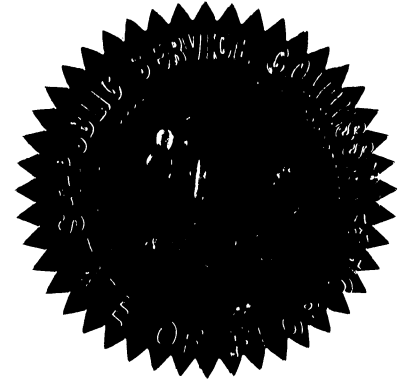


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080001-EI

In the Matter of

FUEL AND PURCHASED POWER
COST RECOVERY CLAUSE WITH
GENERATING PERFORMANCE INCENTIVE
FACTOR.



VOLUME 4

Pages 438 through 637

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PROCEEDINGS: HEARING

BEFORE: CHAIRMAN MATTHEW M. CARTER, II
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER KATRINA J. McMURRIAN
COMMISSIONER NANCY ARGENZIANO
COMMISSIONER NATHAN A. SKOP

DATE: Wednesday, November 5, 2008

TIME: Commenced at 9:30 a.m.
Concluded at 6:05 p.m.

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

REPORTED BY: MARY ALLEN NEEL, RPR, FPR

APPEARANCES: (As heretofore noted.)

DOCUMENT NUMBER-DATE

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FLORIDA PUBLIC SERVICE COMMISSION

FPSC-COMMISSION CLERK

I N D E X

WITNESSES

	NAME	PAGE NO.
1		
2		
3		
4	GERARD J. YUPP	
5	Direct Examination by Mr. Butler	474
6	Prefiled Testimony Inserted	477
7	Cross-Examination by Mr. McWhirter	508
8	Cross-Examination by Mr. Twomey	511
9	Redirect Examination by Mr. Butler	530
10	TERRY O. JONES	
11	Direct Examination by Mr. Butler	532
12	Prefiled Testimony Inserted	535
13	Cross-Examination by Mr. Burgess	568
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
	CERTIFICATE OF REPORTER	637

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS

NUMBER	ID.	ADMTD.
4 GJY-1		531
5 GJY-2		531
6 GJY-3		531
7 GJY-4		531
8 KMD-5		531
54 FOIA Report	445	445
55 Gulf notification letter	448	448

P R O C E E D I N G S

1
2 (Transcript follows in sequence from
3 Volume 3.)

4 CHAIRMAN CARTER: Good morning to one and all.
5 I would like to call this hearing to order. When we
6 last left off, we were beginning to begin. How about
7 that? We ended at the beginning to begin. And with
8 that, we are starting on the FPL portion of the docket.

9 Let me see. Staff, any preliminary matters?

10 MS. BENNETT: Yes, Mr. Chairman. I've spoken
11 with FPL and OPC, and they want to present to you and
12 the Commission an agreement that they've reached.

13 CHAIRMAN CARTER: Okay. Mr. Burgess, you're
14 recognized.

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

16 CHAIRMAN CARTER: Good morning.

17 MR. BURGESS: Good morning. This is with
18 regard to Issue 13C, the drilled hole in the pressurizer
19 piping.

20 A report came out from the Federal Bureau of
21 Investigation late last week that shed some additional
22 light on the circumstances surrounding this particular
23 individual, and the question that we wrestled with in
24 discussions with all of the intervenors, Florida Power &
25 Light and the staff, is what should we do with this

1 document, how should we handle it, because it has a
2 considerable amount of new information that is relevant
3 to the Commission's decision.

4 And what we have suggested from our due
5 process needs is that, one, the document be identified
6 as an exhibit and go into the record, and two, that our
7 witness, even though he has already prefiled testimony
8 that didn't include any reference to this document,
9 because it didn't exist as far as we knew up until that
10 point, that he be allowed to address it orally in his
11 summary and add it into the context of his testimony.

12 Then, of course, he would be subject to
13 cross-examination on it by Florida Power & Light, and
14 Florida Power & Light's witnesses would be entitled to
15 address his testimony in their summary, and they would
16 be subject to cross-examination by us following their
17 testimony.

18 CHAIRMAN CARTER: Mr. Butler.

19 MR. BUTLER: That is a quite accurate
20 description of it. Let me just add a couple of points
21 for clarification. The document in question is
22 precisely an FBI response to an FPL Freedom of
23 Information Act or FOIA request.

24 Initially, we had made the request to the NRC.
25 We received a response from the NRC which we provided to

1 the parties in discovery last summer, but there were
2 portions of the information in the NRC's possession that
3 actually had come from the FBI. NRC asked the FBI to
4 evaluate their portions of the information to determine
5 what could be released. The FBI eventually did that,
6 and we have provided that FBI FOIA response to the
7 parties, which is what Mr. Burgess was just referring
8 to.

9 We do not object to it being stipulated into
10 the record as an exhibit and don't object to OPC's
11 witness commenting on it as sort of a supplement to his
12 summary of his testimony, and all we ask is that our
13 witnesses, which would -- you know, who we have
14 currently is Ms. Dubin and Mr. Avera.

15 Mr. Jones, who will be testifying on direct
16 here shortly, hopefully shortly, is also -- he's our
17 technical expert. I don't know whether anything
18 Mr. Larkin would comment on about the report would
19 require sort of a technical response, but to whatever
20 extent it did, then Mr. Jones would make a brief
21 statement to that effect and be subject to
22 cross-examination.

23 So that's -- I think it is, under the
24 circumstances, information that we agree is relevant to
25 the docket that became available late in the proceeding.

1 That's, in our mind, the best way to handle this. It
2 seems like it's fair to all parties.

3 CHAIRMAN CARTER: Commissioners, we'll make
4 this Exhibit Number 54 as a late-filed amendment because
5 of the agreement of the parties.

6 Commissioner Skop, before I go forward.

7 COMMISSIONER SKOP: Thank you, Mr. Chairman.
8 Just a quick question to Mr. Burgess or FPL with respect
9 to the document that the Chair is going to admit into
10 the record. Would it be possible for each of my
11 colleagues to get a copy of that so we can review it? I
12 have not seen it yet or had the opportunity to, because
13 it has not been in the record.

14 MR. BURGESS: I think that -- I'm glad you
15 raised that question. It appears that Ms. Bennett was
16 anticipating it.

17 CHAIRMAN CARTER: Ask and you shall receive.

18 MR. BURGESS: Actually, it is somewhat
19 voluminous. It may -- I mean, we're going to begin and
20 even address it in our opening statement, so I don't
21 know if you want to gain some familiarization with it
22 before we start or how you want to set about this.

23 CHAIRMAN CARTER: Well, you now have a copy.

24 COMMISSIONER SKOP: And I would like to thank
25 Ms. Bennett for that. Thank you, Staff, for

1 anticipating my question.

2 CHAIRMAN CARTER: Thank you. Commissioners,
3 for the record, this will be Exhibit Number 54, and
4 based upon stipulation of the parties, it will be
5 entered into the record. Without objection, show it
6 done.

7 (Exhibit 54 was marked for identification and
8 admitted into the record.)

9 CHAIRMAN CARTER: Any -- I'll give Ms. Bennett
10 an opportunity to regain her posture, and then we'll ask
11 if there are any further preliminary matters.

12 COMMISSIONER EDGAR: Mr. Chairman, what did we
13 label this?

14 CHAIRMAN CARTER: I beg your pardon?

15 COMMISSIONER EDGAR: What did we label this
16 exhibit?

17 CHAIRMAN CARTER: Exhibit Number 54. Let's
18 call it the FBI report. Sounds kind of cloak and
19 dagger, if you know what I mean.

20 MR. BUTLER: Mr. Chairman?

21 CHAIRMAN CARTER: Yes, sir.

22 MR. BUTLER: I hate to quibble, but would it
23 be possible to call it the FBI FOIA response, F-O-I-A,
24 or something like that? One of the points --

25 CHAIRMAN CARTER: Okay. FOIA report. How

1 about that?

2 MR. BUTLER: That's fine.

3 CHAIRMAN CARTER: I was that close. FOIA
4 report, FOIA, Freedom of Information Act report.
5 Mr. Burgess is that okay with you?

6 MR. BURGESS: That's fine. Thank you.

7 MS. BENNETT: And so that will be entered into
8 the record as Exhibit 54.

9 CHAIRMAN CARTER: Fifty-four.

10 MS. BENNETT: Before we start on FPL, I did
11 talk with Mr. Badders, I'm sorry, from Gulf, and he did
12 want to add an additional record into the record.

13 CHAIRMAN CARTER: Too late. Forget about it.
14 Mr. Badders.

15 MR. BADDERS: Thank you. Good morning. In
16 looking at -- listening to the questions yesterday, we
17 determined that there was one document that was not
18 included in any of the comprehensive exhibits that would
19 probably be helpful to the Commission.

20 CHAIRMAN CARTER: Okay.

21 MR. BADDERS: And I've discussed it with the
22 other parties, and they do not have an objection.

23 This document is Gulf's notification letter
24 that we filed on October 13th informing the Commission
25 that it will have an additional \$32 million

1 underrecovery for the period ending December 2008, and
2 that number puts us over the 10 percent threshold. The
3 letter basically went on to say we did not intend to
4 request an additional increase at this time.

5 We just felt that that was something that was
6 very important to have in the record, considering all
7 the discussions about rejections. And we actually
8 have copies for everyone and will have those passed out.

9 CHAIRMAN CARTER: Okay. If you'll get copies
10 out. Commissioners, for the record, with no objection
11 from the parties, that will be Exhibit Number 55.
12 Exhibit Number 55, we'll take moment to pass that out.

13 And while he's passing that out, are there
14 further preliminary matters from any of the other
15 parties from any other matters that we dealt with
16 yesterday?

17 Hearing none, we'll proceed with today's FPL
18 portion of the docket. Ms. Bennett, any further
19 preliminary matters?

20 Again, Commissioners, this is Exhibit 55.
21 Let's just label it the Gulf notification letter. Is
22 that okay with you, Mr. Badders?

23 MR. BADDERS: That's fine. Thank you.

24 CHAIRMAN CARTER: Got one in. And show it
25 adopted without objection, Exhibit Number 55.

1 (Exhibit 55 was marked for identification and
2 admitted into the record.)

3 CHAIRMAN CARTER: Ms. Bennett, any further
4 preliminary matters?

5 MS. BENNETT: No further preliminary matters.

6 CHAIRMAN CARTER: Okay, then. Any preliminary
7 matters from either of the parties before we begin?

8 Okay. Mr. Butler, you're recognized.

9 MR. BUTLER: Thank you, Mr. Chairman, and good
10 morning, Commissioners.

11 FPL's testimony and exhibits support approval
12 of its 2009 fuel cost recovery and capacity cost
13 recovery factors. There are a lot of potential issues
14 interwoven in the determination of those factors, but
15 staff and the parties have worked closely with FPL
16 through audits, discovery, and dialogue to narrow the
17 focus.

18 I will direct my attention and remarks
19 primarily to what FPL understands to be the principal
20 unresolved issue, recovery of replacement power costs
21 associated with a drilled hole in the pressurizer piping
22 that was discovered during the spring 2006 planned
23 refueling outage at FPL's Turkey Point Unit 3 nuclear
24 facility. That's Issue 13C. I'll try to keep my
25 remarks brief and ask to reserve the remainder of my

1 allotted time to respond to the opening statements of
2 other parties.

3 Toward the end of the spring 2006 refueling
4 outage at Turkey Point Unit 3, FPL personnel identified
5 a small drilled hole in the pressurizer piping during a
6 series of pre-startup tests and inspections. The
7 pressurizer is a device that maintains water pressure
8 inside the reactor coolant system at desired levels.
9 The drilled hole never posed a threat to reactor safety,
10 but had to be repaired before Unit 3 could restart.
11 And, of course, FPL needed to investigate the remainder
12 of the plant to ensure that there was no other vandalism
13 or damage requiring repair.

14 FPL performed this work quickly and well so
15 that only five days of additional outage time resulted.
16 Because FPL was able to respond so effectively, and
17 because Unit 3 operated very reliably both before and
18 after the outage, FPL actually exceeded its 2006 GPIF
19 target for equivalent availability at Unit 3 in spite of
20 the added outage time.

21 The FBI and FPL's corporate security
22 department conducted an investigation aimed at
23 identifying the individual or individuals who drilled
24 the hole. The investigation, which is now complete,
25 turned up substantial evidence that the hole was drilled

1 by one individual working alone. That individual has
2 been permanently denied access to all FPL plants.

3 While the evidence is strong, it is
4 circumstantial. As a result, the U.S. Attorney's Office
5 has elected not to charge the individual, and FPL has
6 concluded as a result that it does not have admissible
7 evidence to bring suit against him or his employer.

8 The Nuclear Regulatory Commission or NRC also
9 conducted an investigation of the drilled hole incident
10 for different purposes. The NRC formed what it refers
11 to as an Augmented Inspection Team or AIT to conduct a
12 thorough investigation of the adequacy and effectiveness
13 of FPL's security systems as well as FPL's response to
14 the drilled hole incident.

15 The NRC team found that FPL properly screened
16 individuals for access to Turkey Point before the
17 incident, including the individual who was suspected by
18 the FPL -- or by the FBI of drilling the hole, that
19 FPL's security personnel were appropriately positioned
20 and effectively trained to control access, and that FPL
21 had responded to the incident appropriately and
22 effectively. As a result, the NRC team found no
23 violations by FPL of the NRC's stringent safety or
24 security regulations either before, during, or after the
25 incident.

1 FPL's process to grant unescorted access to
2 its nuclear plants relies on detailed background checks
3 and FBI criminal history verification, drug and alcohol
4 testing, both initial testing and then random follow-ups
5 while the individual has access, and detailed
6 psychological screening. In addition, all individuals
7 continue to be evaluated while they are working at the
8 plant to determine what access they require and whether
9 there is any observed behavior that would indicate their
10 access should be rescinded.

11 As is the case at all nuclear plants around
12 the country, FPL's access procedures are subject to
13 stringent and frequent NRC scrutiny. It's clear that
14 FPL has a vigorous, aggressive, and effective program
15 for access control.

16 In addition, FPL's nuclear plants have
17 defenses in depth against any sort of incident that
18 could compromise plant safety. Those defenses in depth
19 worked well at Turkey Point Unit 3. The drilled hole
20 was identified before it could cause any significant
21 problems for the plant, and it was repaired with minimal
22 additional outage time.

23 In short, FPL's evidence will show that FPL
24 acted prudently with respect to the drilled hole
25 incident. The evidence will also show that Turkey Point

1 Unit 3 was exceptionally reliable in 2006, even with the
2 drilled hole incident, and that customers saved over a
3 half million dollars in fuel costs as a result of this
4 high reliability.

5 But the Office of Public Counsel and some of
6 the intervenors want to deny FPL recovery of the
7 replacement power costs that it had to incur to keep
8 power flowing to customers while the drilled hole was
9 being investigated and repaired. OPC has asserted that
10 this would be fair, just, and reasonable, but in
11 reality, the opposite is true. OPC's proposal
12 contradicts a long and consistent string of Commission
13 decisions as well as Florida Supreme Court precedent
14 that a utility should be permitted to recover actual
15 fuel costs unless it has been imprudent.

16 As Dr. Avera will testify, imposing
17 uncompensated risks on utilities would be penny-wise,
18 but pound-foolish. FPL's replacement power costs for
19 the drilled hole incident were 6.2 million. Were the
20 Commission to disallow recovery of those prudently
21 incurred fuel costs, the financial markets would take a
22 quick and unfavorable notice. This in turn would lead
23 to an increase in the financing costs for all Florida
24 investor-owned utilities, which would have to be borne
25 by their customers for years to come. The net impact of

1 that increase in financing costs likely would dwarf the
2 \$6.2 million that OPC is asking the Commission to
3 disallow here.

4 Finally, OPC's proposal would create a very
5 strong disincentive for investment in generating
6 resources with low energy costs, including nuclear and
7 renewables, at the same time that Florida is seeking to
8 encourage such investments. Investments in low energy
9 cost generation are important to helping Florida achieve
10 its energy security, fuel diversity, and environmental
11 goals.

12 Let me refer briefly, and I will, I'm sure,
13 have other opportunities through the morning to --

14 CHAIRMAN CARTER: If you want to reserve some
15 time, you --

16 MR. BUTLER: Got to move fast? Okay. I'll
17 tell you what, then. I will just observe very quickly
18 that nothing in what the FBI reports in what has been
19 marked and admitted as Exhibit 54 changes any of the
20 conclusions that I had just referred to.

21 And very briefly, let me just tell you that
22 FPL believes -- totally different subject -- its fuel
23 projections reflected in our September 2 filing remain
24 reasonable, and FPL's fuel factors should be approved.
25 The fuel forecasts we use are consistent with reasonable

1 expectations of conditions in 2009. We monitor on a
2 regular, actually, a weekly basis how the fuel price
3 projections are changing for the coming year. If things
4 change in a way that we feel the -- or that we reach a
5 point where the Commission-established 10 percent
6 threshold is exceeded, we will be back in promptly with
7 proposals on how fuel factors should be changed.

8 Thank you, and that concludes my summary, or
9 my opening statement.

10 CHAIRMAN CARTER: Thank you. You have three
11 minutes remaining on your time.

12 MR. BUTLER: Thank you.

13 MR. BURGESS: Mr. Chairman, may I --

14 CHAIRMAN CARTER: Mr. Burgess.

15 MR. BURGESS: -- ask a question with regard to
16 that? I had never understood that the Commission
17 treated opening statements as oral arguments with
18 rebuttal time. I had understood that we had opening
19 statements to lay out our case, and there's rebuttal
20 testimony to rebut the other side's case, but I didn't
21 know once in proper order everyone had been given the
22 opportunity to present sn opening statement that there
23 was rebuttal time following that. Is that --

24 CHAIRMAN CARTER: That has happened before
25 since I've been here. I mean, I've observed it several

1 times before, so it's --

2 MR. BURGESS: Okay. Thank you.

3 CHAIRMAN CARTER: You probably weren't on
4 those dockets.

5 MR. BURGESS: I probably wasn't. And I
6 appreciate the --

7 CHAIRMAN CARTER: Yes, sir. You're
8 recognized.

9 MR. BURGESS: -- understanding. Thank you,
10 Commissioners. And I also would limit my comments to
11 Issue 13C.

12 This is a circumstance that arose when in
13 2006, a sheet metal worker from Indiana applied to work
14 at the Turkey Point nuclear plant. And because of the
15 sensitive nature of this, of course, this worker had to
16 go through a screening process.

17 Following the screening process, the worker
18 was not only given a job, but he was given a more
19 elevated security clearance called unescorted access.
20 Within the next month of the time that he was hired, he
21 committed an act of vandalism. He drilled a hole in the
22 pressurizer piping causing an outage that resulted in
23 \$6.1 million of replacement fuel.

24 So the question is, is it fair, just, and
25 reasonable for the customers to bear the cost of that

1 replacement fuel? And Florida Power & Light says yes,
2 it's most definitely fair, just, and reasonable for the
3 customers to pay for this because, they say, they had
4 such an arduous screening mechanism in place that blame
5 can't be laid at their feet for this circumstance.

6 And I will read to you some selected excerpts
7 from the testimony, from the sworn testimony of
8 Mr. Jones about this screening process. He says that
9 each individual is subject to a detailed background
10 investigation, character verification, including
11 reference checks. Each individual is required to pass a
12 rigorous psychological examination consisting of nearly
13 600 questions with screened responses for psychological
14 stability. Each individual must successfully complete
15 drug and alcohol screening. Each individual is required
16 to successfully complete an FBI criminal history
17 verification with no disqualifying criminal background.
18 Failure to complete any of these steps, any of these
19 steps will result in the individual being denied
20 unescorted access to FP&L's nuclear facilities.
21 Finally, the individual who has been identified as
22 having drilled the hole in the pressurizer piping was
23 subject to and successfully completed FP&L's rigorous
24 access and fitness-for-duty screening process. That's
25 one version.

1 We have the FBI report that we received late
2 last week that says about this, the individual involved
3 failed the psychological screening test. On the
4 individual's Turkey Point security questionnaire, the
5 questionnaire he filled out in seeking this job, the
6 individual responded yes to a question listed in the
7 questionnaire which said, "Have you ever used and/or
8 sold illegal drugs?" The individual -- it was found in
9 this questionnaire that the individual had been charged
10 with reckless driving, with public intoxication, with
11 driving under the influence, with discharging a firearm
12 in public, with criminal recklessness, and with criminal
13 mischief.

14 I'll read you from Florida Statutes the
15 definition of criminal mischief: One who willfully and
16 maliciously injures or damages any real or personal
17 property belonging to another, including acts of
18 vandalism. This is in this individual's criminal
19 background. It didn't disqualify him by the standards
20 that are presented here.

21 You have two entirely different versions of
22 what this individual was about and what the expectations
23 should have been for this individual with a reasonable
24 screening process. You have the version that was
25 presented by Florida Power & Light, and this was the

1 only version we had on this incident that took place in
2 2006. This is the only version we had all the way up
3 until Friday of last week.

4 We have the FBI report because your staff
5 asked for it in production of documents, production of
6 documents 18 many months ago, and Florida Power & Light
7 presented it -- initially answered, "No, we don't have
8 that. It may not be available," and subsequently
9 provided it to staff and to our office at that time.

10 Nevertheless, within three days of when the
11 hearing was about to start, the only version that you
12 had of what this individual was about and what was known
13 of this individual before receiving this unescorted
14 access was what had been presented to you by Florida
15 Power & Light. And this witness has been deposed by
16 Mr. Young, and there still is no additional evidence --
17 had been no additional evidence other than this until
18 the FBI report came out.

19 And so once again, I just want you to consider
20 what we have here. We have a statement that the
21 individual had been screened for character verification,
22 and each individual is required to pass a rigorous
23 psychological examination, and as required, individuals
24 may be subject to further psychological review if
25 necessary, but each individual is to pass psychological

1 screening. This says the individual did not pass.

2 It says each individual must successfully
3 complete drug and alcohol screening. This says the
4 individual agreed that he had used and/or sold illegal
5 drugs, and he did not answer questions about
6 participation in substance abuse.

7 It says each individual must pass an FBI
8 criminal history verification with no disqualifying
9 criminal background, and I've read to you the criminal
10 background, including vandalism. Now, if that will
11 doesn't disqualify, what would?

12 So you have these two different versions, one
13 saying that the individual must pass every single one of
14 these, and he did pass every one of these; the FBI
15 version indicating apparently he passed none of these.

16 Where we see it is basically this: You have a
17 situation with overlaying, interlocking responsibilities
18 from the contractor who hired this employee, who
19 screened him, who trained him, who was responsible for
20 him with the security firm that works for Florida Power
21 & Light that decides where the cameras are, who can go
22 through what entrances, what type of security is at each
23 entrance, and then you have Florida Power & Light itself
24 who is responsible for all of this, who is paid by the
25 customers to make sure that this kind of thing doesn't

1 happen, and who is paid -- in 2006 was paid 12 percent
2 to cover its risk of running the business. You have all
3 three of these major entities, and right dead in the
4 middle of their overlapping areas of responsibility, you
5 have this intentional act of vandalism.

6 And the question is, well, who's responsible
7 for this? And Florida Power & Light says, "They are,
8 the customers, the ones who are paying us to run this
9 business and who are paying us a profit to take the risk
10 of running this business. They're the ones responsible
11 for this mess. Hand them the bill."

12 How can that be fair, just, and reasonable?
13 We don't think it is, and we know the statute says if
14 it's not fair, just, and reasonable, don't bill the
15 customers.

16 Thank you, Mr. Chairman.

17 CHAIRMAN CARTER: Mr. Wright.

18 MR. WRIGHT: Thank you, Mr. Chairman. The
19 Florida Retail Federation agrees with and supports the
20 position of the Office of Public Counsel and other
21 intervenors on this matter.

22 Even if FPL had adequately executed its
23 security protocol, it would be unfair, unjust, and
24 unreasonable to impose this \$6.2 million cost on FPL's
25 customers, because we, the customers, did not cause this

1 loss, did not cause this risk. We were not in any
2 position to prevent the loss. We were not in any
3 position to protect against this risk. FPL was. FPL
4 could have protected it perhaps by adequately executing
5 its security protocol. FPL could have protected itself
6 in its contract with its contractor.

7 And I'm sure FPL has wonderful attorneys, but
8 I would observe that there's a huge difference between
9 the criminal standard of beyond a reasonable doubt and
10 the civil standard of a simple preponderance. I don't
11 understand why FPL is not going after the contractor
12 when they have concluded that this individual committed
13 the act, but that's another issue.

14 Here, we believe the evidence shows that at
15 best, FPL failed to adequately execute its security
16 protocol, so there's no legitimate reason whatsoever to
17 charge these costs to FPL's customers. Doing so would
18 be unfair, unjust, and unreasonable.

19 I will say I don't believe that the
20 Commission's decision hypothetically to disallow this
21 recovery imposes a disincentive on investment in low
22 energy cost resources. I don't see how telling a
23 utility that it has to bear the consequences of its
24 contractor's actions that the utility and the contractor
25 were in a position to control rationally disincentivizes

1 investment in solar, nuclear, any other renewable, or
2 any other technology, for that matter. Rather, a denial
3 of this \$6.2 million in consequences would be fair,
4 just, and reasonable, and would appropriately allocate
5 the consequences of risks to those in a position to
6 address them and protect against them. It would provide
7 an appropriate incentive signal to protect -- to
8 utilities to protect themselves and their customers
9 against these risks.

10 We urge you to deny FPL's recovery of this
11 \$6.2 million from customers. Thank you.

12 CHAIRMAN CARTER: Thank you. Mr. McWhirter,
13 before I recognize you, I want to caution you, 10
14 minutes, sir. Okay? Ten minutes.

15 MR. McWHIRTER: All right, sir.

16 CHAIRMAN CARTER: Everyone seems to have no
17 problem with that, but I would just caution you, sir, 10
18 minutes.

19 MR. McWHIRTER: FIPUG endorses the position of
20 the Public Counsel. FIPUG will be very interested in
21 understanding from the testimony delivered why a
22 \$6 million shortfall is going to affect investors in the
23 holding company which owns Florida Power & Light
24 Company, a subsidiary electric utility, and why they
25 would ignore other activities that resulted in

1 multi-billion-dollar losses.

2 And that is all I have to say on the subject.

3 CHAIRMAN CARTER: Thank you so kindly,

4 Mr. McWhirter.

5 Ms. Bradley, good morning.

6 MS. BRADLEY: Thank you. We're here because
7 the Legislature, state leadership, and this Commission I
8 think has made it very clear that nuclear power is the
9 future of Florida. It's going to be an important
10 resource, and in order for that to be successfully
11 accomplished, we've got to have public confidence. The
12 public has to know that this is a safe resource and that
13 the Commission is going to make sure that the companies
14 take every precaution to make sure it's a safe energy
15 source. I know you've had some hearings, and a lot of
16 people have complained about it, and some of them are
17 just afraid. They don't understand it, and they need to
18 have public confidence in this energy source and in this
19 Commission that they will enforce that.

20 Unfortunately, this is probably one of the
21 most egregious incidents. I won't go into all the
22 details, because Mrs. Burgess has already done that.
23 But it's great to have these security screenings, but
24 they're not very useful unless they're actually
25 followed.

1 When you have someone that -- I believe the
2 testimony of one of their experts said, you know, "If
3 they flunk one of these criteria, then we don't let them
4 have unescorted access." Well, this person flunked
5 almost all of them, and they still let him have
6 unescorted access. They let him wander around without a
7 security guard or an employee or somebody to keep an eye
8 on him. According to their security protocol, he should
9 have been denied access. And if they had followed that
10 on any one of these factors, this wouldn't have
11 happened. This person wouldn't have been there.

12 They talk about circumstantial evidence, and
13 yet the report, when you read through that, shows that
14 this person flunked a lie detector test. One of his
15 friends testified that he had gotten upset with the
16 company for putting him through all these psychological
17 tests and all these other things he had had to do to get
18 access, and he was upset about it, and he admitted that
19 he had drilled the hole to this friend.

20 A lot of criminal cases are tried successfully
21 on circumstantial evidence. And with the evidence, you
22 know, there's no guarantee we're going to win a case.
23 If we only took the ones that we were going to win, I
24 probably would be not very busy. Sometimes you just
25 have to try cases because it's the right thing to do,

1 and you have to file charges because somebody has
2 violated the law and somebody has created a security
3 issue.

4 And it was interesting, because in the FBI
5 reports, and Florida Power & Light I think in their
6 information, they referred to this. The pipe that was
7 drilled was part of the emergency cooling system, and it
8 may not have been a big deal, but it's an emergency
9 cooling system that they had to shut the plant down for
10 five more days because of this, and because they had to
11 interview people to find out who was responsible and
12 what had happened and all this other security.

13 And it's great that they did the right thing
14 after the fact, but if they had done the right thing
15 before this happened, it wouldn't have happened. And I
16 think it's critical to public confidence and the future
17 of nuclear power in the State of Florida that you let
18 the companies know they've got to do their job, they've
19 got to make sure it's secure energy, and if they don't,
20 you're not going to reward them by passing it along to
21 the customers who don't have any control over what
22 happens anyway. If they had done their job, then this
23 wouldn't have happened.

24 But now they want to pass it along to the
25 customers, and that's not fair. It's not reasonable.

1 It's just not right for the customers, and they have an
2 interest in this too. 6.1 million may not be a big deal
3 to a company, but to a lot of their customers in this
4 economy, this is a serious deal. And we would ask you
5 to deny this request for 6.1 million for the drilled
6 hole incident.

7 Thank you.

8 CHAIRMAN CARTER: Thank you, Ms. Bradley.

9 Mr. Twomey, good morning.

10 MR. TWOMEY: Good morning, Mr. Chairman and
11 Commissioners. Mike Twomey for AARP.

12 AARP has supported the position of the Office
13 of Public Counsel on this issue and that of the Attorney
14 General and the other intervenors from the outset. The
15 admission into evidence of Exhibit 54 compels that
16 support even more today, and we continue in that vein.
17 And accordingly, I would adopt the comments of
18 Mr. Burgess, Mr. Wright, Mr. McWhirter, and the
19 Assistant Attorney General.

20 And I want to amplify just a bit on what she
21 said a minute ago, and I want to ask you during your
22 deliberations and throughout the testimony on this issue
23 to consider chewing on one word, accountability,
24 accountability. Ms. Bradley talked about that,
25 essentially.

1 As she suggested, you all have within the last
2 several months approved the need for four nuclear
3 plants, new nuclear plants throughout the State of
4 Florida, two for this company, two for Progress Energy.
5 They are going to be immensely expensive, although you
6 based your decision on conclusions that they would
7 provide clean base load power at a relatively cheap cost
8 over their lives. That's fine.

9 As Ms. Bradley said, though, customers have to
10 feel comfortable. They have to feel comfortable that
11 the plants are operated safely, and they have to feel
12 comfortable as well that they are operated in a
13 cost-efficient manner. The NRC by and large is
14 responsible for the safety aspect. You, this Commission
15 is responsible for the cost-effective aspect of it, and
16 the customers have to look at you. The buck stops with
17 you.

18 We know -- I believe I've seen schedules that
19 show that most, if not all, of you have had courtesy
20 visits to FP&L's nuclear plants or to Crystal River 3
21 operated by Progress Energy. If you have, you're full
22 aware that you just don't waltz in. You have to go
23 through advanced security procedures and screenings.
24 You have to be escorted in. No customers -- and that's
25 the way it should be. They're veritable armed

1 fortresses, and they should be. They should be operated
2 in that fashion pursuant to the NRC's rules and federal
3 law, the point being that you can't just waltz in off
4 the street. Customers can't waltz in, Commissioners
5 can't waltz in, no one can. The companies that own
6 these units hold the keys to entry to the plants. You
7 need to send a signal on accountability that they need
8 to be operated cost-effectively. Thank you.

9 Now, that's on the drilled hole. I want to
10 take just a second and talk about the fuel projections.

11 We heard yesterday in the cases of the other
12 investor-owned electric utilities that Progress Energy
13 and TECO have made revised filings that substantially or
14 significantly reduce the total fuel costs sought to be
15 approved by you in 2009, primarily as a result of the
16 reduction in forecast costs for natural gas. We heard
17 testimony from Gulf Power's fuel manager yesterday
18 afternoon acknowledging, if I heard it correctly, that
19 if they used their most recent natural gas forecast for
20 2009 for the quantity of gas that they didn't have under
21 firm contracts, they could potentially reduce their 2009
22 request by \$17 million.

23 Again, that's not an insignificant amount of
24 money when you look at it from the customers'
25 perspective, customers who you all know through press

1 reports and other reports you get are experiencing
2 ever-increasing disconnections the last year because of
3 the relations of their household budgets, the economy,
4 all the other problems we're experiencing, and in the
5 face of ever-increasing electric bills, in part due
6 because we've had mid-course corrections and the like
7 and other pass-throughs that go along.

8 Those disconnections are disruptive to
9 families' lives, as you have to know. Even if they have
10 the money, even if it's only for a week, they have to
11 come back, gather up the money, and they pay more.
12 Getting reconnected isn't free. So to the extent that
13 you can, you should try and avoid situations which would
14 promote more disconnections than fewer.

15 Consequently, I would urge you and AARP would
16 urge you to look at these fuel projections in a current
17 eye. If I were to give my college-age son his
18 transportation assistance dollars for 2009 now based
19 upon \$4 a gallon gas costs in September, you all would
20 look askance at that kind of a decision. Yet that's
21 kind of what we're facing with some of these companies,
22 and we may still be facing it with FP&L.

23 I'm going to try and ask some questions of
24 their witness and see why they believe their forecasts
25 should be maintained, despite the fact that they burn

1 the same type of fuels as Progress and TECO and Gulf,
2 and why they haven't made adjustments. Thank you.

3 CHAIRMAN CARTER: Thank you. Ms. McNeill,
4 good morning.

5 MS. WHITE: Hi. I'm Karen White on behalf of
6 Federal Executive Agencies. Initially, we took no
7 position, but based on Exhibit 54, we to like to change
8 that position to support the position of the Office of
9 Public Counsel. Thank you.

10 CHAIRMAN CARTER: I'm sorry.

11 MS. WHITE: That's okay. She's cuter anyway.

12 CHAIRMAN CARTER: Okay. Always appreciative
13 to have our friends from the Federal Government
14 participating.

15 Mr. Butler. Oh, did we get all the parties?
16 You have three minutes, sir.

17 MR. BUTLER: Thank you, Mr. Chairman. First
18 and foremost, I would like to clarify and assure the
19 Commission that FPL provided the information that was
20 provided to us by the FBI promptly when it was available
21 to us. It was not available to us last summer. It was
22 not available to us when the deposition was taken of
23 Mr. Jones in October of 2007. We did not have any
24 outstanding discovery request to which this information
25 was responsive when we received it, but we nonetheless

1 provided it to staff and to the Office of Public
2 Counsel, and it is now to all of the parties in the
3 proceeding so that everyone would have full information
4 going forward into this proceeding. We surely had no
5 intention ever of keeping information from the
6 Commission or from the parties. We provided the
7 information when we received it. Again, I just
8 emphasize, it was the FBI's response to a Freedom of
9 Information Act request that FPL made on its own
10 initiative, and we provided that response when we had it
11 and could make it available to other parties.

12 Secondly, there is a strong suggestion in the
13 comments by Mr. Burgess and others that FPL has good
14 access, security access procedures, but it didn't apply
15 them in this instance to this individual. That's not
16 the case. You'll hear from Mr. Jones that FPL applied
17 the procedures to this individual. The individual ended
18 up not being disqualified for unescorted access by the
19 application of those procedures.

20 Two of the more important ones, you know, the
21 psychological screening, he had his written examination
22 or written evaluation based on the 600 questions that
23 were mentioned. You know, that led, as it does in about
24 one-fifth of all of the cases, to a second level of
25 having an individual psychologist screen and interview

1 the person. That occurred. The psychologist concluded
2 that there were no disqualifying psychological
3 characteristics. That was reviewed by another
4 psychologist thereafter, who concurred that there was no
5 reason to disqualify the individual.

6 The criminal background matrix that FPL uses
7 that has been approved by the NRC -- in fact, it has
8 been kind of taken and used elsewhere in the industry as
9 a model of how these criminal background check matrices
10 should work. That was applied to the individual, and
11 because of various factors, including the age, the
12 disposition -- Mr. Burgess failed to mention that all
13 but one of the charges that he described were dismissed
14 against this individual. Not surprisingly, dismissal of
15 charges plays a significant role in the weight that they
16 are given by this matrix. It was applied to this
17 individual, and he was not disqualified. The individual
18 met each of FPL's security screening requirements.

19 In hindsight, obviously, we wish he weren't
20 admitted to the plant, and we will never admit that
21 individual again to any of the FPL plants. But I think
22 it's only with the application of hindsight that one can
23 reach the conclusion that the individual should not have
24 been admitted.

25 And finally, I would like to just confirm to

1 you, assure you that FPL's plants are operated safely.
2 The drilled hole was discovered not while the plant was
3 operating. It was as the plant was shut down, as it was
4 preparing to start back up again. One of the reasons
5 that there's an extensive series of tests done is to be
6 sure that the plant is in good operating condition
7 before the heat is applied and the nuclear power begins
8 generating electricity. All of those procedures were
9 followed here, and it was because of following those
10 procedures and those tests that the incident was
11 discovered and handled without any further impact on
12 plant operations. Thank you.

13 CHAIRMAN CARTER: Thank you. Would all of the
14 witnesses that are going to testify, would you please
15 stand and raise your right hand.

16 In this matter before the Florida Public
17 Service Commission, do you swear or affirm to tell the
18 truth?

19 Okay. Let's try that again. I need a verbal
20 response. In this matter before the Florida Public
21 Service Commission, do you swear or affirm to tell the
22 truth?

23 (Collective affirmative responses.)

24 CHAIRMAN CARTER: Thank you. Please be
25 seated.

1 Mr. Butler, you're recognized.

2 MR. BUTLER: Thank you. I would call our
3 first witness, who actually is not on this subject.
4 It's Mr. Gerry Yupp.

5 CHAIRMAN CARTER: And again, Mr. Butler, you
6 were here yesterday, and all the parties were here
7 yesterday. Any of the witnesses that were stipulated
8 to, we'll deal with that at the end.

9 MR. BUTLER: Right.

10 CHAIRMAN CARTER: That makes for a smoother
11 operation for me and for you too, probably.
12 Thereupon,

13 GERARD J. YUPP
14 was called as a witness on behalf of Florida Power &
15 Light Company and, having been first duly sworn, was
16 examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. BUTLER:

19 Q. Mr. Yupp, would you please state your name and
20 business address for the record?

21 A. My name is Gerard Yupp. My business address
22 is 700 Universe Boulevard, Juno Beach, Florida, 33408.

23 Q. And you were just sworn in; correct?

24 A. Yes, I was.

25 Q. Okay. By whom are you employed, and in what

1 capacity?

2 A. I am employed by Florida Power & Light Company
3 as Senior Director of Wholesale Operations in the Energy
4 Marketing and Trading Division.

5 Q. Do you have before you prepared testimony
6 dated April 3, 2008, consisting of five pages and one
7 attached exhibit that is designated GJY-1?

8 A. Yes, I do.

9 MR. BUTLER: And I would note, Mr. Chairman,
10 that that GJY-1 exhibit was designated as Exhibit 4.

11 CHAIRMAN CARTER: Okay. Show it done.

12 BY MR. BUTLER:

13 Q. Do you also have before you an exhibit,
14 hedging information report for the time period
15 January 2008 influence July 31, 2008, that was
16 designated as Exhibit GJY-2?

17 A. Yes, I do.

18 Q. And finally, do you have before you testimony
19 dated September 2, 2008, with attached Exhibits GJY-3
20 and 4?

21 A. Yes, I do.

22 Q. Am I correct that you also sponsor in part an
23 exhibit that is identified as KMD-5 as part of that
24 testimony?

25 A. Yes, I do.

1 MR. BUTLER: Okay. Mr. Chairman, those were
2 identified respectively as Exhibits 5, 6, 7, and 8.

3 CHAIRMAN CARTER: Okay.

4 BY MR. BUTLER:

5 Q. Do you have any changes or corrections to make
6 to your prefiled testimony or exhibits?

7 A. No, I do not.

8 Q. And was the testimony and exhibits prepared by
9 you or under your direction, supervision, or control?

10 A. Yes, they were.

11 Q. If I asked you the questions in the testimony
12 today, would your answers be the same?

13 A. They would.

14 MR. BUTLER: Mr. Chairman, I would ask that
15 Mr. Yupp's prefiled testimony be inserted into the
16 record as though read.

17 CHAIRMAN CARTER: The prefiled testimony of
18 the witness will be entered into the record as though
19 read.

20 MR. BUTLER: And we've already identified the
21 exhibits and the numbers for those.

22

23

24

25

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **FLORIDA POWER & LIGHT COMPANY**

3 **TESTIMONY OF GERARD J. YUPP**

4 **DOCKET NO. 080001-EI**

5 **APRIL 3, 2008**

6

7 **Q. Please state your name and address.**

8 A. My name is Gerard J. Yupp. My business address is 700 Universe
9 Boulevard, Juno Beach, Florida, 33408.

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

11 A. I am employed by Florida Power & Light Company (FPL) as Director
12 of Wholesale Operations in the Energy Marketing and Trading
13 Division.

14 **Q. Have you previously testified in the predecessors to this
15 docket?**

16 A. Yes.

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

18 A. The purpose of my testimony is to provide a review of FPL's 2007
19 hedging activity, including the detail required by Item 5 of the
20 Resolution of Issues in Docket 011605-EI approved by the
21 Commission per Order No. PSC-02-1484-FOF-EI, which states:

22 "5. Each investor-owned utility shall provide, as part of its
23 final true-up filing in the fuel and purchased power cost

1 recovery docket, the following information: (1) the volumes of
2 each fuel the utility actually hedged using a fixed price
3 contract or instrument; (2) the types of hedging instruments
4 the utility used, and the volume and type of fuel associated
5 with each type of instrument; (3) the average period of each
6 hedge; and (4) the actual total cost (e.g. fees, commissions,
7 options premiums, futures gains and losses, swaps
8 settlements) associated with using each type of hedging
9 instrument.”

10 **Q. Are you sponsoring an Exhibit for this proceeding?**

11 A. Yes. I am sponsoring Exhibit GJY-1 -- 2007 Hedging Activity

12 **Q. Please describe FPL’s hedging objectives.**

13 A. In Order No. PSC-02-1484-FOF-EI, the Commission approved the
14 Resolution of Issues in the Hedging Docket. The first component of
15 the Resolution states:

16 “Each investor-owned electric utility recognizes the
17 importance of managing price volatility in the fuel and
18 purchased power it purchases to provide electric service to
19 its customers. Further, each investor-owned electric utility
20 recognizes that the greater the proportion of a particular fuel
21 or purchased power it relies upon to provide electric service
22 to its customers, the greater the importance of managing
23 price volatility associated with that energy source.”

1 Accordingly, the primary objective of FPL's hedging program is to
2 reduce fuel price volatility, thereby helping to deliver greater price
3 certainty to FPL's customers. FPL does not execute speculative
4 hedging strategies aimed at "out guessing" the market in the hopes
5 of potentially returning savings to FPL's customers. FPL has
6 implemented a well-disciplined, well-defined and controlled hedging
7 program that is executed in compliance with FPL's risk management
8 policies and procedures.

9 **Q. Please summarize FPL's 2007 hedging activities.**

10 **A.** FPL hedged its fuel portfolio for 2007 utilizing a mix of options and
11 fixed price transactions. An option is a hedging instrument that
12 gives the buyer the right, but not the obligation, to buy (call) or sell
13 (put) a set commodity volume at a specific price for a specific period
14 of time. The buyer of an option pays a premium to hold this right. A
15 fixed price transaction allows a buyer to lock in the price of a
16 commodity for a set volume over a set period of time.

17
18 Natural gas prices continually trended lower after FPL executed its
19 hedges for 2007. Compared to 2006, natural gas prices remained
20 relatively stable throughout 2007 due primarily to mild winter
21 weather, above average natural gas storage levels and a relatively
22 inactive hurricane season. Actual monthly settlement prices on the
23 NYMEX ranged from a high of \$7.59 per MMBtu (June 2007) to a

1 low of \$5.43 per MMBtu (September 2007). Including option
2 premiums, FPL's 2007 natural gas hedging activities resulted in
3 losses of \$799.3 million.

4
5 United States Gulf Coast (USGC) heavy fuel oil and New York
6 Harbor (NYH) heavy fuel oil trended lower for a period of time after
7 FPL executed its hedges for 2007. Mild winter weather and a
8 consistent buildup of U.S. crude oil stocks that peaked in June 2007
9 contributed to the downward trend. This trend reversed itself
10 beginning in the third quarter as U.S. crude oil stocks experienced
11 significant draws and the U.S. dollar began to weaken. Heavy fuel
12 oil prices began a steady upward climb starting in the late summer
13 through the end of the year. For reference, USGC and NYH heavy
14 fuel oil prices were approximately \$37 per barrel in January 2007.
15 By September, prices were approximately \$60 per barrel and
16 finished the year in December at approximately \$72 per barrel.
17 Ultimately, FPL's heavy fuel oil hedges for 2007, including option
18 premiums, resulted in losses of \$56.5 million as the gains realized
19 during the fourth quarter did not fully offset the losses realized
20 during the earlier part of the year when prices were trending lower.

21
22 On a cumulative basis, from inception through 2007, FPL's
23 expanded hedging program has resulted in net losses of

1 approximately \$384.8 million. While the cumulative impact of FPL's
2 hedging program will vary and, at times, may show either net
3 savings or net losses, FPL expects that the cumulative, long-term
4 impact of its hedging program will not result in significant savings or
5 losses to FPL's customers. In fact, given current market conditions,
6 FPL currently projects that by the end of 2008, the cumulative
7 impact of its hedging program will be essentially "flat" from a
8 gain/loss perspective.

9 **Q. Does your Exhibit GJY-1 provide the detail on FPL's 2007**
10 **hedging activities required by Item 5 of the Resolution of**
11 **Issues?**

12 A. Yes.

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

14 A. Yes, it does.

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**
2 **FLORIDA POWER & LIGHT COMPANY**
3 **TESTIMONY OF GERARD J. YUPP**
4 **DOCKET NO. 080001-EI**
5 **SEPTEMBER 2, 2008**

6 **Q. Please state your name and address.**

7 A. My name is Gerard J. Yupp. My business address is 700 Universe
8 Boulevard, Juno Beach, Florida, 33408.

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

10 A. I am employed by Florida Power & Light Company (FPL) as Senior
11 Director of Wholesale Operations in the Energy Marketing and
12 Trading Division.

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

14 A. Yes.

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

16 A. The purpose of my testimony is to present and explain FPL's
17 projections for (1) the dispatch costs of heavy fuel oil, light fuel oil,
18 coal and natural gas; (2) the availability of natural gas to FPL; (3)
19 generating unit heat rates and availabilities; and (4) the quantities
20 and costs of wholesale (off-system) power and purchased power
21 transactions. I also provide a description of the methodology that
22 FPL will utilize to track and recover incremental O&M costs it incurs

1 to make non-separated wholesale energy sales consistent with
2 Commission Order No. PSC-00-1744-PAA-EI. Lastly, I provide a
3 review of FPL's hedging program and present FPL's Risk
4 Management Plan for 2009.

5 **Q. Have you prepared or caused to be prepared under your**
6 **supervision, direction and control any exhibits in this**
7 **proceeding?**

8 A. Yes, I am sponsoring the following exhibits:

- 9 • GJY-3: Appendix I
- 10 • GJY-4: FPL's 2009 Risk Management Plan
- 11 • Schedules E2 through E9 of Appendix II

12

13 **FUEL PRICE FORECAST**

14 **Q. What forecast methodologies has FPL used for the 2009**
15 **recovery period?**

16 A. For natural gas commodity prices, the forecast methodology relies
17 upon the NYMEX Natural Gas Futures contract prices (forward
18 curve). For light and heavy fuel oil prices, FPL utilizes Over-The-
19 Counter (OTC) forward market prices. Projections for the price of
20 coal are based on actual coal purchases and price forecasts
21 developed by J.D. Energy. Forecasts for the availability of natural
22 gas are developed internally at FPL and are based on contractual
23 commitments and market experience. The forward curves for both

1 natural gas and fuel oil represent expected future prices at a given
2 point in time and are consistent with the prices at which FPL can
3 transact its hedging program. The basic assumption made with
4 respect to using the forward curves is that all available data that
5 could impact the price of natural gas and fuel oil in the future is
6 incorporated into the curves at all times. The methodology allows
7 FPL to execute hedges consistent with its forecasting method and to
8 optimize the dispatch of its units in changing market conditions.
9 FPL utilized forward curve prices from the close of business on
10 August 4, 2008 for its 2009 projection filing. This was the most
11 recent date that allowed FPL adequate time to complete its filing.

12 **Q. What are the key factors that could affect FPL's price for heavy**
13 **fuel oil during the January through December 2009 period?**

14 A. The key factors that could affect FPL's price for heavy oil are (1)
15 worldwide demand for crude oil and petroleum products (including
16 domestic heavy fuel oil); (2) non-OPEC crude oil supply; (3) the
17 extent to which OPEC adheres to their quotas and reacts to
18 fluctuating demand for OPEC crude oil; (4) the political and civil
19 tensions in the major producing areas of the world like the Middle
20 East and West Africa; (5) the availability of refining capacity; (6) the
21 price relationship between heavy fuel oil and crude oil; (7) the price
22 relationship between heavy oil and natural gas; (8) the supply and
23 demand for heavy oil in the domestic market; (9) the terms of FPL's

1 fuel supply and transportation contracts; and (10) domestic and
2 global inventory.

3

4 The major driver for crude oil and petroleum product prices during
5 the remainder of 2008 and 2009 will be (1) non-OPEC crude oil
6 production; (2) emerging markets oil demand and; (3) the continued
7 tensions in the Middle East, West Africa (in particular Nigeria) and
8 other producing regions in the world. With limited spare OPEC
9 production capacity and growing worldwide demand, any perceived
10 or actual loss of supply due to political or civil unrest in these regions
11 have been, and will continue to be, a major factor in the price of oil
12 to FPL's customers. World demand for crude oil and petroleum
13 products is projected to increase slightly in 2009 over 2008 average
14 levels, primarily due to increases in demand in China and other
15 emerging economies around the world. Although crude oil
16 production and worldwide refining capacity will be adequate to meet
17 the projected increase in crude oil and petroleum product demand,
18 general adherence by OPEC members to its most recent production
19 accord, and limited spare OPEC production capacity, should
20 prevent significant overproduction of crude oil which, in turn, will
21 result in the continued tight supply of crude oil and petroleum
22 products during most of 2009.

23

1 **Q. Please provide FPL's projection for the dispatch cost of heavy**
2 **fuel oil for the January through December 2009 period.**

3 A. FPL's projection for the system average dispatch cost of heavy fuel
4 oil, by month, is provided on page 3 of Appendix I.

5 **Q. What are the key factors that could affect the price of light fuel**
6 **oil?**

7 A. The key factors are similar to those described above for heavy fuel
8 oil.

9 **Q. Please provide FPL's projection for the dispatch cost of light**
10 **fuel oil for the January through December 2009 period.**

11 A. FPL's projection for the system average dispatch cost of light oil, by
12 month, is provided on page 3 of Appendix I.

13 **Q. What is the basis for FPL's projections of the dispatch cost of**
14 **coal for St. Johns' River Power Park (SJRPP) and Plant**
15 **Scherer?**

16 A. FPL's projected dispatch costs for both plants are based on FPL's
17 price projection for spot coal, delivered to the plants.

18

19 Although FPL has historically burned petroleum coke at SJRPP,
20 current and projected delivered petroleum coke prices have risen
21 above the delivered price of coal, resulting in a projected 2009 fuel
22 mix of 100% coal for SJRPP.

23

1 **Q. Please provide FPL's projection for the dispatch cost of SJRPP**
2 **and Plant Scherer for the January through December 2009**
3 **period.**

4 A. FPL's projection for the system average dispatch cost of coal for this
5 period, by plant and by month, is shown on page 3 of Appendix I.

6 **Q. What are the factors that can affect FPL's natural gas prices**
7 **during the January through December 2009 period?**

8 A. In general, the key physical factors are (1) North American natural
9 gas demand and domestic production; (2) LNG and Canadian
10 natural gas imports; (3) heavy fuel oil and light fuel oil prices; and (4)
11 the terms of FPL's natural gas supply and transportation contracts.

12

13 The major drivers for natural gas prices during 2009 are expected to
14 be (1) projected natural gas demand in North America will continue
15 to grow moderately in 2009, primarily in the electric generation
16 sector; and (2) with continued increases in domestic rig activity in
17 the U.S. over the past few years, 2009 domestic natural gas
18 production is expected to be slightly higher than average 2008
19 production levels, as a continued decline in the Gulf of Mexico
20 region is more than offset by increases in non-conventional gas
21 supplies in the Rocky Mountain and Mid-Continent regions. The
22 remaining balance of supply is projected to come from increased
23 LNG imports.

1 **Q. What are the factors that FPL expects to affect the availability**
2 **of natural gas to FPL during the January through December**
3 **2009 period?**

4 A. The key factors are (1) the capacity of the Florida Gas Transmission
5 (FGT) pipeline into Florida; (2) the capacity of the Gulfstream
6 Natural Gas System (Gulfstream) pipeline into Florida; (3) the
7 limited number of operational receipt points into the Gulfstream
8 pipeline; (4) the portion of FGT and Gulfstream capacity that is
9 contractually committed to FPL on a firm basis each month; (5) the
10 assumed volume of natural gas which can move from the
11 Gulfstream pipeline into FGT at the Hardee and Osceola
12 interconnects; and (6) the natural gas demand in the State of
13 Florida.

14
15 The current capacity of FGT into the State of Florida is about
16 2,030,000 million BTU per day and the current capacity of
17 Gulfstream is about 1,100,000 million BTU per day. For 2009, FPL
18 has firm natural gas transportation capacity on FGT ranging from
19 750,000 to 874,000 million BTU per day, depending on the month,
20 and 535,000 million BTU per day increasing to 695,000 million BTU
21 per day on June 1, 2009 of firm natural gas transportation on
22 Gulfstream. Additionally, FPL will have 500,000 million BTU per day
23 of firm transport on the Southeast Supply Header (SESH) pipeline.

1 The projected in-service date for the SESH pipeline is September
2 2008. While the SESH pipeline will not increase transportation
3 capacity into the state, FPL's firm transportation rights on this
4 pipeline will provide FPL access to 500,000 million BTU per day of
5 on-shore natural gas supply, which will help diversify FPL's natural
6 gas portfolio and enhance the reliability of fuel supply. FPL projects
7 that during the January through December 2009 period between
8 100,000 and 420,000 million BTU per day of non-firm natural gas
9 transportation capacity (varying by month) will be available into the
10 state. FPL projects that it could acquire some of this capacity, if
11 economic, to supplement FPL's firm allocation on FGT and
12 Gulfstream. This projection is based on the current capability and
13 availability of the two interconnections between Gulfstream and FGT
14 pipeline systems, as well as the availability of capacity on each
15 pipeline.

16 **Q. Please provide FPL's projections for the dispatch cost and**
17 **availability of natural gas for the January through December**
18 **2009 period.**

19 A. FPL's projections of the system average dispatch cost and
20 availability of natural gas, by transport type, by pipeline and by
21 month, are provided on page 3 of Appendix I.

22

23

1 **PLANT HEAT RATES, OUTAGE FACTORS, PLANNED**
2 **OUTAGES, AND CHANGES IN GENERATING CAPACITY**

3 **Q.** **Please describe how FPL developed the projected Average Net**
4 **Heat Rates shown on Schedule E4 of Appendix II.**

5 A. The projected Average Net Heat Rates were calculated by the
6 POWRSYM model. The current heat rate equations and efficiency
7 factors for FPL's generating units, which present heat rate as a
8 function of unit power level, were used as inputs to POWRSYM for
9 this calculation. The heat rate equations and efficiency factors are
10 updated as appropriate based on historical unit performance and
11 projected changes due to plant upgrades, fuel grade changes,
12 and/or from the results of performance tests.

13 **Q.** **Are you providing the outage factors projected for the period**
14 **January through December 2009?**

15 A. Yes. This data is shown on page 4 of Appendix I.

16 **Q.** **How were the outage factors for this period developed?**

17 A. The unplanned outage factors were developed using the actual
18 historical full and partial outage event data for each of the units.
19 The historical unplanned outage factor of each generating unit was
20 adjusted, as necessary, to eliminate non-recurring events and
21 recognize the effect of planned outages to arrive at the projected
22 factor for the period January through December 2009.

23

1 **Q. Please describe the significant planned outages for the**
2 **January through December 2009 period.**

3 A. Planned outages at FPL's nuclear units are the most significant in
4 relation to fuel cost recovery. Turkey Point Unit 3 is scheduled to be
5 out of service from March 1, 2009 until April 5, 2009 or 35 days
6 during the period. St. Lucie Unit 2 is scheduled to be out of service
7 for refueling from April 27, 2009 until June 2, 2009 or 36 days during
8 the projected period. Turkey Point Unit 4 is scheduled to be out of
9 service from October 25, 2009 until December 4, 2009 or 40 days
10 during the period.

11 **Q. Please list any changes to FPL's generation capacity projected**
12 **to take place during the January through December 2009**
13 **period.**

14 A. FPL's generation capacity will increase in 2009 with the addition of
15 the combined cycle West County Energy Center (WCEC) Unit 1 in
16 June 2009 and the combined cycle WCEC Unit 2 in November
17 2009. The units will increase FPL's net winter peak capability and
18 net summer peak capability by 1,335 MW and 1,219 MW,
19 respectively.

20 **Q. Will the addition of WCEC Units 1 and 2 result in fuel savings to**
21 **FPL's customers?**

22 A. Yes. The addition of WCEC Unit 1 will result in approximately
23 \$152,590,000 in fuel savings from May through December, 2009

1 and the addition of WCEC Unit 2 will result in approximately
2 \$12,260,000 in fuel savings from November through December,
3 2009. In total, the addition of these highly efficient, combined cycle
4 units will result in approximately \$164,850,000 in fuel savings to
5 FPL's customers in 2009.

6 **Q. How did FPL calculate the fuel savings associated with the**
7 **addition of WCEC Units 1 and 2?**

8 A. FPL utilized its POWRSYM model to quantify the benefits of WCEC
9 Units 1 and 2. This is the same model that FPL uses to calculate
10 the fuel costs that are included in FPL's projection filing. For this
11 analysis, FPL ran four individual cases to determine fuel costs. The
12 first set of cases involved two runs, one without WCEC Units 1 and
13 2 and one with WCEC Unit 1. The total fuel costs of the case that
14 included WCEC Unit 1 were approximately \$152,590,000 lower than
15 the case without both units. The second set of cases also involved
16 two runs, one with both WCEC Units 1 and 2 and one without
17 WCEC Unit 2. The total fuel costs of the case that included both
18 units were approximately \$12,260,000 lower than the case without
19 WCEC Unit 2.

20

21

22

23

1 **WHOLESALE (OFF-SYSTEM) POWER AND PURCHASED**

2 **POWER TRANSACTIONS**

3 **Q.** **Are you providing the projected wholesale (off-system) power**
4 **and purchased power transactions forecasted for January**
5 **through December 2009?**

6 A. Yes. This data is shown on Schedules E6, E7, E8, and E9 of
7 Appendix II of this filing.

8 **Q.** **In what types of wholesale (off-system) power transactions**
9 **does FPL engage?**

10 A. FPL purchases power from the wholesale market when it can
11 displace higher cost generation with lower cost power from the
12 market. FPL will also sell excess power into the market when its
13 cost of generation is lower than the market. Purchasing and selling
14 power in the wholesale market allows FPL to lower fuel costs for its
15 customers because savings on purchases and gains on sales are
16 credited to the customer through the Fuel Cost Recovery Clause.
17 Power purchases and sales are executed under specific tariffs that
18 allow FPL to transact with a given entity. Although FPL primarily
19 transacts on a short-term basis (hourly and daily transactions), FPL
20 continuously searches for all opportunities to lower fuel costs
21 through purchasing and selling wholesale power, regardless of the
22 duration of the transaction. Additionally, FPL has become a
23 member of the Florida Cost-Based Broker System (FCBBS) and will

1 begin transacting on the FCBBS when it becomes operational in
2 early 2009. FPL can also purchase and sell power during
3 emergency conditions under several types of Emergency
4 Interchange agreements that are in place with other utilities within
5 Florida.

6 **Q. Please describe the method used to forecast wholesale (off-
7 system) power purchases and sales.**

8 A. The quantity of wholesale (off-system) power purchases and sales
9 are projected based upon estimated generation costs, generation
10 availability, expected market conditions and historical data.

11 **Q. What are the forecasted amounts and costs of wholesale (off-
12 system) power sales?**

13 A. FPL has projected 1,491,500 MWh of wholesale (off-system) power
14 sales for the period of January through December 2009. The
15 projected fuel cost related to these sales is \$112,997,486. The
16 projected transaction revenue from these sales is \$134,641,669.
17 The projected gain for these sales is \$18,447,799.

18 **Q. In what document are the fuel costs for wholesale (off-system)
19 power sales transactions reported?**

20 A. Schedule E6 of Appendix II provides the total MWh of energy, total
21 dollars for fuel adjustment, total cost and total gain for wholesale
22 (off-system) power sales.

23

1 **Q. What are the forecasted amounts and costs of wholesale (off-**
2 **system) power purchases for the January to December 2009**
3 **period?**

4 A. The costs of these purchases are shown on Schedule E9 of
5 Appendix II. For the period, FPL projects it will purchase a total of
6 1,196,000 MWh at a cost of \$116,281,945. If FPL generated this
7 energy, FPL estimates that it would cost \$132,608,382. Therefore,
8 these purchases are projected to result in savings of \$16,326,437.

9 **Q. Does FPL have additional agreements for the purchase of**
10 **electric power and energy that are included in your**
11 **projections?**

12 A. Yes. FPL purchases coal-by-wire electrical energy under the 1988
13 Unit Power Sales Agreement (UPS) with the Southern Companies.
14 FPL has contracts to purchase and sell nuclear energy under the St.
15 Lucie Plant Nuclear Reliability Exchange Agreements with Orlando
16 Utilities Commission (OUC) and Florida Municipal Power Agency
17 (FMPPA). FPL also purchases energy from JEA's portion of the
18 SJRPP Units.

19
20 Capacity that FPL purchases through short-term agreements will be
21 slightly lower in 2009 compared with 2008, as FPL's agreement with
22 Constellation Energy Commodities Group, Inc. expires on April 30,
23 2009. The capacity associated with this contract is projected to

1 range from 0 MW to 105 MW, depending on the availability of
2 transmission service, during the first four months of 2009. FPL's
3 2009 short-term capacity contracts involving the output of specific
4 generating units are with Southern Power Company (Oleander) for
5 the output of one combustion turbine and with Reliant Energy
6 Services (Indian River) for the output of three conventional steam
7 units totaling 576 MW. The Southern Power Company (Oleander)
8 agreement expires on May 31, 2012. The Reliant Energy Services
9 (Indian River) contract expires on December 31, 2009.

10
11 Additionally, FPL has one short-term capacity arrangement with
12 Bear Energy, LP that began on March 3, 2006 and runs through
13 December 31, 2009. This transaction is for 106 MW of capacity.
14 Lastly, FPL purchases energy and capacity from Qualifying Facilities
15 under existing tariffs and contracts.

16 **Q. Please provide the projected energy costs to be recovered**
17 **through the Fuel Cost Recovery Clause for the power**
18 **purchases referred to above during the January through**
19 **December 2009 period.**

20 A. Under the UPS agreement, FPL's capacity entitlement during the
21 period from January through December 2009 is 931 MW. Based
22 upon the alternate and supplemental energy provisions of UPS, an
23 availability factor of 100% is applied to these capacity entitlements

1 to project energy purchases. The projected UPS energy (unit) cost
2 for this period, used as an input to POWRSYM, is based on data
3 provided by the Southern Companies. UPS energy purchases are
4 projected to be 8,035,530 MWh for the period at an energy cost of
5 \$217,677,000. The total UPS energy projections are presented on
6 Schedule E7 of Appendix II.

7
8 Energy purchases from the JEA-owned portion of SJRPP are
9 projected to be 2,903,503 MWh for the period at an energy cost of
10 \$97,379,000. FPL's cost for energy purchases under the St. Lucie
11 Plant Reliability Exchange Agreements is a function of the operation
12 of St. Lucie Unit 2 and the fuel costs to the owners. For the period,
13 FPL projects purchases of 412,552 MWh at a cost of \$2,521,684.
14 These projections are shown on Schedule E7 of Appendix II.

15
16 FPL projects to dispatch 384,065 MWh from its short-term capacity
17 agreements at a cost of \$33,752,059. These projections are shown
18 on Schedule E7 of Appendix II.

19
20 In addition, as shown on Schedule E8 of Appendix II, FPL projects
21 that purchases from Qualifying Facilities for the period will provide
22 5,572,282 MWh at a cost of \$235,952,993.

23

1 **Q. What are the forecasted amounts and cost of energy being**
2 **sold under the St. Lucie Plant Reliability Exchange Agreement?**

3 A. FPL projects the sale of 537,402 MWh of energy at a cost of
4 \$3,092,615. These projections are shown on Schedule E6 of
5 Appendix II.

6 **Q. How does FPL develop the projected energy costs related to**
7 **purchases from Qualifying Facilities?**

8 A. For those contracts that entitle FPL to purchase "as-available"
9 energy, FPL used its fuel price forecasts as inputs to the
10 POWRSYM model to project FPL's avoided energy cost that is used
11 to set the price of these energy purchases each month. For those
12 contracts that enable FPL to purchase firm capacity and energy, the
13 applicable Unit Energy Cost mechanisms prescribed in the contracts
14 are used to project monthly energy costs.

15

16 **OPERATION AND MAINTENANCE (O&M) EXPENSES**
17 **ASSOCIATED WITH NON-SEPARATED WHOLESALE ENERGY**
18 **SALES**

19 **Q. Does FPL currently recover incremental O&M costs associated**
20 **with generating energy for non-separated wholesale sales?**

21 A. FPL currently recovers incremental O&M costs for off-system sales
22 that are supported by FPL's gas turbine facilities. These gas turbine
23 facilities are comprised of 24 peaking units at FPL's Fort Lauderdale

1 facility, 12 peaking units at FPL's Port Everglades facility and 12
2 peaking units at FPL's Fort Myers facility.

3 **Q. What methodology does FPL utilize to recover the incremental**
4 **O&M costs associated with off-system sales that are supported**
5 **by FPL's gas turbine facilities?**

6 A. FPL currently estimates the incremental O&M costs associated with
7 its gas turbine facilities on a dollars per MWh basis. The units at
8 Fort Lauderdale and Port Everglades are identical and therefore the
9 estimated incremental O&M costs for each facility are the same.
10 The estimated incremental O&M cost for the Fort Myers peaking
11 units is calculated separately, as these units are not similar to Fort
12 Lauderdale and Port Everglades.

13
14 Off-system sales supported by gas turbines are tracked in MWh and
15 recorded on a daily basis. At the end of each month, the MWh
16 contributions from each facility are multiplied by the appropriate
17 estimated incremental O&M cost to produce the total incremental
18 O&M costs associated with off-system sales that were supported by
19 FPL's gas turbines. The total incremental O&M costs are then
20 subtracted from the total fuel costs (Column 7) on Schedule A6 and
21 recorded as a credit to base operating revenues. This final credit for
22 the fuel cost of power sold is also shown on Line 2a of Schedule A2
23 and the combination of Lines 14 and 16 on Schedule A1.

1 **Q. Is FPL proposing to change its methodology for recovering**
2 **incremental O&M costs associated with off-system sales?**

3 A. No, but FPL is proposing to extend its current methodology to
4 include other types of units in FPL's fleet. Specifically, FPL
5 proposes to add two additional categories of units that contribute
6 substantially to off-system sales: combined cycle units and
7 conventional steam units. As with the gas turbine facilities, FPL will
8 estimate the incremental O&M costs for each class of units, track
9 the MWh of sales attributable to each class of units and calculate
10 the total incremental O&M costs associated with off-system sales.

11 **Q. Does the Commission currently allow for the recovery of**
12 **incremental O&M costs associated with off-system sales for**
13 **units other than gas turbines?**

14 A. Yes. Order No. PSC-00-1744-PAA-EI addressed the issue of
15 incremental O&M related to off-system sales by stating the
16 following:

17 "Because the IOUs sell short-term wholesale energy based
18 upon their willingness and ability to sell at or above
19 incremental costs, we believe that the IOUs should measure
20 the costs of these sales on an incremental basis.
21 Accordingly, we find that each IOU shall measure the gain
22 from its non-separated wholesale power sales by subtracting
23 the sum of its incremental costs from the revenue received

1 for each sale. Further, we find that the calculation of
2 incremental costs for these sales shall include, but not be
3 limited to: incremental fuel cost, incremental SO2 emission
4 allowance cost, incremental O&M cost, and separately-
5 identified transmission or capacity charges.”

6 The Order goes on to clarify the appropriate regulatory treatment for
7 the revenues and expenses associated with non-separated
8 wholesale power sales and specifically addresses incremental O&M
9 recovery by stating the following:

10 “Each IOU shall credit its operating revenues for an amount
11 equal to the incremental operating and maintenance (O&M)
12 cost of generating the energy for each such sale.”

13 Therefore, the recovery of incremental O&M is not limited to specific
14 types of units, but rather applies to the cost for all units generating
15 the energy for each sale.

16 **Q. Is FPL’s current methodology for recovery of incremental O&M**
17 **costs associated with off-system sales consistent with Order**
18 **No. PSC-00-1744-PAA-EI?**

19 A. Yes. Order No. PSC-00-1744-PAA-EI did not dictate specifically
20 how each IOU should calculate the incremental O&M it incurred to
21 make off-system sales. Similar to PEF and TECO (as described in
22 testimony at an evidentiary hearing held in Docket No. 010283-EI on
23 August 31, 2001), FPL estimates its incremental O&M costs and

1 credits its operating revenues for these costs.

2 **Q. Is FPL presently recovering incremental O&M costs for its**
3 **combined cycle and conventional steam units through base**
4 **rates?**

5 A. No. The level of O&M expenses required to support the operation of
6 power plants is almost exclusively a function of their output. FPL
7 has confirmed that the O&M projections for its combined cycle and
8 conventional steam units that are reflected in the most recent (2006)
9 Minimum Filing Requirements (MFRs) did not take into account the
10 additional operating hours and output associated with off-system
11 sales. Rather, the O&M data was based on only the requirements
12 of serving native load customers. Therefore, FPL is not currently
13 recovering through base rates the incremental O&M expenses that it
14 incurs when it runs its combined cycle and conventional steam units
15 for more hours or at higher output levels to support off-system sales.

16 **Q. Why has FPL not previously recovered the incremental O&M**
17 **expenses associated with off-system sales from its combined**
18 **cycle and conventional steam units?**

19 A. The Commission's approved procedure for handling the revenues
20 and costs associated with non-separated sales provides for
21 recovery of incremental O&M expenses only when those expenses
22 are not already recovered in base rates. When that system was
23 established in 2000, FPL initially concluded that the level of O&M

1 expenses reflected in its previous MFRs for combined cycle and
2 conventional steam units covered the added operation of those units
3 when FPL makes off-system sales and therefore were not eligible
4 for recovery via a credit to base revenues. However, when FPL
5 recently re-evaluated the basis for projecting O&M expenses for
6 combined cycle and conventional steam units in its most recent
7 (2006) MFRs, it became apparent that the MFRs in fact did not
8 cover the cost of making off-system sales from those units.

9 **Q. When does FPL propose to begin recovering incremental O&M**
10 **costs associated with off-system sales for these additional**
11 **units?**

12 A. FPL proposes to begin recovering incremental O&M costs
13 associated with off-system sales for combined cycle and
14 conventional steam units starting on January 1, 2009. This
15 projected date will allow FPL the necessary time to modify its
16 systems to appropriately capture and account for these incremental
17 costs.

18 **Q. Do FPL's 2009 fuel cost projections reflect FPL's recovery of**
19 **incremental O&M costs for combined cycle and conventional**
20 **steam units?**

21 A. No. FPL does not feel that it has enough information on the unit
22 types from which off-system sales will be made in 2009 to project
23 accurately the incremental O&M costs associated with those sales.

1 As FPL has done historically for its gas turbine units, recovery of the
2 incremental O&M costs for combined cycle and conventional steam
3 units will be handled as part of the final true-up for 2009 and
4 subsequent years.

5 **Q. How will FPL reflect these costs on Schedule A6?**

6 A. FPL plans to show these costs on Schedule A6 as it currently does
7 for gas turbine-related O&M costs. FPL will change the line item
8 description on Schedule A6 from "Gas Turbine Maintenance
9 Revenue Reclassed to Base Revenue" to "System Maintenance
10 Revenue Reclassed to Base Revenue."

11 **Q. Does FPL plan to update its estimated values for incremental
12 O&M by unit class on a routine basis?**

13 A. Yes. FPL will update its cost estimates, by unit class, on a yearly
14 basis.

15

16 **HEDGING/ RISK MANAGEMENT PLAN**

17 **Q. Please describe FPL's hedging objectives.**

18 A. The primary objective of FPL's hedging program has been, and
19 remains, the reduction of fuel price volatility. Reducing fuel price
20 volatility helps deliver greater price certainty to FPL's customers.
21 FPL does not engage in speculative hedging strategies aimed at
22 "out guessing" the market.

23

1 **Q. Does FPL expect that its hedging program will deliver fuel**
2 **savings each year?**

3 A. No. This is a point that I have emphasized in all my prior testimony
4 on hedging. While FPL is extremely pleased when its hedging
5 program generates net savings for its customers, it does not engage
6 in hedging for this purpose. FPL's hedging strategies are aimed at
7 reducing fuel price volatility. Speculative hedging strategies aimed
8 at "out guessing" the market in the hopes of potentially returning
9 savings to FPL's customers will lead to increased volatility in prices
10 to FPL's customers. FPL cannot predict future fuel prices as there
11 is no certainty in predicting the main drivers of fuel price, such as
12 weather, hurricanes or unstable conditions around the world. What
13 FPL can continue to do is execute a well-disciplined, independently
14 controlled hedging program that reduces fuel price volatility and
15 delivers greater price certainty to FPL's customers. As a
16 consequence of volatility reduction, the hedging program will show
17 savings in some years and losses in others, with the expectation
18 that, over time, the cumulative impact of FPL's hedging program will
19 be neutral and not result in significant savings or losses to FPL's
20 customers. FPL does expect, however, that over time its customers
21 will experience more stable rates as a result of FPL's hedging
22 activities.

23

1 **Q. Has FPL prepared a risk management plan for 2009, as**
2 **required by Order PSC- 02-1484-FOF-EI issued on October 30,**
3 **2002?**

4 A. Yes. FPL's 2009 Risk Management Plan is provided in Exhibit GJY-
5 4. FPL's 2009 Risk Management Plan has been modified from prior
6 years to include a greater level of detail in response to
7 recommendations in Staff's recent *Review of Fuel Procurement*
8 *Hedging Practices of Florida's Investor-Owned Electric Utilities*. In
9 addition, FPL's 2009 Risk Management Plan addresses the
10 parameters within which FPL intends to place hedges in 2009 for
11 fuel requirements in 2010.

12 **Q. Is FPL seeking to recover projected incremental operating and**
13 **maintenance expenses with respect to maintaining an**
14 **expanded, non-speculative financial and/or physical hedging**
15 **program for the January through December 2009 period?**

16 A. Yes. FPL projects to incur incremental expenses of \$694,510. By
17 "incremental," I mean that these expenses are not reflected in FPL's
18 base rates. The projected expenses are comprised of salaries and
19 employee-related expenses for the three personnel who were added
20 to support FPL's enhanced hedging program, incremental annual
21 license fees for FPL's volume forecasting software and incremental
22 expenses associated with credit costs necessary to support FPL's
23 hedging program.

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

2 **A.** Yes it does.

1 BY MR. BUTLER:

2 Q. At this point, Mr. Yupp, I would ask for you
3 to summarize your testimony.

4 A. Good morning, Commissioners. My testimony
5 presents and explains several of the inputs that FPL
6 used to develop its 2009 fuel cost projections. Among
7 these inputs are the dispatched cost and availability of
8 natural gas, fuel oil, and coal, generating unit heat
9 rates and availabilities, as well as wholesale power and
10 purchased power transactions. These input projections
11 are reasonable and appropriate for the development of
12 FPL's fuel cost projections for 2009. And that
13 concludes my summary.

14 MR. BUTLER: Thank you, Mr. Yupp. I tender
15 the witness for cross-examination.

16 CHAIRMAN CARTER: Mr. Burgess.

17 MR. BURGESS: No questions.

18 CHAIRMAN CARTER: Mr. Wright.

19 MR. WRIGHT: No questions.

20 CHAIRMAN CARTER: Mr. McWhirter.

21 CROSS-EXAMINATION

22 BY MR. McWHIRTER:

23 Q. Mr. Yupp, what were your hedging losses for
24 2007?

25 A. If you'll give me one second, I will give you

1 an exact number.

2 Our hedging losses for 2007 combined between
3 natural gas and heavy oil were \$855.8 million.

4 Q. And that number is included in the
5 carry-forward for your cost recovery for 2009?

6 A. That number partially would be. It's included
7 in basically all of our projections.

8 Q. What are your hedging gains or losses for the
9 year 2008 to date?

10 A. Our hedging gains for 2008, as they are gains,
11 are approximately 405.9 million for the time period of
12 January through July 2008. We do now have actual
13 results outside of what we filed in the report for
14 August and September. August was an additional
15 63.2 million in gains, and September an additional
16 28 million in gains.

17 Q. Will you sum those for me?

18 A. Certainly. Approximately \$497 million in
19 gains from January through September of 2008.

20 Q. Would it be fair to say with your hedging
21 activities, during periods when fuel prices go down, you
22 suffer hedging losses, but during periods when fuel
23 prices go up, you have hedging gains? Is that correct?

24 A. Yes, with I guess one clarification. From the
25 time that we execute our hedges, if fuel prices go up

1 after that, then, yes, there would be gains associated
2 with them. And likewise, from the time that we execute
3 our hedges, if fuel prices go down, then there will be
4 associated losses.

5 Q. And so it would be fair to say that in 2007,
6 you estimated that the fuel prices would be much higher
7 than they actually turned out to be, and so you locked
8 in higher prices, and then in 2000 -- this year, you
9 estimated that fuel prices would be lower than they
10 turned out to be, and so you locked in lower fuel
11 prices? Is that essentially what happened?

12 MR. BUTLER: Excuse me. Mr. Chairman, I'm a
13 little puzzled by this line of questioning. It seems to
14 be continuing down the path of evaluating FPL's hedging
15 program and results. We had two issues on that, 13A and
16 13B, that were stipulated by the parties. And if this
17 is leading to some other subject, I don't object to it,
18 but it does not seem appropriate if it's directed at
19 either FPL's historic hedging activities or its future
20 hedging plans, because those issues were stipulated.

21 CHAIRMAN CARTER: Mr. McWhirter?

22 MR. McWHIRTER: I think that objection is well
23 taken. Most of the hedging information, as you know, is
24 secret, and staff has access to it through audits, and
25 we have to rely heavily on what staff finds in the

1 subject of its audits as to whether the hedging
2 activities were prudent. I rely on the staff's
3 activities in that area. But I was just trying through
4 this line of questioning to determine the magnitude of
5 what's involved in the hedging activity, and I will
6 refrain from further questions of Mr. Yupp. Thank you.

7 CHAIRMAN CARTER: Thank you. You may proceed.

8 MS. BRADLEY: No questions, Your Honor.

9 CHAIRMAN CARTER: Mr. Twomey, you're
10 recognized, sir.

11 MR. TWOMEY: Thank you, Mr. Chairman.

12 CROSS-EXAMINATION

13 BY MR. TWOMEY:

14 Q. Mr. Yupp, are you the right witness for me to
15 ask my questions about the continued correctness of the
16 natural gas and heavy oil projections that are embedded
17 in your 2009 request?

18 A. Yes.

19 Q. Okay. First let me ask you, what was the date
20 of your -- when was your current filing made? What was
21 the date?

22 A. The projection filing was made September 2nd,
23 2008.

24 Q. September 2nd?

25 A. Yes.

1 Q. Okay. And what was the date of the
2 forward-looking fuel cost forecast that the
3 September 2nd filing was based upon?

4 A. We used the August 4, 2008, forward curve.

5 Q. And how often do you make that type of a
6 forecast?

7 A. I'm not sure I understand. How often do we
8 make that type of a forecast?

9 Q. Well, do you make fuel -- do you just do it
10 once a year in preparation of your fuel clause filing,
11 or do you make monthly examinations of what you think
12 fuel costs are going to be, or do you do it quarterly,
13 or how often do you do it?

14 A. A two-part answer. From a projection
15 standpoint, we do make runs two times a year officially
16 for our estimated/actual filing, which takes place in
17 the beginning of August, and then another projection run
18 for the actual subsequent year projection, as we talked
19 about here, the September 2nd filing.

20 But more detailed than that, we -- within my
21 department, we actually make fuel forecast runs on a
22 weekly basis currently to determine our fuel burn
23 projections on an ongoing basis for the subsequent year,
24 which helps us in managing our fuel hedging program.

25 Q. And when you say subsequent year, do you carry

1 those on for 12 months, or is it confined to the
2 remainder of the months in a calendar year?

3 A. Generally our hedge program for rebalancing
4 purposes is run for the current year that we are in, and
5 then 12 months forward past that.

6 Q. Now, I forgot my glasses today, so I can't see
7 much. I can't see much of anything, even these big
8 notes I made. But do you have in your notebook the
9 documents, the exhibits in your filing that will show us
10 what the embedded costs for heavy oil and -- the average
11 embedded costs for heavy oil and natural gas are?

12 A. By average embedded, do you mean the fully --
13 fully inclusive of transportation, hedges, and all of
14 that cost?

15 Q. Yes, sir.

16 A. Yes, I do.

17 Q. When you find those, would you be kind enough
18 to tell us what the exhibit number is and what the
19 dollar costs are for each fuel, heavy oil and natural
20 gas?

21 A. Yes, I will. This is part of Exhibit KMD-5,
22 which I am co-sponsoring, and Appendix 2 of our
23 projection filing.

24 Q. Yes, sir.

25 A. It is Schedule E-3.

1 Q. E-3?

2 A. And it is on -- the official page number is
3 15. And what we estimate for the calendar year of 2009
4 on an average basis throughout the year, fuel oil costs
5 of \$16.90 per MMBtu, and gas as \$11.19 per MMBtu.

6 The one piece of information that I also have
7 to include in that is that those are charge-out costs,
8 so those are not -- those are the underlying commodity
9 price of natural gas and fuel oil with transportation
10 charges added. That's fixed transportation costs,
11 variable transportation costs, any interruptible
12 transportation costs, delivery of fuel oil to our
13 facilities, as well as any of the hedge marked-to-market
14 values that were in place at the time we completed this
15 forecast or made this projection filing. So those are
16 all-in costs.

17 Q. All those costs are included in the numbers
18 you just gave me?

19 A. Yes, they are.

20 Q. Let me ask you this. Were you in the room
21 yesterday?

22 A. Yes, I was.

23 Q. Okay. Did you hear my questions to the
24 several witnesses from Progress and TECO and Gulf Power?

25 A. I did hear several of your questions, yes.

1 Now, can I remember them specifically at this point?

2 No, but if you'll refresh my memory, I'm all right.

3 Q. I wasn't going to ask you to repeat them.

4 I'll try and ask you the questions.

5 A. Okay.

6 Q. The first question I have is, I thought --
7 this is from memory -- that the witnesses -- and I may
8 be off, and I can be corrected, of course, but that the
9 witnesses for Progress Energy and TECO said that their
10 initially filed -- their initial filings contained
11 natural gas at \$9. Do you recall --

12 A. I do not recall that their original
13 projections included \$9 gas. I think one thing that was
14 mentioned yesterday was for Tampa Electric, their
15 original forecast was from the early July time period,
16 which at that point in time, subject to check, natural
17 gas commodity prices were somewhere between 12 and \$13
18 per MMBtu.

19 Q. Well, I thought -- okay. I thought I heard
20 them say that their revised filings were based upon \$7.

21 A. Their revised filings, yes. I think you were
22 --- I'm sorry. I might have misunderstood. I thought
23 you meant their original projections. But their revised
24 projections I do recall was a lower number.

25 Q. I thought I heard them say \$7 -- I'm sorry, 9.

1 A. That sounds reasonable.

2 Q. Okay. Well, if 9 is reasonable, and we're
3 looking at \$11.19 per MMBtu in your current filing, how
4 do you explain the difference? Is it possible that
5 their number wasn't all-inclusive?

6 A. I'm not sure I recall 100 percent the line of
7 questioning that we're referring to, but I can clear up
8 the -- for us, the underlying commodity price that is in
9 the September 2nd, 2008 projections based on August 4th,
10 2008, was \$9.59 per MMBtu on gas.

11 So to get to the \$11, or \$11 and a little bit
12 over, that includes all of the transport charges as well
13 as the hedging marked-to-market values. So we were at
14 \$9.59 average commodity price, natural gas, 2009.

15 Q. Okay. Thank you. Now, since you have some
16 type of a tracking methodology weekly, since the
17 August 4th forecast that was utilized in preparation of
18 your September 2nd filing, have you seen a trend in the
19 cost of natural gas prices?

20 A. There has been a trend since August 4th.
21 Actually, it began in about mid July that natural gas
22 prices have trended steadily downward or slowly
23 downward. I think the biggest drop was from the mid
24 July probably into the early August time frame, and then
25 it has been a slow and gradual descent downward since

1 that point in time, yes. We have seen that.

2 But it's important to note that the forecast
3 that we used for August 4th did incorporate a
4 significant portion of the original drop that we saw
5 from around the first week in July to the first week in
6 August when we used our -- when we implemented our fuel
7 forecast. There was probably a 3 to \$4 per MMBtu drop
8 in the natural gas price.

9 So our fuel forecast that is used in the
10 September 2nd projection filing does incorporate a
11 significant portion of this recent drop we've seen. The
12 drop since that point has been more gradual, but
13 definitely has declined down.

14 Q. What would be -- if you went out and bought
15 natural gas today, what would you pay for it?

16 A. The natural gas price today for 2009 I believe
17 as of close of business last night was approximately
18 \$7.70, \$7.69 per MMBtu on average for the 2009 period.

19 Q. Okay. Am I -- thank you. Am I correct in
20 understanding that the portion of your fuel mix that is
21 supplied by natural gas is approximately 65 percent?

22 A. For the 2009 period, we are showing about
23 64.9 percent, yes, that will be the natural gas makeup.

24 Q. If you know, Mr. Yupp, or if you can calculate
25 it for me, what would \$1 in the embedded natural gas

1 costs of your filing -- given your company's projected
2 consumption in 2009, what would a swing of \$1 in the
3 price of that gas result in in terms of the overall fuel
4 cost being sought? Do you follow my question?

5 A. Yes, I do. And I have to first say that
6 because hedges are included, or because we have locked
7 in a certain percentage of our natural gas projected
8 requirements for 2009, that as the market does trend
9 down, not all -- there's a portion of our fuel cost that
10 will not change. We have hedged that portion.

11 That being said, the amount of gas that we
12 have hedged is done confidentially, or is confidential
13 to protect our customers. But I can give you, I think,
14 a magnitude of numbers or dollars to kind of put this in
15 perspective. We do project to burn quite a bit of
16 natural gas next year.

17 If I were to say that hypothetically, and this
18 is a ball park number, say 200 BCF per year or for 2009
19 for Florida Power & Light is moving with the market as
20 it moves today, so it is an unhedged portion. And
21 again, that's a hypothetical number, but I think close
22 enough in magnitude that we can get a picture. A dollar
23 move would roughly equate to \$200 million.

24 Q. 200 million?

25 A. Yes.

1 Q. Okay. Now, lastly, Mr. Yupp, if you were to
2 change or if the Commission were to change the amount of
3 your 2009 charge because it thought that the actual
4 experienced natural gas cost in 2009 was going to be
5 lower, as contained in your current request, and during
6 the course of 2009 it went up and the Commission was
7 wrong, that -- and you had an undercharge, that
8 undercharge wouldn't be in the nature of a disallowance
9 as the \$6.2 million being sought in the drilled hole
10 issue. You understand the difference; am I correct?

11 A. Correct.

12 Q. Because while the disallowance, if it were to
13 be ordered, will take away that money from recovery,
14 isn't it true that in the fuel clause methodology, that
15 if there was an underrecovery by the company in 2009,
16 you could get it back next year with interest?

17 A. Correct.

18 Q. In fact, if it went up faster, fast enough
19 that you hit the -- you tripped the 10 percent
20 criterion, you could get it earlier?

21 A. Correct, correct. And an interesting, I
22 think, point maybe to bring up along those lines,
23 because we talk about the trend, lowering fuel prices,
24 as they are right now, over the last week, we've seen a
25 80-cent per MMBtu run-up in natural gas. So seven days,

1 and we've seen natural gas move 80 cents. If I apply
2 that 80 cents to the same 200 BCF that I just gave you
3 for an unhedged portion of natural gas, that's a
4 \$160 million swing in our fuel cost.

5 So the volatility of the market is still
6 there. The trend has been down. But there are two
7 things, two points that I would like to bring up in
8 reference to that.

9 We now enter withdrawal season or heating
10 season. The next six to seven weeks are a critical time
11 for natural gas prices moving forward in the January and
12 forward time frame. Abnormally cold weather in these
13 weeks with higher than anticipated storage withdrawals
14 definitely impact the natural gas market.

15 So we say that the trend is down. We have
16 seen a little bump in the last week. But it's important
17 to note that we are in the precarious position each year
18 as we head into the November-December time period, based
19 on moving into the withdrawal season for natural gas,
20 and what is the weather going to do in November and
21 December, a large determinate of future gas prices.

22 The second point would be, we don't know.
23 Have we seen the full impact of OPEC's recent production
24 accord to cut one-and-a-half million barrels of
25 production a day? Has that -- has the market fully

1 realized that? I don't know that to be the case. I
2 can't sit here and predict what future fuel prices will
3 be. We have seen yesterday, for example, crude oil was
4 up \$7 per barrel on average for the entire 2009 period.

5 So definitely, the volatility exists in the
6 market. Prices have trended lower. We don't know what
7 the future holds.

8 A perfect example of that is, as we sat in
9 October of 2007, as we sat here towards the end of
10 October, beginning of November at the hearing, natural
11 gas for 2008 on average was trading slightly below \$8 an
12 MMBtu, which is roughly where we are at now in 2008 for
13 2009. Did any of us know that by July, we would see
14 natural gas prices of \$13 an MMBtu and what fundamentals
15 pushed the market to that level?

16 So I just bring that up to caution that the
17 market is still very volatile. We're entering a
18 precarious time in the market here. We have been in
19 similar situations and have seen the volatility just
20 take over, whether it was due to real fundamentals or
21 speculation in the market. It's a great unknown where
22 future fuel prices are going to go, and we do not
23 speculate on that. We do not guess where they're going
24 to go. So as of right now, our forecast, what we use we
25 still deem to be reasonable for forecasting fuel cost

1 projections 2009.

2 Q. Thank you. And lastly, when you were here in
3 October and November of 2007, did the Commission set
4 your fuel adjustment charge on that \$8 gas price?

5 A. Yes, they did. Yes, they did.

6 Q. And then when for whatever reason in the
7 market the prices went up, you were able to react to
8 that, and the Commission reacted to it by addressing
9 your request for a mid-course correction?

10 CHAIRMAN CARTER: Mr. Twomey, excuse me.

11 Would you yield for a moment, please, sir?

12 MR. TWOMEY: Pardon me?

13 CHAIRMAN CARTER: I need you to yield for a
14 moment. Would you, please?

15 MR. TWOMEY: Yes, sir. I'm finished with this
16 question.

17 CHAIRMAN CARTER: Okay.

18 MR. TWOMEY: Yes, sir.

19 CHAIRMAN CARTER: Okay. Go ahead and answer,
20 and then I'll come back.

21 A. Yes, they did.

22 MR. TWOMEY: That's all. Thank you.

23 CHAIRMAN CARTER: I didn't want to destroy
24 your train of thought, but I wanted to recognize
25 Commissioner Skop for a question. Commissioner Skop.

1 MR. TWOMEY: I was finished. Thank you.

2 CHAIRMAN CARTER: Thank you.

3 COMMISSIONER SKOP: Thank you, Mr. Chairman.

4 Just a few questions, Mr. Yupp. Good morning.

5 THE WITNESS: Good morning.

6 COMMISSIONER SKOP: Just in response to, I
7 guess, some of the questions that have been asked by
8 Mr. Twomey and some of the other concerned parties, you
9 mentioned that the latest filing was performed on
10 September 2nd, 2008, based on August 4, 2008
11 projections; is that correct?

12 THE WITNESS: That is correct.

13 COMMISSIONER SKOP: And you also stated that,
14 I think, the projected price of natural gas by itself
15 was \$9.59 per MMBtu; is that correct?

16 THE WITNESS: That is correct.

17 COMMISSIONER SKOP: And that's the Henry Hub
18 price, without transport and hedging costs?

19 THE WITNESS: Correct.

20 COMMISSIONER SKOP: And you also mentioned the
21 downward trend of the NYMEX curve, and I guess the
22 downward trend started in July. Is that --

23 THE WITNESS: Yes, it did.

24 COMMISSIONER SKOP: And I guess without
25 disclosing any confidential information, would it be

1 fair to say that currently you're partially hedged for
2 your 2009 natural gas requirements?

3 THE WITNESS: Yes, that would be fair to say.

4 COMMISSIONER SKOP: Okay. So for that
5 unhedged portion, they should be able to avail
6 themselves of the current reduction in natural gas
7 prices; is that correct?

8 THE WITNESS: I'm not sure I -- could you
9 repeat the question, please?

10 COMMISSIONER SKOP: With respect to the
11 unplaced hedges, again, because we're partially hedged,
12 and natural gas has come down, if they were to place
13 additional hedges, they would be at the reduced price of
14 gas, so they would recognize the decline in the gas
15 price; is that correct?

16 THE WITNESS: That is correct, with one
17 additional point. I believe at this point in time, our
18 2009 hedging program is complete. It was not quite
19 complete when we actually made our projection filing.
20 We were still placing hedges for 2009, but I believe we
21 are complete as to the percentage that has been detailed
22 in our risk management plan.

23 COMMISSIONER SKOP: Thank you. But the filing
24 that was made with the Commission probably did not
25 incorporate the reduction of gas prices that may have

1 been realized when the remaining hedges were placed; is
2 that correct?

3 THE WITNESS: Yes, that would be -- certainly
4 that would be correct.

5 COMMISSIONER SKOP: Okay. And I guess with
6 respect to the market volatility that you mentioned,
7 certainly in the winter months, historically there has
8 been upward price pressure on natural gas; is that
9 correct?

10 THE WITNESS: Correct.

11 COMMISSIONER SKOP: And with respect to the
12 market volatility, which in natural gas has been
13 significant over the past year, in your opinion, would
14 you say that the recent market decline somewhat put an
15 end to some of the speculation that was seen in natural
16 gas on the Intercontinental Exchange and such?

17 THE WITNESS: It's tough to say. I've seen
18 arguments for both sides how much speculation really was
19 driving the market. I think there definitely -- I can
20 say if you look at the investment in commodities, and I
21 guess particularly on the fuel oil side or crude oil
22 side, there has been a decline in the amount of dollars
23 that are invested in commodities.

24 So has that impacted the market? Tough to
25 determine. Some will say yes, some say no. I don't

1 have a strong opinion one way or another on that.

2 COMMISSIONER SKOP: Okay. And would you agree
3 that the Commission cannot engage in prospective
4 ratemaking?

5 THE WITNESS: Prospective?

6 COMMISSIONER SKOP: Forward-going ratemaking.

7 THE WITNESS: I would agree.

8 COMMISSIONER SKOP: Okay. And that the
9 Commission is also tasked with ensuring that all costs
10 must be fair, just, and reasonable at the time the
11 projected costs are passed along to the consumer?

12 THE WITNESS: I would agree with that.

13 COMMISSIONER SKOP: Okay. And just one final
14 question, I guess. Would you agree that a utility
15 should seek to minimize costs wherever possible to avoid
16 rate impact issues, which certainly the utilities seem
17 to be hypersensitive of?

18 THE WITNESS: Yes, I would agree with that.

19 COMMISSIONER SKOP: So just one final
20 question. In that regard, in your opinion, would a
21 reforecast be warranted to pass incremental savings that
22 I guess Mr. Twomey has alluded to, which a \$1 movement
23 in natural gas might translate into \$200 million, you
24 know, in terms whatever would be passed on, noting that
25 underrecoveries or significant underrecoveries could be

1 addressed in a mid-course correction filing or through a
2 true-up process and be subject to interest?

3 THE WITNESS: I think I would say it this way.
4 What one of our biggest fears would be and what we don't
5 believe our customers want -- and this would work from
6 both sides of the coin, whether prices go down or
7 whether prices go up. We want to make the best
8 projection we can so as not to be in for mid-course
9 corrections.

10 To the extent that we change factors one week
11 and prices run up the next and are forced, let's say,
12 over a shorter time to come back in and change prices, I
13 think that has to be taken into account too from a
14 customer perspective of factors or fuel cost projections
15 moving up and down and frequent changes to the recovery
16 factor. So while the market has trended down, we have
17 not triggered -- we have not hit what we believe to be
18 -- or not what we believe to be, but we have not seen a
19 reduction in fuel costs that would warrant hitting our
20 10 percent threshold.

21 We continue to monitor that on a weekly basis,
22 is the way we do it. Outside of the answer I gave
23 before on our hedging program, we do monitor the market
24 and recalculate where we are in relation to the
25 10 percent. We are trying to avoid a situation where we

1 revise factors downward and then the market changes
2 because we are moving into a higher volatile time, and
3 we're right back in changing factors again, so that's
4 something else we're taking into account.

5 And I'm not trying avoid your question. I
6 think that's an important point to make as far as how
7 we're looking at it also. Stability is also good for
8 customers.

9 COMMISSIONER SKOP: And I guess you would then
10 agree in response that the flip side of that would be
11 that if the projected prices don't hold and experienced,
12 you know, more stability or an incremental decline, then
13 under the current projection, that might result
14 theoretically in an overrecovery.

15 THE WITNESS: If projected prices do remain
16 where they are at -- or if prices -- not projected
17 prices, but if prices remain where they are at for the
18 2009 period, as we are monitoring week to week, when we
19 do hit that 10 percent threshold of prices, we would at
20 that time notify the Commission, as we are required to
21 do, and make the appropriate decision for what should be
22 done moving forward.

23 But in answer directly to your question, yes,
24 that would put us in an overrecovered situation, given
25 prices are lower than what we filed at the time, and

1 that is why we would use the 10 percent threshold
2 process to alleviate that situation.

3 COMMISSIONER SKOP: Okay. And just one final
4 one, and I'll make it brief. In response to some of the
5 questions raised by the intervenors, do you feel that a
6 reforecast or updated filing would be appropriate before
7 this Commission took action on the data before it?

8 THE WITNESS: No, I do not. I believe that
9 our forecasts right now, even with the downtrend in the
10 market and where we are at in relation to our forecast,
11 our forecast is still reasonable at this point. We will
12 continue to monitor on a weekly basis and see where that
13 gets us. But as of right now, I believe our forecast to
14 still be reasonable for fuel cost projection purposes.

15 COMMISSIONER SKOP: Thank you.

16 CHAIRMAN CARTER: Thank you, Commissioner.

17 Commissioners, I'm going to go with the
18 Federal Executive Agencies and see if they have any
19 questions, and then I'll go to staff and come back to
20 the bench.

21 MS. WHITE: No, we do not.

22 CHAIRMAN CARTER: Thank you. Staff.

23 MR. YOUNG: No questions.

24 CHAIRMAN CARTER: Commissioners, anything from
25 the bench?

1 COMMISSIONER SKOP: Yes, sir.

2 CHAIRMAN CARTER: Commissioner Skop, you're
3 recognized.

4 COMMISSIONER SKOP: Thank you. One more
5 question that I forgot. With respect to the evaluation
6 of fuel prices, do you evaluate the -- hold on real
7 quick and let me see. The 10 percent threshold that
8 you're subject to, was that evaluated for all fuel
9 commodity costs or just natural gas?

10 THE WITNESS: It was evaluated for all fuel
11 commodity costs. We do that on a weekly basis for all
12 fuels.

13 COMMISSIONER SKOP: Thank you.

14 CHAIRMAN CARTER: Thank you, Commissioner.
15 Mr. Butler.

16 MR. BUTLER: Just a couple on redirect.

17 REDIRECT EXAMINATION

18 BY MR. BUTLER:

19 Q. Mr. Yupp, you were mentioning on a couple of
20 occasions in your responses to Mr. Twomey's questions
21 that FPL has been seeing a general decline in the
22 natural gas forward prices market over the last several
23 months. Would you characterize the market as declining
24 during the last week that you were then subsequently
25 describing?

1 A. No. Over the course of the last week, I would
2 characterize the market as being in a slight uptrend, as
3 I mentioned. I believe from the close of business on
4 October 27, which was a Monday, to the close of business
5 last night, Tuesday, so basically seven trading days,
6 the market has moved up. I believe the exact number is
7 76 cents per MMBtu.

8 Q. Does FPL have any way of knowing whether the
9 market continuing forward into the future will continue
10 increasing, flatten out, or go back to declining?

11 A. We do not have any way of projecting that, no.

12 MR. BUTLER: Thank you. That's all the
13 questions that I have.

14 CHAIRMAN CARTER: Thank you. Anything further
15 from the bench?

16 Hearing none, let's deal with the exhibits.

17 MR. BUTLER: I would move into evidence
18 Exhibits 4, 5, 6, 7, and I don't think we'll move 8 yet.
19 We have to have Ms. Dubin support her portion of that
20 exhibit.

21 CHAIRMAN CARTER: Four through 8, any
22 objection? Without objection, show it done.

23 (Exhibits 4 through 8 were admitted into the
24 record.)

25 CHAIRMAN CARTER: Anything further for this

1 witness?

2 MR. BUTLER: No.

3 CHAIRMAN CARTER: Staff, anything further for
4 this witness?

5 Hang on. Give me one second, Mr. Butler. You
6 may be excused.

7 MR. BUTLER: Thank you.

8 THE WITNESS: Thank you.

9 CHAIRMAN CARTER: Call your next witness.

10 MR. BUTLER: Thank you. I would call
11 Mr. Jones to the stand.

12 Thereupon,

13 TERRY O. JONES

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

17 DIRECT EXAMINATION

18 BY MR. BUTLER:

19 Q. Mr. Jones, were you sworn previously at the
20 beginning of the day today?

21 A. Yes.

22 Q. Okay. Thank you. Would you please state your
23 name and business address for the record?

24 A. My name is Terry Jones. My business address
25 is 700 Universe Boulevard, Juno Beach, Florida.

1 Q. Thank you. Could you move your mike in front
2 of you a little bit more there, please?

3 A. How's that?

4 Q. That's great. Thanks.

5 By whom are you employed, and in what
6 capacity?

7 A. I'm employed by Florida Power & Light. I'm
8 the Vice President of Operations, Nuclear, Midwest
9 Region.

10 Q. Do you have before you testimony dated
11 April 3, 2008, consisting of 15 pages and one attached
12 exhibit, TOJ-1?

13 A. Yes, I do.

14 MR. BUTLER: Mr. Chairman, I would note that
15 Exhibit TOJ-1 was marked for identification as Exhibit
16 9.

17 BY MR. BUTLER:

18 Q. Do you also have before you testimony dated
19 September 2, 2008, consisting of 11 pages that was
20 revised on October 15, 2008, with revisions to pages 10
21 and 12, or 10 through 12?

22 A. Yes, I do.

23 Q. Okay. Were those testimonies and exhibits
24 prepared by you or under your direction, supervision,
25 and control?

1 A. Yes, they were.

2 Q. Do you have any further changes or corrections
3 to your testimony?

4 A. No, I do not.

5 Q. Okay. If I asked you the same questions
6 contained in the testimony today, would your answers be
7 the same?

8 A. Yes, they would.

9 MR. BUTLER: I would ask that Mr. Jones'
10 prefiled testimony be entered into the record as though
11 read.

12 COMMISSIONER EDGAR: The prefiled testimony
13 will 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 **TESTIMONY OF TERRY O. JONES**
4 **DOCKET NO. 080001-EI**
5 **April 3, 2008**

6
7 **Q. Please state your name and address.**

8 A. My name is Terry O. Jones. My business address is 700 Universe
9 Boulevard, Juno Beach, Florida 33408.

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

11 A. I am employed by Florida Power & Light Company (FPL) as the Vice
12 President of Nuclear Plant Support.

13 **Q. Have you previously testified in the predecessor to this docket?**

14 A. Yes, I have.

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

16 A. An issue has been raised by the Office of Public Counsel (OPC) in
17 the fuel proceedings as to whether customers or FPL should be
18 responsible for additional fuel costs incurred as a result of an
19 outage extension in 2006 at Turkey Point Unit 3 which was caused
20 by a drilled hole in the pressurized piping. In the 2007 fuel
21 proceeding, the parties stipulated that this issue should be deferred

1 to the 2008 fuel proceeding. My testimony describes the events that
2 occurred during the Turkey Point Unit 3 outage extension in 2006.
3 FPL witness Dubin discusses the regulatory policies associated with
4 recovery of replacement power costs.

5 **Q. Have you prepared, or caused to be prepared under your**
6 **direction, supervision or control, an exhibit in this**
7 **proceeding?**

8 A. Yes, Exhibit TOJ-1 – Corporate Security Investigative Report is
9 attached to my testimony as a confidential exhibit.

10 **Q. Please provide a brief description of the outage extension at**
11 **Turkey Point Unit 3 in March and April of 2006.**

12 A. Toward the end of Turkey Point Unit 3's Spring 2006 refueling outage,
13 FPL personnel identified a small drilled hole in the pressurizer piping
14 on Unit 3 during of a series of tests and inspections that were
15 conducted to ensure that equipment was operating properly prior to
16 plant heat-up and restart. FPL conducted an extensive review of the
17 unit to ensure no other systems were damaged. Prompt and
18 effective corrective actions were taken by plant personnel to repair
19 the pressurizer piping and provide the appropriate assurances of
20 safety for restart. Unit 3 was restarted on April 10, 2006, which was
21 an extension of approximately 5 days to the planned refueling outage.

22

1 The FBI and FPL's Corporate Security Department have both
2 conducted investigations to determine who drilled the hole and
3 under what circumstances. Those investigations commenced
4 immediately after the drilled hole was discovered on March 31,
5 2006. FPL arranged to log access suspensions in the Nuclear
6 Energy Institute's Personnel Access Data Base ("PADS") for all
7 personnel who had entered the Turkey Point nuclear unit
8 containment area during the period March 9-31, 2006 and to
9 reinstate access for each person only after he or she had
10 completed an FBI interview and psychological screening tests.
11 This was an extraordinary measure, because it temporarily
12 removed a large number of qualified nuclear personnel from the
13 pool of available workers for plants around the country and hence
14 required a high level of cooperation from all levels of the nuclear
15 industry, including plant licensees and service vendors. The
16 investigations were extremely thorough and, as a result, lasted
17 more than a year. Both investigations are complete. FPL's
18 Corporate Security Department issued an Investigative Report
19 summarizing both its and the FBI's investigation, which is attached
20 as confidential Exhibit TOJ-1.

21 **Q. What conclusions have been reached about how the hole was**
22 **drilled in the pressurizer piping?**

1 A. FPL has been advised by the FBI that its investigation reached the
2 conclusion that the hole was drilled by a single individual, working
3 alone. The individual identified by the FBI was employed by a
4 contractor FPL hired to perform services in support of Unit 3's Spring
5 2006 refueling outage. The individual had been granted unescorted
6 access to the Turkey Point nuclear plant in early March 2006 after
7 completing FPL's comprehensive access authorization and fitness-
8 for-duty screening. I will explain the concept of unescorted access
9 later in my testimony. Neither investigation has identified a definitive
10 motive for this individual's actions.

11 **Q. Has the individual who was identified in the investigation been**
12 **charged with a criminal act or been the subject of civil**
13 **enforcement action by the NRC?**

14 A. No. The FBI presented the facts in this case to the United States
15 Attorney. Upon review, the U.S. attorney declined to file criminal
16 charges. Subsequently, the NRC has informally notified FPL that it
17 does not have sufficient evidence to pursue civil enforcement action
18 against the individual.

19 **Q. Has FPL sought recourse against the contractor or individual**
20 **who drilled the hole in the pressurizer?**

21 Not at this time. The FBI's and NRC's decisions not to pursue
22 actions against the individual, coupled with the FBI's unwillingness

1 to release its final investigative report to FPL, has hindered our
2 ability to evaluate potential claims arising out of the incident. FPL
3 understands that the FBI has provided the NRC a copy of its report.

4 FPL has requested the NRC, under the Freedom of Information
5 Act, to disclose the report to FPL. If FPL is able to obtain the FBI's
6 investigative report, an evaluation will be performed to determine
7 whether the information it contains gives FPL a basis for recourse
8 in connection with this incident.

9 **Q. What actions has FPL taken with respect to the individual that**
10 **the FBI identified as having drilled the hole in the pressurizer**
11 **pipings?**

12 A. The individual's access to FPL's nuclear plants was revoked promptly
13 upon discovery of the drilled hole. FPL will not permit the individual to
14 have access to its nuclear plants in the future.

15 **Q. Did the NRC investigate the adequacy of FPL's security**
16 **processes in light of this incident?**

17 A. Yes, it did. The NRC formed an Augmented Inspection Team (AIT)
18 that investigated this incident thoroughly. The AIT focused on the
19 adequacy of FPL's security processes at Turkey Point and how
20 FPL ensured that Unit 3 was ready for restart once the drilled hole
21 was found.

22 **Q. What were the findings of the AIT?**

1 A. The AIT found that FPL appropriately positioned security officers at
2 access points leading into containment, that access authorization
3 personnel were knowledgeable in the area of access authorization,
4 and that personnel were appropriately cleared before gaining
5 unescorted access to the site. The AIT also concluded that FPL's
6 identification, classification, and response to the event were
7 appropriate. In addition, the AIT found that the planned actions to
8 ensure restart readiness for Unit 3 and continued operation of Unit
9 4 were effective and thorough. No findings or violations were
10 issued by the NRC. The NRC informed FPL that it had reacted well
11 in a difficult situation. On March 18, 2008, the NRC sent FPL a
12 letter confirming that the NRC considers the AIT inspection to be
13 complete and does not plan to conduct any further inspection.

14 **Q. What is "unescorted access"?**

15 A. "Unescorted access" means that a person is permitted to enter
16 specified portions of a nuclear unit's protected area in order to
17 perform assigned work, without having to be accompanied by a
18 worker with unescorted access to the plant. The system of granting
19 personnel unescorted access to nuclear plants upon successful
20 completion of appropriate screening is universally accepted and
21 used within the nuclear industry. It is logistically essential if the
22 complex activities undertaken at the time of a refueling outage are

1 to be performed promptly and efficiently. FPL requires all
2 personnel with unescorted access to nuclear facilities to pass a
3 rigorous security screening.

4 **Q. Please describe the process used by FPL to screen personnel**
5 **who will have unescorted access to protected areas within its**
6 **nuclear plants.**

7 A. Pursuant to NRC regulations, FPL has access authorization and
8 fitness-for-duty (FFD) programs that apply to all persons who are
9 granted unescorted access to nuclear power plant protected areas.
10 These processes are consistent with the standards and processes
11 used across the nuclear industry and pursuant to applicable NRC
12 requirements. Specifically, each individual who seeks unescorted
13 access to an FPL nuclear plant (whether an FPL employee or
14 contractor employee) is subjected to the following screening:

- 15 • Plant access authorization approval is required, in advance by an
16 FPL supervisor. The FPL supervisor reviews the work
17 requirements of the individual and selects access to only those
18 areas of the plant that are necessary to accommodate the
19 individual's work requirements.
- 20 • Each individual is subject to a detailed background investigation,
21 including verification of employment history, credit check, and a

1 character verification, including reference checks, and, where
2 applicable, education and military checks.

3 • Each individual is required to pass a rigorous psychological
4 examination consisting of nearly 600 questions, with the
5 responses screened for psychological stability and other
6 characteristics. As required, individuals may be subject to further
7 psychological review, including interviews by a licensed
8 psychologist.

9 • Each individual is required to successfully complete an FBI
10 criminal history verification, including fingerprints, with no
11 disqualifying criminal background.

12 • Each individual must successfully complete drug and alcohol
13 screening and is then subject to random drug and alcohol testing
14 during the period of unescorted access.

15 Failure to successfully complete any of these steps will result in the
16 individual being denied unescorted access to FPL's nuclear facilities.

17 **Q. Were all personnel who had access to Turkey Point Unit 3 during**
18 **the Spring 2006 refueling outage screened prior to that outage in**
19 **accordance with these procedures?**

20 A. Yes. In total, 1137 personnel entered the containment of Turkey
21 Point Unit 3 during the outage. Each of these personnel, including
22 the individual identified as having drilled the hole in the pressurizer

1 piping, was subject to and successfully completed FPL's rigorous
2 access and fitness for duty screening processes.

3 **Q. What measures does FPL have in place to control access to**
4 **nuclear power plant protected areas once unescorted access**
5 **is granted?**

6 A. FPL carefully controls access to its nuclear plants, especially within
7 the vital areas such as the containment structure where the
8 pressurizer piping is located. Each individual granted unescorted
9 access to a nuclear plant is also screened by their supervisor for
10 access to vital areas. Even after access is granted through the
11 process that I described earlier, the access level for each individual
12 is reviewed monthly thereafter by his or her supervisor. In addition,
13 all individuals are subject to an ongoing behavioral observation
14 program. This program is specifically designed to detect and require
15 the reporting of behaviors which are not consistent with unescorted
16 access, and also to identify changes in behavior, mood and other
17 relevant criteria which are reported to security and are the subject of
18 additional evaluation and management action, as may be required.
19 Additionally, each person with unescorted access to the plant is
20 required to complete re-qualification Plant Access Training for
21 unescorted access as well as access to radiation controlled areas.
22 During refueling outages, FPL deploys security officers to verify

1 access into the containment structure. FPL also utilizes cameras to
2 monitor work activities throughout the refueling outage.

3
4 All of the processes I have described were in full force and effect and
5 were applied to all personnel who had unescorted containment
6 access during the Spring 2006 Turkey Point Unit 3 refueling outage,
7 including the individual who drilled the hole in the pressurizer piping.
8 He had been authorized to have unescorted access to the area in
9 Unit 3 where the pressurizer piping is located. There was no report of
10 aberrant behavior by that individual that would have warranted
11 revoking or limiting his access.

12 **Q. In addition to access control and worker screening, does FPL**
13 **have other security measures in place to protect the nuclear**
14 **plant site from damage or theft?**

15 A. Yes. FPL has an extensive security program to protect against acts
16 of radiological sabotage and to prevent theft of nuclear material.
17 The specifics of these programs constitute safeguards information,
18 so I cannot discuss those specifics publicly. However, I can
19 confirm that these programs conform in all respects to NRC
20 requirements, are inspected periodically by the NRC, and are
21 internally audited by FPL Nuclear Assurance in order to assess and
22 determine compliance with the security requirements. At all

1 relevant times, including during the Spring 2006 Turkey Point Unit 3
2 refueling outage, FPL maintained these programs consistent with
3 NRC requirements. Of course, it is infeasible to monitor the
4 location and activities at all times for each of the hundreds of
5 personnel who have unescorted access during a refueling outage.

6 **Q. Has the NRC or FPL Nuclear Assurance identified any**
7 **deficiencies in FPL's security program that contributed to this**
8 **event?**

9 A. No. None of the previous NRC inspections or FPL Nuclear
10 Assurance audits identified any uncorrected deficiencies that could
11 have contributed to the drilled hole incident that occurred at Turkey
12 Point Unit 3.

13 **Q. From the results of the NRC's, the FBI's and FPL's internal**
14 **investigations, do you conclude that FPL had appropriate**
15 **measures in place to provide a high degree of protection for**
16 **Turkey Point against the risk of criminal acts such as that**
17 **which occurred?**

18 A. Yes. FPL's security programs clearly provide a high degree of
19 protection and represent a prudent response to the risk of such
20 criminal acts taking place. However, it is important to recognize that
21 no security program – at a nuclear plant or elsewhere – is infallible.
22 Even the most rigorous access-control, worker-screening and

1 security programs, can identify and prevent only a high percentage
2 of potential personnel problems; they can never provide 100%
3 protection against deliberate criminal acts, carried out by
4 individuals with no prior history of such acts. That is why both the
5 security systems and plant safety system have many layers of
6 defense to ensure the health and safety of the public. This is called
7 "Defense in Depth".

8 **Q. Does FPL need to take additional measures to prevent**
9 **recurrence of tampering incidents?**

10 A. As I mentioned previously, FPL will exclude the individual who drilled
11 the hole from ever working at any FPL nuclear plant in the future.
12 Beyond that, given the rigor of our existing security processes, FPL
13 does not believe that systemic changes are warranted.

14 **Q. The NRC has issued a letter to FPL alleging that security**
15 **officers were inattentive at Turkey Point over a period of time.**
16 **Could you explain FPL's position on this matter and the steps**
17 **that FPL is taking to prevent and detect security officer**
18 **inattentiveness?**

19 A. On October 30, 2007, FPL received a letter from the NRC alleging
20 an "apparent violation" concerning the NRC's contention that six
21 Wackenhut security officers were inattentive to their duties at
22 Turkey Point at various times between 2004 and 2006. When the

1 letter was issued, FPL only had information on one of the alleged
2 incidents of inattentiveness (and FPL does not believe that the
3 security officer in that example was inattentive). Accordingly, FPL
4 requested more information about the NRC's investigation so that
5 FPL could further look into the matter. While the NRC originally
6 agreed to this, they reversed their position and declined to provide
7 that information. FPL assumes that NRC will issue a formal Notice
8 of Violation (NOV). Upon issuance of the NOV, FPL will be entitled
9 to the information compiled by the NRC during their investigation,
10 and FPL will formally request that information to assess the validity
11 of the NOV.

12
13 On February 11, 2008, FPL submitted a response to an NRC
14 information request issued to all U.S. nuclear plant operators
15 regarding nuclear power plant security officer attentiveness. While
16 the specific details of FPL's response is security-related and
17 confidential, in general FPL detailed the numerous administrative
18 programs, managerial programs, and controls in effect at Turkey
19 Point (and at all of its nuclear plants), established to prevent,
20 identify, and correct security personnel inattentiveness. These
21 measures include maintenance of a work environment where plant
22 personnel feel free to raise concerns; implementation of a

1 behavioral observation program where plant personnel monitor
2 behaviors; implementation of a fitness-for-duty program which
3 requires random and for-cause drug and alcohol testing; and
4 periodic communication checks with security officers in the plant.

5 **Q. Do you believe that attentiveness of security officers would**
6 **have played a role in whether there were opportunities to drill**
7 **the hole in the pressurizer piping?**

8 A. No. Security officers are not expected to oversee and verify
9 maintenance activities that are being conducted and, in any event,
10 the suspected individual had unescorted access. Moreover,
11 maintenance workers frequently engage in drilling activities, and
12 there is nothing inherently unusual about such activities that would
13 necessarily prompt a security officer to raise questions about such
14 activity.

15 **Q. Should FPL be held responsible for the replacement power**
16 **costs incurred as a result of the Turkey Point Unit 3 outage**
17 **extension?**

18 A. No. FPL witness Dubin discusses the regulatory policies associated
19 with recovery of replacement power costs, but speaking from the
20 perspective of nuclear operations, I see nothing that could warrant
21 criticism in FPL's actions before or after the drilled hole was
22 discovered. FPL management took extensive, reasonable and

1 rigorous actions that complied fully with NRC requirements and
2 industry standards in order to prevent improper access and deliberate
3 criminal acts. FPL is not aware of, nor has anyone else indicated,
4 any reasonable actions that could have been taken to prevent the
5 criminal act that extended the Unit 3 outage. FPL took extensive
6 actions to swiftly and effectively investigate and inspect both
7 Turkey Unit 3 and Unit 4 after the criminal act was discovered,
8 enabling FPL to expeditiously return the plant to service with
9 minimal disruption in production.

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

11 **A.** Yes it does.

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **FLORIDA POWER & LIGHT COMPANY**

3 **TESTIMONY OF TERRY O. JONES**

4 **DOCKET NO. 080001-EI**

5 **September 2, 2008**

6

7 **Q. Please state your name and address.**

8 A. My name is Terry O. Jones. My business address is 700 Universe
9 Boulevard, Juno Beach, Florida 33408.

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

11 A. I am employed by Florida Power & Light Company (FPL). My current
12 position is the Vice President of Operations Midwest Region for the
13 Nuclear Division. Prior to this change, which became effective June
14 2008, I served as Vice President of Plant Support for FPL's Nuclear
15 Division.

16 **Q. Have you previously testified in the predecessor to this
17 docket?**

18 A. Yes, I have.

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

20 A. My testimony presents and explains FPL's projections of nuclear fuel
21 costs for the thermal energy (MMBTU) to be produced by our

1 nuclear units and the costs of disposal of spent nuclear fuel. I am
2 also updating the status of certain litigation that affects FPL's nuclear
3 fuel costs; plant security costs and new NRC security initiatives; and
4 outage events; Both nuclear fuel and disposal of spent nuclear fuel
5 costs were input values to POWERSYM used to calculate the costs
6 to be included in the proposed fuel cost recovery factors for the
7 period January 2009 through December 2009.

8

9 **Nuclear Fuel Costs**

10 **Q. What is the basis for FPL's projections of nuclear fuel costs?**

11 A. FPL's nuclear fuel cost projections are developed using projected
12 energy production at our nuclear units and their operating schedules,
13 for the period January 2009 through December 2009.

14 **Q. Please provide FPL's projection for nuclear fuel unit costs and
15 energy for the period January 2009 through December 2009.**

16 A. FPL projects the nuclear units will produce 261,998,614 MMBTU of
17 energy at a cost of \$0.5308 per MMBTU, excluding spent fuel
18 disposal costs, for the period January 2009 through December 2009.
19 Projections by nuclear unit and by month are in Appendix II, on
20 Schedule E-4, starting on page 15 of the Appendix II.

1 **Spent Nuclear Fuel Disposal Costs**

2 **Q. Please provide FPL's projections for spent nuclear fuel disposal**
3 **costs for the period January 2009 through December 2009 and**
4 **explain the basis for FPL's projections.**

5 A. FPL's projections for spent nuclear fuel disposal costs of
6 approximately \$21.8 million are provided in Appendix II, on Schedule
7 E-2, starting on page 9 of the Appendix. These projections are
8 based on FPL's contract with the U.S. Department of Energy (DOE),
9 which sets the spent fuel disposal fee at 0.9285 mills per net kWh
10 generated, including transmission and distribution line losses.

11

12 **Litigation Status Update**

13 **Q. Is there currently an unresolved dispute under FPL's nuclear**
14 **fuel contracts?**

15 A. Yes.

16 Spent Fuel Disposal Dispute. This dispute arose under FPL's
17 contract with the Department of Energy (DOE) for final disposal of
18 spent nuclear fuel. In 1995 FPL, along with a number of electric
19 utilities, states, and state regulatory agencies filed suit against DOE
20 over its obligation to accept spent nuclear fuel beginning in 1998.
21 On July 23, 1996, the U.S. Court of Appeals for the District of
22 Columbia Circuit (D.C. Circuit) held that DOE is required by the

1 Nuclear Waste Policy Act (NWPA) to take title to and dispose of
2 spent nuclear fuel from nuclear power plants beginning on January
3 31, 1998.

4
5 On January 11, 2002, based on the D.C. Circuit's ruling, the Court of
6 Federal Claims granted FPL's motion for partial summary judgment
7 in favor of FPL on contract liability. There is no trial date scheduled
8 at this time for the FPL damages claim.

9
10 The Court of Federal Claims ruled on May 21, 2004 that another
11 nuclear plant owner, Indiana Michigan Power Company, was not
12 entitled to any damages arising out of the Government's failure to
13 begin disposal of spent nuclear fuel by January 31, 1998. On
14 appeal, the U.S. Court of Appeals for the Federal Circuit upheld the
15 Court of Federal Claims decision on September 9, 2005. The
16 impact of this decision, if any, on FPL's claims against the
17 Government remains unknown at this time.

1 **Nuclear Plant Security Costs**

2 **Q. What is FPL's projection of the incremental security costs for**
3 **the period January 2009 through December 2009?**

4 A. FPL presently projects that it will incur \$30.3 million in incremental
5 nuclear power plant security costs in 2009.

6 **Q. Please provide a brief description of the items included in this**
7 **projection.**

8 A. The projection includes adding security personnel as a result of
9 implementing NRC's Order EA03-038, which limits the number of
10 hours security personnel may work; additional personnel training;
11 additional regulatory initiatives for fires, aircraft threat strategy;
12 protection of spent fuel pools and containments and impacts of NRC
13 Part 73 rulemaking initiatives.

14 **Q. Has the NRC issued any new revisions to the security-related**
15 **Orders that affect FPL's projection?**

16 A. Yes. On March 31, 2008 the NRC issued a new rule under Part 26
17 of the Code of Federal Regulations dealing with worker fatigue.
18 The new rule mandates more restrictive work hour limits, including
19 a specific requirement for "days off" for the security officers at the
20 St. Lucie and Turkey Point sites. Full implementation is required by
21 October 1, 2009. The Part 26 rulemaking impacts costs for 2009

1 are estimated to be \$1.8 million for the St. Lucie and Turkey Point
2 nuclear sites.

3 **Q. Is there a possibility of further NRC security-related initiatives in**
4 **2009 and beyond, in addition to those included in FPL's**
5 **projection?**

6 A. Yes. For example, there is a NRC initiative to review and update
7 the Enhanced Adversary Characteristics (EAC) of the Design Basis
8 Threat (DBT). The DBT is the measure that all nuclear stations are
9 designed to defend against. Some of these EAC/DBT
10 enhancements could require extensive engineering support and
11 significant modifications to station security defensive positions.
12 Industry comments are due to the NRC by September 2008.

13
14 In addition, NRC Part 73.55 rulemaking may involve the need for
15 significant modifications to various areas of the site. Part 73.55
16 directs licensees to have an on-site physical protection system and
17 security organization that provides the level of protection required
18 for nuclear power reactors against radiological sabotage. Some
19 examples include redundant features for Central Alarm Station
20 (CAS) and Secondary Alarm Station (SAS), enhanced weaponry,
21 Owner Controlled Area (OCA) detection, and possible
22 enhancements to assessment and interdiction. The industry and

1 the NRC view the impact differently since the industry believes a
2 literal interpretation of the proposed rule varies greatly from the
3 NRC's stated intent. Nuclear Energy Institute (NEI) has 200 pages
4 of comments discussing the impact of this rule. NEI estimates that
5 the cost of rulemaking, based on literal interpretation, could range
6 from \$20-60 million per site.

7
8 As a final example, the NRC has issued a draft Regulatory Guide
9 for Cyber Security protection of station digital computer,
10 communications systems and networks which would impose
11 significant requirements for monitoring, hardening and responding
12 to cyber intrusions. The draft Guide has been issued for industry
13 comment.

14
15 It is not feasible for FPL to estimate at this time the future costs that
16 will be required to comply with the various developing regulatory
17 requirements, but the Commission should be aware that nuclear
18 security costs could increase significantly based on the issues
19 mentioned above.

1 **2008 Outage Events**

2 **Turkey Point**

3 **Q. Has FPL experienced any unplanned outages at its Turkey Point**
4 **plant in 2008?**

5 A. Yes. In February 2008, Units 3 and 4 experienced an automatic
6 reactor trip and shut down due to an external transmission
7 disturbance that caused reduced voltage in the switchyard that
8 connects the nuclear units to the FPL transmission system.
9 Additionally, when Unit 4 was returning to service, the 4A steam
10 generator water level exceeded the 75% limit and a manual trip
11 was initiated. The manual trip delayed start up by approximately 30
12 hours. The total outage duration for these events, including the
13 equipment issues that emerged independently of the transmission
14 incident, was approximately 6 days for Unit 3 and 4 days for Unit 4.

15 **Q. What caused the 4A steam generator water level to exceed**
16 **75%?**

17 A. In an effort to accelerate the return of Unit 4 to service, the
18 operator implemented fast generator loading that created steam
19 generator level fluctuations and the loss of steam generator level
20 control which resulted in the manual trip of the reactor.

1 **Q. Why was the outage duration for Unit 3 longer than Unit 4?**

2 A. Unit 3 extended the outage to replace a rod position indication coil
3 that had previously malfunctioned in October 2007. FPL had
4 obtained permission from the NRC to defer replacement until a unit
5 shut down occurred in order to minimize the outage time
6 associated with the replacement.

7 **Q. Has FPL experienced any other unplanned outages at its Turkey**
8 **Point plant in 2008?**

9 A. Yes. In June 2008, Unit 3 shut down to rebalance the turbine, due
10 to a high #9 turbine bearing vibration. The outage duration was
11 approximately 1 day. In August 2008, Turkey Point Unit 4 shut
12 down to repair a test connection leak required by technical
13 specifications and American Society of Mechanical Engineers
14 (ASME) code requirements. The outage duration was
15 approximately 8 days.

16

17 **St. Lucie**

18 **Q. Has FPL experienced any unplanned outages at its St. Lucie**
19 **plant in 2008?**

20 A. Yes. In January 2008, St. Lucie Unit 2 was manually shut down
21 due to a leak in the 2B1 Reactor Coolant Pump (RCP) seal upper

REVISED 10-15-08

1 cavity piping. The leakage occurred on a Reactor Coolant Pump
2 seal upper cavity pipe. FPL determined the crack was due to water
3 chemistry and the piping design. The January 2008 outage
4 duration was approximately 11 days.

5 **Q. What corrective actions did FPL take at St. Lucie Unit 2 to avoid**
6 **recurrence of this problem?**

7 A. During the January 2008 Unit 2 outage, the maintenance strategy
8 employed for the repairs on the failed seal line was a complete
9 replacement of all the associated seal line piping on all RCPs. This
10 approach was dictated by the lack of sufficient time during the
11 outage to collect forensics data and thoroughly evaluate that data to
12 determine the root cause for the failures. We did not want to extend
13 the outage, so complete line replacement was the most prudent
14 strategy in the short run.

15 **Q. Did FPL continue to investigate the cause of the RCP seal line**
16 **failures after St. Lucie Unit 2 returned to service?**

17 A. Yes. FPL conducted several evaluations that resulted in a much
18 better understanding of the mechanisms that created the line
19 failures. These evaluations led us to conclude that vibration was a
20 major contributor to the failures. Vibration of the lines resulted from
21 vibration of the RCPs themselves, and we determined that the extent

REVISED 10-15-08

1 of the line vibration depended upon how closely a line's resonant
2 frequency matched the vibration frequency of the RCPs.

3 **Q. Has FPL experienced RCP seal line failures at St. Lucie Unit 1?**

4 A. No. However, with the assistance of an outside firm specializing in
5 piping analysis, FPL has risk-ranked the Unit 1 RCP seal lines based
6 on piping geometry and the potential for vibration fatigue cracking.
7 Each of the 16 lines was assigned a risk of either low, moderate or
8 high. The results of this analysis were reviewed and accepted by
9 FPL's Site Design Engineering organization. As a preventive
10 measure, FPL plans to replace four seal lines during Unit 1's Fall
11 2008 refueling outage that have been identified as high risk. FPL will
12 continue to monitor the medium and low-risk lines for further
13 deterioration but does not believe that replacing them is warranted at
14 this time.

15 **Q. Has FPL experienced any other unplanned outages at its St.
16 Lucie plant in 2008?**

17 A. In June 2008 St Lucie Unit 2 was manually shut down due to a
18 secondary side transient. This transient occurred during
19 maintenance activities to replace a feedwater heater level detector.
20 The outage duration for this event was approximately 2 days.

REVISED 10-15-08

1 Also in June 2008, St Lucie Unit 2 was manually shut down due to
2 a trip of a main condensate pump when the motor leads associated
3 with this pump electrically faulted. The outage duration for this
4 event was approximately 2 days.

5

6 In August 2008, St. Lucie Unit 1 shut down due to flooding
7 associated with the unprecedented amount of rainfall from Tropical
8 Storm Fay. The outage duration was approximately 5 days.

9

10 FPL is in the process of investigating and evaluating these recent
11 outages.

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

13 **A. Yes it does.**

1 BY MR. BUTLER:

2 Q. Mr. Jones, I would ask you at this point to
3 please summarize your testimony.

4 A. All right. Good morning, Mr. Chairman and
5 Commissioners. My testimony presents and explains
6 various aspects of fuel and nuclear operations, but I
7 would like to focus my summary on the portion related to
8 addressing Issue 13C concerning FPL's recovery of
9 replacement power costs associated with the outage
10 extension of Turkey Point Unit 3 resulting from the
11 discovery of a drilled hole in the pressurizer piping.

12 Toward the end of Turkey Point Unit 3's spring
13 2006 refueling outage, FPL personnel identified a small
14 drilled hole in the pressurizer piping on Unit 3 during
15 routine restart testing and inspections. Immediately
16 after discovering the drilled hole on March 31st, 2006,
17 FPL conducted an extensive review of the unit to ensure
18 no other systems were damaged.

19 The FBI and FPL's corporate security
20 department have both conducted investigations to
21 determine who and under what circumstances the hole was
22 drilled. Those investigations were commenced
23 immediately after the drilled hole was discovered. They
24 were extensive, and as a result, lasted more than a
25 year. Both investigations are complete. FPL's

1 corporate security department issued an investigative
2 report summarizing both its and the FBI's investigation.

3 The investigations have concluded that the
4 hole was drilled by a single individual working alone.
5 The identified individual was employed by a contractor
6 that FPL hired to perform services in support of Unit
7 3's spring 2006 refueling outage. The individual had
8 been granted unescorted access to the Turkey Point
9 nuclear power plant in early March 2006 after completing
10 FPL's comprehensive access authorization and
11 fitness-for-duty screening.

12 The FPL access authorization and
13 fitness-for-duty program is governed, mandated, and
14 inspected by the Nuclear Regulatory Commission. It is
15 required to meet the strict standards and guidelines set
16 forth by the Nuclear Regulatory Commission, the Code of
17 Federal Regulations, and additional industry guidance.

18 There are a number of elements associated with
19 the access control program and fitness-for-duty program
20 not only at the FPL nuclear stations, but throughout our
21 industry. First, an FPL supervisor must determine the
22 need for access to the facility, must specify the reason
23 for the access, and determine the level of access that
24 an individual needs to perform the work for which
25 they're being employed or contracted. There is a

1 verification of employment history that is performed.
2 There's a credit check. There's a character
3 verification that is performed using references.

4 There's a psychological screening that must be
5 completed that consists of -- it's a two-tiered
6 approach. There's first a 600-question psychological
7 exam that is administered to every candidate, and that
8 is to determine psychological stability as well as other
9 characteristics, the results in response to those
10 questions reviewed by psychologists. Based on that
11 review, an individual may or may not have to undergo a
12 clinical evaluation by a licensed psychologist. About
13 18 to 22 percent of our contracted workforce has to
14 complete the second tier to successfully complete the
15 psychological screening.

16 There's an FBI criminal history background
17 check that is performed using the applicant's
18 fingerprints. Once that background is received by FPL,
19 we put it through a matrix to review the nature of the
20 offenses, the history of the offenses, the offenses in
21 the aggregate, how the offenses were dispositioned.
22 There's a point system involved, and we use it to
23 determine that there are no disqualifying events or
24 history. This matrix has been inspected and approved by
25 the Nuclear Regulatory Commission.

1 We also subject every applicant to drug and
2 alcohol screening. And what's involved there is, you
3 submit to an alcohol test, and you submit to a drug
4 test, and those results must come back negative, and
5 that is required pre-access. And if you are successful
6 in gaining access to our facility, then you're subjected
7 to random drug screening, as well as our continual
8 behavioral observation program that all supervisors and
9 employees are trained to observe for aberrant behaviors
10 in employees or contractors.

11 As I mentioned, this individual did
12 successfully complete all phases of the screening. As a
13 result of the event and based on our findings, this
14 individual's access was denied to all our FPL plants and
15 will not be renewed.

16 I would like to state that shortly after the
17 event, shortly after we discovered the drilled hole, the
18 drilled hole in the pressurizer piping, the Nuclear
19 Regulatory Commission dispatched an Augmented Inspection
20 Team. An Augmented Inspection Team is a team of
21 inspectors that's dispatched by the NRC regional
22 headquarters that consists of a number of inspectors in
23 a number of areas with a charter, and their charter was
24 to review the event, our response to the event, to
25 examine and inspect our programs, our processes, our

1 personnel, review the physical security plan, and to
2 verify that we were in compliance with our processes,
3 programs, and procedures, and that not only were we in
4 compliance with those processes, programs, and
5 procedures, but they were in full compliance with those
6 as required by the Nuclear Regulatory Commission.

7 CHAIRMAN CARTER: Mr. Jones, are you close to
8 wrapping up?

9 THE WITNESS: Yes, I am. Yes, sir.

10 CHAIRMAN CARTER: All right.

11 THE WITNESS: The NRC's Augmented Inspection
12 Team concluded that FPL's identification,
13 classification, and response to the damage event were
14 appropriate. And in addition, the NRC's Augmented
15 Inspection Team found that our access authorization
16 personnel programs, processes, and procedures were in
17 full compliance with the requirements of the NRC, and
18 that our physical security plan was in compliance with
19 the NRC, and that our security officers were
20 appropriately stationed to control and limit access and
21 exit to vital areas. In fact, the NRC Augmented
22 Inspection Team had no adverse findings or violations
23 based on this inspection.

24 FPL's security programs clearly provide a high
25 degree of protection and represent a prudent response to

1 the risk of such criminal acts taking place. Even the
2 most rigorous access control, worker screening, and
3 security programs can identify and prevent only a high
4 percentage of potential personnel problems. They can
5 never provide 100 percent protection against deliberate
6 acts of vandalism carried out by an individual who met
7 reasonable and thorough screening criteria for access.
8 That is why both the security programs and plant systems
9 have many layers of defense to protect the health and
10 safety of the public.

11 Speaking from the perspective of nuclear
12 operations, I see nothing that could warrant criticism
13 in FPL's actions before or after the drilled hole was
14 discovered. FPL management took extensive, reasonable,
15 and rigorous actions that complied fully with the NRC
16 requirements and industry standards in order to prevent
17 improper access and deliberate criminal acts. FPL is
18 not aware of, nor has anyone else indicated any
19 reasonable actions that could have been taken without
20 the benefit of hindsight to prevent the criminal act
21 that extended the Unit 3 outage.

22 This concludes my summary, Mr. Chairman.

23 CHAIRMAN CARTER: Thank you.

24 MR. BUTLER: Tender the witness for
25 cross-examination.

1 CHAIRMAN CARTER: Mr. Burgess, you're
2 recognized, sir.

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

4 CROSS-EXAMINATION

5 BY MR. BURGESS:

6 Q. Mr. Jones, I have some questions, because I'm
7 not fully understanding who knew what specific facts at
8 what point in time, and I have some questions for you
9 along those lines.

10 I do want to say, though, that I think it is
11 to the company's credit and Mr. Butler's credit that you
12 did bring forward this FBI report prior to the
13 Commission, but -- I mean prior to the Commission
14 proceedings, but I have some specific questions with
15 regard to that.

16 Mr. Jones, when did you gain access to this
17 report that has now been identified in the aggregate as
18 Exhibit 54?

19 A. Based on the submittal, there is a letter from
20 the Federal Bureau of Investigation that's dated
21 September 26, 2008, to our attorney, Mr. Antonio
22 Fernandez. And I would like to clarify, this is not an
23 FBI report.

24 Q. Okay. Well, then please clarify. This is a
25 report from the NRC?

1 A. This is a memorandum from the Federal Bureau
2 of Investigation to Mr. Antonio Fernandez stating that
3 while processing the Freedom of Information Privacy Act
4 request, that the NRC had identified that there were
5 documents in their possession from the FBI, and that we
6 he had requested the release from the NRC, and they
7 referred it to the FBI. And if you examine these
8 documents closely, they are field notes, investigative
9 notes, but it is not a formal FBI report. They are FBI
10 documents, largely raw data.

11 Q. Thank you. Would you look at some of those
12 field notes? I would ask you if you would look at that
13 which has been Bates stamped -- let's see. 00000011 of
14 Exhibit 54. It's page 11 of Exhibit 54.

15 A. My pages aren't numbered.

16 Q. You don't have a bottom right-hand -- do you
17 have a copy of Exhibit 54, Hearing Exhibit 54?

18 MR. BUTLER: He has a copy of the report. He
19 doesn't have it with the Bates numbers. Let's see if we
20 can --

21 MR. BURGESS: It would be the eleventh page in
22 of the --

23 CHAIRMAN CARTER: We've got it.

24 MR. BUTLER: That's okay. We've got it.

25 MR. BURGESS: Thank you. Thank you,

1 Mr. Chairman.

2 CHAIRMAN CARTER: You may proceed.

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

4 BY MR. BURGESS:

5 Q. And this you received -- would you repeat
6 again the date that Florida Power & Light received this?

7 A. September 26, 2008. That's the date on the
8 letterhead. I don't know the actual date it was
9 received in the office.

10 Q. When did you become privy to this information?

11 A. When did I become privy to this information?
12 I received a copy of this on Friday of last week.

13 Q. From whom did you receive this copy?

14 A. I received this copy from our reg affairs
15 folks.

16 Q. Did you ask them why the month delay from the
17 time that it was received by Florida Power & Light --

18 A. No.

19 Q. -- until the time that you obtained a copy?

20 A. No, I did not.

21 Q. Weren't you curious about that?

22 A. No, I was not.

23 Q. Do you think this is relevant to the testimony
24 that you've provided to the Public Service Commission?

25 A. Yes.

1 Q. When I look at that which has been Bates
2 stamped number 11 and I look approximately in the middle
3 of that, it indicates that a lot of -- that some of the
4 information that's included on this page was disclosed
5 in the subject's Turkey Point security questionnaire.
6 Do you see that?

7 A. Yes, I see the information.

8 Q. Okay. And it indicates that his arrest record
9 was disclosed in the Turkey Point security questionnaire
10 and that the information about whether he had sold or
11 used drugs was included in the security questionnaire;
12 is that correct?

13 A. Yes. There is a personal history
14 questionnaire that every applicant is required to fill
15 out, and that is really the beginning of the screening
16 process, and so there are a series of questions that you
17 must complete.

18 Q. So he completed this sometime prior to
19 February of 2006, is that correct, or sometime in the
20 range of February 2006?

21 A. I couldn't be sure exactly whether it would be
22 January or February, but obviously before access, he
23 completed the question -- now, this is excerpts from
24 the -- this is not the questionnaire. This is someone
25 relaying information through a telephone log of what's

1 on the questionnaire.

2 Q. Well, that's what I wanted to find out, is
3 what is on the questionnaire. Have you looked -- when
4 did you look at the questionnaire?

5 A. I haven't reviewed the questionnaire.

6 Q. But you provided testimony to the Public
7 Service Commission about in this particular person's
8 background. Why have you not reviewed the
9 questionnaire?

10 A. The access program manager who has the actual
11 file for this individual provided the information under
12 my direction. The personal questionnaire and the
13 criminal background is, of course -- to explain, is
14 confidential.

15 Now, the fact that this information is before
16 us right now is because it has been disclosed publicly,
17 but, of course, the name of the individual has not been
18 provided. To provide the name as well as the history
19 would be a violation of the Code of Federal Regulations.
20 So all this information is protected, and, of course,
21 unless you have a need to see the information, you don't
22 gain access to the information, including the matrix.

23 But in regards to the personal history
24 questionnaire, obviously, I've seen the personal history
25 questionnaire. I haven't memorized all the questions

1 that are on that questionnaire. I've personally filled
2 it out a number of times as I have gained access to
3 nuclear power plants over my career. I just wanted to
4 clarify that this is not the actual questionnaire that
5 the individual filled out.

6 Q. Well, I'm trying to understand this. Now, is
7 our looking at this any kind of violation of the Code of
8 Federal Regulations?

9 A. No, because the actual individual's name is
10 withheld.

11 Q. Okay. And could you have obtained a copy of
12 the security questionnaire with the actual individual's
13 name withheld without it being a violation of the Code
14 of Federal Regulations?

15 A. Could I have looked at the personal
16 questionnaire and the results of the FBI background
17 check as long as the name of the person was withheld?

18 Q. That's my question.

19 A. Yes.

20 Q. And do I understand correctly that you did
21 not?

22 A. No, I did not. The information provided was
23 by the access program manager, who has access to that
24 information.

25 Q. But you're providing the sworn testimony

1 reflecting information on it to the Public Service
2 Commission?

3 A. That is correct. It was prepared under my
4 direction.

5 Q. And you didn't consider it important to
6 examine the source document to confirm the statements
7 that you were making to the Public Service Commission?

8 A. I did not have to review the original source
9 documents. The access program manager is a person of
10 high integrity, and his statements and his information
11 is valid and correct. He also has unescorted access to
12 nuclear facilities.

13 Q. Did this person, the access program manager
14 that provided you information about the questionnaire so
15 you could provide information and make representations
16 to the Public Service Commission about the individual,
17 did this access program manager tell you about the
18 criminal background?

19 A. Yes.

20 Q. So he told you about each of these
21 circumstances?

22 A. He told me that this individual had a criminal
23 background. He told me that per the matrix, the
24 individual had no disqualifying events based on the
25 nature of the events, the disposition of the charges,

1 and the age at which the events had occurred.

2 Q. Have you represented to the Public Service
3 Commission or Public Service Commission staff in any
4 fashion that you were aware of this individual having a
5 criminal background?

6 A. No. In my testimony, I provided that the
7 individual had met all the screening requirements,
8 including the criminal history background check.

9 Q. Do you recall being deposed by staff attorney
10 Keino Young on October 30th, 2007?

11 A. Yes.

12 Q. Do you recall being asked by Mr. Young, "To
13 your knowledge, did this individual have a criminal
14 history, to the extent you can answer?"

15 MR. BUTLER: I'm sorry. Can you refer to the
16 page in the deposition?

17 MR. BURGESS: Yes. It would be page 42 of the
18 deposition on October 30th, 2007.

19 MR. BUTLER: Mr. Jones, do you have a copy of
20 that deposition available to you?

21 THE WITNESS: Yes, I do.

22 MR. BUTLER: Okay.

23 BY MR. BURGESS:

24 Q. On line 20, for your reference, do you recall
25 being asked by Mr. Young whether the individual had a

1 criminal history, to the extent you were able to answer?

2 A. We're on page 42?

3 Q. Line 20.

4 A. Line 20? That doesn't match what I have here
5 in front of me.

6 MR. BUTLER: Steve, are you referring to a
7 page number at the bottom of the page? You'll note
8 there's also -- embedded in the text, there's a page
9 number that doesn't coincide necessarily.

10 MR. BURGESS: I have that as Hearing -- it
11 would be Bates stamped Hearing Exhibit Number 00002407.
12 The 42 I was using was the number of the deposition as
13 it was transcribed.

14 A. You're going to have to help me get to the
15 right page.

16 MR. BUTLER: I'm sorry. The question you're
17 referring to, it starts, "Okay. Strike that. Strike
18 that question, Mr. Jones. I have another question. To
19 your knowledge, did this individual have a criminal
20 history, to the extent you can answer?"

21 MR. BURGESS: That's what I'm referring to.

22 And I apologize, Commissioner. This is item
23 27 in Composite Exhibit 2. I believe that it's under
24 tab 27 of Composite Exhibit 2.

25 BY MR. BURGESS:

1 Q. Mr. Jones, have you had an opportunity to
2 review that?

3 A. If you could just give me a second to review
4 it.

5 Q. Excuse me.

6 A. Yes, I have reviewed it.

7 Q. Okay. Would you agree with me that you told
8 Mr. Young in response to that question that to your
9 knowledge, no, he did not have a criminal history?

10 A. That is correct.

11 Q. When did you become aware, then, from the
12 access program manager that this individual did have a
13 criminal history?

14 A. It was sometime this year. I don't know the
15 exact time. It was -- I did not know the name of the
16 individual. I also had only the corporate investigative
17 security report that summarized the results of the FBI
18 and the corporate security investigation. I've only
19 recently had conversations, even as recently as
20 yesterday, asking about details around this particular
21 individual, given the FBI report listed specific
22 histories.

23 I did not inquire about, going back a year
24 ago, because of the sensitivity of the information and
25 the violation of the law to disclose any information

1 about an individual is -- I did not have a need to know
2 the specifics on this individual. What I needed to know
3 from the program security manager was, was a matrix
4 applied, and did the individual clear the matrix, and
5 were there no disqualifying events.

6 Q. Okay. An event happened in 2006. Early 2006,
7 you started investigating it. In late 2007, you
8 represented in a deposition that to your knowledge, this
9 individual had no criminal background.

10 MR. BUTLER: Excuse me. I'm going to object
11 to this question. If you look at the deposition, the
12 very next sentence is, "But I would also tell you that I
13 would not know that." And then Mr. Jones went on to
14 describe the application of the matrix. I think that
15 Mr. Burgess is taking the answer considerably out of
16 context.

17 MR. BURGESS: Not at all, Commissioner. That
18 is exactly what I want to get to, is what did this man
19 know, when did he know it, and what was his
20 interpretation of it when he put together the testimony
21 that made these representations to the Public Service
22 Commission. That's exactly what I'm trying to find out,
23 is what did he know.

24 CHAIRMAN CARTER: Mr. Butler, the basis of
25 your objection again is?

1 MR. BUTLER: The basis of my objection is that
2 Mr. Burgess was predicating his question on taking this
3 single sentence that begins the answer, "To my
4 knowledge, no," and putting the question to Mr. Jones
5 based on that alone. I think that if Mr. Burgess wants
6 to ask Mr. Jones about his response to this question in
7 its totality, then that's certainly fair.

8 CHAIRMAN CARTER: I don't see a problem with
9 that, if he wants to answer that. I believe that, you
10 know, it is what it is, and he can answer to explain it
11 based on what's in the record. Ms. Helton?

12 MS. HELTON: Yes. Mr. Jones has the full
13 opportunity to explain his answer.

14 CHAIRMAN CARTER: Okay. You may proceed.

15 MR. BURGESS: Thank you.

16 BY MR. BURGESS:

17 Q. Let me just start with a new question and
18 withdraw anything that may be pending and ask you, at
19 the time in October of 2007, up to that point, what had
20 your access program manager told you about information
21 that was in the security questionnaire of this
22 individual that had been -- that was being investigated?

23 A. Up to that point, what my security access
24 program manager -- the information provided was that
25 this person had completed all the screening requirements

1 for the access control program and fitness-for-duty
2 program, had completed the FBI background check, had
3 been processed through the matrix in accordance with the
4 procedure, and there were no disqualifying events, had
5 undergone the psychological screening process in its
6 entirety and was not disqualified from gaining access,
7 had successfully completed the drug and alcohol program
8 screening and had not been disqualified.

9 And, Mr. Chairman and Commissioners, I would
10 like to clarify that I'm prohibited by the NRC
11 regulations, 10 CFR 7356, from disclosing criminal
12 history information that's reported by applicants for
13 unescorted access, and so is every employee of FPL. And
14 so I did -- so it would be improper for me to request
15 the specifics on that individual, because I did not have
16 a need to know that information.

17 MR. BUTLER: I need to interject something
18 here just so that everybody is clear. Frankly, FPL was
19 a little surprised by what it was the FBI concluded
20 could be made public in response to the FOIA request. I
21 think that Mr. Jones has expressed his concern. We
22 struggled some with the fact that is it more specific
23 and more identifying probably than we would feel
24 comfortable generally disclosing, given the constraints
25 that Mr. Jones has referred to.

1 On the other hand, the FBI has disclosed it to
2 us publicly, and therefore, in our view, it is public
3 information. Because it's public information that the
4 FBI has disclosed, we've provided it on that basis. But
5 it puts us as a company, and Mr. Jones in particular, in
6 sort of an awkward position here, because it's probably
7 not -- if we had been asked in advance what would get
8 disclosed, we might not have seen this, sir, given the
9 same answer as what we saw in the document.

10 CHAIRMAN CARTER: I think that -- and I'm
11 thinking aloud here. I think that based upon the fact
12 that the document is public information, he can respond
13 to that without violating whatever federal privacy
14 requirements there may be. I don't think Mr. Burgess
15 has asked him any questions that would violate that at
16 this point in time.

17 MR. BUTLER: I agree. I'm not objecting to
18 the questions. I'm not concerned about that. I'm
19 simply pointing out that we find ourselves in sort of an
20 odd posture. We are talking publicly about information,
21 appropriately so, given that it has been made public,
22 but about information that, were the FBI not to have
23 publicized it, I think our interpretation would have
24 been that we would have had to be more circumspect in
25 the extent to which that sort of information would be

1 publicly disclosed.

2 And so when Mr. Jones is asked about his
3 reactions and his level of caution in October of 2007
4 when his deposition was taken, you know, he was reacting
5 to how FPL understands the Code of Federal Regulations
6 to restrict licensees such as FPL in disclosing this
7 sort of information. Now we're in sort of a different
8 posture because we're talking about something that the
9 FBI has made public through its FOIA response.

10 So I'm not asking for a ruling. I simply
11 wanted to provide context to the commentary that is
12 occurring.

13 CHAIRMAN CARTER: But I do -- and correct me
14 if I'm wrong, Mr. Burgess. I think you just asked him
15 based upon the information within the confines of the
16 document, not necessarily asking him to violate federal
17 privacy protection rights for any employees.

18 MR. BURGESS: Absolutely, Mr. Chairman. And
19 to provide context for what my concerns are, basically,
20 I understand some of the quandary Mr. Jones felt like he
21 was in. I mean, he thought there were certain
22 constraints, and he didn't want to violate those. At
23 the same time, he was making representations to the
24 Public Service Commission, and so there was -- he felt
25 like he perhaps -- I'm putting words in his mouth, but

1 thought he was walking a tightrope.

2 The fact of the matter remains, though, and
3 this is what I think is so important for the Commission,
4 the Commission received this information. This
5 testimony is the information, and the only information
6 you had on this subject matter up until two days ago, or
7 until Friday.

8 And so what I'm trying to find out is, on
9 these representations, what did you know when you made
10 this representation? And it's my understanding, and I'm
11 going to ask with more questions, but did you provide
12 testimony earlier than this, and was this deposition
13 taken by Mr. Young in response to testimony, and what
14 did you know at the time of the testimony, what did you
15 know, and what had you asked of your corporate
16 information, what had you asked to try to find out about
17 this individual and about the security information about
18 this individual before you made the representation to
19 the Public Service Commission that he had passed all of
20 the matters and all of the subjects that had to be
21 passed in order for him to gain this heightened security
22 clearance? And so that's simply --

23 CHAIRMAN CARTER: Sure.

24 MR. BURGESS: That is the context of what I'm
25 trying to --

1 CHAIRMAN CARTER: You may proceed.

2 MR. BURGESS: I appreciate his concern.

3 THE WITNESS: And, Mr. Chairman, I'm just
4 trying to explain that I did not have a need to know the
5 details, nor am I allowed to know the details of an
6 individual's confidential background check. The FBI had
7 a need to know that, and so our corporate access people
8 disclosed that information, obviously, to them.

9 CHAIRMAN CARTER: That's appropriate, and we
10 really, based upon the requirements and prohibitions on
11 that, particularly -- I mean, every person is entitled
12 to the right of privacy, you know, but nevertheless, the
13 questions that Mr. Burgess is asking you I don't believe
14 causes you to violate the privacy of the individual,
15 unless I'm misreading it.

16 Commissioner Argenziano.

17 COMMISSIONER ARGENZIANO: But that begs
18 question. Who at the company does get to know the
19 results of the background check? Because after all,
20 that's what it's for, is to make sure that somebody
21 screens it. And I'm wondering if that person shouldn't
22 be the person that's presenting information to the
23 Commission.

24 CHAIRMAN CARTER: I think we will allow
25 Mr. Burgess to continue with his line of questioning,

1 and --

2 COMMISSIONER ARGENZIANO: And maybe someone
3 could answer that question for me later from the
4 company.

5 CHAIRMAN CARTER: One second. Commissioner
6 Skop.

7 COMMISSIONER SKOP: Thank you, Mr. Chairman.
8 Commissioner Argenziano read my mind. You know,
9 assuming there was a background check prior to granting
10 unescorted access, who had the responsibility at FPL of
11 reviewing the results of that background check?

12 THE WITNESS: Mr. Commissioner, the access
13 program -- there's a fitness-for-duty access program
14 person at each nuclear facility, and then there's the
15 corporate access program and fitness-for-duty personnel
16 that get the results of those. They screen those in a
17 matrix, and the corporate access manager and their
18 direct reports have that responsibility and
19 accountability.

20 COMMISSIONER SKOP: So would you agree that
21 something fell through the cracks here in terms of some
22 of the responses that were provided on the
23 questionnaire?

24 THE WITNESS: No, I do not agree with that.
25 The personal history questionnaire was filled out.

1 Based on the responses on the personal questionnaire,
2 the appropriate actions were taken. In response to
3 the -- based on the information in the personal history
4 questionnaire and the results of the FBI fingerprint
5 check, there were two arrests. All the charges were
6 dismissed with the exception of one, as I recall,
7 looking at the FBI notes, field notes.

8 The corporate access control people put the
9 offenses through the matrix. I've got to be careful
10 here, because the matrix itself is safeguarded
11 information. But based on the nature of the offense,
12 the age of the offense, 16 years old, the disposition of
13 the charges, this was not a disqualifying event.

14 In respect to the question that was raised
15 about, again taken out of context, have you ever used or
16 sold drugs, there's a whole lot more that goes along
17 with that. And basically, this person was -- disclosed
18 that in the '80s, they had used marijuana, but had
19 ceased using marijuana, and there was nothing in the
20 character verifications or other background checks that
21 indicated otherwise.

22 COMMISSIONER SKOP: So he didn't inhale?

23 CHAIRMAN CARTER: Let's yield for a moment to
24 Commissioner Argenziano.

25 COMMISSIONER ARGENZIANO: Well, I certainly

1 understand that, and that what is on this page here --
2 since this is not the background check itself, the
3 question would remain to me as a Commissioner trying to
4 determine whether the company with due diligence looked
5 at everything, what else -- was there anything else on
6 the criminal background check that goes beyond what's on
7 this page?

8 And not having that information, that leaves a
9 gaping hole as to whether the company -- you know, if
10 this was all that was presented in front of the company
11 on the complete background check, that makes a
12 difference to me. If there was something else on that
13 background check, which, of course, there's nothing here
14 that indicates to me that -- was there anything else?
15 This is just an excerpt.

16 So my question would be to a person -- and it
17 obviously is not to this witness, because he was not
18 allowed or couldn't see the background check itself. So
19 now I have a question of, did the background check have
20 anything else indicating any type of arrest or problem
21 other than the excerpt that's on this sheet of paper?
22 Because that is what we're determining, and without that
23 information, how would we know? Do you follow the
24 question? Am I articulating well or not?

25 CHAIRMAN CARTER: Yes, you are. Do you know

1 the answer to that?

2 THE WITNESS: Yes. Yes, I do. The Nuclear
3 Regulatory Commission came in and with their inspection
4 team -- actually, there were two inspections. There was
5 the Augmented Inspection Team where they came in and
6 reviewed our programs and processes and validated that
7 we had appropriately used the matrix to determine
8 access.

9 And then there was another inspection that
10 just happened to be a baseline inspection that followed
11 a couple of months later where they were looking at the
12 access control program, looking at our safeguards
13 procedures. And one of the regional inspectors was so
14 impressed with the matrix, the thoroughness of it, the
15 point system that we used to disqualify an individual,
16 that he -- it is safeguarded information -- that he took
17 that back to the region, because he thought that that
18 was in many ways superior to what he had seen at other
19 utilities. There were no findings of violations as a
20 result of that inspection.

21 COMMISSIONER ARGENZIANO: That's not the
22 question.

23 CHAIRMAN CARTER: Commissioner Argenziano.

24 COMMISSIONER ARGENZIANO: That's not the
25 question. On the criminal background check, I know

1 when -- in the State Legislature, when I was criminal
2 justice chair, we wanted to implement certain laws in
3 certain places saying, "Well, we want you to do a
4 background check for sexual predators in schools. We
5 want this criteria looked at." Okay?

6 So what I'm trying to figure out -- and I'm
7 not questioning the matrix that you use. Since we are
8 here to determine whether FP&L was negligent, or
9 whatever word I want to use, or didn't do a good job in
10 vetting, there must have been a process -- if there's a
11 background check, there must be something that is
12 included in the background check. Is it a complete FBI
13 background check that is done on individuals that work
14 at a nuclear power plant, and what is the criteria
15 they're looking for?

16 And some things here, if these don't meet, you
17 know, kick-out status as far as, well, this person did
18 this 20 years ago, it doesn't rise to the level or
19 whatever, if they're not incorporated, well, then they
20 can't be looked at. They can be looked at as saying is
21 this good judgment to hire somebody like this, but how
22 many people do we have working that had things that they
23 had done when they were 18 or 17 or 16 or 15?

24 What I'm looking for is the complete
25 background check. Was there anything other than what's

1 on this sheet of paper that was a criminal background
2 check?

3 Now, there could be other things. I mean,
4 from what I'm seeing, the man didn't pass the psych
5 test. I'm more interested in why you let him go through
6 without passing the psych test. But if I'm looking at a
7 criminal background check, first of all, I don't know
8 what the kick-out -- I don't know what's the proper term
9 to use. What would be the proper matrix on the matrix
10 that said, okay, this person was arrested in 1980, and
11 for this particular crime, he is not eligible to work in
12 this plant? I don't see the guidelines for what kicks a
13 person out immediately.

14 And then the second thing I don't see is, this
15 is just a part. This goes to 1980. Was there anything
16 subsequently or any other arrest for this individual
17 that we obviously don't have in front of us? And we
18 don't know, because the witness has not seen that. And
19 if I'm being asked to look at a criminal history and
20 only seeing part of it, my question I have is, who from
21 the company can say, without giving the man's name or
22 anything else, was there any other arrest or anything
23 else on a criminal background check that we should be
24 aware of in making this determination?

25 THE WITNESS: Yes, I can answer that question.

1 COMMISSIONER ARGENZIANO: Okay.

2 THE WITNESS: The personal history
3 questionnaire serves two purposes. One, it's for you to
4 disclose any and all past transgressions. The question
5 that you're asked is, "Do you have any arrests," not
6 within the last three years, not within the last seven
7 years, not within the last ten years.

8 As those of you who have been through probably
9 security background checks, a number of them, including
10 the one I went through after 9/11 for the Federal
11 Government, only asked me back ten years, which I
12 thought was interesting. We asked any and all. Okay?
13 We also asked -- obviously, you see one of the questions
14 is, "Have you ever used or sold illegal drugs?"

15 COMMISSIONER ARGENZIANO: Excuse me. And I
16 don't mean to cut you off. I know what you asked, and I
17 know that some people will not give everything. In the
18 background check itself, first of all, was it a complete
19 criminal history, an FBI --

20 THE WITNESS: Yes, it is.

21 COMMISSIONER ARGENZIANO: What class was it,
22 or do you know? Was it a complete criminal history, and
23 was there anything else on the criminal history, not
24 what the person wrote down? I mean, obviously, he said
25 certain things, and I don't know if that's his complete

1 recollection of what he was arrested for or not. I
2 would like to know what the criminal history came up
3 with.

4 THE WITNESS: Right. The criminal history
5 came up with, in September of 1990, the arrest for
6 provocation, criminal recklessness and mischief, and
7 those were the charges that were dismissed in 1994. So,
8 yes, using -- the fingerprints are submitted to the NRC.
9 Then they go to the FBI, and the FBI does a complete
10 criminal background check.

11 What I was going to mention is, the second
12 purpose of that personal history questionnaire -- I
13 can't even say it now. It's an integrity test. If you
14 omit any offense, when we find it, you are not going to
15 be admitted on the basis of integrity. So if you want
16 to know, one of the disqualifying things is, if you lie
17 to us, you're done.

18 COMMISSIONER ARGENZIANO: Right, and I
19 understand that. But what you're telling us today is
20 that to your knowledge, because you said you did not see
21 the history check, but to your knowledge -- and I would
22 love to ask this question to the person who does look at
23 the criminal history check. But to your knowledge, was
24 this on this paper the only things that came up in the
25 criminal background check?

1 THE WITNESS: The only thing that came up on
2 the criminal history background check by the FBI was the
3 September 1990 arrest for provocation, criminal reckless
4 and mischief, and those are the charges that were
5 dismissed in 1994.

6 COMMISSIONER ARGENZIANO: Then how did you get
7 the one from '91 and '89 and '89?

8 THE WITNESS: That was the individual's
9 recollection and what they actually disclosed on the
10 form.

11 COMMISSIONER ARGENZIANO: That makes me feel
12 really comfortable now. Okay. There was nothing else,
13 then?

14 THE WITNESS: That is correct.

15 COMMISSIONER ARGENZIANO: Okay. Thank you.

16 THE WITNESS: There was nothing else from the
17 FBI.

18 CHAIRMAN CARTER: Thank you. Commissioner
19 Skop.

20 COMMISSIONER SKOP: Thank you, Mr. Chairman.
21 I just wanted to clarify one point that I heard. You
22 mentioned that the individual did not disclose all of
23 his offenses which he was arrested for?

24 THE WITNESS: No, sir, I did not. I said -- I
25 used as an example, on the personal history

1 questionnaire, when we ask you to disclose, you know,
2 have you ever been arrested, if you fail to disclose
3 that, when the FBI fingerprint check comes back and
4 states otherwise, that is a disqualifying event, because
5 we are trying to verify trustworthy, integrity, and
6 reliability.

7 If you put on there -- if you check no on the
8 box, have you ever used or sold drugs, and through our
9 character verification we find out that you, you know,
10 in your 20s or in college, you know, recreationally used
11 marijuana, but to your words, did not inhale, that's
12 going to be a disqualifying event, again, because you
13 lied to us.

14 CHAIRMAN CARTER: Let me -- would you yield?

15 COMMISSIONER SKOP: Just one quick one, and
16 then I'll yield.

17 CHAIRMAN CARTER: We'll come back.

18 COMMISSIONER SKOP: So for each of the
19 offenses that are listed on the telephone conversation
20 record that is in Exhibit 54, each of those arrests were
21 identified by the person of interest; is that correct?

22 THE WITNESS: Again, this being field notes --
23 and I talked to the access program manager to find out
24 what was on the FBI report. What was actually disclosed
25 by the individual -- let me make sure I -- is that on or

1 about June of 1989, he disclosed that he was arrested
2 for public intoxication and reckless driving. On the
3 form, he disclosed that on or about June of 1991, he was
4 arrested for discharging a firearm, criminal
5 recklessness -- and he got the date wrong on this.
6 Whoever put this information in here got the date wrong.
7 It's not 1990. It's all 1991. And he didn't get the
8 exact nature of the charge correct, but off the FBI, it
9 matches up, with a couple of word differences, to what
10 the charge was. So there was an arrest in 1989, and
11 there was an arrest in 1991.

12 COMMISSIONER SKOP: Thank you.

13 THE WITNESS: To which he pleaded guilty for
14 driving under the influence.

15 COMMISSIONER SKOP: Thank you.

16 THE WITNESS: The other charges were
17 dismissed.

18 CHAIRMAN CARTER: Commissioner Argenziano.

19 COMMISSIONER ARGENZIANO: And I guess my
20 comment is that, again going back to the criteria that
21 would -- you know, that a company would have to rely on,
22 somewhere in federal law, there must be something that
23 indicates what this background is supposed to eliminate
24 from hiring.

25 And when you look at the excerpts that are

1 here, while they are disturbing to look at and they are
2 somewhat of a judgment call, if you see dismissed,
3 dismissed, dismissed, I don't know what the company
4 could do except call -- a judgment call to the person's
5 character, which probably they should do.

6 But just because it says dismissed also does
7 not mean there weren't plea bargains or all kinds of
8 things. You would look at a pattern, and I would hope
9 that the company would look at that too, because this is
10 not a Play-Doh factory. It is a nuclear power plant, so
11 you would hope that's in there.

12 So not having, you know, the guidelines in
13 front of me or to see what probably the federal law
14 indicates as to, you know, the discretion of the company
15 in hiring and what their discretion still is, I would
16 hope judgment or saying, you know, "He may have done
17 this a long time ago, but there seems to be a pattern,
18 and maybe we better not pick this person," I would hope
19 that they have that room to play.

20 I think the focus, because we're stuck with
21 this, and without seeing guidelines, goes back to, to
22 me, is that he did not pass his psychological test. So
23 when you come and say that he completed his --
24 successfully completed all phases, how do you say that
25 if he didn't pass the psych test?

1 THE WITNESS: Because the psychological phase
2 includes this 600-question psychological exam looking
3 for psychological stability and other characteristics.
4 When you take this exam, it is then reviewed by a
5 psychologist, and about 18 to 22 percent of people that
6 take this exam of our contracted workforce have to then
7 go through the rest of the psychological screening. So
8 the psychological screening in its entirety is the
9 600-question exam and the clinical interview, if
10 warranted, by a licensed psychologist.

11 COMMISSIONER ARGENZIANO: So basically, what
12 you're saying is the person in question failed the
13 written psych exam, and then some psychologist or
14 psychiatrist then gave him a check-off and said that
15 you're okay to go to work there? So he still failed the
16 written portion.

17 THE WITNESS: We do use that term, failed. In
18 fact, as I said, about 18 to 22 percent of our
19 contracted workforce fails or is flagged by their
20 responses. I prefer to use the word "screened" by the
21 responses to undergo a clinical interview.

22 COMMISSIONER ARGENZIANO: Then just one other
23 question. Given the fact that he failed the written
24 part of that test and somewhat of a judgment call, do
25 you use then the background checks even if they are

1 dismissed years ago? Do you kind of look at the whole
2 picture?

3 THE WITNESS: We look at everything in the
4 aggregate, yes, Commissioner.

5 COMMISSIONER ARGENZIANO: And you did in this
6 case?

7 THE WITNESS: Yes, that was done in this case.
8 In fact, when this person was screened to undergo the --
9 this person was screened by a licensed psychologist to
10 undergo the screening, that clinical evaluation was done
11 by a licensed psychologist that we've used for I know in
12 excess of probably 10 years, and then the results of
13 that went to another licensed psychologist that reviewed
14 those results and then gave approval for the
15 psychological screening. So we used two psychologists
16 to perform that evaluation, the one that does the
17 clinical interview and the evaluation, and then that is
18 reviewed by a second independent psychologist for
19 approval. We don't rely on one source.

20 COMMISSIONER ARGENZIANO: Has the stringency
21 -- I guess that would be the word -- of the psychologist
22 you said you've been using for 10 years --

23 THE WITNESS: In excess of 10 years, yes.

24 COMMISSIONER ARGENZIANO: Could it be that
25 maybe he's more relaxed in his practice -- and I know

1 this is going to sound strange, but has he ever taken
2 the psychologist test? No, I'm serious, I really am. I
3 would love to see that happen, but that's another
4 discussion. But I'm just wondering if after 10 years
5 he's not somewhat relaxed in his screening. And I guess
6 that's a judgment call on your part.

7 THE WITNESS: First, I don't know if they've
8 ever taken the exam or screening or undergone a clinical
9 interview themselves. The person that we use to make
10 the second call is nationally known and respected,
11 highly respected by the Nuclear Regulatory Commission
12 for his process and methods.

13 COMMISSIONER ARGENZIANO: But does the second
14 person or the first person psychologist, or psychiatrist
15 -- I can't remember which term you used -- do they both
16 get the benefit of knowing the background check also?

17 THE WITNESS: I don't know the answer to that
18 question.

19 COMMISSIONER ARGENZIANO: That's important, I
20 think. Thank you.

21 CHAIRMAN CARTER: Commissioner Skop.

22 COMMISSIONER SKOP: Thank you, Mr. Chairman.
23 Just a quick question, and again, this piggybacks on the
24 line of questioning that Commissioner Argenziano raised.

25 I guess it's of interest to me that the -- why

1 FPL would expend such resources to remediate the person
2 of interest in terms of hiring as a potential worker as
3 opposed to -- and noting, I believe, that his job
4 function was a sheet metal worker, which I thought I
5 heard, why would somebody go to that great length,
6 knowing what they would see in a background report,
7 noting -- you know, isn't there a more suitable, better
8 qualified worker that would require less headache and
9 drama to go clear? I mean, are we in that shortage of
10 workers for that function, and would we want that type
11 of person being in close proximity to nuclear generating
12 equipment?

13 THE WITNESS: As far as the screening and
14 background check -- and it is very rigorous, and it is
15 very extensive. Everyone undergoes that, whether
16 they're a contractor or they're going to be an FPL
17 employee. In our long-term contractors and FPL
18 employees, about 10 percent, about one out of ten wind
19 up having to go through the clinical evaluation.

20 But to answer your question more directly,
21 we're no different than any other nuclear power plant in
22 the country, in that we do bring in a large contracted
23 workforce so that we can effectively and efficiently
24 execute a refueling outage in a reasonable amount of
25 time. We process on the order of about 1,000 people to

1 accomplish a refueling outage.

2 And so, yes, the ones that are the easiest to
3 screen, the ones that are coming from another nuclear
4 power plant, we do those first, and again, the same
5 rigorous, step-by-step process. But we know with high
6 confidence that they're going to make it through that
7 unless they had some transgression from the time they
8 left nuclear plant X to come to nuclear plant Y.

9 The other ones, obviously, would be ones that
10 we would not want to go to additional trouble and
11 additional expense to process until you start running
12 out of options.

13 COMMISSIONER SKOP: Okay. I guess at the
14 appropriate point -- you know, I know that a lot of the
15 discussion from my colleagues and myself has focused on
16 the background check and the character of the person of
17 interest in this matter, but at some point, I have some
18 additional questions that I would probably want to ask
19 the appropriate person regarding security posting and
20 access and some of the things that led to the act of
21 vandalism that happened within the reactor compartment.
22 So I'll reserve those questions if you're not the
23 appropriate person.

24 THE WITNESS: Chairman and Commissioners, I do
25 want to be clear. This person did not fail the

1 psychological screening process.

2 COMMISSIONER SKOP: Well, that's not what I'm
3 seeing in front of -- in the document before me. I
4 mean, he was remediated and passed with the clinical.
5 He may have failed the questioning, the psychological
6 screening questions, but then apparently FPL undertook
7 the opportunity to have one or more clinical discussions
8 with the person of interest. Is that correct, or am I
9 misstating that?

10 THE WITNESS: That is -- I respectfully
11 disagree.

12 COMMISSIONER SKOP: Can you please explain for
13 us then what transpired, how the results that had said
14 that he failed the psychological test and he received a
15 clearance from a physician?

16 THE WITNESS: Right. That is a special
17 agent's field note.

18 The individual took the 600-question
19 psychological examination. Based on his responses as
20 screened by a licensed psychologist, he was required to
21 undergo a clinical evaluation. And as I said, that
22 happens about 18 to 20 percent of the time with the
23 contracted workforce, and it happens somewhere around 10
24 to 12 percent of the time with people that are applying
25 for FPL employment.

1 So that is a normal part of the two-tier
2 process. This person did not fail the psychological
3 screening process.

4 CHAIRMAN CARTER: Commissioner Argenziano.

5 COMMISSIONER ARGENZIANO: Well, he didn't fail
6 the process. He failed the first part of the process.
7 And in all fairness, with 600 questions, some of us
8 could fail, who knows, if they're not answered exactly,
9 you know. So what they're saying is, they have a
10 process.

11 The second part of the process they believe he
12 passed, which is hard for us to determine, because we
13 don't have any written notes or anything about -- you
14 know, one psychologist's determination on what may be
15 quite normal behavior may not strike us as normal
16 behavior, or anybody else.

17 So he failed part of it. A red flag came up.
18 Others do too. It doesn't mean the others are going to
19 go and do something. But he did fail part of that,
20 which is an indicator.

21 My question before about whether the other
22 people who are then questioning this man face to face,
23 or this woman face to face, do they get to look at the
24 background screening.

25 But then going back to what you said before

1 about background screening and why take somebody who has
2 this, if you had the opportunity to look at some
3 people's background checks from when they were 16, 17,
4 18, 20, 21, 22, some of these things are quite common.
5 Okay? And I'm not diminishing the fact of some of this
6 behavior, I mean, discharging a firearm.

7 Some of this shows a pattern also, but
8 sometimes many people out there in the general
9 population have this, and to exclude them I guess is
10 kind of difficult unless those guidelines again that I
11 was looking at, looking for, which we don't have in
12 front of us -- I don't know what the guidelines are to
13 the company as far as this is what you will -- or if
14 there are any, this is what you will kick out if they
15 come to work in a nuclear power plant. So I think we're
16 at a loss.

17 But maybe just to add that -- and I'm not
18 diminishing -- that's why I think some of it comes into
19 a judgment call. Okay, given the past history, even
20 though this person could have been young and foolish and
21 stupid and all that stuff, but does he show a pattern,
22 and is this information given to the psychologist who
23 has been flagged because the person failed the first
24 part of that? And I don't have the answers to that.

25 COMMISSIONER SKOP: To your point, do we

1 actually know whether he was young at the time these --
2 I mean, he could have for all purposes have gone through
3 a midlife crisis.

4 COMMISSIONER ARGENZIANO: Well, we don't know
5 how old he is now, so that's what I'm just assuming.

6 THE WITNESS: Chairman and Commissioners, I
7 would like to add that -- and only because it was
8 personally disclosed to me. I knew two individuals that
9 also were flagged by this process and had to undergo
10 interviews with a psychologist that happened to be
11 former Navy nuclear personnel, just like myself, in the
12 submarine service with a top-secret security clearance,
13 and right out of the Navy and in their initial
14 employment at a nuclear power plant, was screened. And
15 maybe that was as a result of volunteering for submarine
16 service. That might have been what the kicker was. But
17 one out of five, certainly it is not unusual, and that's
18 why I took issue with it. It's not a remediation. It's
19 a part of the process.

20 In regards to what the criteria is, the NRC
21 obviously through their regulations and inspections
22 mandate that we have a program, that we have a screening
23 criteria, and that it's consistently applied, and that
24 it prevents people that are untrustworthy, unreliable,
25 and without integrity from gaining access to the nuclear

1 power facility.

2 CHAIRMAN CARTER: You're recognized.

3 COMMISSIONER ARGENZIANO: That's great, and I
4 understand that. But not knowing the criteria, I'm
5 sitting here trying to judge. You know, I'm looking at
6 some of the behaviors here. I don't know if they're a
7 constant pattern. I don't know -- let me ask it this
8 way. What in the NRC criteria would tell you or mandate
9 to you that you have to not hire someone? What
10 components would there be that says this person does not
11 get hired?

12 THE WITNESS: I'm going to answer it this way
13 to keep myself out of the safeguards space, because as a
14 result of this event, I did review the matrix. And
15 between the period of time that I was site vice
16 president for Turkey Point and my new role, I was in
17 charge of corporate security, and so therefore, I wanted
18 the matrix to be reviewed to determine, you know, was it
19 in line with industry standards, how do we compare from
20 a benchmark perspective.

21 So I have seen the matrix, so I do have
22 knowledge of disqualifying events. Unfortunately, I
23 can't disclose what a disqualifying event is, because I
24 would violate the safeguards. So it's kind of
25 frustrating for me, because my hands are kind of tied.

1 If I could rattle off offenses that would automatically
2 be disqualifying, it would certainly give you some
3 comfort and assurance of the robustness of the process,
4 but I'm at a disadvantage.

5 COMMISSIONER ARGENZIANO: How could there be a
6 prohibition on you telling me what the disqualifications
7 are if you don't mention anyone that might be involved?
8 And how would this Commission ever know if we're looking
9 -- we're sitting here trying to judge whether a company
10 had negligence or didn't exhibit good judgment, and how
11 do you do that unless you get to the nut of everything
12 that's here?

13 I mean, the counselor for OPC presents a case
14 where it looks like, you know, this person maybe had a
15 background that could have contributed. But when you
16 look at dismissed, dismissed, dismissed, then it begs
17 the question of what does -- in that matrix, what is it
18 that's mandated to a nuclear power plant? And if it's
19 not, then we need to be all talking to our federal
20 counterparts to say, you know, let's do something.

21 There has to be something there that we're
22 missing that would -- let me go back to how come you
23 can't tell me what the matrix is, what are the
24 disqualifying -- how come you can't tell me that?

25 THE WITNESS: The reason I can't tell you that

1 is because the Code of Federal Regulations prevent me
2 from disclosing safeguards information. And the two
3 rules for safeguards information is -- well, you have to
4 have to have a need to know that specific information.

5 COMMISSIONER ARGENZIANO: I need to know.

6 THE WITNESS: Well, in the NRC's eyes, you
7 have to have a need to know that information. And
8 obviously, my --

9 COMMISSIONER ARGENZIANO: I don't think
10 that's --

11 THE WITNESS: -- need to know was that -- so
12 that I could review the matrix was that I wanted to be
13 satisfied of what type of -- how it was used and how it
14 was applied, because these folks obviously work for me.

15 And I did -- an interesting note is, I did
16 discover that -- the matrix has to satisfy the NRC
17 requirements, but you can be more conservative than the
18 NRC requirements. And we discovered that we are more
19 conservative not only than the NRC requirements, but we
20 are more conservative than a couple of the other
21 utilities out there. And my evidence of that is that
22 personnel that had been admitted access to two other
23 utilities, when we screened them, our matrix kicked them
24 out and we did not admit them to our facility.

25 MR. BUTLER: Mr. Chairman?

1 CHAIRMAN CARTER: Mr. Butler, I was going to
2 ask you, have you got some kind of idea on --

3 MR. BUTLER: Could we take short break and see
4 what we can put together?

5 Commissioner Argenziano, to your concern,
6 basically what is at issue here is that this matrix,
7 it's safeguarded in this instance not to protect
8 individuals' confidential or privacy type interests, but
9 rather, you don't want people who would have bad reasons
10 to be seeking access to nuclear plants to know how it
11 works, to know how it might be gamed in a way to give
12 them the opportunity for access. That is the reason, as
13 I understand it, why it's safeguarded.

14 What I'm wondering is, if we took a break --

15 COMMISSIONER ARGENZIANO: Before you do that,
16 before we do that, I'm not asking for secret
17 information. What I'm asking for is what would kick out
18 somebody from being hired in a nuclear power plant.

19 MR. BUTLER: But that's -- I understand. I
20 mean, it's frustrating --

21 COMMISSIONER ARGENZIANO: I don't think that's
22 secret.

23 MR. BUTLER: I believe it is.

24 COMMISSIONER ARGENZIANO: I don't think that's
25 secret.

1 MR. BUTLER: I mean, I will confirm that.

2 COMMISSIONER ARGENZIANO: Okay. Then what's
3 the sense of having a background check in front of me
4 that right now -- not a background check, but indicate
5 -- what would indicate to me that if I'm looking at --
6 if a company has hired somebody -- in a background
7 check, let's say -- I'm trying to think of a crime that
8 would disqualify him. Okay. You know, he has been
9 found guilty of --

10 CHAIRMAN CARTER: Fraud.

11 COMMISSIONER ARGENZIANO: -- endangering the
12 public through firearms and explosives or something like
13 that.

14 MR. BURGESS: That would be a good one, or
15 fraud, hypothetically.

16 COMMISSIONER ARGENZIANO: What I'm trying to
17 say is, if the company -- here there's two ways of
18 looking at what's in front of me. And this is not the
19 complete background check, but yet it's being presented
20 as the only thing that was found on the criminal history
21 check. What is the company's responsibility when a
22 charge has been dismissed? And OPC may be able to
23 answer that too.

24 I mean, I'm not sure the company -- if there's
25 no guideline that says, you know, if this ever occurred,

1 whether it was dismissed or not, I'm trying to find out
2 what would kick out somebody from working in a nuclear
3 power plant. And I'm not sure that your presenting this
4 makes the case if it's dismissed, dismissed, dismissed,
5 other than the fact that the judgment call may be a real
6 play here. You know, do you take this with the
7 psychologist and say, "Hey, he red-flagged"? Maybe it's
8 OPC who really needs to --

9 MR. BURGESS: Well, the one thing that I would
10 say in response, Commissioner, to dismissed, and
11 therefore we can't look at that, or that it's really not
12 proper to consider that, consider this event. This
13 individual did drill a hole in a nuclear power plant,
14 and he's not even going to be charged. So if the same
15 individual goes through the same screening process, it
16 would show up not as charged, arrested, dismissed. It
17 would show up not even arrested for this act. And I
18 hope he will never be allowed to work in a nuclear power
19 plant again.

20 CHAIRMAN CARTER: Commissioner Argenziano.

21 COMMISSIONER ARGENZIANO: Now, just out of
22 curiosity, why is he not going to be charged?

23 MR. BURGESS: That is something that the --

24 COMMISSIONER ARGENZIANO: Is it the company's
25 decision?

1 MR. BURGESS: That the FBI and the U.S.
2 Attorney and the State Attorney -- that's information
3 that we're interested in as well.

4 MR. BUTLER: FPL had no involvement in having
5 this individual not be charged. We would have loved to
6 see him be charged, but it was a decision of the U.S.
7 Attorney's office based on the information presented to
8 them by the FBI.

9 We also would have loved the NRC to have
10 brought civil penalty proceedings against the individual
11 as somebody who had had licensed access to the plant.
12 The NRC has elected not to proceed with civil penalties
13 against the individual. That's frustrating to us. We
14 certainly had no involvement in that outcome.

15 MR. BURGESS: But, Commissioner, the point
16 remains that it is not going to happen. There's not
17 going to be official action against this individual for
18 drilling the hole. And so at this point to say all of
19 these background things, because the charges were
20 dismissed, therefore, they're not relevant, I mean, they
21 may be something that you can't withhold any kind of
22 other rights against them, but you sure can say,
23 "Because of this, we're not going to let you work in a
24 nuclear power plant."

25 MR. BUTLER: And FPL has already taken that

1 step with respect to its own plants. It has limited
2 ability to control others, but has advised through a
3 system called PADS, this person has been flagged -- and
4 you can ask Mr. Jones about this. This person has been
5 flagged so that any other nuclear plant that wanted to
6 employ this individual would be advised to check with
7 FPL about the background of the person. They would end
8 up getting reported to them the information FPL has
9 regarding the drilled hole incident. So to the extent
10 it is within our control to do so, he will not have
11 access to other nuclear plants in the future.

12 COMMISSIONER ARGENZIANO: Well, Mr. Chair,
13 that is great. And I understand the point, and I'm not
14 dismissing this person's background. I'm trying to
15 figure out how I hold the company responsible when it
16 says dismissed, and I'm trying to figure out are there
17 rules in place that the company didn't follow. That's
18 what I'm trying to get to, or is it more a combination
19 of things, the company should have showed better
20 judgment.

21 But then again, how many people in society who
22 are are working in plants today, or does NRC and our
23 federal legislators say that nobody with any kind of
24 criminal background should be working in a nuclear
25 plant? That's what I'm trying to get to to make the

1 determination of whether the company was negligent in
2 not looking at this criminal background, and then
3 saying, well, okay, even though it says dismissed, it
4 shows a pattern of some type of behavior. But then
5 again, we're saying you're guilty without being charged
6 guilty. So, I mean, it's kind of hard to do.

7 But to blame the company -- and this is what I
8 need that information for. I could blame the company if
9 I found out that there was a rule that said you
10 shouldn't hire anybody with anything in their
11 backgrounds ever. I don't know where to draw the line.
12 I don't know what is fair and what is not fair. I don't
13 know that the next person who comes in who when he was
14 20, or whenever it was, due to reckless driving should
15 not be hired. I don't know if that's fair.

16 And I'm not trying to dismiss your concern,
17 because I'm very concerned with it. I'm just trying to
18 find a basis for getting there.

19 MR. BURGESS: I agree with you, and we're
20 frustrated as well. The first we saw this, that there
21 was any question, was Friday. Up until Friday, what we
22 were told was there's no red flags on this guy at all,
23 there was no reason for any concern. And now we have
24 this, and we're frustrated, as you are, that we don't
25 have more, and more to the point, that we didn't have

1 more at an earlier stage.

2 MR. BUTLER: Mr. Chairman?

3 COMMISSIONER ARGENZIANO: Does staff maybe
4 have any --

5 CHAIRMAN CARTER: Yes.

6 MR. BUTLER: I think it would be possible, but
7 we really would need a break to be able to determine
8 this, to -- definitely to show all of the Commissioners
9 and all of the parties what the NRC's regulations are
10 about the licensee's obligations for controlling access
11 to the plant. And then, what I am pretty sure that that
12 is going to have is a level of generality that then puts
13 the onus on the individual licensee, FPL in this
14 instance, to develop a system that actually implements
15 the details, the matrix, for example, that Mr. Jones has
16 been referring to, which the NRC then on a pretty
17 regular frequency reviews to determine whether it is
18 sufficient given what their regulatory requirements are.

19 I think we can put together without violating
20 any of the safeguards on disclosing information that
21 sort of explanation. I am sure it's going to be short
22 of the specifics that we would all like to be able to
23 discuss in detail, but I think it might end up being
24 helpful to at least understand the framework.

25 CHAIRMAN CARTER: Commissioners, let's do

1 this. We've been going for three hours with one court
2 reporter, and this is probably an appropriate time to
3 take a break so that we can do that and kind of give
4 some general guidelines and information. But let's at
5 least give the court reporter a break, because we may
6 be -- you know, we may still be -- I mean, I feel your
7 frustration.

8 You know, how do you -- you know, we've got
9 federal, the NRC. We got situations here where the
10 State Attorney or the U.S. Attorney didn't do what we
11 thought they should have done. So it is confusing, so
12 how do we -- or as they say, where do we cut Gordian
13 knot. But I think for the court reporter's purposes,
14 we're going to give her a break, and we'll come back on
15 the half hour. We're on recess.

16 MR. BUTLER: Thank you.

17 (Recess from 12:17 to 12:35 p.m.)

18 CHAIRMAN CARTER: We are back on the record.
19 Commissioners, just kind of for planning purposes, let
20 me -- it was a slight oversight on my part for not
21 telling you what our plans are for lunch. I wanted to
22 give staff an opportunity. We'll probably break at one
23 o'clock for lunch, and we'll come back at 2:30. That
24 way, staff will have an opportunity to not only have
25 their lunch, but they'll be able to do some research as

1 well. So that will better let the parties plan. You
2 guys can plan for what you're getting ready to do.

3 Ms. Bradley, you had a question?

4 MS. BRADLEY: Well, I was -- a question has
5 come up a couple of times about the age of this person,
6 and I was going to direct your attention to page --

7 CHAIRMAN CARTER: We got it, we got it.

8 COMMISSIONER ARGENZIANO: I got it.

9 CHAIRMAN CARTER: We got it, we got it.

10 MS. BRADLEY: Okay.

11 CHAIRMAN CARTER: Thank you. We got it. We
12 got it. So everybody knows what we're going to do, so
13 I'm going to -- I don't want to cut anybody off at the
14 knees, but guide yourselves accordingly so we can kind
15 of land at one o'clock.

16 Commissioner Skop, you're recognized.

17 COMMISSIONER SKOP: Thank you, Mr. Chairman.
18 I guess in some of the responses, I heard the witness
19 state that with the nuclear background, as well as
20 familiar with security procedures -- I guess I'll go
21 ahead and ask some of the few questions I had, because I
22 think the second part of this, notwithstanding the
23 background check and the hiring of the individual, is
24 what safeguards were in place in terms of being able to,
25 you know, monitor what was going on, the management

1 oversight of the contractors and their employees.

2 Whether it be an unfortunate circumstance or
3 whatever, you know, FPL seemingly has experienced a
4 recent string of incidents which somewhat implicate
5 management oversight, with the guards at the nuclear
6 facilities, the power outage resulting from disabling
7 protected devices, you know, Sunshine Energy and the
8 drilled hole in question. So again, you know, I think
9 it's important to kind of look and see if there's a
10 pattern here of some sort to make sure that things are
11 operating appropriately. And again, we are talking
12 about a nuclear reactor, and thank goodness this was
13 caught, as it should have been, before startup.

14 But the issues that I had, again, we know that
15 the person of interest, we saw the arrest record, that
16 he admitted to drug use, and the psychological testing.
17 But obviously, I think that you stated that the
18 background check was conducted prior to granting
19 unescorted access to the facility; is that correct?

20 THE WITNESS: That is correct.

21 COMMISSIONER SKOP: Okay. And with respect to
22 security posting to the reactor compartment, I guess the
23 FBI and the polygraph report says that the hole was in a
24 very tight, small space in an area of the plant
25 requiring controlled access, so I would assume there was

1 a security posting or management posting controlling
2 ingress and egress, access to the reactor compartment.

3 THE WITNESS: The pressurizer is located
4 inside the containment --

5 COMMISSIONER SKOP: Containment vessel. I'll
6 using the nuclear submarine term. Containment vessel.

7 THE WITNESS: And, yes, Commissioner, there
8 was controlled access to the containment building.

9 COMMISSIONER SKOP: So there would be access
10 logged in with who ingressed and egressed from the
11 containment --

12 THE WITNESS: Yes, Commissioner.

13 COMMISSIONER SKOP: And as far as tool
14 inventory, there would be also a log of what tools
15 entered and came out?

16 THE WITNESS: Yes. We maintain a tool
17 inventory log for tools that are checked out of the tool
18 room.

19 COMMISSIONER SKOP: But not accounting for
20 what may go in and out of the containment?

21 THE WITNESS: No, you do not log tools and
22 equipment that are going in and out of the containment.
23 The containment is a huge, huge structure, 200 feet
24 tall. I forgot how large in diameter. And so there's a
25 tremendous amount of equipment that's coming in and out

1 to support reactor disassembly, reassembly, and
2 maintenance on the primary coolant system components.

3 COMMISSIONER SKOP: Okay. And with respect to
4 the work that's being conducted within the containment
5 area, is there periodic management or security
6 walk-throughs through those areas while work is being
7 conducted?

8 THE WITNESS: There's periodic supervisory and
9 management walk-throughs in the area. Security, no,
10 does not typically tour inside containment, and it's
11 just to minimize exposure. The more people you have in
12 the containment, the more your overall exposure is going
13 to go up.

14 I think I mentioned earlier that I was the
15 site vice president at the time. I made several tours
16 myself inside that containment building, so I was one of
17 the 1,137 personnel that had access to the containment
18 building.

19 COMMISSIONER SKOP: Thank you. With respect
20 to the drilled hole, I think I heard two different
21 things, and I'm seeing two different things in the FBI
22 report, but one seems to indicate that it was the
23 pressurizer piping, and in the other one, it seems it's
24 the emergency cooling system. So is that nomenclature,
25 or is that -- am I missing something there?

1 THE WITNESS: Again, this report is really not
2 a report. It's field notes, and so there is some
3 terminology that isn't correct. It's actually in the
4 piping associated with one of the power operated relief
5 valves, so it's piping associated with the pressurizer.

6 COMMISSIONER SKOP: Okay. Thank you. And
7 then with respect to the discovery of the leak prior to
8 startup, was that done during cold testing or hot
9 testing?

10 THE WITNESS: That was done during cold
11 testing.

12 COMMISSIONER SKOP: All right. Thank you.

13 THE WITNESS: The reactor was shut down at the
14 time.

15 CHAIRMAN CARTER: Thank you. It would help if
16 I turned on my mike. Thank you. Commissioners,
17 anything further from the bench?

18 Mr. Burgess.

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

20 BY MR. BURGESS:

21 Q. Mr. Jones, I'm still not settled on what
22 information you have and when you received it with
23 regard to the security questionnaire. Do you now have
24 in your possession a copy -- I don't mean right now, but
25 have you viewed a copy of this individual, the person of

1 interest's security questionnaire?

2 A. No, I have not.

3 Q. And so do you not -- all of the things that
4 you have been explaining to the Commissioners about
5 this, what is the source of your information on that?

6 A. The source of my information on that is the
7 corporate access fitness-for-duty manager. I do not
8 know the name of the individual, in fact.

9 Q. So everything that you have said to the
10 Commissioners this morning has been based on what you
11 have been told by the corporate access manager, is that
12 right, on what he has told you?

13 A. When you say everything, no.

14 Q. Everything with regard to what is in this
15 individual's security questionnaire?

16 A. What I have told the Chairman and the
17 Commissioners is what has been reported to me by the
18 corporate access security manager, and also the
19 information that I gained by reading these field notes
20 that were supplied by the FBI.

21 Now, once the FBI made this public, what the
22 actual criminal history was, and after I consulted with
23 counsel, I felt comfortable asking the corporate
24 security access fitness-for-duty manager more specific
25 questions around the actual criminal history, but I

1 instructed him not to reveal the individual's name,
2 because that would put me in violation of the law.

3 Q. Right.

4 A. But given that we don't have a name, I'm a
5 little uncomfortable that it talks about occupation and
6 what state, because there's how many sheet metal workers
7 actually showed up to Turkey Point? I'm a little
8 uncomfortable -- I'm still uncomfortable with the whole
9 darn thing as far as discussing the specific criminal
10 record.

11 But given the information that was here, I
12 asked him to validate did the person relaying this
13 information over the phone, did they get this right, and
14 are the dates right, and were these the offenses.

15 Q. And when did you do this, talk to the
16 corporate access manager?

17 A. I talked to him yesterday.

18 Q. And before that, you had received information
19 as to what was in the security questionnaire from the
20 access program manager, is that right, or are these the
21 same people?

22 A. When you say received information from what's
23 in the PHQ, no, I did not ask for specific information
24 in the PHQ, again because that's confidential and that's
25 a violation of the rules. I can't do that.

1 Q. Let me get one thing straight. My
2 understanding from what your testimony was earlier --
3 correct me if I'm wrong -- is that you can obtain
4 security questionnaires if they are redacted as to the
5 name for your own purposes. And I correct in that?

6 A. I did state that earlier, and I stated that as
7 an opinion. I haven't confirmed that with counsel. And
8 that was probably presumptuous on my part, because the
9 FBI published this thing with the name redacted. But it
10 has been my experience for 21 years in the commercial
11 business that the line manager only knows whether or not
12 access has been granted or denied, and you don't know
13 the specific history of that individual, and you don't
14 have a need to know that, so therefore, you don't
15 request it.

16 Q. Okay. So your opinion is and your
17 understanding is that you could gain access to the
18 security questionnaire if it were redacted as to the
19 name of the individual, but you have not done so. Am I
20 correct in that?

21 A. Yes. That's my opinion as of this morning,
22 but I haven't confirmed it with counsel. And I came to
23 that really over the last few days looking at the FBI
24 report and asking counsel about how is it that the FBI
25 could have disclosed this and still be in compliance

1 with the Code of Federal Regulations. And counsel's
2 opinion was that because the name was redacted, it was
3 probably okay, although you heard Mr. Butler state
4 earlier that he's not entirely sure about that.

5 Q. Right. And so because you did not have the
6 actual security questionnaire, any information that
7 would have been obtained from it, you obtained for the
8 purpose of your testimony information from what you
9 called the access program manager; is that correct?

10 A. That's correct.

11 Q. Okay. Now, you have spoken about -- what I'm
12 trying to find out is whether it's another individual or
13 the same individual. You have spoken about somebody you
14 have talked to within the last few days to get more
15 detailed information about this, and I thought you used
16 the term "corporate access manager."

17 A. Corporate -- I'm not 100 percent sure of his
18 exact title. It's the same person I'm referring to as
19 the security corporate access manager.

20 Q. So any information you received either before
21 you got this report or after is from the same
22 individual?

23 A. Some of the information also came through our
24 counsel in nuclear who had interviewed -- obtained the
25 information through corporate security.

1 Q. But from the -- for the purposes of providing
2 the representations to the Commission in your testimony
3 and representations to Mr. Young in your deposition, you
4 were relying on the access program manager?

5 A. That is correct.

6 Q. Okay. And that continues to be the person
7 that you're relying on for this more refined information
8 that you're providing the Commission this morning in
9 response to Exhibit 54?

10 A. That is correct.

11 Q. So you have not seen any of the source
12 documents associated with the specific information
13 listed in the special agent's field notes?

14 A. That is correct.

15 Q. Have you received specific information about
16 the 1990 arrest for criminal recklessness and criminal
17 mischief?

18 A. Yes.

19 Q. Did the arrest take place in Indiana?

20 A. I do not know that. The specific information
21 was, I asked what was on the FBI -- without revealing
22 the name, what was on the FBI criminal background check,
23 and the -- let me turn to it here. And the corporate
24 access control manager confirmed that the FBI background
25 report listed an arrest in September 1990 with charges

1 of provocation, criminal recklessness and mischief, and
2 that it was -- and he also confirmed that those were
3 dismissed in 1994.

4 Q. Okay. I want to ask about those specifically.
5 But this was the same access program manager who had
6 made representations to you earlier that led you to
7 answer that you didn't know whether there was any
8 criminal background associated with this individual or
9 not, and that's the same individual that you're relying
10 on now that you relied on for your testimony in your
11 deposition?

12 A. That is correct.

13 Q. Okay. Now, do you have the arrest report for
14 this recklessness, criminal recklessness and criminal
15 mischief?

16 A. I do not know the answer to that question. I
17 mean, I don't personally have that report, no.

18 Q. Do you know what the legal elements of
19 criminal recklessness are?

20 A. No, I do not.

21 Q. Do you know what the legal elements of
22 criminal mischief are?

23 A. No, I do not.

24 Q. If criminal mischief is an act of vandalism,
25 would that be relevant to the question of the

1 individual's background?

2 A. Any and all transgressions are relative to the
3 individual's background.

4 Q. If the elements of criminal recklessness are
5 causing great bodily harm to an individual, would that
6 be relevant to the question of the individual's
7 background?

8 MR. BUTLER: I'm going to object to these
9 questions as assuming facts not in evidence. But I
10 suspect Mr. Burgess is probably referring --

11 CHAIRMAN CARTER: Mr. Burgess.

12 MR. BURGESS: Yes. I intend to --

13 CHAIRMAN CARTER: He's not a lawyer. He's an
14 engineering guy.

15 MR. BURGESS: Commissioner, I have no
16 intention of asking him his legal opinion on the Indiana
17 statutes that might be in play, but I do think that
18 since this is the individual that is before you and the
19 only individual that is before you saying, "We have run
20 this person through the wringer and he is clean," then
21 the question as to, going to Commissioner Argenziano's
22 question, what would disqualify you, I think is
23 relevant.

24 And I think the statute -- I'm simply asking
25 him if the elements of the statute were as I am

1 representing they are -- and I can ask the Commission to
2 take official notice of the Indiana statute on criminal
3 recklessness, but if they are as I'm representing, would
4 that not be relevant to the background information?

5 MR. BUTLER: I think he has already said it is
6 relevant.

7 CHAIRMAN CARTER: Hang on a second. The first
8 thing that you asked him, he said anything would be
9 relevant.

10 MR. BURGESS: Yes, uh-huh.

11 CHAIRMAN CARTER: So this is -- what we say in
12 football, we call this piling on. But I think he said
13 any offense would be relevant. He has already answered
14 that.

15 MR. BURGESS: Uh-huh.

16 CHAIRMAN CARTER: So I'm trying to figure
17 out --

18 MR. BURGESS: I just want to make sure. Okay.
19 All right.

20 CHAIRMAN CARTER: That's what he said. He
21 answered that question. Ms. Helton?

22 MR. BURGESS: Well, okay. I need to refine
23 that.

24 BY MR. BURGESS:

25 Q. Everything is relevant; correct, Mr. Jones?

1 CHAIRMAN CARTER: You said that -- as you went
2 down the offenses, he said everything is relevant in
3 terms of what they check into.

4 MR. BURGESS: Uh-huh, yes.

5 CHAIRMAN CARTER: So what I'm trying to find
6 out is, by going through the specific perspective or the
7 elements of each offense, you know, it has been asked
8 and answered, unless -- is there more you're trying to
9 get? Ms. Helton?

10 MS. HELTON: It seems to me that we are
11 covering a lot of the same ground.

12 CHAIRMAN CARTER: So let's move on.

13 MR. BURGESS: Okay.

14 BY MR. BURGESS:

15 Q. Do you know the individual acts that this
16 individual was charged with in this particular -- for
17 this particular arrest?

18 A. No, I do not.

19 Q. And you say everything is relevant. Are not
20 some things more relevant than others? Are there not
21 some acts that cause greater concern than others?

22 A. Yes, absolutely. Based on the transgression,
23 the arrest, the disposition, those are put through the
24 matrix. And, yes, there are things that carry a much
25 heavier weight than other transgressions, including the

1 relevant history of how much time has passed and whether
2 something is recent or in the distant past. And you
3 review that all in the aggregate, including the
4 verification.

5 And to just demystify this matrix a little
6 bit, really, you know, you don't tell people where
7 you've got all the security cameras, obviously, because
8 then they could circumvent them. And just like a
9 corporation has internal auditing, you don't tell them
10 all the tactics that you're going to use in the internal
11 auditing process. So therefore, the matrix, it isn't
12 that I'm trying to keep it from you, but it's
13 safeguarded so that people cannot take advantage of how
14 we screen and what flags are raised.

15 Q. Do you know why the charges were dismissed
16 four years after the original charges were imposed?

17 A. No, I do not.

18 Q. Wouldn't that be relevant to a consideration
19 of whether this person should have been prevented from
20 being given unescorted access?

21 MR. BUTLER: I'm going to object that this is
22 continuing the same line. It has been asked and
23 answered. Clearly, all of the aspects, the nature of
24 the charge, the disposition of the charge, how long ago
25 it occurred, the frequency of charges, they all play

1 into the matrix. What Mr. Jones has testified to on
2 several occasion is that he's not in a position to
3 describe the details of the matrix, but it seems like
4 Mr. Burgess keeps coming back to asking what amounts to
5 the same series of questions over and over again.

6 CHAIRMAN CARTER: What about it, Mr. Burgess?

7 MR. BURGESS: I am asking a different line of
8 questions. I am asking him specifically -- at this
9 point, the question that's pending is whether the fact
10 that it was dismissed four years following the time that
11 the charges were initially pending, is that something
12 that should being looked at, because what I'm trying to
13 understand is --

14 CHAIRMAN CARTER: Okay. I got it. I got it.
15 I just wanted the basis of it, because --

16 MR. BURGESS: But he's saying I'm covering the
17 same ground. I am not. What I'm trying to -- I'm
18 looking at this thinking, that would be a typical
19 arrangement if there was some period of time after which
20 charges had been -- there was a non-adjudication and an
21 expungement that took place later. I'm trying to find
22 out if this is something he knows about.

23 This is the witness and the only witness that
24 is representing to you that Florida Power & Light has
25 done nothing wrong, our screening process is as good as

1 it can get. And this is the only information we have on
2 the screening process, and I'm trying to find out what
3 he knows specifically that allows him to represent to
4 you that we've done everything that you could expect us
5 to do to screen out anybody that's problematic.

6 CHAIRMAN CARTER: You're stretching.

7 Ms. Helton, I -- I mean, what you're saying,
8 Mr. Burgess, sounds good, but it seems like we're back
9 where we started again. Ms. Helton, maybe you heard
10 something different than what I heard.

11 MS. HELTON: I'm very sympathetic to
12 Mr. Burgess's plight and to you all's plight for trying
13 to shuffle through all this information when it seems
14 that you don't have access to all of the information. I
15 know that I'm sitting here being frustrated, and I'm
16 assuming that you all are sitting there being
17 frustrated, and I can see Mr. Burgess's frustration.

18 MR. BURGESS: I had hoped you wouldn't.

19 MS. HELTON: No. I mean, I'm glad I'm not
20 sitting in your seat.

21 That being said, I mean, I've heard Mr. Jones
22 say that he didn't get the FBI report or the FOIA
23 report, whatever you want to call it, until Friday, that
24 he had limited access to the information about this
25 individual. And it just seems like we're going over the

1 same lines of questioning, and I'm not sure how much
2 further along down the road it's getting us, is my
3 perspective. But I'm not the one sitting there, you
4 know, having to make a decision at the end of the day
5 either.

6 CHAIRMAN CARTER: Commissioner Argenziano.

7 COMMISSIONER ARGENZIANO: I think there's two
8 different things going on here. I don't think that the
9 matrix is what we're talking about. No one wants the
10 detailed information of what type of questions you ask
11 psychologically.

12 By the way, most people know how to answer
13 those anyway. You know, would you answer the phone by
14 saying, "Hi, Dummy, hi. Welcome to our company"? No,
15 of course not, and most people know how to do that.

16 But there are psychological components --
17 that's not what's being asked. I think what's being
18 asked is about the screening process, not the secrecy
19 behind the matrix. And I think there's a difference of
20 opinion there, because the matrix keeps coming up, and
21 that's not what he's asking about. I think Mr. Burgess
22 is saying, "Look, here's your one witness to vouch for
23 your screening process. Let him answer the questions."
24 And I think that his question was a viable question and
25 not about the matrix.

1 CHAIRMAN CARTER: I'm stalling until one
2 o'clock.

3 MR. BUTLER: Mr. Chairman?

4 CHAIRMAN CARTER: It is one o'clock, isn't it?

5 MR. BUTLER: Mr. Chairman?

6 CHAIRMAN CARTER: Mr. Butler, yes, sir.

7 MR. BUTLER: I'm sorry. Unfortunately, it
8 does keep coming back to this matrix. I think the
9 reality is that FPL gets both self-reported and the FBI
10 fingerprint report results. It reports various sorts of
11 offenses. It reports dates for them, and it reports
12 dispositions for them. The matrix -- you know, you take
13 those offenses, you take the information about them, and
14 you put it through this matrix, and you get a score, and
15 the score will either disqualify someone or not.

16 I guess maybe I wasn't being articulate in
17 expressing my objection to Mr. Burgess's questions, but
18 what the questions are premised on is this idea that
19 there is some incredibly detailed further process where
20 you're going back and pulling up the arrest report, the
21 sort of court's disposition records on the charges,
22 et cetera, et cetera, to get that sort of information.

23 And I believe we can confirm with Mr. Jones,
24 but I believe we can confirm here that that -- whatever
25 you want to call it, second or tertiary level of review

1 isn't something that's done as part of the evaluation.
2 You get the history, you look at what has been reported,
3 frequency, disposition, age, et cetera, and you reach
4 determinations based on the points that are scored. And
5 if the person has enough points, they're disqualified;
6 if they don't, they aren't, which is kind of where my
7 frustration comes with the questions Mr. Burgess is
8 asking, because they're --

9 CHAIRMAN CARTER: Everybody is frustrated.
10 Let's do this, then. In all fairness, I did give
11 everyone ample notice of when we were going to take the
12 lunch break. I want to be fair to our staff too,
13 because in addition to -- I want to give them time to
14 eat lunch, but I also want to give them a chance to get
15 ready.

16 Mr. Burgess, we'll pick up with you when we
17 return.

18 MR. BURGESS: Thank, Mr. Chairman.

19 CHAIRMAN CARTER: 2:30, everyone.

20 (Proceedings recessed for lunch at 1:05 p.m.)

21 (Transcript follows in sequence in Volume 5.)
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25

