 A. I am unable to determine what Mr. Fichera means by "Ensure all statutory
23 limits which benefit ratepayers are strictly enforced." To the extent this

1 simply means that the Commission should comply with the Florida statute
2 governing securitization, I agree it is a best practice.

3 **Q. Do you agree with practice #4?**

4 A. In part. I agree in principle that if actual servicer costs are higher or lower
5 than the formal agreement between the SPE and FPL provides that customers
6 should pay or receive the difference. However, as a practical matter, I believe
7 it will be more costly to identify and account for these costs separately than
8 any likely savings to the customer might be worth. That is why FPL used
9 estimates representing the lower end of a range of such fees that have been
10 approved in other utility asset-backed securitizations.

11 **Q. Do you agree with practice #5?**

12 A. No. For obvious reasons I do not believe it is appropriate to require that the “.
13 . . . bonds be offered to the broadest possible market . . .” Taken literally, this
14 implies that FPL should market the bonds all over the world. It is my view
15 that the potential market among, for example, Bangladeshi investors (to pick
16 just one market) is not sufficiently large and would not place any realistic
17 price pressure on the issuance to warrant the effort involved. As in other areas
18 of Saber’s proposed process, the use of an absolute standard can lead to
19 unintended negative consequences.

20

21 Nevertheless, I concur with the principle underlying practice #5 to the extent
22 that I believe careful consideration needs to be given to how broadly to market
23 the bonds, balancing the incremental effort involved with the likely

1 incremental price pressure. FPL expects to develop, in conjunction with the
2 underwriters and the Commission's representative and its advisor, a marketing
3 plan prior to proceeding with the transaction. Mr. Olson addresses this issue
4 in his testimony.

5 **Q. Do you agree with practice #6?**

6 A. I agree that, in general, the attributes of "transparency" and "accountability"
7 are desirable. However, without any information as to what specific practices
8 Mr. Fichera believes are necessary to achieve transparency and accountability,
9 I cannot determine whether I am in agreement with the practice as stated.

10 **Q. Do you agree with practice #7?**

11 A. Generally yes. Subject to the reservations expressed earlier about clarity of
12 decision-making authority, I believe the issues addressed in practice #7 should
13 all be part of the evaluation of FPL's specific issuance approach that the
14 Commission's representative and its financial advisor evaluate.

15 **Q. Do you agree with practice #8?**

16 A. No. For the reasons noted earlier I believe "lowest cost", as described by Mr.
17 Fichera, is an inappropriate standard. Nonetheless, if the company is asked to
18 certify that it has taken all reasonable actions likely to lead to lowest cost,
19 properly balanced by the other considerations I described earlier, we would do
20 so.

21 **Q. Do you agree with practice #9?**

22 A. No. The financing documents are for the benefit of bondholders. We believe
23 that Section 366.8260(15) already provides this protection for customers.

1 **Q. Mr. Fichera provides a list of what he considers deficiencies in FPL's**
2 **proposed financing order. Are there factors the Commission should**
3 **consider in evaluating Mr. Fichera's suggested deficiencies in FPL's**
4 **proposed financing order filed with FPL's petition?**

5 A. Yes. As an introductory comment to Mr. Fichera's list of deficiencies, let me
6 state that FPL's proposed form of financing order as well as proposed
7 transaction documents were based upon industry precedent. In fact, Mr.
8 Fichera admits in his testimony that the proposed transaction structure is
9 consistent with most but not all other transactions. Mr. Fichera focuses upon
10 one significant issue in our proposed form of financing order-that the FPL
11 does not give "day of pricing" approval to the Commission or its Staff. I have
12 discussed the reasons for our approach to the Commission's participation in
13 the structuring, marketing and approval process above. As for the list of other
14 "deficiencies" in our proposal cited by Mr. Fichera, we are happy to see that
15 the list is short. But let me assure you that the Company did its homework,
16 and each of these issues was carefully considered by us. In fact, some of these
17 "deficiencies" do not exist, because they have already been addressed in our
18 financing order and the transaction documents. I will address those factors by
19 item number as they appear in Mr. Fichera's testimony on page 53.

20

21 In (1) we do not believe that the "negligence" standard is either customary or
22 required in the marketplace to sell the storm recovery bonds. As for the

1 protection of customers, Section 366.8260(15) provides express protection for
2 them for FPL malfeasance under the servicing arrangement.

3

4 In (2), FPL has already stated in testimony that Section 366.8260(15) protects
5 customers against losses from a servicer default.

6

7 In (3), Mr. Fichera states that FPL's proposed financing order should prohibit
8 FPL from terminating the Servicing Agreement in the case of a Servicer
9 default, without FPSC approval. While there is no such statement in FPL's
10 proposed financing order, FPL's proposed form of servicing agreement
11 prohibits FPL from voluntarily resigning as servicer unless FPL determines
12 that it can no longer legally perform its services functions. This provision was
13 included because FPL recognizes that the servicing functions are inextricably
14 related to FPL's normal billing and collection activities. In addition the
15 proposed form of financing order submitted by FPL prohibits the appointment
16 of a successor servicer under the servicing agreement, without Commission
17 consent, if such appointment would result in an increase in servicing fees
18 greater than any threshold proposed in the financing order. These servicing
19 agreement provisions are consistent with the protections afforded in other
20 transactions, including transactions in which Mr. Fichera has participated.

21

22 In (4) Mr. Fichera states that FPL's proposed financing order is deficient
23 because it does not "require that any Servicer "float" benefit to Florida

1 ratepayers rather than FPL". The Servicer "float" pertains to any interest
2 earnings on funds collected for repayment by FPL which have not yet been
3 remitted to the trustee. FPL's proposed servicing agreement, as filed with the
4 Commission, requires FPL to remit funds to the trustee on a daily basis.
5 Consequently, all interest earnings accrue to the customer's benefit and there
6 is no Servicer "float". FPL is uncertain how it could account for intraday
7 earnings or adjustments related to the true-up of actual vs. forecast write-offs.
8 These amounts are negligible and consequently, the agreement proposes that
9 these amounts, positive or negative, will accrue to the Servicer.

10

11 In (5), Mr. Fichera recommends that FPL's financing order "mandate
12 continuing disclosure to the SEC and the general public to increase liquidity
13 for storm-recovery bonds and lower ratepayer costs". The SEC provides that
14 if there are fewer than 300 investors in a security, the issuer may deregister
15 the security and suspend SEC reporting requirements once the entity has filed
16 at least one 10-K with the SEC. This practice has been routinely followed
17 (and is expected by investors) in utility transition bond transactions. The
18 deregistration of securities eliminates the need for annual audited financial
19 statements as well as Sarbanes Oxley related certifications, reducing ongoing
20 transaction costs to customers and liabilities to the company. Investors can
21 continue to receive financial information from the trustee or from web sites
22 maintained by the issuer. Consequently, I believe that mandating continuing
23 disclosure to the SEC is not a preferable feature to include in FPL's financing

1 order. FPL would agree to make continuing disclosure of specified
2 transaction information available via a website.

3
4 In (6) Mr. Fichera contends that FPL's proposed financing order is deficient
5 because it does not require FPL to "include an accurate description of credit
6 risk in marketing documents." First, as FPL has not yet submitted the
7 proposed form of its marketing materials, this statement seems premature, at
8 best. But in anticipation of a request by Mr. Fichera to include in such
9 marketing materials a statement evaluating the credit risk of the storm
10 recovery bonds, I will respond. Any evaluation of credit risk is judgmental in
11 nature, and thus not subject to an evaluation of accuracy. In other offerings,
12 Mr. Fichera has recommended that language be included in the offering
13 documents and marketing materials stating that "the broad-based nature of
14 the true-up mechanism and the state pledge, serve to effectively eliminate, for
15 all practical purposes and circumstances, any credit risk associated with the
16 Bonds." While I can understand why a financial advisor might desire for an
17 issuer to make such a statement, it is neither appropriate, nor customary for an
18 issuer to make judgmental statements regarding the level of credit risk related
19 to an investment in offering documents provided to the SEC or marketing
20 materials governed by securities law. Credit risk can mean different things to
21 different people. The SEC in its guidance to issuers is very clear that issuers
22 are to provide investors with disclosure that is not misleading. Investors
23 should form their own conclusions relative to an investment's risk

1 characteristics through review of factual information provided by the issuer in
2 offering documents and marketing materials and review of assessments of
3 credit risk made by the rating agencies. If there are stress tests which
4 illustrate the remoteness of the possibility that the storm recovery bonds
5 would not be paid on time, and there is a perceived benefit, it would be far
6 preferable to state the results of such tests in the offering documents to
7 establish that conclusion. Instead of mandating the inclusion of a credit risk
8 assessment, the Commission should instead be content with reminding FPL of
9 its obligations to comply with federal securities law in its disclosure.

10

11 If the Commission chooses to make a finding or a conclusion regarding the
12 credit risk of this security in the financing order as a statement of fact, FPL
13 would include that statement in offering documents and marketing materials
14 provided it was clearly identified in each instance that it was a conclusion of
15 the Commission and not the Company.

16

17 Similarly, if Mr. Fichera desires to characterize the State's obligations under
18 the financing order, as he does in testimony, as "direct, explicit, conditional
19 and irrevocable", or to describe the role of the State and local governments a
20 "payors of last resort" with respect to the charges, we will similarly include
21 such statements as conclusions of the Commission, not the Company-as this
22 language is not explicitly included in the statute.

23 In (7), Mr. Fichera states that FPL's proposed financing order is deficient

1 because it does not “describe accurately the government’s role in the
2 transaction.” I disagree completely with this claim. The description of the
3 state pledge included in FPL’s proposed financing order is taken directly from
4 the statute. Mr. Fichera would prefer for the financing order to characterize
5 the state pledge as a “guaranty.” This, to my mind, would be an inaccurate
6 description. While the words “pledge” and “guaranty” may be similar in
7 meaning to the lay person, they may be viewed differently in the investment
8 community. I believe it is most prudent and accurate to use the words chosen
9 by the legislature when drafting the statute. However, if the Commission
10 chooses to describe its covenant in the financing order and the statute as a
11 guarantee, our offering document will quote the language of the financing
12 order as statements of the Commission.

13 **Q. Would you please summarize the key points related to securitization that**
14 **the Commission should consider as it determines what to include in its**
15 **final ruling and/or in the financing order?**

16 **A.** Yes. First, and most important, the Commission should be clear in deciding
17 and communicating which party will have final decision-making authority: the
18 Commission acting through its representative, or FPL. I believe the former is
19 less desirable, but subject to the limitation that FPL will always have to retain
20 authority over its SEC disclosure, either can work. However, clarity is
21 required.

22

1 Second, a “lowest cost” standard as described in Mr. Fichera’s testimony,
2 while superficially appealing, is inappropriate for this case. It cannot be
3 objectively measured, it ignores other important non-cost criteria, and it
4 creates the potential for abuse. A more comprehensive view of total cost
5 which encompasses reasonable expediency and a balance of customer and
6 company interests would be a more appropriate standard for the Commission
7 to require. FPL fully intends to take all reasonable measures to get the best
8 deal for customers consistent with the terms of the financing order, the market
9 conditions at the time of pricing and the other considerations discussed in my
10 testimony.

11

12 Third, contrary to Mr. Fichera’s statements, we welcome the Commission and
13 Staff’s involvement in the issuance process and believe the general process
14 that we have laid out readily accommodates it. We look forward to benefiting
15 from the practical experience Saber Partners has gained in other securitization
16 transactions. The process as we have laid it out, however, does provide that
17 FPL has final decision-making authority and therefore seeks to have all input
18 addressed and approvals given *before* specific decisions are made. It makes
19 no provision for the Commission, the Staff, or the financial advisor to agree to
20 a proposed decision and then subsequently say “no, we changed our minds.”
21 For this limitation I make no apologies. If the Commission chooses to assume
22 final decision-making authority, then the specifics of the proposed issuance
23 process would need to change.

1

2 Fourth, contrary to Mr. Fichera's and Mr. Noel's assertions, FPL recognizes
3 that it has a very strong interest in this transaction being successful, reflected
4 in very tight pricing, an efficient execution process, and a deal that is well
5 recognized by key capital market participants. In this, our interests are
6 aligned with customers. An excellent transaction is a key objective of the
7 entire FPL Treasury team for 2006.

8 **Q. Does this conclude your rebuttal testimony?**

9 **A. Yes.**

1 BY MR. LITCHFIELD:

2 Q And, Mr. Dewhurst, attached to your rebuttal
3 testimony are Exhibits MPD-4 through MPD-10?

4 A That's correct.

5 MR. LITCHFIELD: And, Chairman Edgar, those exhibits
6 have been premarked and numbered and have been entered into the
7 record.

8 CHAIRMAN EDGAR: Thank you.

9 BY MR. LITCHFIELD:

10 Q Mr. Dewhurst, have you prepared a summary of your
11 rebuttal testimony?

12 A I have.

13 Q Would you please present that?

14 A Commissioners, my rebuttal testimony responds to
15 certain proposals and assertions raised by Witnesses Jenkins,
16 Stuart, Larkin, Fichera, Klein and Noel.

17 First, with regard to Mr. Jenkins' proposal for up to
18 a 20 percent disallowance of the company's prudently incurred
19 restoration costs, this proposal, if adopted, would be contrary
20 to the plain terms of the 2005 rate stipulation settlement,
21 will be contrary to long-standing well-founded regulatory
22 policy, would raise investors' risk perceptions and, hence,
23 FPL's cost of capital, would interfere with incentives for the
24 safe and rapid restoration of power after hurricanes, and would
25 have a chilling effect on the prospect of negotiated settlement

1 between utilities and other, excuse me, and other parties,
2 which would be bad public policy.

3 Second, with regard to Mr. Stewart's recommendation
4 of a reserve level of \$150 million to \$200 million, I believe
5 this would be shortsighted and would ultimately lead to greater
6 rate volatility and higher costs for customers.

7 And, finally, with regard to issues raised by staff
8 witnesses from Saber Partners, I would suggest the following:
9 One, that the Commission not adopt Mr. Fichera's proposal for,
10 quote, coleadership of the bond issuance process, but should
11 instead make clear whether final decision-making authority over
12 the details of the process will reside with the Commission or
13 with FPL. Either can work, but I believe it is important that
14 we be clear.

15 Two, that the Commission not adopt a so-called lowest
16 cost standard for the securitization process. While we will
17 always strive for efficiency and low cost, an absolute lowest
18 cost standard is inherently unverifiable, ignores other
19 important interests, is not required by the statute, and was,
20 in fact, expressly rejected by the Legislature during the
21 legislative process. Instead, the Commission should adopt a
22 more inclusive standard which I describe in my testimony.

23 Third, FPL welcomes the involvement of the
24 Commission, its staff and its financial advisor in this
25 process. We also welcome the direct involvement of Office of

1 Public Counsel and others here who would like to monitor the
2 issuance process. But I do strongly urge the adoption of a
3 process that seeks to have all input relevant to a given
4 decision provided before that decision is made and that
5 minimizes the possibility for second guessing.

6 I look forward to answering Commissioners' questions
7 on these securitization issues at the appropriate time. Thank
8 you.

9 MR. LITCHFIELD: Mr. Dewhurst is available for
10 cross-examination, subject to the stipulation.

11 CHAIRMAN EDGAR: Thank you. Who would like to begin?

12 Mr. Kise.

13 MR. KISE: Yes. Thank you. I will note that
14 Mr. Dewhurst didn't say he looked forward to the intervenors'
15 questions, but nevertheless we'll try to make them quick and
16 painless.

17 CROSS EXAMINATION

18 BY MR. KISE:

19 Q Mr. Dewhurst, I'm going to refer you -- do you have a
20 copy of your rebuttal testimony in front of you?

21 A I do.

22 Q And for ease of reference and for purposes of speed,
23 I'm going to refer you -- stick fairly close to that testimony
24 and make references to it. Unless I indicate otherwise, I'm
25 going to be referring to that testimony. If we need some other

1 testimony, the direct or elsewhere, I'll indicate that.

2 Referring on Page 2 of your rebuttal testimony, in
3 the items there at the top dealing with the 20 percent cost
4 disallowance, do you see where I am?

5 A Yes, sir.

6 Q Okay. I'd like to ask you about those five points in
7 sequence: Violating the principles of sound ratemaking,
8 inconsistent with past regulatory policy, increases investor
9 perception of risk, inconsistent with storm restoration policy
10 and inconsistent with 2005 rate case settlement. And since
11 you've chosen that order, I'm going to stick with that order.

12 First, with respect to violates the principles of
13 sound ratemaking, if you'd look over on Page 6 at Lines
14 approximately 13, I believe it's 13 to 19, beginning on Line 13
15 you comment that you believe this proposal by Mr. Jenkins, and
16 it's referred to as sharing -- will it be sufficient for our
17 purposes if I refer to his proposal as sharing?

18 A That's fine with me.

19 Q Okay. Okay.

20 A The shorthand.

21 Q For shorthand, yes, sir. You refer to sharing as, as
22 poor regulatory policy on Line 13, and then down on Line 19 you
23 say it violates basic principles of sound ratemaking. Do you
24 see where I'm referring?

25 A Yes, sir.

1 Q Okay. Now this is your personal opinion; correct?

2 A This is my opinion. Yes, sir.

3 Q Okay. You are not an expert in regulatory policy;
4 correct?

5 A I would not say I'm an expert in regulatory policy.
6 This is based on my practical experience as a senior executive
7 of a utility.

8 Q Okay. But you've never worked for a regulatory body
9 or agency; correct?

10 A No, sir.

11 CHAIRMAN EDGAR: Excuse me, Mr. Kise. I think
12 Mr. Litchfield --

13 MR. LITCHFIELD: Thank you. Thank you, Chairman
14 Edgar. I would -- and I'm not going to pose this in the form
15 of an objection, but it's clear that Mr. Dewhurst's testimony
16 that is the subject of Mr. Kise's cross-examination at this
17 point relates to Mr. Dewhurst's opposition and, indeed, the
18 company's opposition to the proposed recommendation of
19 Mr. Jenkins that there would be sharing of reasonable and
20 prudently incurred storm restoration costs in contravention of
21 the settlement agreement which Mr. Jenkins himself agreed with.
22 And I guess I'm puzzled by -- and I guess FPL's effort is
23 intended to endorse and support the stipulation, settlement
24 before the FPSC and any other administrative or judicial
25 tribunal and any other forum. That's the basis of FPL's

1 position in this docket. We're attempting to endorse and
2 support and have that stipulation and settlement upheld.

3 The Attorney General's Office, among other parties,
4 signed that agreement, and I guess I'm a little puzzled as to
5 how they could conduct cross-examination and be construed as
6 endorsing and supporting the stipulation and settlement. I
7 make that as a statement to preserve FPL's position for the
8 record. Mr. Kise and the other parties obviously can govern
9 themselves.

10 MR. KISE: Madam Chair.

11 CHAIRMAN EDGAR: Mr. Kise.

12 MR. KISE: Just briefly so we don't spend much time,
13 not that my silence would go as acquiescence, although I doubt
14 anyone ever thinks I acquiesced anything.

15 CHAIRMAN EDGAR: Only in which chair you're going to
16 sit in.

17 MR. KISE: Right. Right. We, as I began at the
18 outset, on behalf of the Attorney General indicated that we, in
19 fact, executed that agreement in the Attorney General's Office
20 and plan to support it. We simply have a difference of
21 opinion, which I think -- and I do think Mr. Litchfield by the
22 time I'm done with this cross-examination might, I might be
23 able to shed some light on exactly what our disagreement is
24 with respect to the interpretation of this agreement. I am,
25 however, irrespective of that, and without getting into a mini

1 trial over whether we are supporting it or not, I'm simply
2 asking this witness about testimony that he has proffered in
3 this proceeding. We don't need to advocate a particular
4 position. We simply want to make sure that the record is clear
5 with respect to this issue. This is the only witness they have
6 offered in rebuttal to Mr. Jenkins. This is a very important
7 issue, it's an extremely important issue to the Attorney
8 General, and so that is the nature of my examination.

9 So I don't want to -- and I don't think
10 Mr. Litchfield is attempting to engage in a debate over whether
11 or not I'm allowed to ask these questions. We'll save that for
12 another day. Hopefully we will never have to do it.

13 CHAIRMAN EDGAR: Mr. Litchfield.

14 MR. LITCHFIELD: I have one other point to make, and
15 that is in reference to the procedural order in this matter.
16 And I'm referring particularly to Section 5, prehearing
17 procedures, that addresses prehearing statements. And in that
18 section of the procedural order it says that, "Each party's
19 prehearing statement shall set forth the following information
20 in the sequence listed below." It says in item number 4,
21 "Parties who wish to maintain no position at this time on any
22 particular issue or issues should refer to the requirements of
23 (C) below." (C) below is entitled "Waiver of Issues." And the
24 relevant section of that indicates that, "Unless a matter is
25 not at issue for that party, each party shall take a position

1 on each issue by the time of the prehearing conference or by
2 such later time as may be permitted by the prehearing officer.
3 If a party is unable through diligence and good faith efforts
4 to take a position on a matter at issue for that party, it
5 shall explicitly state in its prehearing statement why it
6 cannot take a position. If the prehearing officer finds that
7 the party has acted diligently and in good faith to take a
8 position and further finds that the party's failure to take a
9 position will not prejudice other parties or confuse the
10 proceeding, the party may maintain no position at this time
11 prior to hearing and thereafter identify its position in a
12 posthearing statement of issues. In the absence of such a
13 finding by the prehearing officer, the party shall have waived
14 the entire issue and the party's position shall be shown as no
15 position in the prehearing order."

16 When we were at the prehearing conference, I recall
17 that Commissioner Deason, who served as and continues to serve
18 as prehearing officer in this matter, specifically requested
19 the Attorney General's Office whether, in fact, they were able
20 to take a position. And as I recall, Mr. Kise indicated that
21 he couldn't at that time indicate whether they were going to
22 take a position or not and asked for some window of opportunity
23 within which to follow up pursuant to the procedures laid out
24 in the procedural order. Now to my knowledge, I don't believe
25 that that follow-up occurred, or at least we were not copied on

1 any letter or email or correspondence indicating anything as to
2 why they could not take a position. And I'm not aware of any
3 finding by the prehearing officer allowing the Attorney
4 General's Office to maintain a no position at this time through
5 the, through this stage, through the hearing at this point.

6 CHAIRMAN EDGAR: Mr. Kise.

7 MR. KISE: Mr. Litchfield is correct. We did ask a
8 and received graciously from Commissioner Deason additional
9 time to address this issue. At the time that the prehearing
10 order was prepared, I seem to recall Mr. Keating contacting me
11 to ask about this position. I informed him that due to, the
12 same thing that I informed Commissioner Deason, that due to the
13 Attorney General's travel schedule it was not possible to give
14 a specific answer at the time this order was being prepared.

15 The day we opened, I thought and if it's not -- I
16 don't see how it couldn't be clear, but the day we opened we
17 addressed this issue specifically at the opening, at the very
18 outset that indeed we would support the agreement, and, and
19 maintained that the agreement, however, that the Commission
20 isn't bound by this. I have discussed repeatedly with both
21 Mr. Litchfield and Mr. Walker and many other members of Florida
22 Power & Light, but certainly those two in particular, in some
23 exhaustive detail as to the Attorney General's position on
24 sharing. It is no secret he has legislation pending in front
25 of this session that relates to this sharing issue. His, his

1 views on this are quite firm and quite well-known. They
2 certainly understood that. I see absolutely no prejudice to
3 them by our engaging in this line of questioning. I don't --
4 there's just absolutely -- there's no way that they could think
5 otherwise.

6 And, again, I'm not engaging in a mini trial about,
7 and I don't think we should at this point, about whether the
8 agreement itself allows us to take a position one way or the
9 other. We have a disagreement as to the language of that
10 agreement. That's one thing. But for purposes of this
11 proceeding, we're certainly entitled to ask Mr. Dewhurst, who
12 is a witness on a very critical issue and one very important
13 to, I think, this Commission as well as to the people of
14 Florida about that position. And that's what we're endeavoring
15 to do and hopefully get through with in 15 minutes or so.

16 CHAIRMAN EDGAR: Mr. Litchfield.

17 MR. LITCHFIELD: If indeed the Attorney General's
18 position is that it intends to support and endorse the
19 agreement but rely on the Commission that it is not bound by
20 the settlement, that's a statement of position, and that's the
21 statement of position that should be reflected in the
22 prehearing order and in their position in the case. And then,
23 again, if that is their position, then I don't think the line
24 of questioning that Mr. Kise is about to embark upon is
25 relevant at this point, and we need not spend more time this

1 evening engaging in it. But I'm happy to have that position
2 stated. I think I just heard him state it, and I think that's
3 their position and that ought to be reflected.

4 CHAIRMAN EDGAR: Okay.

5 MR. KISE: Well, I don't think that's right. But
6 okay.

7 CHAIRMAN EDGAR: I personally am enjoying the back
8 and forth. Truly, I am. But while I still have the
9 opportunity to do so, although I see the push back, I'm going
10 to turn to Mr. Melson and ask for counsel.

11 MR. MELSON: Commissioner, Chairman, at this hour I
12 would allow the questions. I have not heard an objection.
13 I've heard a lot of give and take. And we'll probably get
14 through it faster if we ask questions and get it done.

15 CHAIRMAN EDGAR: Again, I enjoyed the discussion.
16 Thank you, Mr. Melson, as well. And I note that the comments
17 of each of you gentlemen are on the record, and we will proceed
18 with the questions. Mr. Kise.

19 MR. KISE: Thank you.

20 BY MR. KISE:

21 Q Mr. Dewhurst, I may back up just on one question, I'm
22 sorry, but then we'll move forward very quickly.

23 A I'm sure that will help me, too.

24 Q And hopefully get everyone out of here. And I'm not
25 sure you answered this question. You have never worked for a

1 regulatory body or agency; correct?

2 A That's correct.

3 Q Okay. And your experience has been in the private
4 sector; correct?

5 A Most of my experience has been in the private sector.

6 Q Well, from 2001 until now you have been in your
7 current position; right?

8 A In my current position, clearly, in the private
9 sector.

10 Q Yes, sir. And then prior to that you were with Dean
11 and Company, and that was the private sector; yes?

12 A Yes.

13 Q And then prior to that Mercer Management Consulting.
14 That would be private sector as well?

15 A Yes.

16 Q Okay. And how far back would we have to go in years
17 to get beyond Mercer Management Consulting more or less?

18 A A few years beyond that. There is a period in a
19 quasi-public organization.

20 Q But not a regulatory body or agency?

21 A That's correct.

22 Q Okay. And you don't today bring yourself here as an
23 expert in regulatory policy; correct?

24 A Yes. Again subject to the caveat that I think I have
25 by virtue of my position been able to acquire some knowledge of

1 that, but not as a technical expert, if that's a fair
2 distinction.

3 Q Okay. And in your experience in your career you are
4 not now, nor have you ever been, charged with the
5 responsibility to protect the consumer; is that right?

6 A I'm not sure quite what you mean by being "charged
7 with the responsibility to protect the consumer."

8 Q Well, regulatory bodies have to take into
9 consideration things that are not relevant necessarily to the
10 private sector. Would you agree with that?

11 A I'm not sure whether I agree or not. I haven't
12 really thought about it.

13 Q Let me ask you a better question.

14 You're paid to support whatever regulatory Florida
15 Power & Light supports; correct?

16 MR. LITCHFIELD: I object to the question.

17 MR. KISE: Well, it's just a simple question. It's a
18 yes or no.

19 CHAIRMAN EDGAR: I sustain the objection. And,
20 Mr. Kise, let's move along.

21 MR. KISE: Okay.

22 BY MR. KISE:

23 Q You're the Chief Financial Officer of Florida Power &
24 Light.

25 A That's correct.

1 Q Your testimony reflects the position of Florida Power
2 & Light; correct?

3 A That's correct.

4 Q Okay. And you are testifying here in your capacity
5 as Chief Financial Officer of Florida Power & Light; correct?

6 A That's correct.

7 Q Okay. You are also a substantial shareholder of
8 Florida Power & Light; is that correct?

9 A I don't know what you mean by "substantial," but I
10 have shareholdings in FPL Group.

11 Q Well, as of February 16th you owned directly
12 approximately -- well, not approximately -- 145,789 shares of
13 Florida Power & Light stock directly; is that about right?

14 A No. That's not correct.

15 Q Okay. About how much is it then?

16 A I own zero of Florida Power & Light.

17 Q Okay. So since February 16th you have divested
18 yourself of them?

19 A No. I have never owned any shares of Florida
20 Power & Light.

21 Q For FPL Group. I'm sorry. I'm sorry.

22 A I honestly don't know how many shares I own or
23 control.

24 Q Would that be a fair estimate, approximately 145,000?

25 A Subject to check, it doesn't sound far off. I

1 honestly don't know.

2 Q Okay. Does that assist in refreshing your
3 recollection? I'm just asking for an approximation, not a
4 guarantee.

5 MR. LITCHFIELD: Does Mr. Kise have copies of what he
6 just handed to the witness?

7 MR. KISE: It's just used for refreshment purposes.
8 I don't intend to introduce it or anything of the kind. I'm
9 just asking him did that assist him. If he says no, then he
10 says no.

11 THE WITNESS: It sounds reasonable. I don't know.
12 It's been a while since I --

13 BY MR. LITCHFIELD:

14 Q Fair enough. Fair enough. But it's fair to say
15 that, that you have an interest in, as both the CFO and as a
16 shareholder, and you're expressing your opinion here today;
17 correct?

18 MR. LITCHFIELD: Madam Chairman, may I?

19 CHAIRMAN EDGAR: Mr. Litchfield, you may.

20 MR. LITCHFIELD: I think that the company would be
21 willing to stipulate that the witnesses that are employed by
22 FPL are FPL employees and that they're here as witnesses and
23 that they're FPL employees and that they're FPL employees. I
24 think we're willing to stipulate to that.

25 I guess I fail to see where this is going. We're

1 here at 8:25 almost, and I understood Mr. Kise was going to
2 have a few short questions, and we're going over Mr. Dewhurst's
3 employment situation, which is very clear from the record. And
4 if where Mr. Kise is headed is to attempt to disqualify him or
5 cast some bias with respect to his opinion, this Commission has
6 employees of the companies that it regulates before it every
7 day of the week.

8 MR. KISE: I will note two things, Madam Chair, very
9 briefly. One, we've spent more of our time on objections than
10 we have on questions. And, two, I'm simply demonstrating for
11 the record, and I think it is important, that, that
12 Mr. Dewhurst is not just an employee of FP&L. This isn't like
13 just any witness. I certainly don't think that someone -- and
14 I think it's relevant to bias of the witness in terms of the
15 opinion. He's advocating regulatory policy. His opinion goes
16 directly to what he believes this Commission should do. And
17 the fact that he owns roughly \$6 million worth of stock makes
18 him a little bit different. It's just a simple question and
19 he's answered it, and I'm not going to ask anymore questions
20 about it. I just wanted it in the record because I think it's
21 important to show the witness's point of view.

22 CHAIRMAN EDGAR: Mr. Litchfield, bear with me. Have
23 you made an objection?

24 MR. LITCHFIELD: I had made an objection, but I
25 understood that Mr. Kise had finished that line and was moving

1 on.

2 CHAIRMAN EDGAR: All right.

3 MR. KISE: I don't have anymore. I just wanted him
4 to answer the question and he has, and I thank him for that.

5 CHAIRMAN EDGAR: Okay.

6 BY MR. KISE:

7 Q Okay. Moving -- well, so you're -- just to be clear
8 then, on the opinion that you expressed at least at
9 Page 6, Lines 13 to 19, that, that the sharing concept is poor
10 regulatory policy, that is your opinion not as a regulatory
11 expert but as the Chief Financial Officer of FP&L; correct?

12 A That's correct.

13 Q Okay. Looking again at Page 6, Line 13, and then
14 again on Line 20, and moving, I'm sorry, to the second point
15 that you make about inconsistency with past regulatory policy,
16 it's the second heading, you state at Line 13, you make a
17 reference that, that the sharing concept would be grossly
18 unfair to FP&L. You state again at Line 20 that it would be
19 grossly unfair to FP&L. And then on Page 11, Lines 15 and 16,
20 at Line 16, excuse me, you again state that sharing would be
21 grossly unfair to FPL. Is that, is that correct?

22 A No, that's not correct.

23 Q Okay. I'm sorry. Where am I --

24 A You're, you're mixing two different things. So let
25 me take Page 6.

1 Q Let's stick with Page 6 then.

2 A Okay. On Page 6 I do state that the sharing concept
3 would, in my view, be grossly unfair to FPL. On the basis, as
4 shown on Line 17 and beyond, that it denies FPL the opportunity
5 ever to recover a portion of its previously incurred costs
6 without regard to reasonableness and prudence, et cetera.

7 Q Okay.

8 A And that's my belief.

9 Q Fair enough. We can stay there. We don't have to go
10 to Page 11. I was actually just trying to encompass the areas
11 where you had made that statement?

12 A Well, since you raised Page 11, there is a different
13 concept there, which is changing something after the fact is,
14 in my opinion, separately unfair.

15 Q Indeed. And I think that, that also goes to your
16 comment, I think, and that's where I'm trying to get, with
17 inconsistency with past regulatory policy. But I'm focusing on
18 the term "grossly unfair" in the context of, of the sharing
19 concept, and I want to try and place that in some perspective.

20 The five-year total shareholder return for Florida
21 Power & Light -- FPL Group is approximately 40 percent; is that
22 right?

23 A I don't know. I'm not sure where you're getting that
24 number from.

25 MR. KISE: Again, this is going to be just for

1 refreshing recollection purposes.

2 MR. LITCHFIELD: Madam Chairman --

3 MR. KISE: I can show it to you, Mr. Litchfield.

4 MR. LITCHFIELD: I --

5 (Pause.)

6 THE WITNESS: Okay. I acknowledge the reference.

7 BY MR. KISE:

8 Q Okay. I just wanted to see, did that refresh your
9 recollection as to the five-year total shareholder return for
10 FPL Group is approximately 40 percent?

11 A Yeah. Let me make sure that the Commission
12 understands. This is the shareholder return for FPL Group,
13 which, of course, reflects general industry trends and events
14 specific to businesses other than Florida Power & Light
15 in the FPL Group portfolio, as well as events of Florida Power
16 & Light.

17 Q Okay. Now if I understand -- well, strike that.

18 In your view, FPL should be allowed to recover
19 100 percent of its previously incurred storm costs that are
20 reasonable and prudent; correct?

21 A That is my opinion, yes. My belief.

22 Q So there should be -- the consumer should pay
23 100 percent of those reasonable and prudent storm costs;
24 correct?

25 A Yes. That's correct. And that's because they are a

1 part of the cost of providing service. And under the basic
2 regulatory compact, the cost of providing service are, should
3 be compensated in rates.

4 Q Okay. And you also believe, do you not, that the
5 consumer should pay 100 percent of the fuel cost increase;
6 right?

7 A That's correct for the same reason. The customer is
8 the beneficiary of the electric service that we are delivering,
9 and fuel cost is an essential cost component of delivering that
10 valuable electric service.

11 Under the regulatory compact it is appropriate for
12 cost-regulated business that prudently incurred costs be
13 recoverable.

14 Q So all of these costs, fuel costs, storm costs, get
15 passed through 100 percent to the consumer, correct, in your
16 view?

17 A Commissioners, I hate to quibble, but the "passed
18 through" term has some connotations or could have certain
19 connotations.

20 Q Let me withdraw the question.

21 A Let me be specific. I think those are, assuming they
22 are prudently incurred, they are recoverable.

23 Q 100 percent?

24 A 100 percent.

25 Q FPL bears no portion of that business risk, meaning,

1 meaning the increase in fuel costs or the risks proposed by a
2 storm.

3 A No. No. That is not correct.

4 Q Okay. How is that incorrect?

5 A Let me start with fuel costs. Fuel costs are, at
6 least here in Florida today, set through a clause proceeding
7 which is done once a year, may have a semiannual adjustment,
8 but the fuel factor is fixed for that period.

9 Once the fuel factor is fixed, FPL is supporting the
10 fuel cost. We are going out and buying the fuel and providing
11 the capital and liquidity to support that. When we have a year
12 like last year where fuel prices rise dramatically, we end up
13 carrying that underrecovery on our books. In time that will
14 turn around, but in the meantime there is pressure on the
15 balance sheet. That is an adverse effect on FPL.

16 Q I'm sorry. You're finished? I don't want to
17 interrupt you.

18 A On the storm side, there's been extensive discussion
19 over the last three days that costs of restoration are only a
20 portion of the effects of hurricanes and tropical storms on
21 FPL. There is a very significant impact typically from lost
22 revenues or revenues not achieved. That drops to the bottom
23 line and is adverse to the shareholders' interests. There are
24 a variety of other, what I would call, second order effects.
25 Clearly the shareholder does not gain from hurricanes and

1 tropical storms passing through, even in the event -- even if,
2 as I believe it should be, the cost of restoring service are
3 properly recoverable.

4 Q With respect to carrying the fuel clause, costs on
5 the books --

6 MR. LITCHFIELD: Madam Chairman, may I interpose an
7 objection, unless counsel can point to me an issue in this case
8 that relates to the sharing of fuel costs or anything having to
9 do with fuel costs for that matter?

10 MR. KISE: I'll withdraw the question.

11 BY MR. KISE:

12 Q Moving to Page 7, Lines 4 to 9.

13 A Yes, sir.

14 Q You reference that the proposal, meaning the sharing
15 proposal, would be highly detrimental to customers' long-run
16 interests because it would have a negative impact, extremely
17 negative impact on investor perceptions of risk; is that
18 correct?

19 A That is correct.

20 Q Okay. And then on Page 12, Lines 12 to 13, you state
21 that because of this risk adjustment in the marketplace, over
22 time the customers would end up bearing roughly the same cost,
23 but they would do so through higher costs of capital; is that
24 right?

25 A That's correct. But by itself it's incomplete. If

1 you move down to the next paragraph, you will see second and
2 more important --

3 Q We're going to get there, unless you want -- I mean,
4 we'll get there.

5 A Okay. As long as we understand that by itself is an
6 incomplete statement. That's just getting us back to where we
7 were. The real negative effect comes later on?

8 Q The negative -- right. But with respect to the
9 higher cost of capital, I'm just trying to understand that
10 you're saying that at least with that -- within part of your
11 testimony that over time customers would end up bearing roughly
12 the same cost, and then I know there's a second part that we
13 can talk about. I just -- all I'm asking is is that what it
14 says on the page. And that's consistent with your opinion.
15 You're not changing that today; right?

16 A I'm not changing my opinion today. As long as it's
17 clear to everybody that there are two components to this risk,
18 investor risk perceptions element that I'm trying to detail for
19 you here.

20 Q Okay. Now are you absolutely certain, as the first
21 matter, that indeed there will be this increased cost in
22 capital? You can guarantee that for certain if sharing is
23 imposed by this Commission, that indeed as an absolute
24 certainty that, that there will be an increased cost of
25 capital?

1 A Based on all my knowledge of capital markets and
2 every discussion I've ever had with investors, yes.

3 Q Okay. And do you have any way, based on Mr. Jenkins'
4 proposal, which I believe is a 20 percent sharing, what that
5 impact -- can you quantify that impact? How much increase --

6 A Sitting here today I can't. Although as my
7 testimony, full testimony on Page 12 indicates, I believe that
8 the sum total after it has rippled through the capital markets
9 will be more than the apparent savings from the shifting of the
10 20 percent burden apparently on to shareholders.

11 Q And --

12 A The customers will be worse off net.

13 Q Well, I mean -- and that's where I'm going because
14 I -- at least with respect to this portion of it, the
15 customers, at least from your testimony it looks like the
16 customers will end up bearing roughly the same cost, just in a
17 different forum, in a different way, rather.

18 A The first paragraph details what I call the cost
19 shifting component.

20 Q Right.

21 A The second details the risk shifting component. But
22 the sum of the two is the combined impact on investors'
23 perceptions and their subsequent actions.

24 Q And this is, this is your opinion as the Chief
25 Financial Officer of FPL; correct?

1 A That's correct.

2 Q Okay. And is it possible that the market adjustment
3 may be less than you think or may be none at all?

4 A It's possible it may be less, it's possible it may be
5 more. I think it is practically impossible that there would be
6 none whatsoever.

7 Q But if it's possible, then is there any reason why
8 this Commission should not err on the side of offering
9 customers relief now after they've been pummelled by storms and
10 fuel cost increases and offer that relief now and see what
11 happens in the marketplace? Why not adopt that approach?

12 A With respect to this specific point as to why I
13 believe Mr. Jenkins' proposal is a bad one, I would say --
14 there's a risk the other side. There's a risk that the
15 reaction might be worse. I don't think it would be in
16 customers' best interest to try.

17 Q Well, it certainly wouldn't be in the shareholders'
18 best interest; right?

19 A Correct.

20 Q Okay. Moving to point number four, I think, as you
21 have it listed in the order. I don't know if you've numbered
22 them, but just the inconsistent with storm restoration policy.
23 On Page 13, Lines 13 to 14 in your rebuttal testimony --

24 A I'm with you.

25 Q Okay. You indicate that in the immediate aftermath

1 of a storm with extensive outages, customers' interests are
2 best served by focusing on the safe and rapid restoration of
3 power. That's correct; right?

4 A I believe so, yes. That's what I believe.

5 Q Now just for the record, you're not an expert in
6 power restoration; correct?

7 A Correct.

8 Q Okay. But their best interests are clearly served by
9 safe and rapid restoration of power; right?

10 A Yes, that's what I believe. I believe that's
11 Commission policy.

12 Q Now on Page 7, Lines 11 to 13 -- 11 and 12, excuse
13 me, you reference that sharing would create incentives for
14 utilities that are counter to the goal of safe and rapid
15 restoration of service following a storm. Do you see where I'm
16 referring to?

17 A I do.

18 Q Okay. And then again I think on Page 14, Lines 2 and
19 3, you again reference this financial incentive to act contrary
20 to customers' best interest, and I'm understanding best
21 interest to mean the interest of focusing on the safe and rapid
22 restoration of power; right?

23 A That is what I intended.

24 Q Okay. So if the Public Service Commission, if this
25 Commission orders sharing, my question to you is which is the

1 company going to compromise on? Are you going -- is FP&L -- if
2 the Public Service Commission orders sharing, is FP&L going to
3 be less safe in its restoration of power?

4 A I certainly hope not. My point here is simply that
5 by accepting the proposal, you introduce a conflict of
6 incentives. You create a fairly significant incentive, it's
7 20 percent of the cost that's going to be borne for the utility
8 to perhaps be a little more cost efficient, which generally in
9 restoration terms means a slower process. At very least, I
10 feel certain that we would be subject to criticism even if we
11 continue to devote our best efforts to safe and rapid
12 restoration of power because that incentive would be there.
13 And I don't think it's in customers' best interests to have
14 that kind of conflict of incentives at such a critical time. I
15 think we want a system that has us focusing on safe and rapid
16 restoration of power.

17 Q So then you're saying that FPL will act contrary to
18 what you have described as their best interest, the safe and
19 rapid restoration of power?

20 A No, sir. That's not what I'm saying.

21 Q Okay.

22 A I'm saying that such a framework would put any
23 utility in a bind. And I don't think it's smart public policy
24 to have that kind of mixed incentive, to have a formal message
25 that says concentrate everything on safe and rapid restoration

1 of power, recognizing that it's not a cost-efficient process at
2 that time, and at the time same time have a ratemaking
3 structure that says, oh, by the way, if you can save a little
4 bit here, it's less costly to you as well. I think that's a
5 very mixed message and inappropriate.

6 Q But if the -- I'm just trying to find out where the
7 rubber meets the road. If the company -- is the company always
8 going to act in the best interest of its customers, always, yes
9 or no?

10 A Yes and no. It depends.

11 Q It depends on what, money?

12 A It depends on what you mean by the best interest of
13 customers.

14 Q Okay. I'm going to stick with your definition on
15 Page 13, Lines 13 and 14, customers interests -- this is post-
16 hurricane -- are best served by focussing on the safe and rapid
17 restoration of power. That is your definition, and what I'm
18 asking you is, what is -- I think, if the power company is
19 always going to act in customers' best interests, then I don't
20 think there is a disincentive at all.

21 MR. LITCHFIELD: Madam Chairman, may I be heard?

22 CHAIRMAN EDGAR: Mr. Litchfield, you may.

23 MR. LITCHFIELD: Not only do I think the question has
24 been asked and answered at least twice, I do believe that the
25 cross-examination is becoming argumentative.

1 MR. KISE: I'm sorry, I'm not trying to be. I really
2 am not. I'm just trying to get an answer about this question
3 and I don't think he has answered it. He said yes and no,
4 which isn't really an answer. So I'm just trying to back up
5 and get some explanation. This is very important testimony.
6 Mr. Dewhurst is saying that sharing would create some
7 disincentive for them to act in the best interests of their
8 customers, and I'm just not sure that he really wants to say
9 that. But if he does, then that is fine, it is his testimony.
10 He is certainly capable of testifying and making that decision.

11 CHAIRMAN EDGAR: Okay, Mr. Kise.

12 Mr. Litchfield, I will agree with you that in my
13 opinion the witness has answered the question.

14 Mr. Kise, if you need him to clarify his answer ask
15 him to clarify his answer and then we will move on from there.

16 BY MR. KISE:

17 Q I asked you -- just to back up, I asked you whether
18 the company would act in -- would not act in the best interests
19 of its customers, as you have defined it, based on financial
20 considerations. And you said more or less, no and yes. So,
21 can you clarify what you mean? Clarify this testimony, I
22 really just want to know what you mean. If the company is
23 going to always act in the best interest of the customers, as
24 you define it, then say that. If not, then say why not.

25 MR. LITCHFIELD: I will object. There are at least

1 three or four questions in that.

2 CHAIRMAN EDGAR: Mr. Kise, shorter questions, please
3 and one at a time. And, really, let's work together to get
4 through this.

5 MR. KISE: Okay.

6 BY MR. KISE:

7 Q You agree based on your testimony, Mr. Dewhurst, that
8 customers' interests are best served post-hurricane by
9 focussing on a safe and rapid restoration of power, right?

10 A I agree with that.

11 Q Okay. And you have stated that the imposition of
12 sharing would create some disincentive to serving that
13 interest, correct?

14 A That is correct.

15 Q Okay. And so, will the company be less safe if
16 sharing is adopted in its restoration of power? Will it be
17 less safe?

18 A I hope not. I don't believe that Florida Power and
19 Light will, but I do believe that over time incentives matter.
20 And a system which has this kind of incentive over time will
21 produce behaviors that we do not want to see.

22 Q But, you don't believe that Florida Power -- I think
23 I heard you say you don't believe Florida Power and Light will?

24 A I would hope that we would continue to stress the
25 safe and rapid restoration of power, that is my belief.

1 Q I was just on safety, and I was going to go to rapid,
2 because I'm trying to break this into small pieces, but --

3 A I am comfortable with putting the two together. It
4 is a little hard to separate them because you can speed up by
5 being unsafe.

6 Q So then you are saying, this is just yes or no, that
7 the company, that FPL -- let's not talk about other companies
8 and what psychological impact this is going to have on the rest
9 of the market just for right this moment. I'm just trying to
10 get your testimony about what your company is going to do. You
11 are saying that FPL will not compromise on the safe and rapid
12 restoration of power even if this Commission orders sharing,
13 right?

14 A At the risk of further argument, I am going to say
15 yes and no. Your question says what will FPL do. FPL is a
16 large organization. It is made up of thousands of people
17 operating through complex series of internal processes and
18 incentives, and there is a difference between what FPL's
19 decision-making and policies may be and the performance of an
20 organization, whether FPL or any other over time. So, my
21 answer is yes, that we will continue to be committed to the
22 goal of safe and rapid restoration of power. However, I will
23 suggest to you that over time a system that has that kind of
24 incentive is going to see differences in behavior relative to
25 one that doesn't, and those differences in behavior will not

1 ultimately be in the customers' best interest. That is my
2 testimony.

3 Q Are you and the other chief executive officers in
4 control of policy at the company?

5 A The policy level, yes.

6 Q And so you set the policy, correct, collectively?

7 A Collectively, yes. That is a fair characterization.

8 Q Okay. And so are you saying that if you set a policy
9 that says I know we have sharing, but we are still going to
10 focus on the safe and rapid restoration of power, are you
11 suggesting that your employees will disregard that policy?

12 MR. LITCHFIELD: Madam Chairman.

13 CHAIRMAN EDGAR: Mr. Litchfield.

14 MR. LITCHFIELD: We have been over this ground, I
15 think, for about 15 minutes now. I think Mr. Kise has had a
16 great deal of latitude here. The question has been asked and
17 answered. It is becoming argumentative. And, frankly,
18 again -- and that is the basis of my objection, but, again, I
19 would point everyone present to Paragraph 19 of the stipulation
20 and settlement which says that all signatories shall support
21 and endorse the terms of that agreement before this body and
22 any other regulatory body, or in any forum, I believe, is the
23 term that is used. And I don't view this as supporting the
24 settlement agreement, frankly. Now, again, Mr. Kise will have
25 to govern himself, but it seems to me that he is attempting to

1 build a record by which the Commission could adopt the sharing
2 mechanism. To me that is not supporting or endorsing the terms
3 of the settlement. But, again, Mr. Kise has to make that
4 decision for himself. But I do refer you back to my objection
5 that this has been asked and answered and it is about time, I
6 think.

7 MR. KISE: I will move front that. I will move on
8 from that.

9 CHAIRMAN EDGAR: Okay. For the record, I sustain the
10 objection. Mr. Litchfield, I agree with you. I think we have
11 gone over it and over it, and I appreciate you saying you are
12 going to move on. And I am asking you to move on.

13 MR. KISE: I am going to move on. I do need just
14 briefly to respond, because this is a very, as you can see,
15 contentious point between us about --

16 CHAIRMAN EDGAR: We are all aware of that.

17 MR. KISE: Just briefly, I don't think it is
18 inconsistent with the rate case settlement, and I don't believe
19 that we are doing anything that is contrary to Paragraph 19 or
20 otherwise. And the record is what it is, and the Public
21 Service Commission, this Commission respectfully will
22 undertake, I am certain, its obligation to balance the
23 interests of the parties and the people and make the right
24 decision. And if sharing is that, then that is what it is.

25 CHAIRMAN EDGAR: Mr. Kise, let's continue with the

1 questioning.

2 BY MR. KISE:

3 Q Moving to Item 5, as long as we are talking about the
4 agreement, Mr. Dewhurst. Inconsistent with the rate case
5 settlement, 2005 rate case settlement. And, again, I don't
6 think you numbered these, but it is the fifth one in your list
7 of reasons contradicting Mr. Jenkins' proposal, inconsistent
8 with 2005 rate case settlement. At Page 7, Lines 15 to 23, you
9 state in sum and substance that the sharing concept is both
10 completely inconsistent with the rate settlement On Line 15,
11 and that imposing sharing would be tantamount to ignoring the
12 agreement as you say on Line 19. Is that correct?

13 A That is correct.

14 Q Now, for the record, you are not a lawyer, correct?

15 A That is correct.

16 Q You have no legal training, correct?

17 A I believe, like one of the earlier witnesses, I have
18 taken a legal course some time in the dim and distant past.

19 Q Okay. But other than that?

20 A No.

21 Q And just while we are on that subject, just flipping
22 quickly to Page 8, Line 3, where you make another reference to
23 it is axiomatic under Florida law. Again, you are not a legal
24 expert, right?

25 A No, that is just my simple layman's reading of the

1 Florida Statute. It says in there -- I have it here. Would
2 you like to go through it?

3 Q No, no, that's fine.

4 A It says in there reasonable rate of return, so --

5 Q Axiomatic is your lay reading? That is an
6 interesting choice of words.

7 A I apologize for my language.

8 CHAIRMAN EDGAR: Mr. Kise, please.

9 MR. KISE: I'm moving on.

10 BY MR. KISE:

11 Q Let's talk about the settlement agreement
12 specifically. You were not present during the negotiations, is
13 that correct?

14 A I was not present with -- I was not present at the
15 sort of multi-party negotiations, that is correct.

16 Q I mean, up until two days ago I certainly hadn't
17 understood you to have -- I didn't know who you were, so you
18 certainly weren't in any discussions that we had collectively
19 on the agreement. Did you have some internally?

20 A We certainly had internal discussions on the
21 agreement, and I was clearly a part of the senior management
22 team that decided whether or not we should approve the
23 agreement.

24 Q So you had the opportunity to comment on the
25 agreement, then, before it was executed?

1 A Yes.

2 Q Now, you agree, do you not, that the Public Service
3 Commission is not bound by that agreement, right?

4 A Yes, I say that in the interest of time. I state
5 that in my testimony. My concern is not whether the Commission
6 has the power to, but whether it is wise to. It would be
7 unwise.

8 Q Understood. Directing you to Page 14, Lines 17 and
9 18, you reference the 2005 settlement explicitly acknowledges
10 that prudently incurred storm restoration costs are
11 recoverable, is that right?

12 A Yes, that is correct.

13 Q Okay. Where does it say that? Do you have the
14 agreement in front of you?

15 A I do.

16 Q Can you point me to where in the agreement it says
17 that, please?

18 A Starting at the bottom of Page 9, the target level
19 for Account Number 228.1 shall be as established by the
20 Commission, whether on its own motion, upon petition by FPL, or
21 in conjunction with a proceeding held in accordance with
22 Section 366.8260, Florida Statutes. FPL will be permitted to
23 recover prudently incurred costs associated with events covered
24 by Account Number 228.1, and replenish Account Number 228.1 to
25 a target level through charges to customers that are approved

1 by the Commission, that are independent of and incremental to
2 base rates, and without the application of any form of earnings
3 test or measure. That seems to me to be pretty clear.

4 Q Okay. But it also includes something that is not
5 included in your testimony, the statement that all of this has
6 to be approved by the Commission, correct?

7 A That is correct.

8 Q And you have acknowledged that the Commission isn't
9 bound by this agreement with respect to sharing, correct?

10 A That is correct.

11 Q And, thus, then how could whatever the Commission
12 does in its approval process that is specifically contemplated
13 by this paragraph be in any manner inconsistent with the
14 agreement?

15 A Well, I think -- again, I am not a lawyer. My
16 layman's reading of this is the clause that are approved by the
17 Commission very obviously refers to prudently incurred costs,
18 so the implication is clearly that the Commission would have to
19 make a judgment of prudence, but assuming that it had approved
20 a judgment of prudence, then all the parties to this agreement
21 then agree that those costs would be recoverable, et cetera, et
22 cetera.

23 Q But isn't it susceptible also to the interpretation
24 that if the Commission approves sharing, and that your costs
25 need to be approved, that indeed that is contemplated by the

1 agreement? That is equally plausible, is it not, sir?

2 A I don't believe so, no.

3 Q You don't believe so. Okay. Second, let me ask you
4 this. Where in this Paragraph 10, either on Page 9 or on Page
5 10, where we are looking, where do you see the word sharing in
6 that paragraph? Can you point that out to me, any reference to
7 sharing?

8 A I don't see a direct reference to sharing. It is
9 clearly to me implied in the statement FPL will be permitted to
10 recover prudently incurred costs. There is no qualification on
11 that. It doesn't say FPL will be permitted to recover 80
12 percent of its prudently incurred costs.

13 Q But it don't say 100 percent, either. There is no
14 reference to a number. It says prudently incurred costs
15 associated, and all of it as approved by the Commission, right?

16 A Yes, I agree. And the obvious to me layman's
17 interpretation if there isn't a qualifier it clearly means 100
18 percent.

19 Q Well, certainly in your mind at the time that you
20 approved this settlement, I'm sure that is what you thought,
21 but where is the word sharing? It is not there, right? No
22 specific reference, right?

23 A I have said so.

24 Q Okay. And, I believe that as of the time this
25 settlement was negotiated and executed the sharing concept had

1 become part of the discourse before this Commission
2 specifically with reference to FPL, is that correct?

3 A I don't recall the exact sequence of time, so I think
4 you may be trying to put words in my mouth.

5 Q Well, I'm not going to do that. Let's look at Page
6 11, Line 10 of your testimony where you reference that in the
7 storm restoration costs proceeding, 2004 --

8 A I'm sorry, could you give me the page.

9 Q I'm sorry. Page 11, Line 10.

10 A Yes, sir.

11 Q And you indicate therein that the principle of
12 so-called sharing was raised then and rejected in the final
13 order regarding FPL's 2004 storm restoration costs, is that
14 correct?

15 A That is correct. It was certainly raised and
16 rejected in the 2004 storm proceedings.

17 Q And I believe you testified yesterday that, in fact,
18 that proceeding at least the staff recommendation -- no, I
19 think that you testified yesterday that that had concluded as
20 of the time, or all but substantially concluded at the time of
21 these negotiations. Isn't that right?

22 A I did not testify yesterday.

23 Q I'm sorry, Wednesday. It is all running together.

24 A I am not sure I testified on that, but it is
25 certainly true to the best of my recollection that we had the

1 storm order before we were in the final negotiation of the rate
2 case, if that is your question.

3 Q Okay. Thank you. So then if this issue was part of
4 the discourse, and FPL wanted to address sharing, why is there
5 then no mention of the word sharing in this document, other
6 than with respect to revenue sharing, but no mention of it with
7 respect to storm costs?

8 A I think the answer is obvious. It wasn't necessary.
9 We just had an order from the Commission saying that prudently
10 incurred restoration costs are recoverable. We are simply
11 endorsing that, getting all parties to endorse it in the
12 agreement. I think it is very obvious.

13 Q Well, perhaps to you, but there were many other
14 parties to that settlement. Why did FPL --

15 A I can only speak to my own view.

16 Q Indeed you can. And that is exactly my point, why
17 then is there no record --

18 MR. LITCHFIELD: Madam Chairman.

19 CHAIRMAN EDGAR: Mr. Litchfield.

20 MR. LITCHFIELD: Again, I think there is a lot of
21 editorializing going on on behalf of Mr. Kise. And, again, I
22 think the cross-examination is degenerating into argument.

23 CHAIRMAN EDGAR: Mr. Kise, about how much more do you
24 have?

25 MR. KISE: Just three or four more questions.

1 CHAIRMAN EDGAR: Let's not continue to ask the same
2 question over and over.

3 MR. KISE: I'm trying not to, but I am still trying
4 to get exact answers.

5 BY MR. KISE:

6 Q Do you recall this subject matter being raised at all
7 at least in your -- the concept of sharing that is, do you
8 recall that being raised at all at least in the negotiations
9 that you participated in? Did you have any discussion about
10 this?

11 A Yes.

12 Q And was there any discussion on your side about
13 including specific language with respect to sharing?

14 A I did not participate in the drafting of the
15 agreement.

16 Q In your view, had that concept been introduced into
17 these negotiations, would that have had some impact on the
18 settlement? In your view.

19 MR. LITCHFIELD: I will object to the question. I'm
20 not sure --

21 THE WITNESS: I have lost the question, quite
22 frankly.

23 BY MR. KISE:

24 Q Well, if there was some discussion of --

25 A Some discussion with whom, between whom?

1 Q Internal discussion about the sharing concept. And
2 maybe my question wasn't clear. I'm asking you if you had any
3 internal discussions about the sharing concept being included
4 as part of this agreement with respect to recovery of storm
5 costs?

6 A I misunderstood your question. I don't recall any
7 such discussions.

8 Q Okay. And would you agree with me that adding to the
9 sentence that ends any form of earnings test or measure, do you
10 see -- on the contract, Page 10 of the contract, Paragraph 10?

11 A I am with you on Page 10.

12 Q Right. The application of any form of earnings test
13 or measure, do you see where I am reading?

14 A Yes, I see that.

15 Q To address this issue, could FPL have not simply
16 added "or sharing," period?

17 A I don't know whether they could or could not have.
18 Again, it seems obvious to me that they would be permitted to
19 recover prudently incurred costs covers it quite nicely.

20 Q Fair enough, but the word sharing I think as you
21 indicated before doesn't appear anywhere in that Paragraph 10,
22 right?

23 A I have agreed with you on that.

24 MR. KISE: Thank you, Mr. Dewhurst.

25 CHAIRMAN EDGAR: Mr. Kise, you are finished? Thank

1 you.

2 Mr. Twomey, are you next? I will remind and request
3 that you remember my admonition at the beginning of this
4 hearing to not duplicate cross.

5 MR. TWOMEY: You mean I can't repeat all of Mr.
6 Kise's questions?

7 CHAIRMAN EDGAR: No, sir.

8 MR. TWOMEY: Well, good morning, Mr. Dewhurst.

9 THE WITNESS: I regret to tell you it is good
10 evening.

11 CHAIRMAN EDGAR: For a little while longer.

12 MR. TWOMEY: Not yet.

13 CROSS EXAMINATION

14 BY MR. TWOMEY:

15 Q Now, Mr. Dewhurst, absent Solicitor General Kise
16 joining the Commission staff, could you think even for a minute
17 that a staff audit of FPL's storm cost expenditures drawn from
18 a funded reserve would provide the same level of scrutiny those
19 costs have received the last three days?

20 A No, I think I would agree that in general there will
21 be a heightened level of scrutiny if there is an adversarial
22 process in which people go through extensive discovery. I
23 think there is also a cost to that process.

24 Q Thank you. And we will get to it in a minute, but
25 the cost associated with that, I'm sure you would agree, would

1 have to be measured against the detriments of not doing it.

2 Would you agree?

3 A I don't concede that there are detriments.

4 Q If there were detriments. There should be a weighing
5 process, correct?

6 A I agree that the administrative cost of the
7 proceedings should not be the sole criterion.

8 Q Okay. I will try and make this as brief as possible,
9 okay. Without trying to go back to your -- cover your direct
10 testimony, I want to say in your direct testimony you say at
11 Page 14, Line 16, there is no single correct reserve balance.
12 The appropriate reserve level depends largely on the regulatory
13 framework for storm cost recovery. Now, do you still believe
14 that?

15 A I'm sorry, you said Page 14?

16 Q Page 14, Line 16 of your direct, not your rebuttal?

17 A Yes, correct.

18 Q You still believe that?

19 A I do believe that.

20 Q Okay. Now, turning to Page 18 of your rebuttal
21 testimony, you criticize Mr. Stewart for saying among other
22 things, that a 150 to \$200 million storm technology reserve
23 would be inadequate -- would be adequate because that amount
24 would not be in your words large enough to absorb another
25 Andrew type of event and that a reasonable level for the

1 reserve is \$370 million in 1997 dollars, correct?

2 A Yes and no. I am there quoting from a PSC order from
3 1998.

4 Q Yes, sir. But that was the basis for your -- I
5 stated the question wrong, but that was the basis for your
6 criticism of Mr. Stewart's position, correct?

7 A In this specific piece, yes.

8 Q Now, you testified in the 2004 storm cost-recovery
9 surcharge case, correct?

10 A I did.

11 Q And you are familiar somewhat with the final order
12 entered in that case?

13 A I am familiar with aspects of it. It has been awhile
14 since I reviewed it in detail.

15 Q I won't try and pin this down, but generally, isn't
16 it true that FPL filed a petition in that case on or about
17 November 19th, 2004, subject to check in the order?

18 A That sounds about right.

19 Q Okay. Seeking permission to implement its proposed
20 surcharge on a preliminary basis. I should have finished it.
21 I didn't finish the question. On November 19th, 2004, I think
22 the order shows, if you will agree with me, that you filed a
23 petition asking to have the surcharge collected on a
24 preliminary basis, and that you received to do so a little less
25 than three months later on February 17th, 2005? Does that

1 sound about right?

2 A Subject to checking the dates. In that proceeding
3 there was what I would call an interim surcharge pending the
4 prudency review and the full review.

5 Q Yes, sir. And isn't it additionally true that you
6 received permission to charge the surcharge on an interim basis
7 without the benefit of a prior evidentiary hearing?

8 A That is correct.

9 Q And isn't it also true as a result of the final
10 order, FPL had approved by this Commission some \$794-plus
11 million of prudently incurred storm-related costs to be charged
12 against the storm reserve, and almost 442 million to be
13 recovered through the surcharge, including 33.8 million
14 recognized as lost revenues? Does that sound roughly correct
15 to you?

16 A I have to object, I'm sorry, to the last piece of
17 characterization of lost revenues, but subject to checking the
18 numbers, the basic numbers sound about right. At that time
19 there was a -- originally there was a reserve balance of
20 approximately 355 million. The final order imposed a surcharge
21 of about 440 million, so that sounds about right.

22 Q Okay. And I won't --

23 MR. LITCHFIELD: Madam Chairman, may I be heard? And
24 I may simply have lost the thread here, but I guess I would ask
25 that counsel refer us back to the portion of Mr. Dewhurst's

1 rebuttal testimony to which this cross-examination relates.

2 MR. TWOMEY: I will look for it in a second. The
3 thesis, Madam Chair, is that the company and Mr. Dewhurst has
4 taken the position that the surcharge mechanism isn't a good
5 mechanism. That Mr. Stewart had said that you can rely on the
6 surcharge mechanism, you really don't need the larger amount
7 for securitization. And I just want to show briefly, and I can
8 do it in one more question if I am allowed to ask it, that the
9 surcharge mechanism under the current policy allows them to get
10 rapid relief. That is all I am trying to show.

11 CHAIRMAN EDGAR: Mr. Twomey, can you respond to Mr.
12 Litchfield's request to tie this to the --

13 MR. TWOMEY: I don't -- I haven't noted it in my
14 questions, and I can't without going through all the testimony.

15 CHAIRMAN EDGAR: Mr. Litchfield?

16 MR. LITCHFIELD: I'm willing to proceed with the
17 additional question, although I would note that I believe
18 Mr. Twomey may be mischaracterizing Mr. Dewhurst's testimony to
19 the extent that he said that a surcharge is not a good option.
20 I think, again, it is pretty clear in the record, as we
21 discussed at some point in this proceeding, I can't determine
22 whether it was today or yesterday with Mr. Kise, that the
23 company's primary recommendation is securitization, although a
24 surcharge is certainly an option that the company would propose
25 in the alternative.

1 CHAIRMAN EDGAR: Mr. Twomey, your question.

2 MR. TWOMEY: I will drop that. Withdraw it.

3 BY MR. TWOMEY:

4 Q Mr. Dewhurst, can you cite me to any other storm
5 cost-recovery case prior to your 2004 case where the Commission
6 granted a utility interim storm surcharge relief without an
7 evidentiary hearing?

8 A No, this was the first time. I think Commissioner
9 Deason may have mentioned this this morning, this was really
10 the first time that the framework had been stressed and the
11 first time I think that any utility had been in a position
12 where it had blown through its storm reserve and was looking
13 for recovery of a very large amount in excess of the storm
14 reserve.

15 Q Okay. Thank you. On page 19 of your rebuttal
16 testimony, Page 19, Line 16, in response to the question of
17 what impact would Mr. Stewart's recommendation have on customer
18 rates, you say the following, "Clearly, the level of the
19 reserve has no impact on FPL's hurricane exposure," correct?

20 A That is correct. Those two things are clearly
21 independent.

22 Q And would I be correct in understanding that by FPL's
23 hurricane exposure, you are referring primarily to its
24 financial exposure as opposed to exposure to hurricanes?

25 A No, that is not really correct. What I was saying

1 was that we are dealing with two different things. There is a
2 reserve level and then there is what is the risk of incurring
3 future storm restoration costs. Those two are independent.

4 The second one is a direct function of our exposure
5 to hurricane damage, but it is going to be whatever it is going
6 to be. The storm reserve is a separate matter. So, therefore,
7 and it follows in the next sentence, the effect of varying the
8 target reserve level for a given level of hurricane exposure is
9 simply to vary the expected length of time before which that
10 storm reserve is exhausted. So the higher the storm reserve,
11 the longer it is likely to last, and the higher the impact on
12 customer rates. The lower the storm reserve, the shorter the
13 time it is likely to last and the shorter the impact on
14 customer rates. There is just a trade-off there.

15 Q Yes, sir, but I took that sentence to mean that
16 because of the surcharge and other alternative methods at the
17 Commission for recovering your legitimate costs that
18 irrespective of the reserve amount, you had an expectation that
19 you would get your -- you would recover your prudent and
20 reasonable expenses, right?

21 A That is not what that sentence was intended to read.
22 Maybe it is not very artfully put. It was simply intended to
23 be a predicate to the sentence that follows. However, I do
24 agree that the most important thing from a financial integrity
25 point of view for FPL is the principle of recoverability of

1 prudently incurred restoration costs.

2 Q Right. And, again, isn't it true that you have an
3 expectation of recovering those costs whether it is through a
4 surcharge cost hearing like that, I mean, a hearing like this
5 that results in a surcharge, or a hearing like this that
6 results in a securitization order?

7 A Yes, that is correct. The recoverability is key.
8 The other dimension, the second order of dimension, if you
9 like, is then the time frame over which that occurs.

10 Q Yes.

11 A Clearly there is a difference between something that
12 happens promptly and something that takes a lot longer.

13 Q Yes. And maybe I read your testimony incorrectly,
14 but I had the impression that you are testifying here that by
15 and large FPL would be indifferent to the mechanism for getting
16 the money because you would get the money one way or the other,
17 but that there were certain increased costs to your customers
18 resulting from one methodology versus the other. Let me be
19 more specific, if I may.

20 A I think that is almost right, but not quite.

21 Q Well, you say at the bottom of Page 19, Line 22, "In
22 addition, a smaller reserve will among other things equal, mean
23 more frequent regulatory proceedings each of which carries an
24 administrative cost and burden for all parties," correct?

25 A That is correct.

1 Q Okay. Don't you have a reasonable expectation that
2 your customers will reimburse you for the costs of these
3 proceedings at some point?

4 A Under the current regulatory framework, yes, I do
5 believe that.

6 Q And to be clear, not just the cost of storm
7 restoration, but the cost of the proceedings, as well?

8 A No, I don't believe that I could say that.

9 Q I guess it might depend on where you are between rate
10 cases, right?

11 A Yes. We don't put the cost of the proceedings
12 against the storm reserve, if that is your question.

13 Q But depending upon when you had your next rate case,
14 you could theoretically recover these costs?

15 A Okay. If the scenario that you are thinking about is
16 hypothetically, we have a regular annual proceeding, then the
17 costs of those would eventually become embedded in base rates
18 through regular proceedings, yes, I would agree with that.

19 Q Okay. Now, you say at Page 20, Line 13 -- in fact,
20 you recognize the cost detriment at Page 20, Line 13 in your
21 rebuttal when you testified, however, transaction costs
22 associated with securitization bonds are higher than those
23 associated with the surcharge, correct?

24 A That is correct.

25 Q Okay. Now, on Page 22, Line 6, as I read it you

1 criticize Mr. Stewart's statement that keeping the storm damage
2 reserve level as low as is reasonably possible will reduce
3 interest and bond issuance costs. Is that correct?

4 A Yes, that is correct.

5 Q But you apparently make that criticism on the basis
6 that a smaller reserve will necessarily result in a string of
7 securitization petitions and a higher total cost than a single
8 securitization. Is that generally correct?

9 A Yes, that was the presumption under that. The point
10 I was simply making is it is small, but there is a certain
11 amount of fixed costs every time you go out and do a bond
12 offering. The larger the deal in general the slightly more
13 efficient it is. The lower the issuance cost as a percent of
14 the principal, and, therefore, if you have a world in which you
15 have small frequent events, there is an incremental cost to do
16 that. It is not huge, but it is an incremental cost.

17 Q Okay. Well, you don't deny, do you, that a smaller
18 reserve in any given case would have lower costs and fees?

19 A No, sir, I agree with you on that.

20 Q In fact, if I may, I want to briefly run through some
21 of the costs and try and ascertain what some of the savings
22 might be. If you could follow me. Do you have your direct
23 testimony?

24 A I have my direct, yes, sir.

25 MR. LITCHFIELD: Madam Chairman.

1 CHAIRMAN EDGAR: Yes, sir.

2 MR. LITCHFIELD: We have moved from Mr. Dewhurst's
3 rebuttal testimony now to his direct testimony, and I just
4 wonder if that is fruitful at this point irrespective of
5 whether it is permissible.

6 MR. TWOMEY: Madam Chair, the purpose is this, Mr.
7 Dewhurst -- I am not going through anything in his direct
8 testimony. I want to ask -- he makes a suggestion that Mr.
9 Stewart is incorrect in saying, he says, in answer to the
10 question on Page 22, "Is Mr. Stewart's statement that keeping
11 the storm damage reserve level as low as reasonably possible
12 will reduce interest and bond issuance cost accurate?" "No,
13 quite the reverse." And what I want to try and demonstrate and
14 I can do it reasonably rapidly --

15 CHAIRMAN EDGAR: Mr. Twomey, I apologize for
16 interrupting, but in the interest of time, if I may. May I
17 have a high expectation that your next two or three questions
18 will be fruitful?

19 MR. TWOMEY: You may, because I hope to demonstrate
20 that by your adoption of Mr. Stewart's recommendation that the
21 customers of FPL will save in excess of \$550 million over the
22 course of the 12 years. May I proceed?

23 CHAIRMAN EDGAR: You may.

24 BY MR. TWOMEY:

25 Q Okay, sir. On your MPD-1, I don't have the number of

1 the exhibit. Let me establish, first if I may, and I think we
2 got part of this initially the first day from Mr. McWhirter,
3 but did you or did you not agree that the total of the 12 years
4 on Line 16, that is total customer charge, comes out to
5 2,086,040,000?

6 A I believe we finally agreed on that.

7 Q Okay. Now, do you agree -- and that is the total
8 amount that customers will have to pay over the course of the
9 12 years if this petition is approved, correct?

10 A Yes.

11 Q Do you also agree that customers will have to pay
12 regulatory assessment fees and franchise fees on top of the 2
13 billion plus dollars?

14 A Yes, I agree.

15 Q Okay. And if you know, Mr. Dewhurst, would you tell
16 the Commission what the regulatory assessment fee is?

17 A I don't know.

18 Q Do you know what the average of the municipal and
19 local government franchise fees are that you pay?

20 A No, I don't. I noted on Wednesday that that is
21 something I would like to know.

22 Q Okay. Now, Line 2, Mr. Dewhurst, year one, the
23 beginning balance of 1,050,000,000, that is the principal
24 amount to be bonded, correct?

25 A Pre-issuance, correct.

1 Q Pre-issuance. That is it is pre tax?

2 A And pre-issuance costs, as well.

3 Q I'm sorry. Now, included in that amount, if I
4 understand this exhibit correctly, is \$400 million, which is
5 the pretax amount of the \$650 million storm reserve, correct?

6 A No, it is the post-tax component.

7 Q Maybe I said that wrong. The reserve you are
8 requesting in your filing is \$650 million, correct?

9 A That is correct.

10 Q And the amount that is included of that in the
11 1,050,000,000 is \$400 million, correct?

12 A Approximately 400 million, that is correct.

13 Q Okay. I apologize for saying it wrong. Which, as I
14 understand it, the \$400 million is 61.5 percent of the 650,
15 right?

16 A Roughly.

17 Q And if you strip that out, you are left -- if you
18 strip the \$400 million out of the beginning balance, you get
19 650, do you agree with that?

20 A Approximately, yes.

21 Q And if you take Mr. Stewart's \$200 million
22 recommendation and take 61.5 percent of that, I have calculated
23 that it is \$123 million. Do that sound roughly correct?

24 A I will accept your number subject to check.

25 Q And if you add that to the 650, I have calculated

1 that it comes up to a new beginning balance for my purposes of
2 \$773 million, okay? 650 plus 123 is 773, correct?

3 A Subject to check.

4 Q Okay. And what I have done is try to figure savings
5 here as a percentage of the initial balance, the beginning
6 balance you are requesting. I took 773 of that and I came up
7 with it is 73.6 percent of 1,050,000,000, okay?

8 A Okay.

9 Q So, whatever you call it, the reverse of that from
10 100 is, the savings would represent 26.4 percent. Take 73.6
11 percent from the 100 and you get 26.4 percent?

12 A I understand you get the number. I would not refer
13 to it as a savings because you don't have the reserve.

14 Q Let's take the total \$2 billion, 2,000,000,086 that
15 the customers would have to pay if the petition is granted by
16 the Commission as filed per your request now, and we multiply
17 it times 26.4 percent, okay?

18 A Okay.

19 Q Now, I've got a number of 550,715,000, or over half a
20 billion dollars, and what I want to ask you is if I have done
21 my math correctly, isn't that the savings that is, the amount,
22 the smaller amount the customers would not pay as compared to
23 your \$2 billion if the Commission accepted Mr. Stewart's \$2
24 million reserve recommendation?

25 A Yes and no, it depends on how you look at it. I

1 think it is fair to look at it as the savings on the charges on
2 securitization. It is offset by the fact that you have given
3 up whatever the number was, I forget what you were working up,
4 200 million?

5 Q 200 million.

6 A So, you don't have 450 million of incremental storm
7 reserve capacity. So if that is a trade-off that customers
8 prefer, then I would agree that they would be better off. If
9 it is a trade-off that they would not prefer, they would be
10 worse off.

11 Q Well, speaking of what the customers prefer, Mr.
12 Dewhurst, do you have a copy of the prehearing order?

13 A I don't.

14 Q I want to hand you a copy of it very briefly here,
15 and ask you --

16 MR. LITCHFIELD: Madam Chairman, while he is doing
17 that, could I --

18 CHAIRMAN EDGAR: Mr. Litchfield.

19 MR. LITCHFIELD: Thank you -- ask Mr. Twomey again to
20 refer us back to the portion of Mr. Dewhurst's rebuttal
21 testimony to which this line relates.

22 CHAIRMAN EDGAR: Mr. Twomey.

23 MR. TWOMEY: Again, Madam Chair, it has to do -- let
24 me find it. Is Mr. Stewart's statement that keeping the storm
25 damage reserve level as low as reasonably possible will reduce

1 interest and bond issuance costs accurate. If you want me to
2 go through line-by-line what we can find very readily, Madam
3 Chair, in Mr. Dewhurst's Exhibit MPD-1, and I'm sure he will --
4 I'm confident he will support me on this, is that we can go
5 through and calculate the interest cost savings, which are
6 substantial, as well as the tax savings, which are substantial,
7 that flow necessarily and mathematically from reducing the
8 requested reserve of 650 to Mr. Stewart's 200. It goes
9 directly to the question I just read.

10 CHAIRMAN EDGAR: Mr. Twomey. Mr. Litchfield.

11 MR. LITCHFIELD: Chairman Edgar, I just believe that
12 we have been down this road for sometime now. I had understood
13 that Mr. Twomey within two or three questions was going to be
14 able to provide some fruit, if you will, and it has been
15 probably fifteen minutes and we are still struggling with these
16 questions. And if they can be asked concisely and we can make
17 the point in a couple of questions, that's fine. I thought
18 that was what we were attempting to do, but it is now 9:25.

19 CHAIRMAN EDGAR: Mr. Twomey, I do think he has a
20 point.

21 MR. TWOMEY: I beg your pardon?

22 CHAIRMAN EDGAR: I said I think he has a point.

23 MR. TWOMEY: I think, Madam Chair, that Mr. Dewhurst,
24 I heard him agree with me, I think I did, that if you flow
25 through the reductions in charges to the customers associated

1 with moving the reserve request of 650 to Mr. Stewart's 200
2 million it would bring down the request of the company to
3 charge his customers in excess of \$2 billion over 12 years by
4 an amount of \$550 million. That is where I was going. I
5 thought he agreed with me.

6 THE WITNESS: Am I allowed to correct your
7 misconception of what I said?

8 CHAIRMAN EDGAR: Mr. Dewhurst, you may.

9 THE WITNESS: I agreed with that component of it. I
10 also pointed out that in exchange the customers have given up
11 the value, whatever that value is, of having an incremental 400
12 million in the reserve from day one.

13 MR. TWOMEY: Yes, sir, and if I may continue.

14 BY MR. TWOMEY:

15 Q And you said as I recall right before I handed you
16 the prehearing order, words to the effect if that is what the
17 customers want, that is what they want.

18 MR. LITCHFIELD: Madam Chairman, may I be heard
19 again?

20 CHAIRMAN EDGAR: You may, Mr. Litchfield.

21 MR. LITCHFIELD: Mr. Twomey is tossing around figures
22 and we have asked and we have listened to probably 25 plus
23 questions on this topic, and he is asking Mr. Dewhurst to
24 accept a series of calculations. He has not provided any
25 assumptions that might pertain to those computations, including

1 the applicable tax rate, whether it is on a stand-alone,
2 whether it is on a consolidated basis, any number of
3 assumptions that might relate to it. And he is asking Mr.
4 Dewhurst to accept his figures. I still am not sure where this
5 is going.

6 MR. TWOMEY: Madam Chair.

7 CHAIRMAN EDGAR: Briefly, Mr. Twomey.

8 MR. TWOMEY: Maybe Mr. Litchfield should have
9 listened more closely. I'm not tossing around figures or
10 requiring assumptions. I am using Mr. Dewhurst's exhibit, his
11 numbers, and asking him if we reduce the reserve to \$200
12 million versus the request of 650, if it necessarily doesn't
13 reduce the 12 year payment total by \$550 million. Now, he just
14 said again that he agreed with that calculation, but that he
15 thought that there were associated detriments that the
16 customers would experience by not having the larger reserve.
17 And my next question was going to be haven't the customers, all
18 of the customers as indicated in the prehearing order on their
19 positions on Issue 37, indicated that is exactly what they want
20 to do.

21 CHAIRMAN EDGAR: Mr. Twomey, about how many more
22 questions approximately do you plan to ask?

23 MR. TWOMEY: Not many.

24 CHAIRMAN EDGAR: About how many is not many?

25 MR. TWOMEY: Let me see.

1 CHAIRMAN EDGAR: Thank you.

2 MR. TWOMEY: I would say about four or five, Madam
3 Chair. I would like to observe, too, this is the --

4 CHAIRMAN EDGAR: Mr. Twomey, I am going to give you
5 the latitude to ask four or five more questions and let's see
6 where we are then.

7 MR. TWOMEY: Thank you.

8 BY MR. TWOMEY:

9 Q Mr. Dewhurst, you had before the objection indicated
10 that the customers would suffer some detriment perhaps by not
11 having as large a reserve as the company has requested,
12 correct?

13 A That is true.

14 Q And didn't you say that that is what they want, then
15 that is what they want?

16 A I don't think I said that. If I did I misspoke.
17 What I intended to say was some customers may prefer one, some
18 customers may prefer another as a trade-off in there. I
19 believe I talked about this in my direct testimony.

20 Q Yes, sir. And to the extent that customers are
21 represented by attorneys and parties in this case, would you
22 agree with me as evidenced by Issue 37 and the customer
23 parties' positions that each and every one agreed with the
24 position of the Office of Public Counsel that the reserve
25 should be \$200 million?

1 A Yes and no. I agree to the extent that you say
2 customers represented by counsel. I don't agree to the extent
3 that you are purporting to represent the preferences of
4 4.3 million customers. I think the Commission has an
5 independent obligation ultimately to decide what is in the best
6 interests of the customer base overall.

7 Q Yes, sir. Are you finished?

8 A Yes, sir.

9 Q Now, I know you have already conceded that you are
10 not a lawyer, but are you aware or not that the Public Counsel
11 is charged by Florida law with representing the interests of
12 your customers in these cases? Yes or no would be good.

13 A I recognize the Office of Public Counsel has a duty
14 to represent customers. I cannot say whether that is the
15 totality of representation of customers.

16 Q And that is a fine answer. That is acceptable for
17 me. Now, you have conceded, I think, that if my math is
18 correct, that the 12 year reduction in total charges to the
19 customers, not including reduced amounts of regulatory
20 assessment fees and franchise fees they have to pay, as well,
21 would be some \$550 million, correct?

22 A I have agreed that that is a piece of the equation.
23 Let me try it a different way. When a storm comes along three
24 or four years from now, there will be an offset to that which
25 is that we will then be asking customers to pay the prudently

1 incurred restoration costs associated with that storm. To the
2 extent they exceed the reserve, there will be additional costs
3 incurred by customers that would not be incurred if they had
4 the \$650 million reserve.

5 Q Yes, sir. And if my math is correct, the 550 million
6 is a precise number and what I would ask you, can you with any
7 specificity quantify in dollar terms the detriments you are
8 afraid that my customers and my clients and the clients of
9 Public Counsel and the others will experience?

10 A Yes, sir, I can.

11 Q And what are they?

12 A They are the difference between the up front reserve
13 levels that we talked about, this difference between 650 and
14 400. The difference is you have that capacity to absorb losses
15 right from day one. That is the difference.

16 Q Yes, but can you quantify that in terms of the
17 additional number of dollars that --

18 A Yes, sir, I just did.

19 Q -- your customers will have to pay over the course of
20 the next 12 years? Because isn't it dependent, Mr. Dewhurst,
21 on whether or not you experience storm damage the next three or
22 four years?

23 A I certainly concede that. Maybe I am being too
24 pessimistic. Maybe we will never have another storm. I
25 fervently hope that.

1 Q And isn't it true, also that if you have a rate case
2 at the end of your current settlement agreement, and it is
3 litigated that you possibly could receive a storm damage
4 accrual?

5 A I'm sorry, can you say that one again.

6 Q Yes, sir. When does your current settlement
7 agreement expire?

8 A It runs through December of '09.

9 Q Pardon?

10 A December of '09 unless it is continued --

11 Q Right. Unless you have another settlement agreement
12 you may expect to have a rate case at that time, right?

13 A That is correct.

14 Q And if it is litigated, wouldn't you reasonably
15 expect to have the Commission approve a storm damage accrual at
16 that time?

17 A I don't know.

18 MR. TWOMEY: That is all I have. Thank you.

19 CHAIRMAN EDGAR: Thank you, Mr. Twomey.

20 Mr. Beck.

21 MR. BECK: Yes, ma'am.

22 CROSS EXAMINATION

23 BY MR. BECK:

24 Q Mr. Dewhurst, good evening.

25 A Good evening.

1 Q I would like to ask you a few questions about your
2 storm accounting methodology that you cover on Pages 22 through
3 24 of your testimony?

4 A Yes, sir.

5 Q In those sections of your testimony you discuss some
6 differences between the methodology used by Gulf Power Company
7 and your company in this proceeding, is that right?

8 A No, I don't think that is a fair characterization of
9 my testimony.

10 Q How would you characterize the storm accounting
11 methodology you discuss on Pages 22 through 24?

12 A The intent of my rebuttal testimony there was to
13 rebut a contention in Mr. Larkin's testimony to the effect that
14 Gulf was endorsing the incremental cost approach, and I don't
15 think that is what a fair reading of their stipulation or their
16 testimony says.

17 MR. BECK: Madam Chairman, I would like to have an
18 exhibit marked for identification.

19 CHAIRMAN EDGAR: Mr. Beck, we will be on Exhibit
20 Number 170. Do you want to title it with the order number?

21 MR. BECK: Yes, ma'am. It is Order Number
22 PSC-05-0250.

23 (Exhibit 170 marked for identification.)

24 BY MR. BECK:

25 Q Mr. Dewhurst, you are familiar with the order and the

1 stipulation concerning Gulf Power Company, aren't you?

2 A Generally, yes. I haven't read it for a while.

3 Q In fact, you quote it in your testimony on Page 24,
4 do you not?

5 A I do, yes, sir.

6 Q Could you turn to Page 19 of the order. And 19 would
7 be on the upper left-hand corner. It is where Page 19 is
8 marked. It would be 24 on the bottom.

9 A Yes, sir, I have that.

10 Q That is an exhibit to the settlement agreement
11 between Gulf Power and various parties, is that right?

12 A That is what it appears to be, yes.

13 Q And would you look, please, at Item D on the list?

14 A Yes, sir.

15 Q What I want to do is just cover some of the
16 differences that exist between this settlement agreement and
17 the methodology Florida Power and Light is utilizing in this
18 proceeding. D is that Gulf Power will eliminate all base
19 salaries and normal budgeted overtime from all bargaining unit
20 labor costs charged to the property insurance reserve. Do you
21 see that?

22 A Yes. That is a part of what Gulf agreed to in their
23 settlement agreement, yes.

24 Q And that is different than what Florida Power and
25 Light is proposing in this case?

1 A That is correct.

2 Q And if you look under Item G, please. Gulf Power
3 agreed to exclude advertising expense. Do you see that?

4 A I do see that.

5 Q And that is different than what Florida Power and
6 Light is proposing in this case?

7 A That is correct.

8 Q Could you turn to the next page, please?

9 A Yes.

10 Q H. Do you see where Gulf Power shall not book any
11 uncollectible expenses or lost revenues to the property
12 insurance reserve?

13 A Yes, I see that.

14 Q And that is different than what Florida Power and
15 Light is proposing in this case?

16 A Yes. What Gulf agreed to in this settlement
17 agreement is clearly different from what we are proposing in
18 this case.

19 Q Now, Gulf Power is also in front of this Commission
20 for a securitization case at this time, is that right?

21 A That is my understanding.

22 Q Would you agree with me that Gulf Power was under no
23 obligation whatsoever to follow the terms of the settlement
24 agreement in the securitization case?

25 A Yes, I agree with that. I believe they voluntarily

1 agreed to.

2 MR. BECK: That's all I have. Thank you.

3 CHAIRMAN EDGAR: Thank you, Mr. Beck.

4 Are there questions from any of the other intervenors
5 on cross for this witness? No? Thank you.

6 Questions from staff?

7 MR. KEATING: None from staff.

8 CHAIRMAN EDGAR: Commissioners? Commissioner Deason.

9 COMMISSIONER DEASON: Thank you. Mr. Dewhurst, staff
10 has shared with me an answer to an interrogatory, which
11 indicates that the historical ten-year average return earned on
12 the storm reserve back when it had a positive balance was
13 slightly above 4 percent. Does that sound right to you?

14 THE WITNESS: Subject to check that sounds reasonable
15 for that period, yes, sir.

16 COMMISSIONER DEASON: Is that a good proxy for what
17 the reserve will earn in the future or it just depends upon
18 markets and economics at that time?

19 THE WITNESS: The latter, sir. I believe there was a
20 question, actually Mr. Kise raised a question about investment
21 policy guidelines. We had provided that in an interrogatory,
22 but it is basically short-term instruments. You need the
23 liquidity to be able to fund restoration costs.

24 COMMISSIONER DEASON: And staff shared with me an
25 interrogatory that describes those investment requirements and

1 they are fairly restricted, what I would consider relatively
2 liquid and safe investments.

3 THE WITNESS: That is the intent, yes, sir.

4 COMMISSIONER DEASON: Generally, and I'm sure it is
5 hard to precisely estimate, but generally how would you compare
6 what you anticipate to be the interest rate on the
7 securitization bonds, if we go that route, in comparison to
8 what you could expect the funded reserve to earn given its
9 investment parameters?

10 THE WITNESS: Commissioner, obviously it depends on
11 the shape of the yield curve. If I assume for the moment a
12 fairly standard yield curve, so upward sloping, and reflect the
13 strong credit of the securitization effort issue resulting in
14 the low rate, I would expect that on average there would
15 probably be a percent or two of negative carry, if you like.

16 COMMISSIONER DEASON: And is it fair to characterize
17 that as a cost of having a positive funded reserve?

18 THE WITNESS: Yes and no. I guess the way I think of
19 this, or an analogy for this is -- and please pardon the pun,
20 but it is kind of like a rainy day fund or a windy day fund.
21 But it is funds that are set aside so that you don't have to
22 draw on, or don't have to interfere with other consumption
23 patterns if an event hits. So, obviously that is a thing that
24 a lot of prudent consumers do for their own benefit. And
25 typically in that case I think it is fair to say there is a

1 cost, an opportunity cost. You could do other things with
2 those resources. And in that sense, yes, I think there is a
3 cost to it.

4 There is also a value to it, and one of the
5 difficulties here, I think, is to decide what is the right
6 balance between those two. As we developed the recommendation
7 which led us to the 650 million, or I should say we were really
8 working primarily off trying to be consistent with past
9 Commission orders and the framework that had been set out
10 before. And really we got to the 650 million by starting at
11 the 370 million from the '98 order, which was based on an
12 Andrew type event, factoring up for inflation and system
13 growth. And just as Witness Stewart did, then kind of adding a
14 little bit for the thought that we are probably in a more
15 active hurricane period, and with that you get to 650 million.
16 But, as I said before, I don't think there is any absolute
17 analytical way of coming up with a perfect number.

18 COMMISSIONER DEASON: From a policy standpoint, would
19 you agree that this Commission would have to determine the cost
20 of establishing a reserve, a positive reserve in some amount
21 against the benefits that that positive reserve would -- the
22 value of that positive reserve and the benefits that it
23 potentially could create?

24 THE WITNESS: Yes, sir, I would definitely agree with
25 that.

1 COMMISSIONER DEASON: And switching gears for just a
2 moment, I know that your proposal is for a 12-year period of
3 securitization. Is that something that this Commission has
4 flexibility, either lengthening or shortening, or is that
5 somehow already cast in stone and that what we have before us
6 is just the amount as opposed to the term?

7 THE WITNESS: I think the answer is clearly in
8 principle, no, it could be changed. It was arrived at,
9 however, by looking at -- let see if I can keep this brief.
10 These are amortizing bonds, right? So the way that you
11 effectively create the amortization is having a series of
12 tranches of different maturities that effectively amortize out
13 with a roughly constant storm charge. You want for the benefit
14 of getting a good deal on the issuance to adjust those tranches
15 so that their maturities fit in the normal market windows,
16 which is a function of what investors typically buy, what kind
17 of paper they buy. They don't buy 11-year paper, they buy
18 10-year paper.

19 So you want a tranche that fits ten years, you want a
20 tranche that fits 7 years, and so on. They are stacked down.
21 Then you have to go through the math of figuring out how to get
22 that all to balance so that the amortization schedule will then
23 work.

24 I'm sorry for the long-winded answer, but, yes, in
25 principle it is possible to change it, and it would certainly

1 be possible to shorten the time period. Our review of the
2 numbers and the market information suggested it would be very
3 difficult to stretch it out much further without running into
4 some market acceptance problems. I don't know if that
5 addresses your question.

6 COMMISSIONER DEASON: You have answered my question
7 precisely. Thank you very much.

8 CHAIRMAN EDGAR: Mr. Litchfield.

9 MR. LITCHFIELD: Thank you, Madam Chairman. I have
10 just a very few questions on redirect.

11 REDIRECT EXAMINATION

12 BY MR. LITCHFIELD:

13 Q Mr. Dewhurst, do you recall the discussion with
14 Mr. Twomey relative to the interim surcharge that was approved
15 by this Commission following the 2004 storm season?

16 A Yes, sir.

17 Q Do you know whether that interim surcharge was
18 approved by this Commission subject to refund following a
19 hearing?

20 A It was.

21 Q In fact, was there an evidentiary hearing held in
22 that case?

23 A There was.

24 Q You also indicated, as I recall, with respect to a
25 question of Mr. Twomey, that recoverability is key. Do you

1 recall that?

2 A I do recall saying that, yes.

3 Q By recoverability, did you mean some of the
4 reasonable and prudently recovered costs to restore storm
5 service or all reasonable and prudently incurred storm
6 restoration costs?

7 A The latter.

8 Q Do you know whether Mr. Twomey's math is correct?

9 A I don't know. I haven't checked it. I was accepting
10 everything subject to check.

11 Q Now, with respect to the question asked of you, or
12 line of questions asked of you by Mr. Beck. He directed you to
13 the Gulf stipulation?

14 A Yes, sir.

15 Q Do you still have that in front of you?

16 A Yes.

17 Q Would you turn to Paragraph 4 of that stipulation.
18 It is Attachment A to the order.

19 A This is on Page 13? On Page 2, 13, or 8?

20 Q Well, if I have the same copy that you have, I show
21 Page 5 of Attachment A and 16 of the order, I believe.

22 A Paragraph 4, is that where you are going?

23 Q Paragraph 4 of Attachment A to the order, which, in
24 fact, is the stipulation?

25 A I think I am with you now.

1 Q Okay. Do you see the sentence beginning for the sole
2 purpose?

3 A Yes, sir.

4 Q Would you please read that sentence?

5 A "For the sole purpose of this stipulation and
6 settlement, and without prejudice to the right and ability of
7 any party to assert how such charges associated with future
8 storms should be charged to the property insurance reserve, the
9 parties adopt and agree to apply the criteria and guidelines
10 contained in Exhibit A to this document."

11 Q Thank you. Now, would you refer back to MPD-4, that
12 is the stipulation and settlement in Florida Power and Light
13 Company's last base rate case to which you were referred
14 several times by Mr. Kise.

15 A Yes, sir.

16 Q Now, would you refer to Paragraph 10, and in
17 particular the sentence that reads, "FPL will be permitted to
18 recover prudently incurred costs associated with the events,"
19 and it continues. Do you see that sentence on Page 10? It is
20 in Paragraph 10.

21 A Yes, sir.

22 Q And do you see the clause at the end of that
23 sentence, beginning "that are independent of and incremental"?

24 A "That are independent of and incremental to base
25 rates and without the application of any form of earnings test

1 or measure."

2 Q Thank you. Now, is sharing a measure, Mr. Dewhurst?

3 A I believe so.

4 MR. KISE: Objection. This witness is not qualified
5 to render an opinion. Are you asking him as a layperson if
6 that is his definition?

7 MR. LITCHFIELD: I'm asking the witness if it is his
8 understanding or his interpretation or his view, not a legal
9 conclusion, not a legal opinion, as to whether his
10 understanding is that sharing, in fact, constitutes a measure.

11 MR. KISE: His personal view as the CFO and
12 substantial shareholder of FPL?

13 MR. LITCHFIELD: Well, I will object to that
14 qualification. I think the witness can answer the question
15 without that qualification.

16 CHAIRMAN EDGAR: The witness can answer the question.

17 THE WITNESS: Yes, I think that is fair.

18 MR. LITCHFIELD: That is all the redirect I have,
19 Madam Chairman, but I do have one administrative matter that I
20 would like to take up now if that is appropriate.

21 CHAIRMAN EDGAR: Not knowing what it is, I don't know
22 if this is the time or not.

23 MR. LITCHFIELD: I will try, and if you tell me to
24 wait five minutes, I will wait five minutes.

25 CHAIRMAN EDGAR: Okay.

1 MR. LITCHFIELD: There has been some discussion
2 albeit limited in this docket, but some discussion nonetheless
3 as to the relative merits of the 2005 base rate settlement
4 between Florida Power and Light Company and other parties to
5 this table, as to whether it was quote, unquote, good or bad.
6 And I would ask that administrative notice be taken of the
7 transcript of the agenda session. Actually, I think it was a
8 portion of the hearing schedule at which that agreement was
9 approved. And I have a copy here. Not a clean copy. I'm not
10 sure we need -- if we are taking administrative notice, I
11 guess, you don't need a copy, but it would be Volume 10, Pages
12 1597 through Page 1684. And that is in Docket Number
13 050-0045-EI, and consolidated with Docket Number 050188-EI.

14 MR. KISE: If I'm understanding what he is
15 introducing, I don't have any objection. I will join in what I
16 think he is placing in the record is a defense of the
17 settlement, and I think hopefully we have demonstrated at least
18 from the Attorney General's Office position that we think it is
19 a good settlement, and we certainly kept the word sharing out
20 of Paragraph 10.

21 CHAIRMAN EDGAR: The Commission in this record will
22 take administrative notice of the documents that you have
23 described.

24 MR. LITCHFIELD: Thank you, Madam Chairman.

25 CHAIRMAN EDGAR: Thank you. We have an exhibit.

1 Mr. Beck.

2 MR. BECK: I move Exhibit 170.

3 CHAIRMAN EDGAR: Seeing no objection, we will enter
4 Exhibit 170 into the record as evidence. Do we need to take up
5 deposition testimony?

6 MR. KEATING: I'm sorry?

7 CHAIRMAN EDGAR: Part of the witness' testimony had
8 been stipulated. Do we need to enter a deposition into the
9 record?

10 MR. KEATING: Yes, that is what I was about to add.
11 We do need to add exhibit -- I believe it would be 171, which
12 would be the deposition transcript of Moray Dewhurst.

13 CHAIRMAN EDGAR: Folks, we are going to be done in
14 just a few minutes, but we do have a couple of things that I
15 think that we need to take care of, and I want to make sure
16 that everybody hears. So believe me I am as eager to move on,
17 but let's just hang tight for just a couple more minutes, I
18 think.

19 Mr. Keating, again, please.

20 MR. KEATING: Yes. We need to have marked, I
21 believe, as 171 the deposition transcript of Moray P. Dewhurst
22 taken April 14th, 2006.

23 CHAIRMAN EDGAR: So noted and entered into the record
24 as Exhibit Number 171.

25 (Exhibits 170 admitted into the record. Exhibit 171

1 marked for identification and admitted into evidence.)

2 CHAIRMAN EDGAR: Mr. Keating.

3 MR. KEATING: Yes. Another administrative matter.
4 The deposition transcripts for staff Witnesses Noel, Fichera,
5 and Klein were stipulated as part of the record. The errata
6 sheets for those depositions have not yet been completed, and
7 staff would like to have a late-filed exhibit that I guess
8 would be 172, a composite exhibit, so that it can provide those
9 errata sheets to the parties and ensure that those are included
10 in the record to ensure the completeness of the deposition.

11 CHAIRMAN EDGAR: Mr. Keating, do you have a date that
12 you expect those to be ready?

13 MR. KEATING: I think we could provide those by, I
14 will say, Tuesday of next week.

15 MR. LITCHFIELD: Madam Chairman, may I?

16 CHAIRMAN EDGAR: Mr. Litchfield.

17 MR. LITCHFIELD: We are amenable, and I had discussed
18 with Mr. Keating the possibility of a late-filed exhibit. My
19 only concern is that with briefs due on Thursday, Tuesday
20 strikes me as a bit late.

21 MR. KEATING: We will make every effort to provide
22 them on Monday.

23 CHAIRMAN EDGAR: So noted. Mr. Keating, other
24 matters? Mr. Melson, you are recognized.

25 MR. MELSON: Madam Chairman, Mr. Harris is passing

1 out a sheet on which two issues are identified. We have met
2 with the parties. There are a couple of issues in this
3 proceeding that are within the scope of Issue 74, but are not
4 specifically identified. And I will take Item B first. There
5 has been a great deal of discussion about what sort of
6 post-financing order regulatory oversight is appropriate, and
7 while that is implicit in several issues in the prehearing
8 order, there is no separate issue. And we thought, and I think
9 the parties agree that it would be useful to deal with that
10 separately in the briefs. Subpart A, there is also a concern
11 on the part of staff that the wording of the finance order,
12 financing order is going to have very significant implications
13 for the financial community and the financing.

14 Ordinarily, our practice is after the Commission
15 votes, the staff simply drafts and issues an order consistent
16 with the vote. I think all parties would be well served in
17 this case to have some interaction involving all of the parties
18 during that 15-day period following the vote and before the
19 issuance of the order to try to ensure that the order, A,
20 accurately reflects the Commission vote, and, B, is written in
21 a way to be clear to the financial community.

22 I have talked with the parties about this, and I
23 think they are all amenable to briefing these two issues so
24 that when we bring a recommendation to you on the 15th we will
25 have the benefit of very precisely understanding their

1 thoughts.

2 CHAIRMAN EDGAR: Thank you, Mr. Melson.

3 Commissioners, any questions? Seeing none.

4 Parties, are we clear?

5 Mr. Beck, are you?

6 MR. BECK: I wanted to raise one other matter.

7 I am clear on that.

8 CHAIRMAN EDGAR: On this matter are we clear? Okay.

9 Mr. Beck.

10 MR. BECK: In view of the new issues, as well as the
11 length of time we spent at the hearing, it has been long,
12 arduous, our briefs I think as presently scheduled are due next
13 Thursday?

14 CHAIRMAN EDGAR: Briefs are due April 27th. Is that
15 Thursday?

16 MR. BECK: I believe so. I would like to request one
17 additional day, so that they would be due close of business on
18 Friday for all parties.

19 MR. LITCHFIELD: FPL would join in that request.

20 CHAIRMAN EDGAR: It is nice to end on a note of
21 cooperation.

22 Mr. Keating, is there a reason from the perspective
23 of staff that that would be a problem?

24 MR. KEATING: It does give us one less day to have
25 the briefs and prepare the recommendation, but I would just ask

1 if the parties could consider providing whatever they file
2 electronically to ensure that any distribution required so the
3 staff can look at that as soon as possible.

4 CHAIRMAN EDGAR: That strikes me as a reasonable
5 request. Are the parties able to meet that?

6 MR. KISE: Absolutely.

7 CHAIRMAN EDGAR: Thank you. Any other housekeeping,
8 administrative -- we are almost there, folks?

9 Mr. Litchfield.

10 MR. LITCHFIELD: I was wondering if you could dismiss
11 Mr. Dewhurst.

12 CHAIRMAN EDGAR: Oh, I'm sorry. Mr. Dewhurst, you
13 are excused.

14 Thank you, Mr. Litchfield.

15 Okay. Per our discussion, briefs will be due April
16 28th. They will be brought to us electronically. The staff
17 recommendation, my understanding is due May 8th, and we will
18 have a special agenda item to discuss this on May 15th. Are
19 there other matters? Okay.

20 Seeing none, my special thanks to my fellow
21 Commissioners, to our Commission staff, Technical, Legal, to
22 our court reporters for the cooperation and the good-natured
23 professionalism that we have all shown to get through the work
24 that we had. I appreciate it very much. And, with that, this
25 hearing is adjourned.

(The hearing concluded at 10:00 p.m.)

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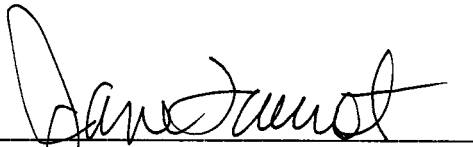
CERTIFICATE OF REPORTERS

WE, JANE FAUROT, RPR, and LINDA BOLES, RPR, CRR, Official Commission Reporters, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

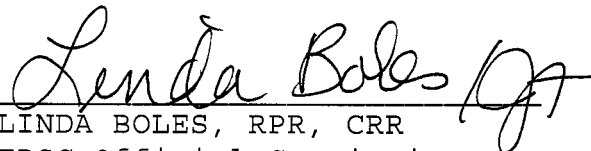
IT IS FURTHER CERTIFIED that we stenographically reported the said proceedings; that the same has been transcribed under our direct supervision; and that this transcript constitutes a true transcription of our notes of said proceedings.

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

DATED THIS 23rd day of April, 2006.



JANE FAUROT, RPR
FPSC Official Commission
Reporter
(850) 413-6732



LINDA BOLES, RPR, CRR
FPSC Official Commission
Reporter
(850) 413-6734