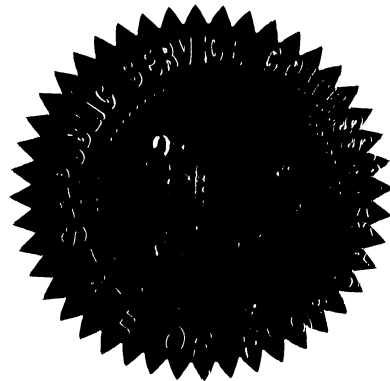


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080001-EI

In the Matter of

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



VOLUME 7

Pages 769 through 957

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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: Thursday, November 6, 2008

TIME: Commenced at 9:37 a.m.  
Adjourned at 12:48 p.m.

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

REPORTED BY: LORI DEZELL, RPR

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APPEARANCES:

(As heretofore noted.)

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

1  
2 (Transcript follows in sequence from  
3 Volume 6.)

4 **CHAIRMAN CARTER:** Good morning to one and all.  
5 We'd like to welcome everyone today. I will begin  
6 our hearing.

7 First of all, we've got a preliminary matter.  
8 Before I go with staff for preliminary matters,  
9 Commissioner Skop, you're recognized, sir.

10 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.  
11 Which way would you like to proceed? Are we still  
12 going to go with the FPL?

13 **CHAIRMAN CARTER:** Yes, because we'll be  
14 proceeding next with Ms. Dubin, I believe.

15 **COMMISSIONER SKOP:** Okay. Great. I would  
16 like to, if he's available, I'd like to recall  
17 Mr. Jones for additional questions.

18 **MR. BUTLER:** At this time?

19 **COMMISSIONER SKOP:** Yes.

20 **CHAIRMAN CARTER:** Is Mr. Jones still here?

21 **MR. BUTLER:** He is.

22 **CHAIRMAN CARTER:** Yeah, that's right. We  
23 didn't excuse him. He's close to the door today.

24 **MR. JONES:** Hope springs eternal. Good  
25 morning.

1           **COMMISSIONER SKOP:** Good morning, Mr. Jones.  
2           I just wanted to briefly follow up on a line of  
3           questioning that I started yesterday. I had some  
4           time overnight to consider and rethink what was  
5           going on within the document that was provided in  
6           terms of the investigational record. You would  
7           agree that the leak was discovered on March 31st,  
8           2006; is that correct?

9           **MR. JONES:** Yes, Commissioner.

10          **COMMISSIONER SKOP:** Okay. And based upon the  
11          testimony I've heard, it took approximately five  
12          days to repair that leak once it was found; is that  
13          correct?

14          **MR. JONES:** Yes, Commissioner. But let me  
15          explain that the repair of the leak included the  
16          investigation, the removal of all the insulation  
17          for extended condition, and the inspection and  
18          additional testing that we needed to do to assure  
19          ourselves that the unit was safe to restart. So  
20          when you say repair, there's the physical repair,  
21          but there was much more involved.

22          **COMMISSIONER SKOP:** Yes, sir. And I do  
23          appreciate that, because we want to make sure that  
24          our nuclear plants are good to go and everything's  
25          in order before we restart them.

1           So during that five days that it took to do  
2           all the things that you just mentioned, that  
3           resulted in five days of having to purchase power  
4           because the unit was not able to start up on  
5           schedule; is that correct?

6           **MR. JONES:** That's correct.

7           **COMMISSIONER SKOP:** Okay. Now, I believe  
8           yesterday you previously stated that not only are  
9           your employees but your contractors and their  
10          employees are also briefed about the necessity of  
11          reporting safety issues; is that correct?

12          **MR. JONES:** That is correct.

13          **COMMISSIONER SKOP:** Okay. Now, if I could  
14          draw your attention back to page 37 of the  
15          investigation report, and that was two weeks prior  
16          to discovery of the leak. And in that report, a  
17          second contractor was apparently told by the person  
18          of interest that, quote, "On or about March 14th,  
19          2006," name deleted, "stated that he," quote,  
20          'drilled a hole in a pipe,' end quote, "at the  
21          power plant." Name omitted "stated that he finally  
22          got a drill bit that worked and drilled a hole in a  
23          pipe." Name omitted "stated that he finally  
24          showed," expletive deleted.

25          Now, my concern is, if that second contractor

1 employee was told something by the person of  
2 interest two weeks prior to the discovery of the  
3 leak, certainly that person had been trained in  
4 reporting a safety issue. And I can't think of  
5 anything greater of concern than a nuclear safety  
6 issue. And that second person obviously did not  
7 report what the person of interest told them at  
8 that time; is that correct?

9 **MR. JONES:** To the best of my knowledge, yes,  
10 that's correct.

11 **COMMISSIONER SKOP:** Okay. Because if he, in  
12 fact, would have done that, given somewhat of my  
13 knowledge of FPL's procedures, I believe there  
14 probably would have been immediate investigation  
15 and immediate safety standdown to act on that  
16 information. And from my -- what I see, I don't  
17 see that happening until after the leak was  
18 discovered two weeks later. Is that correct?

19 **MR. JONES:** That is correct.

20 **COMMISSIONER SKOP:** Okay. So the question  
21 that I have is that if this person, the second  
22 person, would have reported that leak immediately,  
23 as he had a duty to do and was grossly negligent by  
24 not doing, then certainly the person of interest  
25 could have been immediately identified. Obviously



1           they knew where the person of interest was working,  
2           and they could have readily identified the leak  
3           two weeks prior and repaired it and done all the  
4           things you mentioned before the end of the shutdown  
5           period and theoretically avoided the need to  
6           purchase five days of power; is that correct?

7           **MR. JONES:** Yes, that is correct.

8           **COMMISSIONER SKOP:** Okay. So going back to  
9           you, Mr. Butler, I think that we had the discussion  
10          yesterday, and again I'm not going to cross-examine  
11          a witness on a legal issue. You know, I'm not  
12          saying that there should be complete  
13          responsibility, but I am trying to say that the  
14          contractor I think has some liability there, and it  
15          bothers me that we're not going after a contractor.  
16          And I know the way I see it, and I've had some time  
17          to think about this from a legal perspective.  
18          Again, I'm a new lawyer. I don't know everything.  
19          You know, there may be flaws. But, you know,  
20          anyone can bring a legal action and try. You don't  
21          get anything without asking. It's a lot easier to  
22          just try and pass it through to the ratepayer.  
23          But what I see here is certainly you have a  
24          claim under contract law for actual damages, which  
25          I think that you admitted yesterday. But what I

1 don't see is why there would not be a negligence  
2 claim against one or more parties, ideally the  
3 contractor, maybe the employee, maybe the sheet  
4 metal union, but again, namely the contractor for  
5 gross negligence, which is a tort, which hopefully  
6 they would have some insurance to cover the  
7 consequential aspect that wasn't covered under  
8 contract law, namely the purchased power. Because  
9 again, had their employee reported a nuclear safety  
10 issue -- and again, this is a big concern for the  
11 NRC, because for the life of me, I'm more concerned  
12 about this second person than I am the first  
13 person.

14 I mean, I've got a lot of concerns about the  
15 first person, but this was somebody that knew  
16 something that didn't act on something that could  
17 have resulted in a nuclear issue, a nuclear safety  
18 issue. And had that person brought that  
19 information to light in a timely manner, they would  
20 have been able to fix that leak ideally or identify  
21 the leak before they even got into the testing and  
22 avoided that need for the \$6.2 million of purchased  
23 power.

24 So my question is, is that certainly there  
25 seems to be some form of a negligence claim that

1 FPL could pursue against the contractor that  
2 doesn't involve hearsay, because you have a  
3 statement from a person that said he had actual  
4 knowledge, and at some point under the doctrine of  
5 respondent superior or vicarious liability the  
6 contractor is somewhat liable there.

7 **MR. BUTLER:** We are re-evaluating based on the  
8 information that we have from the FBI, which  
9 obviously we didn't have until pretty recently  
10 ourselves. The one thing I will observe that is  
11 not necessarily a disqualifying factor, but I have  
12 to observe it because I was deeply involved in the  
13 case actually on behalf of a claim for FPL near the  
14 start of my legal career, is that the law in  
15 Florida is fairly unfavorable to negligence claims  
16 against someone where one has contract remedies.

17 There is a pretty well established principle  
18 of the contract being viewed as, you know, the  
19 bargain between the parties as to allocating what  
20 the responsibility is, and thereby eliminating or  
21 limiting the extent of the negligence claims. But  
22 it's an issue that needs to be explored further. I  
23 agree.

24 **COMMISSIONER SKOP:** And I appreciate that and  
25 I appreciate that clarification and I understand

1 the legal principle. But I also equally recognize  
2 that when you have gross negligence, you know,  
3 sometimes what was contracted for was only actual  
4 damages. It was probably reasonably foreseeable  
5 that if someone was grossly negligent and, you  
6 know, failed to disclose there might be a cause of  
7 action. I'm not saying there is, I'm not saying  
8 there's not. But I'm saying I'd like to see that  
9 pursued or at least some responsibility taken from  
10 the company again because safety briefs were given.  
11 So something fell by the wayside there.

12 But what I'm trying to say -- and I'm not  
13 doing this in a manner that should be taken as  
14 adverse to FPL. But what I'm trying to say is FPL  
15 should take action to try and indemnify its costs  
16 that it incurred before just passing them through  
17 to the ratepayer. And what I see here concerns me.  
18 I don't have a complete record. I wasn't privy to  
19 the investigation. I'm just looking at  
20 holistically -- I admit maybe there's some stuff  
21 I've missed in here.

22 But again, I'm just trying to piece together  
23 the pieces of the puzzle on a, you know, 24-hour  
24 turnaround basis in realtime, trying to say, okay,  
25 should we -- is FPL's request legitimate and should

1           that be passed through, or do we have concerns  
2           where FPL should take at least some portion of the  
3           responsibility, if not all.

4           Again, that's a question for my colleagues.  
5           But I do think it's a very, very valid point on the  
6           second person -- second person, because he had a  
7           duty. He knew something that could cause -- that,  
8           you know, was -- you know, nuclear is ultra  
9           hazardous, and he knew something that was a  
10          significant safety concern. And if he was properly  
11          trained he should immediately disclose that.

12          I mean, even you, I mean, would you admit  
13          that, if I were your client and I told you I had  
14          just drilled a hole in a nuclear power plant, I  
15          think you would have to disclose that to the  
16          authorities if you remediated me and I chose not to  
17          tell.

18          Would you agree with that? That even -- even  
19          under the -- that's exception to attorney-client  
20          privilege?

21                 **MR. BUTLER:** I'm struggling with my  
22                 recollection of the ethics provision, but I think  
23                 you're right.

24                 **COMMISSIONER SKOP:** Okay. So even an attorney  
25                 would be forced -- I'm not putting the attorney

1 standard on this guy, but if he was properly  
2 trained he should have disclosed. To me it's a  
3 legitimate concern. Again, I'm not trying to --  
4 I'm not trying to say, hey, you're liable for  
5 \$6.2 million, but what I'm saying is that  
6 contractor has got some potential liability here,  
7 and I think that that should be looked at and  
8 exhausted before we come directly to the ratepayer  
9 for full recovery.

10 **MR. BUTLER:** On the last point,  
11 Commissioner -- and you may want to examine  
12 Ms. Dubin about this aspect, because she will cover  
13 it in her testimony -- the Commission's practice  
14 previously, and we have -- we've followed it and  
15 it's resulted in -- on occasion refunds to  
16 customers because of our ability in recovering  
17 funds, typically we have, the absence of  
18 imprudence, been allowed to recover costs that were  
19 incurred with a commitment that we will pursue any  
20 available opportunity for recovery elsewhere. And  
21 then, to whatever extent we're successful, we flow  
22 that back as an -- through an after-the-fact -- I'm  
23 not sure refund or credit is the better term, but  
24 as a benefit to the customers through whatever  
25 year's fuel proceeding it would come up. We have

1 done that before and we certainly will do it here  
2 if we are successful in recovering anything.

3 **COMMISSIONER SKOP:** Okay. Well, I'm just  
4 looking for, again, a good-faith showing by the  
5 company because, again, it's -- some of the  
6 evidence is circumstantial against the hole  
7 driller, but I think there is a legitimate question  
8 of fact as to whether that person should have been  
9 granted access in the first place. And I know that  
10 the argument has been that the NRC matrix is what  
11 we use. You know, I think some independent  
12 discretion goes there.

13 But what to me is even more straightforward is  
14 you had a person with actual knowledge of a  
15 potential nuclear safety issue that was a contract  
16 employee that failed to report that, and had he  
17 reported that in a timely manner, the apparent leak  
18 or the leak could have -- I mean, the hole could  
19 have been found, repaired, and the unit gone online  
20 as scheduled and avoided the need for \$6.2 million.

21 So to me it's a little bit harder to even  
22 overlook that one, because it's not just one person  
23 now, it's two people and, frankly, you know, that  
24 scares me, that somebody had knowledge of something  
25 and didn't -- didn't disclose it, if that, in fact,

1 is true.

2 **MR. BUTLER:** I understand. And as Mr. Jones  
3 testified, had we known it, we would have responded  
4 timely. Not knowing it timely is concerning, I  
5 agree, and it is something we will take a look at.

6 **COMMISSIONER SKOP:** Thank you.

7 **CHAIRMAN CARTER:** Commissioner Argenziano?

8 **COMMISSIONER ARGENZIANO:** Well, Commissioner  
9 Skop brings up an interesting point, and I wonder  
10 what staff's opinion is, and also OPC and -- and  
11 the others that are looking at this too. Because  
12 if there is a way and if that contractor has  
13 responsibility and the company can go to that  
14 contractor and there's less of a hit on the  
15 consumer, well, then, that's something we ought to  
16 be looking at. And I'd like to know other's  
17 opinion on that, what they think.

18 I mean, it sounds like there may be a remedy  
19 there. Second person didn't say anything. It did  
20 cause the company to have to go out and purchase  
21 fuel elsewhere. And if, as I said, if it would  
22 shift some of that pain from all on the consumer to  
23 maybe to the contractor as well as the company, it  
24 may -- there may be a remedy there. So I need some  
25 other legal opinions on it.



1           Is it possible, and if that's possible, I  
2           heard the company say that they have done this  
3           before, that they could -- if they are successful  
4           later, I'd rather know now what the chances are, to  
5           be honest with you, and if there's a possibility  
6           there that the contractor -- I don't know how, but  
7           I'd like to know if the contractor can be held  
8           responsible for its individual who did not come to  
9           the company and report that.

10           **CHAIRMAN CARTER:** Would you like to hear from  
11           staff --

12           **COMMISSIONER ARGENZIANO:** I think staff as  
13           well as our other attorneys here.

14           **COMMISSIONER SKOP:** I think Mr. Burgess wants  
15           to --

16           **CHAIRMAN CARTER:** Mr. Burgess -- let's go to  
17           Mr. Burgess first. Mr. Burgess, you're recognized.

18           **MR. BURGESS:** Thank you. Thank you very much,  
19           Mr. Chairman. And to that point, I was intending  
20           to raise and seek the Commission's approval for the  
21           ability of the parties to brief the entire issue of  
22           the drilled hole. Even if you issue a bench ruling  
23           on the entire balance of the fuel adjustment  
24           issues, I was going to ask, because of how much  
25           significant information came in, and this issue

1 being Exhibit A of the import of this new  
2 information that came in a couple of days before  
3 the hearing, that even if your inclination is, your  
4 intent is to issue a bench warrant -- a bench  
5 ruling on all the rest of the issues in the case,  
6 that you allow the parties to brief and your staff  
7 to analyze the briefs and make -- bring a  
8 recommendation to you so that you have greater time  
9 for these issues to be explored and addressed by  
10 all the parties and your staff to make an analysis  
11 and bring you that.

12 So if we did that, it may get to Commissioner  
13 Argenziano's point and perhaps allow us to address  
14 some of the issues that haven't been fully  
15 explored, as Commissioner Skop is --

16 **CHAIRMAN CARTER:** Commissioner Skop?

17 **COMMISSIONER SKOP:** Thank you. And too,  
18 Mr. Burgess, with respect to the point I just  
19 raised, would OPC's position be that that would be  
20 appropriate to avoid passing the costs to the  
21 ratepayer if there were remedies available that  
22 would be against the contractor?

23 **MR. BURGESS:** Oh, absolutely. Yes,  
24 absolutely, Commissioner. That is a point that we  
25 are very interested in.

1           **COMMISSIONER SKOP:** All right. Thank you.

2           **MR. BURGESS:** Thank you.

3           **MR. BUTLER:** Mr. Chairman, may I respond  
4 briefly to Mr. Burgess's suggestion?

5           **CHAIRMAN CARTER:** Sure. And I'll come back to  
6 Mr. Wright and Ms. Bradley, and Mr. -- had a brain  
7 cramp -- McWhirter. Mr. Butler? And then I can  
8 make -- and then I'll come to staff. You guys can  
9 back clean up. Mr. Butler?

10           **MR. BUTLER:** I fail to see how the issue  
11 raised by Commissioner Skop is something that can  
12 be usefully briefed by the parties in this setting.  
13 I mean, we know that the contractor has denied  
14 responsibility for the incident. That doesn't mean  
15 the contractor necessarily could not be held  
16 responsible, but it's going to have to be something  
17 that a court would determine.

18           On -- we are going to end up presenting  
19 information that almost certainly will result in a  
20 conclusion that the Commission -- to the Commission  
21 that there might be a cause of action, but it's not  
22 certain. I think that's where we'll end up.  
23 That's where Public Counsel will end up with any  
24 briefing on the specific issue of the availability  
25 of enforceable remedies against others in this

1 instance.

2 It seems like that the pathway that the  
3 Commission has taken previously is the appropriate  
4 one because it doesn't try to either force a  
5 decision into a certain time period or require that  
6 the decision be made on the basis of just  
7 speculating on what might be possible. You know,  
8 we should pursue remedies, you know, evaluate the  
9 availability of them, and make the decision if we  
10 have information and an ability to pursue the  
11 claims against others, do so, and return any  
12 amounts that we recover to customers. I think it  
13 works very effectively. It has before.

14 We are absolutely committed to pursuing  
15 remedies, we've done so, and it just doesn't seem  
16 like that that process is something that deferring  
17 to briefing would advance the cause.

18 **CHAIRMAN CARTER:** Commissioner Argenziano.

19 **COMMISSIONER ARGENZIANO:** Just to that, and  
20 I'm trying to balance things out, because the  
21 Commission could decide that -- that it shouldn't  
22 be the burden of the consumer. We don't know the  
23 outcome of that yet with my colleagues and what  
24 conclusion I guess we're going to come to.

25 What would be the difference if you, I guess,

1           instead of shifting it to the consumer now, going  
2           out and finding out if you have a case against the  
3           contractor, and then if you do recover those  
4           dollars, then you will recover them and get to keep  
5           them.

6           **MR. BUTLER:** Well, Commissioner, if one  
7           assumes that the Commission determines, and I  
8           realize that it may be presumptuous to make the  
9           assumption, but if one assumes the Commission  
10          determines that FPL was not imprudent in its  
11          actions, that is a conclusion that I think entitles  
12          us to recover the costs that we incurred as a  
13          result of the replacement of power.

14                 We also have an obligation -- now, there may  
15          be others who are also -- who are responsible to us  
16          and we can recover the funds from those sources.  
17          But it seems like that if we are put in a position  
18          where we don't recover the costs, even though we  
19          were prudent, except to the extent that we are able  
20          to go and get them from a third party, it's  
21          basically imposed a new legal standard on FPL. And  
22          FPL is completely committed to aggressively  
23          pursuing recovery from others. We've done it  
24          before.

25                 And in the -- in the context, in a decision

1           which the company behaved prudently itself, there  
2           are others that are possibly responsible for the  
3           consequences. It fits the regulatory construct of  
4           how the fuel clause works. And the idea of  
5           recovering prudently incurred costs currently to  
6           allow us to recover, in this instance allow us to  
7           keep, because we've actually already recovered, it  
8           would be a matter of refunding the costs in  
9           question, with an obligation that we understand and  
10          that we will pursue that whatever we can get from  
11          others is obviously to the benefit of customers and  
12          would be flowed back to them as a credit.

13                   **COMMISSIONER ARGENZIANO:** Did you say at the  
14          beginning that -- I guess I forgot what you said at  
15          the beginning. I remember there was a question  
16          there I was going to ask you about -- I guess my  
17          question to you was how come you couldn't go and,  
18          you know, see if you have a case, try to recover  
19          from that contractor, and I think your first  
20          response was that you couldn't do that without us  
21          ruling that you were not prudent?

22                   **MR. BUTLER:** If that was what I said, I didn't  
23          mean to say that. We certainly could. I mean,  
24          we're not legally precluded from seeking a claim  
25          against a contractor until you have ruled.

1           I was trying to say that I think that the  
2           Commission's consistent practice precedent in the  
3           fuel adjustment proceedings, and also consistent  
4           with the logic of recovering prudently incurred  
5           costs, is that if we -- if you determine that we  
6           have prudently incurred them, then we should be  
7           allowed to recover them now.

8           But then also as a separate related but  
9           independent issue is our duty in all instances  
10          where there are other possible avenues of recovery  
11          to seek recovery from those avenues, and to the  
12          extent we are successful to, you know, credit that  
13          to the benefit of the customers.

14          **COMMISSIONER ARGENZIANO:** Can I ask to that  
15          point, how many other cases -- and forgive me  
16          because I haven't been here that long -- have there  
17          been that are exactly or kind of like this one,  
18          where there's a responsibility or an intentional  
19          act, that responsibility is more of the issue  
20          rather than a prudent cost just because something  
21          else had occurred, not intentional act? I see a  
22          difference in the scenario.

23          **MR. BUTLER:** Well, there are not a great  
24          number of them. Fortunately that means that the  
25          plants haven't been experiencing these sort of

1           circumstances regularly. There was one some number  
2           of years ago in which a group of overly  
3           enthusiastic teenagers drove a Jeep into the  
4           cooling canal at the St. Lucie power plant, and it  
5           was handled exactly like what I just described.

6           The conclusion was that FPL had not done  
7           anything imprudent in failing to maintain adequate  
8           security, but the people nonetheless circumvented  
9           it, got their Jeep into the canal, and the company  
10          ended up actually pursuing a claim against the  
11          insurer of the driver of the Jeep, and those funds  
12          were returned to customers. I think Ms. Dubin  
13          actually mentions that in her testimony, and you  
14          can examine her on the details of it.

15          But that's probably the one that comes to mind  
16          to me that is the closest analogy. And as I say, I  
17          would concede there aren't a lot of examples, and I  
18          will also say again that I'm glad there aren't a  
19          lot of examples to compare.

20                 **CHAIRMAN CARTER:** Commissioner Skop.

21                 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

22           And I'll pick you back off Commissioner  
23           Argenziano's question. I guess it's -- my  
24           understanding is that the cost of the purchased  
25           power has already been recovered. It's just a



1 question -- the question before the Commission is  
2 whether FPL should be responsible. And I think  
3 that's the issue as framed; am I correct?

4 **MR. BUTLER:** That is the issue as framed. And  
5 then the practical reality of that is that I guess  
6 if you concluded we were responsible there would  
7 end up needing to be an affirmative refund of those  
8 monies, because they have already been collected  
9 from customers.

10 **COMMISSIONER SKOP:** And I think, based on the  
11 discussion we've had, I mean, certainly that's a  
12 genuine issue of material fact as to the degree if  
13 any of FPL's responsibility or the contractor's  
14 responsibility.

15 But, you know, I know the example that you  
16 just presented about teenagers driving into the  
17 cooling pond or what have you, to me that seems to  
18 be a little bit more remote and more attenuated  
19 than the issue we have at hand, where you have at  
20 least two individuals. One's a bad actor, a person  
21 of interest that drilled the hole, and the second  
22 one that failed to report a nuclear safety  
23 incident, both of which were inside the plant, not  
24 just trying to, you know, what do they call it,  
25 joyride. But -- yeah, I'm getting old. I have to

1 remember back to my play.

2 But, you know, to me, I would struggle, and  
3 again, I'm not trying to take an adverse position  
4 against FPL. What I am trying to do in the same  
5 manner in which FPL has no problem insulating  
6 itself from risk, I'm trying to insulate the  
7 ratepayer from risk, exhausting all possible  
8 remedies, before such time as they are required to  
9 incur the cost. Actually they already have,  
10 because it's been recovered from them.

11 Now, what I'm trying to get to the bottom of  
12 is, you know, we should seek to indemnify them from  
13 the full payment of this because, again, I think  
14 there is some responsibility to -- to be had. It  
15 would be a lot simpler if, you know, we could go  
16 pursue legal claims. Or it would be a lot simpler  
17 and probably put myself and my colleagues in less  
18 of a hardship position if there was some  
19 willingness, again, to proactively kind of accept  
20 some form or aspect of responsibility. And I  
21 just -- you know, frankly, I've never seen that  
22 done. And, you know, it's troubling.

23 So again to me, I think that we need to get to  
24 the bottom of, you know, pursuing all remedies  
25 available to FPL, and I don't know whether

1 concurrently, you know, perhaps maybe if we're  
2 forced to make a decision, maybe we refund a  
3 portion of it and then, subject to recovery or  
4 interest at the commercial paper rate or what have  
5 you, you know. Again, that's a decision we're  
6 going to have to make.

7 But I do want to address one quick point that  
8 you made in your opening arguments, going to  
9 chilling effect resulting from regulatory  
10 accountability. And, you know, in certain aspects,  
11 you know, it's certainly a valid argument. In this  
12 one I would adamantly disagree. Even in their dire  
13 straits, I think that the capital markets are  
14 sophisticated enough to distinguish between this  
15 instance and any resulting disallowance by this  
16 Commission from other cost recovery matters.

17 I don't really think it's plausible to think  
18 that this would have a chilling effect on new  
19 nuclear construction. I mean, people can  
20 rationally relate to the fact that somehow a hole,  
21 not by itself, got drilled into a critical nuclear  
22 component. And I think that people could  
23 reasonably understand why a commission would be apt  
24 to exercise its discretion to import some part of  
25 responsibility and disallowance of cost recovery to

1 protect the consumers, if it were to be determined.

2 Again, that's the keywords. If it were to be  
3 determined that there was some responsibility there  
4 on the part of the utility.

5 **MR. BUTLER:** Commissioner Skop, I would  
6 respectfully disagree. Mr. Avera will be  
7 testifying later, going to that point. But  
8 fundamentally, FPL's perspective on this is that it  
9 is regulated by the Nuclear Regulatory Commission  
10 in the specific area of safe, reliable operation of  
11 its nuclear plants.

12 One of the things that the NRC is directly and  
13 specifically concerned about is access to the  
14 plants. FPL did what the NRC directed it to do.  
15 In fact, actually did a little bit more  
16 aggressively, or implemented a little more  
17 aggressively than the NRC expects its access  
18 authorization, and somebody slipped through the  
19 cracks. And it's very unfortunate. We wish it  
20 weren't the case. And obviously the Commission  
21 does, everybody does. Customers of FPL clearly  
22 wish that weren't the case.

23 But it happened that way in spite of our  
24 efforts to comply with all applicable NRC  
25 expectations and requirements on access control.

1           And I do believe that were we to be found  
2           imprudent, responsible, whatever the term of art  
3           would be, applied to it, in spite of our having  
4           followed the specific directions of the regulator  
5           that is charged with ensuring safety and including  
6           proper access of the plants, that that would have a  
7           chilling effect. Mr. Avera will be speaking to  
8           that.

9                       **COMMISSIONER SKOP:** And again, I would  
10           respectfully disagree. I mean, the amount in  
11           question is trivial in relation to most amounts  
12           that this Commission faced. I mean, it's analogous  
13           to basically saying that -- no, I'm not even going  
14           to go there.

15                    But anyway, I would point out that it's not  
16           just one person here. It is two people, because  
17           again, what critically concerns me, and if I was  
18           not subject to ex parte rules, I would have already  
19           written a letter to the NRC, the chairman of the  
20           NRC, asking, hey, you know, there's a problem here.  
21           Because the second person, a contractor who had  
22           been trained, was apparently told about a hole in a  
23           nuclear pipe. He didn't tell a soul. That's a  
24           problem. That's a significant problem. If the  
25           NRC's not concerned about that, frankly they're not

1           doing their job.

2           So, to me, I'm concerned. I'm equally  
3           concerned with the NRC's action. I would hope they  
4           would take a look at this. I mean, because this is  
5           a critical safety concern. If somebody has actual  
6           knowledge that there is a hole in a nuclear plant  
7           piping, that's a problem. I don't see how you can  
8           say logically. I don't sleep well at night knowing  
9           that.

10           **CHAIRMAN CARTER:** Commissioner Argenziano.

11           **COMMISSIONER ARGENZIANO:** I understand what  
12           Commissioner Skop is expressing. We all would be  
13           looking at, how could anybody say that, hey, you  
14           knew that there was a hole in this and you didn't  
15           say anything about it. I don't understand how the  
16           company could foresee that that person knew about  
17           that, so -- so to that point, I'm having a hard  
18           time.

19           If the NRC guidelines -- these are the guys  
20           who say this is what you will do in a nuclear power  
21           plant, put these guidelines down, this is where I  
22           draw the line in trying to be fair. I don't want  
23           the consumer to take any hits they don't need to  
24           take, because God knows they've had enough and  
25           they're having a hard time. So I'm looking for

1           those same things that you are.

2           Now, the first thing you talked about is a  
3           second party knowing and it's their responsibility.  
4           I'm there with you on that one. But as far as  
5           telling an entity, we talk about certainty in the  
6           market and certainty in places. If I'm the person  
7           who's responsible for a nuclear power plant, and  
8           I'm saying this to the OPC and to others too  
9           because this is what I'm struggling with. Here's  
10          the guidelines set by big guys. If the company has  
11          followed the guidelines, then how do you say the  
12          company is responsible?

13          Now, the NRC, if you want, maybe if we can as  
14          a commission -- I don't even know if we do that.  
15          In the Legislature we'd send off a letter and say,  
16          you know what, we think you haven't addressed maybe  
17          the fact that the guy failed the written portion of  
18          the test, and maybe you should send down in your  
19          guidelines to nuclear power plants new areas that  
20          you need to be looking at, like go back in and look  
21          at why the guy failed. Go back and look at why  
22          those charges were dismissed, because again, I have  
23          a problem in being fair.

24          And I don't know -- you know, there are people  
25          who probably don't want me to be fair, and that

1 usually happens on both sides of the aisle. But in  
2 being fair, when I look at the charges against the  
3 person, if they're dismissed, and I live in  
4 America, they're dismissed. But maybe now, knowing  
5 that, you know, the guy was -- with the AG was and  
6 so on, the NRC could send back something to the  
7 regulators, and, I mean, being a regulator, you  
8 want people to think a little outside of the box  
9 too. But truthfully what is their obligation?

10 And if the big guys are saying these are the  
11 guidelines, well, then the guidelines could be  
12 faulty, but you can't fault the company if they  
13 followed the guidelines.

14 So the remedies I see, and this is just one  
15 commissioner speaking, is possibly what you  
16 indicated first, that there is additional  
17 responsibility somewhere else that could relieve  
18 the consumer from that.

19 And something still keeps going back to that  
20 site test. So the legal minds in this room should  
21 be looking in that area, I think, is where I only  
22 see, because I can't come up with the company  
23 having foresight of the second person knowing it  
24 and didn't say anything. And I can't come up with  
25 the explanation as to the company, you know, should



1 have gone beyond the guidelines. Should they?  
2 Maybe. And when you think about it in -- in some  
3 type of -- what word am I looking for?

4 **CHAIRMAN CARTER:** Hindsight.

5 **COMMISSIONER ARGENZIANO:** Hindsight, or to  
6 say, you know, the circumstances may be a red flag  
7 is here. But if we as a country say these are your  
8 guidelines and then when you follow the guidelines  
9 say boom, boom, you know, you can't do it that way.

10 So the other point -- I'd rather see us  
11 explore the other points to that, and that's where  
12 this commissioner feels that we have any kind of  
13 movement in that direction to alleviate the burden  
14 from the consumer.

15 **COMMISSIONER SKOP:** And I tend to agree with  
16 that. Again, with respect to the first part,  
17 whether the person was properly granted unescorted  
18 access, I do think there's room for improvement in  
19 the NRC process there because, from what I've  
20 heard, there's nothing in place today that would  
21 prevent the same thing from happening elsewhere.  
22 Because the -- if we're going to stick solely to  
23 the guidelines, and the company is not going to  
24 exercise its independent discretion because it  
25 controls access, NRC doesn't control access, the

1 company is the ultimate --

2 **COMMISSIONER ARGENZIANO:** Yes.

3 **CHAIRMAN CARTER:** You're recognized.

4 **COMMISSIONER ARGENZIANO:** Excuse us. If I  
5 understand -- I understand that while they could  
6 have used in it more aggressive independent  
7 discretion, the guidelines are still the  
8 guidelines. And I would hope the company would be  
9 in discussion with the NRC about saying, hey, maybe  
10 we need more guidelines, and maybe this Commission  
11 could say, hey, you know, we're a little concerned.  
12 We had this case in front of us and, you know,  
13 they've met the guidelines, perhaps you should take  
14 a second look at the guidelines.

15 **COMMISSIONER SKOP:** And to that point and to  
16 touch on Commissioner Edgar's comment that she  
17 made, certainly I would think that the company  
18 would take lessons learned and improve their own  
19 internal review on a forward-going basis, because  
20 if the NRC requirements don't currently address red  
21 flag issues such as this, it may be that the  
22 company would independently bolster its review so  
23 that when you see maybe arrest record, even though  
24 charges were dismissed, that heightens the level of  
25 review to prevent recurrence of an employee of this

1 nature, you know, even getting anywhere close to a  
2 restricted access area.

3 So again, I agree with you guys on that point,  
4 because again, that's a judgment call they  
5 followed, the NRC regulations. I do think there  
6 was some room for independent discretion. But  
7 again, my critical focus is trying to indemnify the  
8 ratepayers and exhausting all remedies before we  
9 just unilaterally pass it on to the consumers. And  
10 here --

11 **COMMISSIONER ARGENZIANO:** All of us.

12 **COMMISSIONER SKOP:** Yes, all of us. I don't  
13 want to speak for me. All of my colleagues I think  
14 share that interest. But the costs have already  
15 been incurred by the ratepayer, FPL has already  
16 recovered, and maybe, again, for the second aspect,  
17 maybe we require FPL to go out and diligently  
18 pursue all civil remedies, and if recovery is  
19 subject to interest to the ratepayer, and that  
20 would maybe make part of this go away. Does that  
21 sound reasonable?

22 **CHAIRMAN CARTER:** Yes, it does. And I want to  
23 continue the discussion, Commissioners. But let me  
24 do this and then we'll come back to the bench. I  
25 think Mr. Burgess had raised a question and we kind

1 of -- and it is, you know, related to what we're  
2 discussing and I was going to allow the intervenors  
3 to speak to that before I went to staff and came  
4 back to the bench.

5 But, Mr. Burgess, we probably -- you probably  
6 forgot -- they may have forgotten what you said.  
7 But you're recognized again and then we'll go with  
8 Mr. Wright, Mr. McWhirter, then Ms. Bradley.

9 **MR. BURGESS:** Thank you, Mr. Chairman. And  
10 judging by Mr. Butler's response, perhaps I  
11 miscommunicated. I am not saying that the reason  
12 that I'm asking for the opportunity to brief is  
13 solely to address the issue Commissioner Skop  
14 brought to light. I'm saying that because a  
15 document came in to the record within days of the  
16 beginning of the hearing and that document itself  
17 has led to hours of questions --

18 **CHAIRMAN CARTER:** Days.

19 **MR. BURGESS:** -- from the Commissioners --  
20 days of questions from the Commissioners  
21 themselves, that normally we have months to prepare  
22 and present a case on, and we didn't have it in  
23 this case, that I think the Commission would be  
24 better served for this issue to allow the parties  
25 to try to put it into an organized context and

1 present to you how we see the issues, and what  
2 Commissioner Skop raised is one of the issues that  
3 we would seek to raise, but it's not the only thing  
4 that we would try to raise through briefs. And I  
5 think you would be well served to get that and to  
6 get your staff's perspective on it before making a  
7 decision on all of these issues that have arisen  
8 and kind of surprised each one of us at the 11th  
9 hour.

10 **CHAIRMAN CARTER:** Okay. Mr. Wright? I'll  
11 come back to the bench. I'm going to go to the  
12 parties. Mr. Wright?

13 **MR. WRIGHT:** Thank you, Mr. Chairman. The  
14 Florida Retail Federation supports Public  
15 Counsel's, effectively, motion that we be allowed  
16 to submit briefs. This is an important issue and,  
17 like Public Counsel, we would -- we would plan,  
18 more likely for efficiency purposes, we would  
19 probably co-author our brief and cosign a brief  
20 with Public Counsel so you don't get whatever it  
21 is, seven different briefs. But we would like to  
22 brief the totality of issue 13C.

23 **CHAIRMAN CARTER:** Okay. Thank you.  
24 Mr. McWhirter.

25 **MR. McWHIRTER:** Good morning.

1                   **CHAIRMAN CARTER:** Good morning.

2                   **MR. McWHIRTER:** You didn't wake me up,  
3                   Mr. Chairman. My concern is the unstated concern  
4                   or the unstated probability that you might rule  
5                   from the bench without giving us an opportunity to  
6                   reflect upon what we've heard here today. I would  
7                   like to amplify Mr. Burgess's request to give a  
8                   short period of time, not a long period of time,  
9                   but a short period of time to let us explain in  
10                  brief some of the things we think are important on  
11                  all these issues.

12                  And to show -- you just mentioned that we've  
13                  spent days on a six-million-dollar issue. The last  
14                  witness in this case, Mrs. Dubin, is going to  
15                  provide the justification for a \$1.4 billion  
16                  increase, and she's going to do it about  
17                  two o'clock this afternoon, when everybody's antsy  
18                  to get out of here, and I think that we're not  
19                  going to have time to explore in sufficient detail  
20                  the \$1.4 billion.

21                  So I would respectfully suggest to you that  
22                  you make a determination that you're not going to  
23                  rule from the bench in this case, and I don't in  
24                  any way want to lessen the significance of this  
25                  issue with respect to the hole in the pipe. The

1 issue is really not who to put the blame on. The  
2 issue is, when you have two innocent parties,  
3 Florida Power & Light may -- you may determine that  
4 it's totally innocent and did good management. And  
5 customers are clearly innocent. They can't even  
6 get on the site.

7 So between two innocent parties, where do you  
8 let the costs lie? And I think an intelligent  
9 short brief on that subject would certainly be  
10 helpful to the Commission. So I respectfully  
11 suggest to you -- endorse what Mr. Burgess has  
12 done, and I would also suggest that, with respect  
13 to several other issues in this case, you decline a  
14 bench ruling.

15 **CHAIRMAN CARTER:** Ms. Bradley?

16 **MS. BRADLEY:** We would also support the OPC's  
17 position on this. But I have to go a step farther,  
18 because I'm at a severe disadvantage here. I  
19 haven't seen a lot of these records, and I can't  
20 just sign something waiving public record. Our  
21 office is the advocate for public records and  
22 government in the sunshine. And unless this court  
23 rules something is confidential, I can't see it.

24 So I would ask that the court rule -- make a  
25 ruling on some of these confidential documents

1 before the time that it's briefed so that I can  
2 have the advantage of seeing what you all are  
3 talking about. It's kind of hard to advocate when  
4 you can't even see what's being discussed, and  
5 particularly the NRC report that has reviewed what  
6 they did, I would certainly like to see that, would  
7 ask that you rule on it, either that it's  
8 confidential. If it's not -- if you rule it's  
9 confidential, then we respect that and we'll honor  
10 that.

11 So I would support Mr. Burgess's position but  
12 ask a little bit more so that I can effectively  
13 advocate on this issue.

14 **CHAIRMAN CARTER:** I think that, under the  
15 rules of confidentiality, that a separate point  
16 that you raised, as we discussed yesterday, and  
17 Ms. Helton did kind of break it out to you in terms  
18 of the process as to how we handle confidential  
19 documents and all like that, and I don't think that  
20 puts you at a disadvantage if all the parties would  
21 be subject to the same perspectives on -- in terms  
22 of how we handle confidential information.

23 Yes, ma'am? Commissioner Argenziano.

24 **COMMISSIONER ARGENZIANO:** And forgive this --  
25 the ignorance here, but you mean the Attorney



1 General's Office can't get a confidential document?

2 **CHAIRMAN CARTER:** The attorneys that  
3 participate in the case --

4 **COMMISSIONER ARGENZIANO:** If the president of  
5 the Senate came and said, I need to see that, could  
6 he get it or she, someday maybe again?

7 **CHAIRMAN CARTER:** Hang on a second because  
8 we're crossing hairs. Ms. Helton?

9 **MS. HELTON:** As you know, Chapter 119 offers a  
10 very strong laudable requirement in the state of  
11 Florida that most of our information that we have  
12 here is public records and anybody that wants to  
13 come and see it can see it. But they also -- the  
14 Legislature has also decided that there are certain  
15 types of information that we -- if the requirements  
16 are met in section 366.093, and there's also some  
17 equivalent provisions in the other -- Chapter 364  
18 and 367, that we must hold that information to be  
19 confidential.

20 So if someone comes to the Commission, the  
21 president of the Senate, and asks to see  
22 confidential information at our clerk's office, our  
23 clerk's office should say no. But there are  
24 mechanisms that a person can request to see the  
25 confidential information. Our rule sets out that

1 process in 25-22.006. Our rule states -- and I  
2 don't have it in front of me and I probably should  
3 pull it up -- but the preference is that the  
4 parties to a case work out the mechanisms so that  
5 they can see the confidential information. If the  
6 parties can't work out the mechanisms then they can  
7 come to the Commission and we will help that  
8 process along. But our preference is that the  
9 parties do it amongst themselves.

10 I can't imagine that Florida Power & Light  
11 would deny the Attorney General access to its  
12 public records. I can't imagine that Florida Power  
13 & Light would make the Commission have to --

14 **COMMISSIONER ARGENZIANO:** Well, why don't we  
15 find out right now on this subject.

16 **MR. BUTLER:** Sure. And Ms. Bradley may want  
17 to confirm whether she agrees or not, but I just  
18 spoke to her about it. I think -- here's the  
19 issue. The Attorney General's Office, unlike, for  
20 example, say FIPUG, if we were wanting to agree on  
21 providing Mr. McWhirter access to this document and  
22 could do it by a bilateral confidentiality  
23 agreement, the Attorney General's Office is a  
24 public body and has, you know, public disclosure  
25 responsibility under the same law that we've been

1 discussing.

2 But I understand from her that if you have  
3 determined that the document is confidential, then  
4 they may assert that confidentiality as an  
5 exemption from their obligation to disclose it.  
6 That's the problem. When they get it, they have  
7 sort of this independent public records  
8 responsibility for it.

9 So it seems like, unless there's some  
10 disagreement among the parties as to the  
11 confidentiality of this report, the best thing to  
12 do would be just to have the Commission rule on its  
13 confidentiality and then we can directly provide it  
14 to Public Counsel and to Ms. Bradley, the Attorney  
15 General, and can make any arrangements of the  
16 private parties that --

17 **COMMISSIONER ARGENZIANO:** Mr. Chairman?

18 **CHAIRMAN CARTER:** You're recognized.

19 Commissioner Argenziano.

20 **COMMISSIONER ARGENZIANO:** Thank you so much,  
21 because we seem to go around the long way. If  
22 there's a remedy there and we can rule that it is  
23 confidential, we know it's confidential, let's rule  
24 it's confidential and so that the Attorney  
25 General's Office can get it without having to

1 disclose it to others and make it happen. I don't  
2 see why that's a big deal.

3 **CHAIRMAN CARTER:** Commissioner McMurrian.

4 **COMMISSIONER McMURRIAN:** Thank you. I wanted  
5 to ask staff the -- I don't know if it's a statute.  
6 I assume it's a statute. Whatever affords us the  
7 ability to hold something confidential until we've  
8 decided that it's -- and ruled on it's  
9 confidential, and I'm prehearing officer in this  
10 case and eventually I guess we'll be taking up all  
11 the things that are outstanding with regard to  
12 confidentiality requests, but is the statute that  
13 requires us to hold something confidential until  
14 we've ruled on it, is that not good enough for the  
15 Attorney General's Office to consider it  
16 confidential in the meantime, or do we need to go  
17 ahead and rule -- I mean, I agree with Commissioner  
18 Argenziano. Maybe the simplest way is to rule on  
19 it. I don't know. But is it not considered  
20 confidential now in the meantime before we actually  
21 rule on it? And maybe Ms. Bradley --

22 **MS. HELTON:** I honestly don't know the answer  
23 to that question. I know that it's good enough for  
24 us to maintain the confidentiality here at the PSC,  
25 and I think maybe it would be better for

1 Ms. Bradley to answer the question. I don't know  
2 whether that would protect the information if  
3 Ms. Bradley were to take it back to the Attorney  
4 General's Office.

5 **COMMISSIONER McMURRIAN:** Do you understand  
6 what I'm talking about, Ms. Bradley?

7 **MS. BRADLEY:** Yes, I do. And, in all honesty,  
8 I don't think we've had a ruling on that. I mean,  
9 we have to take the strict line because that's our  
10 job is to advocate for public record and government  
11 in the sunshine. But, like has been said, the  
12 easiest way, if you all rule it's confidential we  
13 respect that. And I'm not in the same position.  
14 OPC has a special exemption that they can respect  
15 that. The private attorneys are not, you know,  
16 part of the government, so they don't have any type  
17 of strict guidelines for them.

18 And so I'm kind of in a unique position here,  
19 and I hate to burden the Commission with this, but  
20 it does put us at a disadvantage if you don't rule  
21 on the confidentiality.

22 **CHAIRMAN CARTER:** Commissioners, we may have  
23 to look at this. But my concern is -- of course  
24 I've only been here three years and I've seen  
25 several cases before with the Attorney General's

1 Office participating, and I don't remember that  
2 being a problem before. So I'm not -- this is  
3 where my confusion is coming in, Ms. Helton.

4 **MS. HELTON:** And it may be that before  
5 there -- either was not confidential information at  
6 issue in the proceeding, or it may be that the  
7 ruling was already made on the confidentiality of  
8 the information and we had already deemed it to be  
9 confidential. I know that in the fuel docket  
10 there's an awful lot of information that comes  
11 through and it may be -- it sounds like this is not  
12 one of the ones that has come before the prehearing  
13 officer for a ruling.

14 There is a provision in 366.093, if my memory  
15 serves me correctly, that security measures are  
16 confidential under the statute, and it sounds to me  
17 that it's because of security reasons that this  
18 information should be held confidential, that  
19 the -- and I don't know why we could not go ahead  
20 today and rule it confidential. That would be  
21 included in the final order of -- or we could even  
22 issue a separate procedural order today for the  
23 prehearing officer to sign or the presiding officer  
24 to sign. So that seems like that would kind of  
25 close the loop and allow Power & Light to provide

1 the information to Ms. Bradley.

2 **CHAIRMAN CARTER:** Okay. Commissioner Edgar?

3 **COMMISSIONER EDGAR:** Mr. Chairman, I hope this  
4 is not out of turn and if it is, I apologize. But  
5 I always enjoy back and forth discussion at the  
6 bench and with the parties, always. It's one of my  
7 favorite parts of the job, in fact. But yet we do  
8 still have witnesses that we have yet to hear from  
9 and they have been here for a few days and our  
10 calendar is tight the rest of the week. It just  
11 seems to me that the issue of potential rulings on  
12 confidentiality and also maybe potential additional  
13 briefing, I don't know, might be something better  
14 taken up after we have heard from the witnesses. I  
15 mean, you know, often we do a bench decision on  
16 issues. That is, you know, maybe something that we  
17 will be prepared to do later today. Maybe not. I  
18 don't know, because I don't know how far we're  
19 going to get.

20 But I'm just wondering if many of the issues  
21 that we have discussed, if actually making a  
22 decision at this point might be a little premature,  
23 before we have the opportunity to conclude the  
24 technical case.

25 **CHAIRMAN CARTER:** Commissioner Argenziano.

1                   **COMMISSIONER ARGENZIANO:** I respectfully  
2 disagree. I think that what's before us, we're  
3 talking about it right now, you either know now  
4 whether you want the Attorney General to have the  
5 information or not. I would like the Attorney  
6 General to have that information, knowing that it's  
7 confidential and that it remains confidential, so  
8 that no one else has any -- and in the statute the  
9 emphasis really is on proprietary. There is safety  
10 measures and systems and procedures, and I  
11 understand that. And that really is so that the  
12 average person out there who may want to do harm to  
13 the company, let's get logical here.

14                   I think that if you don't want the Attorney  
15 General, you know, or -- I don't see the time  
16 making a difference as to when we make that  
17 decision. The discussion is at hand now and I for  
18 one would like to make the motion that, if we have  
19 to go the roundabout way of saying that we have to  
20 declare this information confidential in order for  
21 the Attorney General to get it and keep it  
22 confidential, well, then, let's do it.

23                   So I move that we --

24                   **CHAIRMAN CARTER:** Before we -- before I  
25 entertain your motion, let me hear from Ms. Helton,



1 who is the counsel for the Commission. Ms. Helton,  
2 recommendation for the bench on this matter?

3 Because we do -- and Commissioner Argenziano would  
4 move and we could move forward on that. But give  
5 us some guidelines here, because we do want -- all  
6 of us, we have always wanted the Attorney General  
7 to participate. Like -- as I said, for the three  
8 years that I've been here, they've been involved in  
9 all of the major cases, and I don't see a reason  
10 why they wouldn't be involved now.

11 Did you get me?

12 **MS. HELTON:** I'm having problems with the  
13 buttons this week. We are as we speak drafting an  
14 order to grant confidential treatment to the  
15 information in question. So I think -- I  
16 understand Commissioner Argenziano's -- I'm sorry,  
17 I'm having a hard problem with your name today.

18 **CHAIRMAN CARTER:** Argenziano.

19 **COMMISSIONER ARGENZIANO:** A lot of people do.

20 **MS. HELTON:** It's about making sure that we  
21 can hand over the information to the AG's office  
22 today. But we feel compelled to make sure that we  
23 dot all the I's, cross all the T's, and we have  
24 protected the information adequately. We want  
25 parties and utilities to feel comfortable when they

1 file confidential information with us that the  
2 Commission has done everything within its power to  
3 maintain the confidentiality of that information.

4 So our goal is as quickly as we can to bring  
5 an order for signature to the -- I'm not sure if it  
6 should be the presiding officer or the prehearing  
7 officer. We can -- we don't even have to worry  
8 about that right now. For your signature, we will  
9 have it issued by the clerk's office and then we  
10 can, through Florida Power & Light, hand the  
11 information over to Ms. Bradley.

12 **CHAIRMAN CARTER:** Do we need a motion or --

13 **MS. HELTON:** I don't think we need a motion.  
14 I think this is something --

15 **CHAIRMAN CARTER:** Can we just defer to --

16 **MS. HELTON:** -- that's done normally through  
17 the course of the proceeding, and we can just have  
18 an order issued.

19 **CHAIRMAN CARTER:** And I think that we all  
20 agree that we want the Attorney General's Office to  
21 participate. Commissioner Argenziano, are you  
22 comfortable with that we allow the prehearing  
23 officer to sign the order allowing for the  
24 confidentiality --

25 **COMMISSIONER ARGENZIANO:** As long as we make

1 that understanding now. Because if I'm not here  
2 later and there's a different discussion I want it  
3 stated --

4 **CHAIRMAN CARTER:** No, nobody leaves.

5 **COMMISSIONER ARGENZIANO:** -- that we aren't  
6 going to give -- we are going to give the Attorney  
7 General the opportunity to have that confidential  
8 information and keep it confidential. That's all  
9 I'm trying to say.

10 **COMMISSIONER EDGAR:** Mr. Chairman, I'm sorry.  
11 I think we have gone way far afield. I think we  
12 are potentially setting very poor precedent for  
13 procedures before the Commission. I quite frankly  
14 am not comfortable having this Commission direct  
15 any commissioner as to what they should or should  
16 not do with a draft order brought to them my staff.  
17 I -- I apologize, Commissioner, but I think that is  
18 inappropriate for the Commission to tell a  
19 prehearing officer what they should do with a draft  
20 order that she hasn't even seen yet.

21 **CHAIRMAN CARTER:** All right. Let me handle  
22 it, Commissioner. Let me do this. As presiding  
23 officer, bring the order to me and I will sign it.  
24 I have the flavor of the Commissioners. I know  
25 where we want to be. You bring it to me and I will

1 sign it.

2 **COMMISSIONER ARGENZIANO:** Mr. Chairman?

3 **CHAIRMAN CARTER:** Commissioner Argenziano.

4 **COMMISSIONER ARGENZIANO:** With respect to  
5 that, and I understand that heartburn of that, then  
6 I would like to put on the table the motion to make  
7 sure that we give that -- whether it's through your  
8 signature, but I'd like to move right now that we  
9 make sure that the Attorney General gets that  
10 information, and also add to that that it's kept  
11 classified. And I would -- that's the motion I set  
12 on the table. Whether it's done through your  
13 signature or through the vote here right now, I  
14 move to do that.

15 **CHAIRMAN CARTER:** Commissioners, we have a  
16 motion on the floor.

17 **COMMISSIONER SKOP:** Second.

18 **CHAIRMAN CARTER:** Motion and a second. Is  
19 there any further discussion? Commissioner Edgar,  
20 you're recognized for discussion and debate.

21 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.  
22 And if indeed we are going for the vote on this,  
23 I'm just going to say I'm going to vote no, and not  
24 because I have a disagreement with the Attorney  
25 General having access, but I think this is very,

1 very poor procedure. Thank you.

2 **CHAIRMAN CARTER:** Commissioner McMurrian.

3 **COMMISSIONER McMURRIAN:** I don't -- I guess  
4 where I am is I don't think we really need to vote  
5 on it, and no disrespect to you, Commissioner  
6 Argenziano, but I think if we tell staff that they  
7 need to get a recommendation to whoever, and I have  
8 no hangup with whether it's the prehearing officer  
9 or presiding officer, they need to get a  
10 recommendation on confidentiality. They know that  
11 they're doing -- and they're saying they're doing  
12 that already. So I guess my preference would be  
13 not to have a vote on it and they have the  
14 direction they need.

15 **COMMISSIONER ARGENZIANO:** Sure. And,  
16 Mr. Chair?

17 **CHAIRMAN CARTER:** Commissioner Argenziano.

18 **COMMISSIONER ARGENZIANO:** And I respect that.  
19 I really do. But it seems to me, and my  
20 frustration is and I guess I like to get things  
21 done and it seems here that you take forever to get  
22 something done, and I understand. But I don't have  
23 the patience for that sometimes, and I'm going to  
24 come right out and say it. I said, let's do it,  
25 there's a motion on the table and let's rule on the

1 motion. With respect to your opinions -- and I  
2 really do. But I believe that sometimes you just  
3 get something done instead of taking the ten-mile  
4 approach. So, with the motion on the table, if you  
5 want to vote no, I guess you vote no.

6 **CHAIRMAN CARTER:** Commissioner Skop.

7 **COMMISSIONER SKOP:** Thank you. Mr. Chairman,  
8 I also tend to agree. I second the motion in  
9 support of my colleague, because again, I do think  
10 the Attorney General should have access to the  
11 information in a timely manner, because again, I  
12 think that's the intent of all my colleagues. I do  
13 tend to agree with both Commissioner Edgar and  
14 Commissioner McMurrian, that procedurally it's -- I  
15 think it would have policy questions in terms of  
16 discretion of each individual prehearing officer,  
17 because I don't think I would react kindly to being  
18 told what to do or not to do.

19 But what I think we could do, and perhaps --  
20 perhaps Commissioner Argenziano may be amiable to  
21 this. If we had a commitment from staff that would  
22 be the direction and we could get it done in a  
23 timely manner, perhaps we could just take that at  
24 face, based on the representations made by staff on  
25 the record without a vote. But I just wanted to

1 throw that out there.

2 I'm interested in getting that information,  
3 and, you know, I would vote to support getting that  
4 information affirmatively if I had to.

5 **CHAIRMAN CARTER:** Commissioner, one second.  
6 Let me do this before I come back to you. And I'm  
7 going to come back to Commissioner Argenziano and  
8 then Commissioner Edgar.

9 Ms. Helton, how long would it take you guys to  
10 draft that?

11 **CHAIRMAN CARTER:** You know, you make a great  
12 point, Commissioner McMurrian. We don't really  
13 have to write it. We can rule from the motion and  
14 go from there. We don't really need to have it  
15 written. Any further debate? Any further debate?  
16 There's a motion on the floor. Commissioner Edgar,  
17 you're recognized in debate.

18 **COMMISSIONER EDGAR:** Yeah. Could I have the  
19 motion repeated, please?

20 **COMMISSIONER ARGENZIANO:** Okay. And in my  
21 nonlawyer version, in my legislative practice for  
22 12 years, I move that this Commission vote on  
23 sending the confidential information, allowing the  
24 Attorney General's Office to have the confidential  
25 information that we rule is confidential, so that

1 the Attorney General can have that information,  
2 which the companies seem to have no problem with,  
3 and keep it confidential, because there is  
4 confidential information in there obviously that is  
5 not meant for the whole world to see. That's my  
6 motion.

7 **CHAIRMAN CARTER:** Commissioner Edgar, any  
8 further questions on the motion? It's been moved  
9 and seconded.

10 **COMMISSIONER EDGAR:** Just a comment, and  
11 Commissioner Argenziano and I agree on many, many,  
12 many things, and I'm almost -- I'm so hesitant to  
13 even say this, but the attorney in me is just  
14 uncomfortable procedurally. And again, the  
15 substance of it. But our staff has said to us, and  
16 I'm not going to go to them because we've already  
17 done that. But our staff has said to us that they  
18 need a little more time to dot the I's and cross  
19 the T's, and as an attorney that seems to me to be  
20 a reasonable request.

21 Issues of confidentiality, as has been pointed  
22 out, we have a very strong public records and open  
23 government philosophy in this state, which of  
24 course I support. But I also recognize that  
25 occasionally, and in instances where we are dealing



1 with documents that could deal with an  
2 infrastructure of such import as a nuclear  
3 facility, occasionally there is a bump between the  
4 open government and public records requirements of  
5 our state and of the federal law. And that is the  
6 sort of thing that I would want our staff to be  
7 able to look at very, very, very carefully.

8 And I just am concerned with the precedent,  
9 and I don't think, as I have suggested, that we  
10 continue with the witnesses and let us move through  
11 that, which is what I came here to do this morning,  
12 that we continue with that and allow these  
13 procedural matters to have a little bit more time  
14 today, to me is not going ten miles down the road.

15 So that's just my take. So again, I'm just  
16 very uncomfortable with this from a procedural  
17 aspect.

18 **MS. HELTON:** Mr. Chairman, I may have a fix  
19 that -- I probably should have gone back and looked  
20 at the statute before responding earlier. It's  
21 been -- someone has reminded me that in 366.093,  
22 subsection 2, that the Commission has been given  
23 the authority to issue appropriate protective  
24 orders designating the manner for handling such  
25 information during the course of the proceeding and

1 for protecting such information from disclosure  
2 outside the proceeding.

3 So my recommendation to you would be that you  
4 could issue a protective order, staff can still  
5 bring an order to grant confidential treatment to  
6 the presiding officer, and we can do both and then  
7 that way I think everyone is protected and I think  
8 that staff would feel comfortable that the  
9 confidentiality of the information has been  
10 maintained.

11 **CHAIRMAN CARTER:** How is that in the context  
12 of where we are now, Ms. Helton?

13 **MS. HELTON:** I think --

14 **CHAIRMAN CARTER:** We have a motion, we have a  
15 second, we had debate, and I'm getting ready to  
16 call for the vote. What are you saying?

17 **MS. HELTON:** That if -- if Commissioner  
18 Argenziano felt so inclined to change her motion so  
19 it would be styled a protective order.

20 **COMMISSIONER ARGENZIANO:** And I was --  
21 Mr. Chair?

22 **CHAIRMAN CARTER:** You're recognized.

23 **COMMISSIONER ARGENZIANO:** Just reading that  
24 now, and I will amend the motion.

25 **CHAIRMAN CARTER:** Okay. You're recognized.

1           **COMMISSIONER ARGENZIANO:** I will amend the  
2 motion -- the motion to have -- hang on one second  
3 as I'm reading the statute.

4           Okay. I will go ahead and move that we label  
5 this as a protective order, designating the manner  
6 in which we give this to the AG as a confidential  
7 document.

8           **COMMISSIONER SKOP:** And I would second that,  
9 and thank Commissioner Argenziano for adopting that  
10 amendment to her motion.

11           **CHAIRMAN CARTER:** Thank you, Commissioners.  
12 Any further debate or discussion based upon the  
13 input and revision of the motion presented to us by  
14 staff? Any further debate? Any further debate?  
15 Staff, anything further before we vote?

16           **MR. COOKE:** One additional -- I'm sorry. It  
17 might be appropriate, just because, again, all --  
18 there's no doubt we will get this accomplished.  
19 The question is making sure we've dotted all the  
20 I's and crossed all the T's. And it might be  
21 appropriate to ask if FPL would be willing to make  
22 the motion, because it's really the FPL's  
23 information that's being presented. Normally when  
24 the protective order takes place it's on motion of  
25 the -- one of the parties.

1                   **COMMISSIONER ARGENZIANO:** Excuse me.

2                   Mr. Chairman?

3                   **CHAIRMAN CARTER:** Commissioner Argenziano.

4                   **COMMISSIONER ARGENZIANO:** That's not what the  
5                   statute says. I don't have any problem doing that.  
6                   The company I said -- I think before already  
7                   indicated it had no problem.

8                   **MR. COOKE:** I agree, and I just --

9                   **COMMISSIONER ARGENZIANO:** I'm trying to not  
10                  make a mountain out of a molehill. And if it's a  
11                  stumbling block, let's get it out of the way.

12                  **MR. COOKE:** I agree. I would just -- I've  
13                  talked to Mr. Butler and I think they're prepared  
14                  to join into the --

15                  **MR. BUTLER:** If it is useful, we move for a  
16                  protective order granting confidential treatment to  
17                  the IT report, and I think upon your ruling  
18                  favorably upon that motion for protective order we  
19                  would be in a position to provide the document to  
20                  Ms. Bradley without concern over it being fully  
21                  disclosed.

22                  **COMMISSIONER ARGENZIANO:** Thank you.

23                  **CHAIRMAN CARTER:** All those in favor?

24                  **COMMISSIONER ARGENZIANO:** Aye.

25                  **COMMISSIONER EDGAR:** Aye.

1           **COMMISSIONER SKOP:** Aye.

2           **COMMISSIONER McMURRIAN:** Aye.

3           **CHAIRMAN CARTER:** Aye.

4           All those opposed? Show it done. We've kind  
5 of beat a dead horse to sleep, Commissioners.

6           Ms. Bradley.

7           **MS. BRADLEY:** I just want to briefly say thank  
8 you and I certainly did not intend to create a --  
9 either a burden for the staff or Commission or a  
10 delay. We're just kind of in a unique position and  
11 take public records very seriously in our office,  
12 and I -- I just needed a ruling. But I appreciate  
13 your efforts.

14           **CHAIRMAN CARTER:** We -- we do -- I would  
15 appreciate in the future going forward is that when  
16 there's -- during the prehearing we get those  
17 matters taken care of in the future. I think it  
18 would be very efficient for all of us, because we  
19 just spent an inordinate amount of time on  
20 something that -- I mean, all of us want the AG's  
21 office to participate. But let's move on.

22           Commissioner Skop, you're recognized.

23           **COMMISSIONER SKOP:** Just briefly to  
24 Ms. Bradley's point. I'd like to commend my law  
25 school classmate, Ms. Alexis Lambert, who actually

1 is the head of the sunshine law at the AG's office.  
2 She does a great job. Thank you.

3 **CHAIRMAN CARTER:** Thank you. Mr. Twomey?

4 **MR. TWOMEY:** Mr. Chairman, Commissioners, the  
5 AARP adopts and specifically endorses the comments  
6 of Mr. Burgess, Mr. Wright, Mr. McWhirter, and  
7 Ms. Bradley.

8 **CHAIRMAN CARTER:** Captain McNeill? Sorry.  
9 Ms. White. Sorry.

10 **MS. WHITE:** She stepped out. We will do  
11 whatever you tell us to do, sir. If you want us to  
12 brief, we will; and if you make a bench decision,  
13 we'll abide by that as well. We do support  
14 Mr. Burgess in this matter.

15 **CHAIRMAN CARTER:** Thank you. Ms. White's  
16 representing our Federal Executive Agencies.

17 Okay. Let's kind of get us back around here.  
18 Commissioners, what I said I was going to do is  
19 hear from the parties, then go to staff, and then  
20 come back to the bench on this request made by  
21 Mr. Burgess.

22 **MR. BUTLER:** Mr. Chairman?

23 **CHAIRMAN CARTER:** Mr. Butler.

24 **MR. BUTLER:** I'm sorry. Very briefly. If you  
25 choose to direct briefing, one thing that had been

1 pointed out to me by my able colleagues I think is  
2 an excellent point, is it would I think be  
3 appropriate not to have the briefing cover the  
4 subject of the availability of legal remedies  
5 against third parties. The concern is that the  
6 information that is in those briefs will -- unless  
7 we go through another unusual -- highly unusual  
8 confidentiality procedure with respect to them,  
9 that would be public information filed in the  
10 clerk's office, and we'd hate to, if we were in a  
11 position of trying to enforce remedies against a  
12 party having something that was said by us or  
13 others that was unfavorable or casting doubt on the  
14 possible availability of claims be read back to us  
15 in whatever legal proceeding we were attempting to  
16 enforce the rights.

17 So I think it's an issue that really is not --  
18 the Commission is not appropriately part of the  
19 decision for you to evaluate the -- sort of extent  
20 and the validity of legal claims against the third  
21 parties, and it does put us in an awkward position  
22 if we have that briefed in a way that possibly puts  
23 things out there that we would have to be, you  
24 know, responding to if we end up pursuing legal  
25 claims. Thank you.

1           **CHAIRMAN CARTER:** Thank you, Mr. Butler.  
2           Staff, you're recognized. You guys remember where  
3           we are, right, procedurally? We're talking about  
4           the issue raised by Mr. Burgess.

5           **MS. HELTON:** I think that Chapter 120 states  
6           that when a party asks to brief a matter before an  
7           administrative agency that's been litigated, that  
8           we have to afford them that right. So staff's  
9           recommendation would be to allow the parties to  
10          brief issue 13C.

11          Now, with respect to Mr. Butler's argument,  
12          maybe what we can do is meet with the parties after  
13          the conclusion of the hearing and see if we can  
14          reach an agreement about what would be briefed and  
15          not be briefed, and perhaps if Commissioner  
16          Argenziano would allow the staff at the conclusion  
17          of the hearing to talk to her about what we think  
18          about what contract claims or civil claims that the  
19          company would have against Florida Power & Light,  
20          we can kind of get to Mr. Butler's concerns about  
21          doing this in a public forum where -- where someone  
22          may be able to use that against them later down the  
23          road.

24          **CHAIRMAN CARTER:** Mr. Burgess, what do you  
25          think?



1           **MR. BURGESS:** I think that is -- sounds like a  
2           good solution to me. I mean, I think it would be  
3           certainly worth the effort to discuss tactically  
4           what we might want to stay away from that may be in  
5           the interest of all of our clients. Now, where it  
6           ends up leading, I don't know. If -- you know, if  
7           the ruling is we can brief 13C, and we end up after  
8           meeting saying we disagree, you know, that we  
9           should not stay -- that we should stay away from  
10          this area, well, you know, then I assume it would  
11          be up to each party's --

12          **CHAIRMAN CARTER:** I have faith and confidence  
13          in your ability to negotiate both sides.

14          **MR. BURGESS:** I appreciate that, Mr. Chair.

15          **CHAIRMAN CARTER:** I always do. It's always --  
16          Commissioners, here's my perspective on this. Let  
17          me do this. I'm going to need to collect my  
18          thoughts on -- before coming to you with some kind  
19          of disposition on this, because -- I mean, you  
20          know, sometimes, you know, I think when you're  
21          playing basketball a move on the fly is pretty  
22          good. But on something like this, we may need a  
23          little bit more deliberation, so I'm going to need  
24          to get my thoughts together on how I'll come back  
25          to you with this issue in terms of briefing.

1           Based on what Ms. Helton has said, the  
2           statute, from the administrative body we fairly --  
3           we do -- we'll have to grant that, but, I mean, we  
4           need to think about how we'll do that. Let me do  
5           this to kind of get myself together and get a  
6           chance to talk with staff on how we go further with  
7           that. And I had so much hope about progress for  
8           today.

9           Let me ask this before we do the --  
10          Commissioners, does any Commissioner have any  
11          further questions for Mr. Jones?

12          **COMMISSIONER SKOP:** No.

13          **CHAIRMAN CARTER:** Thank you, Mr. Jones. You  
14          may be excused. And I don't think he's one of the  
15          rebuttal witnesses either, right, Mr. Butler?

16          **MR. BUTLER:** He is not listed, although  
17          depending on what Larkin says, he might. We don't  
18          know yet.

19          **CHAIRMAN CARTER:** All right. Are there any  
20          other preliminary matters before we take a break?  
21          Because I'm going to need to get with staff before  
22          I come back to you in terms of the briefing  
23          perspective. Any other preliminary matters from  
24          the parties? Mr. Butler?

25          **MR. BUTLER:** None that I'm aware of.

1 Mr. Burgess?

2 **CHAIRMAN CARTER:** Mr. Burgess, are there any  
3 other preliminary matters?

4 **MR. BURGESS:** I'm sorry, Mr. Chairman. No, we  
5 don't have any other preliminary matters. Thank  
6 you.

7 **CHAIRMAN CARTER:** Mr. Wright?

8 **MR. WRIGHT:** No, Mr. Chairman. Thank you.

9 **CHAIRMAN CARTER:** Mr. McWhirter, any other  
10 preliminary matters, because we really need to get  
11 started. I was hoping we were getting started over  
12 an hour ago.

13 **MR. McWHIRTER:** Get going, Mr. Chairman.

14 **CHAIRMAN CARTER:** Thank you, Mr. McWhirter.  
15 Ms. Bradley?

16 **MS. BRADLEY:** No, sir. I think I've exhausted  
17 my limit. So let's go.

18 **CHAIRMAN CARTER:** Mr. Twomey?

19 **MR. TWOMEY:** No, sir.

20 **CHAIRMAN CARTER:** Ms. White?

21 **MS. WHITE:** No, sir.

22 **CHAIRMAN CARTER:** Captain McNeill?

23 **MS. McNEILL:** No.

24 **CHAIRMAN CARTER:** Okay. Commissioner  
25 McMurrian, you're recognized.

1           **COMMISSIONER McMURRIAN:** I just want to ask  
2 Ms. Helton again can I get that reference again  
3 about what you -- I guess it was a statutory  
4 reference about if a party asks to brief then we  
5 have to afford them that opportunity. Because I'm  
6 going to look at that.

7           **MS. HELTON:** I don't think I gave you the  
8 specific statute, but I will do that now. It's  
9 120.57(1) (b).

10          **CHAIRMAN CARTER:** Okay. Commissioners, I want  
11 to take a chance to get -- take a moment to get  
12 with staff on that. Let's do this. Let's --  
13 everybody stay close. Let's come back on the hour.  
14 We're in recess.

15           (Break taken.)

16          **CHAIRMAN CARTER:** We are back on the record  
17 and just, Commissioners, just to kind of get us  
18 back in procedurally where we need to be,  
19 Ms. Helton, based upon your review of Chapter 1 --  
20 is it Chapter 120 --

21          **MS. HELTON:** Yes, sir.

22          **CHAIRMAN CARTER:** -- point 57, does that -- we  
23 have to give leave for the -- the submittal of the  
24 briefs in this matter?

25          **MS. HELTON:** Well, I think I heard Mr. Burgess

1 say and the other intervenors agree that they would  
2 like to have the opportunity to brief issue 13C.  
3 And I believe that, under 120.57(1)(b), that the  
4 Legislature has determined that if a party wants to  
5 file some type of post hearing written statement,  
6 then they must be afforded that opportunity to do  
7 so.

8 **CHAIRMAN CARTER:** Commissioners, based upon  
9 the statute and based upon the respectable -- we  
10 will grant that. Not like we can stop it anyway.  
11 Let's do that and let's move forward.

12 With that, Commissioners, anything further  
13 before we go further with our next -- Mr. Burgess,  
14 you're comfortable with that?

15 **MR. BURGESS:** Thank you very much,  
16 Commissioners. I appreciate it.

17 **CHAIRMAN CARTER:** Mr. Butler?

18 **MR. BUTLER:** I'm sorry, I was conferring with  
19 my colleague. Am I comfortable with?

20 **CHAIRMAN CARTER:** Well, we just moved forward,  
21 based upon Chapter 120.57, allowing the parties to  
22 provide briefing.

23 **MR. BUTLER:** Briefing on issue 13C?

24 **CHAIRMAN CARTER:** 13C, yes, sir.

25 **MR. BUTLER:** We do not object to that.

1                   **CHAIRMAN CARTER:** Thank you. Let's move  
2 forward. Would you call your next witness.

3                   **MR. BUTLER:** We will. That would be  
4 Ms. Dubin.

5   **KOREL DUBIN**

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

8   **DIRECT EXAMINATION**

9 **BY MR. BUTLER:**

10            **Q** Ms. Dubin, have you previously been sworn?

11            **A** Yes, I have.

12            **Q** Would you please state your name and business  
13 address for the record?

14            **A** Yes. My name is Korel Dubin. My business  
15 address is 9250 West Flagler Street, Miami, Florida,  
16 33174.

17            **Q** And by whom are you employed and in what  
18 capacity?

19            **A** I'm employed by Florida Power & Light as  
20 senior manager of purchased power.

21            **Q** I'm going to ask you if you have before you a  
22 veritable laundry list of testimonies before. You have  
23 before you testimony dated March 3, 2008, consisting of  
24 nine pages with attached Exhibits KMD-1 and KMD-2?

25            **A** I do.

1           **Q**    All right.  And do you have before you  
2 testimony dated on April 3, 2008?

3           **A**    Yes, I do.

4           **Q**    Okay.  Do you have testimony before you --  
5 excuse me -- dated August 4, 2008, consisting of nine  
6 pages and attached Exhibits KMD-3 and KMD-4?

7           **A**    Yes.

8           **Q**    Do you have before you testimony dated  
9 September 2, 2008, consisting of 16 pages with attached  
10 Exhibits KMD-5, KMD-6, and KMD-7?

11          **A**    Yes.

12          **Q**    And finally, do you have before you testimony  
13 dated October 15, 2008, consisting of four pages and  
14 attached Exhibit KMD-8?

15          **A**    Yes, I do.

16          **Q**    Okay.

17                **MR. BUTLER:**  Mr. Chairman, I would note that  
18 these exhibits have been assigned -- preassigned  
19 Exhibit Nos. 10, 11, 12, 13 -- back to Exhibit 8,  
20 the KMD-5 is actually already premarked as 8 -- and  
21 then 14, 15, and 16.

22                **CHAIRMAN CARTER:**  Thank you.

23 **BY MR. BUTLER:**

24           **Q**    Were these testimony -- testimonies and  
25 exhibits prepared by you or under your direction,

1 supervision, or control?

2 **A** Yes, they were.

3 **Q** Do you have any corrections or changes to make  
4 to them at this time?

5 **A** No, I do not.

6 **Q** Okay. If I asked the same questions contained  
7 in your prefiled testimony, would your answers be the  
8 same?

9 **A** Yes, they would.

10 **MR. BUTLER:** I'd ask that Ms. Dubin's prefiled  
11 direct testimonies be inserted into the record as  
12 though read.

13 **CHAIRMAN CARTER:** Prefiled direct testimony of  
14 the witness will be entered into the record as  
15 though read.

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1                   **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**2                   **FLORIDA POWER & LIGHT COMPANY**3                   **TESTIMONY OF KOREL M. DUBIN**4                   **DOCKET NO. 080001-EI**5                   **MARCH 3, 2008**

6

7   **Q.     Please state your name, business address, employer and position.**

8   A.     My name is Korel M. Dubin, and my business address is 9250 West Flagler  
9           Street, Miami, Florida, 33174. I am employed by Florida Power & Light  
10          Company (FPL or the Company) as the Manager of Cost Recovery Clauses  
11          in the Regulatory Affairs Department.

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

13 A.     Yes, I have.

14 **Q.     What is the purpose of your testimony in this proceeding?**

15 A.     The purpose of my testimony is to present the schedules necessary to  
16          support the actual Fuel Cost Recovery (FCR) Clause and Capacity Cost  
17          Recovery (CCR) Clause Net True-Up amounts for the period January 2007  
18          through December 2007. The Net True-Up for the FCR is an under-recovery,  
19          including interest, of \$121,036,106. The Net True-Up for the CCR is an  
20          under-recovery, including interest, of \$3,707,455. I am requesting  
21          Commission approval to include this FCR true-up under-recovery of  
22          \$121,036,106 in the calculation of the FCR factor for the period January 2009  
23          through December 2009. I am also requesting Commission approval to  
24          include this CCR true-up under-recovery of \$3,707,455 in the calculation of

1 the CCR factor for the period January 2009 through December 2009.

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

4 A. Yes, I have. It consists of two appendices. Appendix I contains the FCR  
5 related schedules, and Appendix II contains the CCR related schedules. In  
6 addition, FCR Schedules A-1 through A-12 for the January 2007 through  
7 December 2007 period have been filed monthly with the Commission and  
8 served on all parties. Those schedules are incorporated herein by reference.

9 **Q. What is the source of the data that you will present through testimony**  
10 **or exhibits in this proceeding?**

11 A. Unless otherwise indicated, the data are taken from the books and records of  
12 FPL. The books and records are kept in the regular course of the Company's  
13 business in accordance with generally accepted accounting principles and  
14 practices, and with provisions of the Uniform System of Accounts as  
15 prescribed by the Commission.

16

17

#### **FUEL COST RECOVERY CLAUSE (FCR)**

18 **Q. Please explain the calculation of the Net True-up Amount.**

19 A. Appendix I, page 3, entitled "Summary of Net True-Up," shows the calculation  
20 of the Net True-Up for the period January 2007 through December 2007, an  
21 under-recovery of \$121,036,106.

22

23 The Summary of the Net True-up amount shown on Appendix I, page 3

1 shows the actual End-of-Period True-Up under-recovery for the period  
2 January 2007 through December 2007 of \$146,613,806 on line 1. The  
3 Estimated/Actual True-Up under-recovery for the same period of \$25,577,700  
4 is shown on line 2. Line 1 less line 2 results in the Net Final True-Up for the  
5 period January 2007 through December 2007 shown on line 3, an under-  
6 recovery of \$121,036,106.

7

8 The calculation of the true-up amount for the period follows the procedures  
9 established by this Commission set forth on Commission Schedule A-2  
10 "Calculation of True-Up and Interest Provision."

11 **Q. Have you provided a schedule showing the calculation of the actual  
12 true-up by month?**

13 A. Yes. Appendix I, pages 4 and 5, entitled "Calculation of Actual True-up  
14 Amount," shows the calculation of the FCR actual true-up by month for  
15 January through December 2007.

16 **Q. Have you provided a schedule showing the variances between actual  
17 and estimated/actual fuel costs and revenues for 2007?**

18 A. Yes. Appendix I, page 6 compares the actual fuel costs and revenues to the  
19 estimated/actuals for January through December 2007.

20 **Q. Please describe the variance in fuel costs.**

21 A. Appendix I, page 6, line C11 compares the Actual End of Period Net True-up  
22 under-recovery of \$200,358,364 to the Estimated/Actual End of Period Net  
23 True-up under-recovery of \$79,322,258 resulting in a variance of

1           \$121,036,106. This variance is due primarily to a \$97,525,633 (1.6%)  
2           increase in Jurisdictional Total Fuel Costs and Net Power Transactions (page  
3           6, line C6), a \$21,617,546 (0.4%) decrease in Jurisdictional Fuel Revenues  
4           (page 6, line C3), and an increase of \$1,892,924 in interest (page 6, line C8).

5  
6           The \$97.5 million increase in Adjusted Total Fuel Costs and Net Power  
7           Transactions is due primarily to an \$82.3 million (1.5%) increase in the Fuel  
8           Cost of System Net Generation, a \$31.0 million (30.7%) variance in the Fuel  
9           Cost of Power Sold, and a \$12.8 million (4.6%) increase in Fuel Cost of  
10          Purchased Power. These amounts are somewhat offset by a \$7.9 million  
11          (4.4%) decrease in Energy Payments to Qualifying Facilities, and a \$18.5  
12          million (21.1%) decrease in the Energy Cost of Economy Purchases.

13  
14          The \$31.0 million (30.7%) variance in Fuel Cost of Power Sold is primarily  
15          due to lower than projected off-system sales and lower than expected fuel  
16          costs. The \$12.8 million (4.6%) increase in Fuel Cost of Purchased Power is  
17          primarily due to higher than projected purchases (an additional 216,007  
18          MWhs) from Purchase Power Agreements (PPAs) at a slightly higher cost  
19          than originally projected.

20  
21          As shown on the December 2007 A3 Schedule, the \$82.3 million (1.5%)  
22          increase in the Fuel Cost of System Net Generation is primarily due to \$206.9  
23          million (28.8%) greater than projected heavy oil cost, offset by \$122.3 million

1 (2.7%) lower than projected natural gas cost. Heavy oil averaged \$9.31 per  
2 MMBtu, \$0.10 per MMBtu (1.1%) lower than projected, and 23,076,030 more  
3 MMBtu's (30.3%) of heavy oil were used during the period than projected.  
4 The natural gas price averaged \$9.70 per MMBtu, \$0.08 per MMBtu (0.9%)  
5 higher than projected, but 16,716,955 fewer MMBtu's (3.5%) of natural gas  
6 were used during the period than projected.

7

8 The \$7.9 million (4.4%) decrease in Energy Payments to Qualifying Facilities  
9 is due primarily to a decrease in the energy purchases. The \$18.5 million  
10 (21.1%) decrease in the Energy Cost of Economy Purchases is mainly  
11 attributable to lower than projected economy purchases and lower than  
12 expected market prices.

13 **Q. What was the variance in retail (jurisdictional) Fuel Cost Recovery**  
14 **revenues?**

15 A. As shown on Appendix I, page 6, line C3, actual jurisdictional Fuel Cost  
16 Recovery revenues, net of revenue taxes, were \$21.6 million (0.4%) lower  
17 than the estimated/actual projection. This decrease was due primarily to  
18 lower than projected jurisdictional sales, which were 488,364,370 kWh (0.5%)  
19 lower than the estimated/actual projection.

20 **Q. Pursuant to Commission Order No. PSC-08-0030-FOF-EI, FPL's 2007**  
21 **gains on non-separated wholesale energy sales are to be measured**  
22 **against a three-year average Shareholder Incentive Benchmark of**  
23 **\$19,672,897. Did FPL exceed this benchmark?**

1 A. No.

2 **Q. What is the appropriate final Shareholder Incentive Benchmark level for**  
 3 **calendar year 2008 for gains on non-separated wholesale energy sales**  
 4 **eligible for a shareholder incentive as set forth by Order No. PSC-00-**  
 5 **1744-PAA-EI in Docket No. 991779-EI?**

6 A. For the year 2008, the three year average Shareholder Incentive Benchmark  
 7 consists of actual gains for 2005, 2006 and 2007 (see below) resulting in a  
 8 three year average threshold of:

9                   2005           \$21,022,022

10                   2006           \$19,438,254

11                   2007           \$18,545,406

12           Average threshold   \$19,668,561

13           Gains on sales in 2008 are to be measured against this three-year average  
 14           Shareholder Incentive Benchmark.

15

16                                   **CAPACITY COST RECOVERY CLAUSE (CCR)**

17

18 **Q. Please explain the calculation of the Net True-up Amount.**

19 A. Appendix II, page 3, entitled "Summary of Net True-Up" shows the calculation  
 20 of the Net True-Up for the period January 2007 through December 2007, an  
 21 under-recovery of \$3,707,455, which I am requesting to be included in the  
 22 calculation of the CCR factors for the January 2009 through December 2009  
 23 period.

1

2 The actual End-of-Period under-recovery for the period January 2007 through  
3 December 2007 of \$19,268,464 (shown on line 1) less the estimated/actual  
4 End-of-Period under-recovery for the same period of \$15,561,009 that was  
5 approved by the Commission in Order No. PSC-08-0030-FOF-EI (shown on  
6 line 2), results in the Net True-Up under-recovery for the period January 2007  
7 through December 2007 (shown on line 3) of \$3,707,455.

8 **Q. Have you provided a schedule showing the calculation of the actual**  
9 **true-up by month?**

10 A. Yes. Appendix II, page 4, entitled "Calculation of Actual True-up Amount,"  
11 shows the calculation of the CCR End-of-Period true-up for the period  
12 January 2007 through December 2007 by month.

13 **Q. Is this true-up calculation consistent with the true-up methodology used**  
14 **for the other cost recovery clauses?**

15 A. Yes, it is. The calculation of the true-up amount follows the procedures  
16 established by this Commission set forth on Commission Schedule A-2  
17 "Calculation of True-Up and Interest Provision" for the Fuel Cost Recovery  
18 Clause.

19 **Q. Have you provided a schedule showing the variances between actuals**  
20 **and estimated/actuals?**

21 A. Yes. Appendix II, page 6, entitled "Calculation of Final True-up Variances,"  
22 shows the actual capacity charges and applicable revenues compared to the  
23 estimated/actuals for the period January 2007 through December 2007.

1 **Q. What was the variance in net capacity charges?**

2 A. Appendix II, page 6, Line 13 provides the variance in Jurisdictional Capacity  
3 Charges of \$1,935,196 or 0.4%. This \$1,935,196 variance was primarily due  
4 to a \$3,955,688 or 14.5% decrease in Incremental Power Plant Security  
5 Costs and a \$1,228,751 or 0.6% decrease in Payments to Non-cogenerators.  
6 This decrease in Power Plant Security Costs is primarily due to lower than  
7 projected costs for Turkey Point Security Search Equipment and a delay in  
8 the completion of the planned work scope. Additionally, certain expenditures  
9 associated with the NERC cyber security compliance project were delayed  
10 until 2008 and contributed to the variance. The \$1,228,751 or 0.6% decrease  
11 in Payments to Non-cogenerators is due to lower than estimated capacity  
12 payments to SJRPP. These decreases were partially offset by a \$2,735,526  
13 or 0.9% increase in Payments to Cogenerators (QF's), primarily due to higher  
14 than estimated capacity payments to ICL caused by higher than expected  
15 performance of the ICL facility during the last five months of 2007.

16 **Q. What was the variance in Capacity Cost Recovery revenues?**

17 A. As shown on page 6, line 16, actual Capacity Cost Recovery Revenues (Net  
18 of Revenue Taxes), were \$5,668,864 (1.1%) lower than the estimated/actual  
19 projection. This \$5,668,864 decrease in revenues, less the \$1,935,196  
20 decrease in costs, plus interest of \$26,213 (page 6, line 18), results in the  
21 final under-recovery of \$3,707,455.

22 **Q. Have you provided Schedule A12 showing the actual monthly capacity**  
23 **payments by contract?**



1 A. Yes. Schedule A12 consists of two pages that are included in Appendix II as  
2 pages 7 and 8. Page 7, shows the actual capacity payments for Qualifying  
3 Facilities, the Southern Company – UPS contract and the St John River  
4 Power Park (SJRPP) contract. Page 8 provides the Short Term Capacity  
5 payments for the period January 2007 through December 2007.

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

7 A. Yes, it does.

1           **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2                           **FLORIDA POWER & LIGHT COMPANY**

3                                   **TESTIMONY OF KOREL M. DUBIN**

4   **DOCKET NO. 080001-EI**

5   **April 3, 2008**

6

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

8   A.     My name is Korel M. Dubin and my business address is 9250 West  
9           Flagler Street, Miami, Florida 33174.

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

11 A.     I am employed by Florida Power & Light Company (FPL) as Manager  
12           of Cost Recovery Clauses in the Regulatory Affairs Department.

13 **Q.     Have you previously testified in 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)  
17           in 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  
20           caused by a drilled hole in the pressurized piping. Consistent with  
21           its prior precedent, the Commission approved FPL's request to  
22           recover through the 2007 Fuel Cost Recovery (FCR) factor the  
23           approximately \$6 million of replacement power costs associated  
24           with the outage extension, subject to potential refund with interest

1 if the Commission were to determine subsequently that FPL is not  
2 entitled to recover those costs. In the 2007 fuel proceeding, the  
3 parties stipulated that this issue should be deferred to the 2008  
4 fuel proceeding. My testimony discusses the regulatory policies  
5 associated with recovery of replacement power costs. FPL witness  
6 Jones describes the events that occurred during the Turkey Point  
7 Unit 3 outage extension in 2006.

8 **Q. What standard has the Commission used to determine whether**  
9 **utilities may recover replacement power costs associated with**  
10 **nuclear unit outages?**

11 A. The Commission has consistently based that determination on  
12 whether a utility's actions were prudent in whatever circumstances  
13 led to the need for replacement power. These prudence  
14 determinations essentially look to whether a utility acted reasonably  
15 based on the information available to it at the time, without the benefit  
16 of hindsight. So long as a utility's actions are prudent by this  
17 measure, the utility is permitted to recover the replacement power  
18 costs.

19 **Q. Do you believe that this prudence standard is appropriate for**  
20 **determining whether replacement power costs may be**  
21 **recovered?**

22 a. Yes, I do. Replacement power costs constitute out-of-pocket fuel  
23 and/or purchased power costs actually incurred by a utility in  
24 providing electric service to its customers. As such, they are properly

1 recoverable through the FCR Clause just like any other power costs,  
2 unless they are shown to have been unnecessarily incurred because  
3 the utility could have avoided them had it acted reasonably.

4  
5 The purpose of the FCR was clearly enunciated almost fifty years  
6 ago: the FCR allows a utility to recover its actual fuel costs, no more  
7 or no less. As stated in Order No. 2515-A, dated April 24, 1959,

8 "A fuel adjustment clause is intended to compensate for day-  
9 to-day fluctuations in the cost of fuel which cannot be  
10 anticipated in the base rates. It should be constructed and  
11 applied so as to reimburse the utility for the increase in the  
12 cost of fuel as related to generation. It also operates so as to  
13 pass on to the customer any savings realized by the utility  
14 from decreased cost of fuel."

15 Pursuant to this stated purpose of the FCR, the Commission has  
16 consistently based replacement power cost recovery determinations  
17 on whether a utility's actions were prudent in whatever circumstances  
18 led to the need for replacement power. These prudence  
19 determinations essentially look to whether a utility acted reasonably  
20 based on the information available to it at the time, without the benefit  
21 of hindsight. So long as a utility's actions are prudent by this  
22 measure, utilities have been permitted to recover the replacement  
23 power costs. For example, in 1984 the Commission reviewed and  
24 approved the recovery of replacement power costs associated with

1 the outage at FPL's St. Lucie Unit 1 associated with removal of the  
2 damaged Thermal Shield. In Order No. 15486 in Docket No.  
3 840001-EI-A, the Commission relied on the prudence standard in  
4 approving recovery of those replacement power costs and even  
5 references OPC's concurrence that prudence is the standard when it  
6 states:

7 "Burden of Proof and Standard of Care"

8 Public Counsel correctly pointed out that the utilities  
9 bear the burden of demonstrating that their fuel costs are  
10 reasonable and prudent. FPL has also correctly indicated  
11 that hindsight should not serve as the basis for liability in this  
12 case and that for a utility to be denied recovery of  
13 replacement power costs it must be shown that management  
14 acted unreasonably at the time the relevant decision were  
15 made...we find that FPL's decision to include a thermal shield  
16 in the design of SL1 was prudent when we consider the  
17 information known to the decision-makers at the time of the  
18 relevant decisions. Likewise, we have determined that FPL's  
19 operation of the unit prior to the extended outage was prudent  
20 and reasonable as was the repair and return to service.  
21 Accordingly, we have found that *the replacement fuel costs*  
22 *incurred were reasonable and prudent and properly*  
23 *recovered through the fuel cost recovery clause."* [emphasis  
24 added]

1 In 1996, the Commission reviewed several outages that had  
2 occurred at the St. Lucie plant in 1994 and 1995. One of the outage  
3 events is similar to the circumstances of the Pressurizer Piping  
4 incident in that it was a bad act, outside of the company's control. It  
5 was an act of trespassing, wherein a vehicle was driven up over the  
6 St. Lucie discharge canal berm and ultimately ended up lodging  
7 inside one of the discharge pipes. The Commission again relied on  
8 the prudence standard in determining whether or not FPL could  
9 recover replacement power costs stating that:

10 "We approve Florida Power & Light Company's request to  
11 recover replacement energy costs incurred as a result of  
12 outages at Plant St. Lucie during the period September 1994  
13 through September 1995. *FPL's actions regarding the outages*  
14 *were reasonable and prudent and, therefore, FPL should*  
15 *recover all replacement energy costs."*

16 (Emphasis added). These are just two of many instances over the  
17 years where the Commission has evaluated actions that led to  
18 outages and allowed recovery of the resulting replacement power  
19 costs if the utility were found to have acted prudently. In fact, I have  
20 been personally involved in the Commission's FCR proceedings for  
21 almost 25 years and have never seen the Commission evaluate the  
22 recovery of replacement power costs using any standard other than  
23 prudence.

24 **Q. Should FPL be entitled to recover the replacement power costs**

1           **associated with the 2006 Turkey Point Unit 3 outage extension**  
2           **under the prudence standard?**

3       A.     Yes. As FPL witness Jones explains in his testimony, FPL complied  
4           fully with NRC requirements and industry standards in order to  
5           prevent improper access and deliberate criminal acts, and took  
6           extensive actions to swiftly and effectively investigate and inspect  
7           both Turkey Unit 3 and Unit 4 after the drilled hole in the pressurizer  
8           piping was discovered, enabling FPL to expeditiously return the plant  
9           to service with minimal disruption in production. FPL's actions at  
10          each step in this process were unquestionably reasonable and  
11          prudent.

12       **Q.     Would it be unfair to deny FPL recovery of its replacement power**  
13           **costs even though its actions were prudent?**

14       A.     Yes. To deny recovery of replacement power costs even where a utility  
15           has acted prudently would be completely inconsistent with the purpose  
16           of the FCR Clause. Such a policy would create a major disincentive to  
17           investments in new nuclear capacity which FPL believes is important to  
18           help ensure energy security and fuel diversity.

19       **Q.     Did FPL provide its customers less low-cost nuclear energy in**  
20           **2006 fuel costs than initially expected, due to the impact of the**  
21           **Pressurizer Piping outage extension at Turkey Point Unit 3?**

22       A.     No. Even with the outage extension due to the Pressurizer Piping  
23           incident, FPL's nuclear units performed better than projected in 2006.  
24           In its September 9, 2005 fuel adjustment projection filing, FPL

1 projected to generate 23,524,087 MWhs with its nuclear units in  
2 2006. FPL actually generated 23,532,578 MWhs in 2006, even with  
3 the additional outage time resulting from the Pressurizer Piping  
4 incident. This additional nuclear generation saved customers  
5 approximately \$560,000 compared to the cost of natural gas that  
6 likely would have been burned instead.

7  
8 Moreover, as reported in FPL's Generating Performance Incentive  
9 Factor (GPIF) testimony, FPL's nuclear fleet performance for 2006  
10 was excellent. Even with the Pressurizer Piping outage, Turkey  
11 Point Unit 3 achieved an extremely high Adjusted Equivalent  
12 Availability Factor (EAF) of 91.3%. In fact, three of FPL's four  
13 nuclear units (including Turkey Point Unit 3) had Adjusted Equivalent  
14 Availability Factors that were so high in 2006 that they achieved the  
15 maximum available GPIF reward. In view of this strong performance,  
16 any suggestion that FPL's customers need special protection from  
17 the costs of FPL's 2006 nuclear operations simply does not ring true.

18 **Q. Please summarize your testimony.**

19 A. To deny recovery of replacement power costs even where a utility  
20 has acted prudently would be completely inconsistent with the  
21 purpose of the FCR Clause and with fundamental principles of  
22 ratemaking. It would put the utility at risk of not recovering its actual  
23 fuel costs whenever a nuclear plant is unexpectedly offline, even for  
24 reasons beyond the utility's control, and it would provide the utility no



1 corresponding reward for having to bear this large risk. Such a policy  
2 would create a major disincentive to investments in any technology  
3 that has very low energy costs, including solar and wind as well as  
4 nuclear generation. Those investments are important to helping  
5 achieve Florida's energy security, fuel diversity and environmental  
6 (including climate change) goals.

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

8 **A.** Yes, it does.

1                   **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2                               **FLORIDA POWER & LIGHT COMPANY**

3                                       **TESTIMONY OF KOREL M. DUBIN**

4   **DOCKET NO. 080001-EI**

5   **August 4, 2008**

6

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

8   A.     My name is Korel M. Dubin and my business address is 9250 West  
9           Flagler Street, Miami, Florida 33174.

10 **Q.    By whom are you employed and in what capacity?**

11 A.     I am employed by Florida Power & Light Company (FPL) as Senior  
12           Manager of Purchased Power in the Resource Assessment and  
13           Planning Department.

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

15 A.     Yes, I have.

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

17 A.     The purpose of my testimony is to present for Commission review  
18           and approval the calculation of the Estimated/Actual True-up  
19           amounts for the Fuel Cost Recovery (FCR) Clause and the Capacity  
20           Cost Recovery (CCR) Clause for the period January 2008 through  
21           December 2008.

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

24 A.     Yes, I have. It consists of various schedules included in Appendices I

1 and II. Appendix I contains the FCR related schedules and Appendix  
2 II contains the CCR related schedules.

3

4 The FCR Schedules contained in Appendix I include Schedules E3  
5 through E9 that provide revised estimates for the period July 2008  
6 through December 2008. FCR Schedules A1 through A9 provide  
7 actual data for the period January 2008 through June 2008. They are  
8 filed monthly with the Commission, are served on all parties and are  
9 incorporated herein by reference.

10 **Q. What is the source of the actual data that you will present by**  
11 **way of testimony or exhibits in this proceeding?**

12 A. Unless otherwise indicated, the actual data is taken from the books  
13 and records of FPL. The books and records are kept in the regular  
14 course of our business in accordance with generally accepted  
15 accounting principles and practices, as well as the provisions of the  
16 Uniform System of Accounts as prescribed by this Commission.

17 **Q. Please describe what data FPL has used as a comparison when**  
18 **calculating the FCR and CCR true-ups that are presented in your**  
19 **testimony.**

20 A. The FCR true-up calculation compares estimated/actual data  
21 consisting of actuals for January through June 2008, and revised  
22 estimates for July through December 2008, with the mid-course  
23 correction data filed on June 3, 2008. The CCR true-up calculation  
24 compares estimated/actual data consisting of actuals for January

1 through June 2008, and revised estimates for July through December  
2 2008 with original estimates for January through December 2008.

3 **Q. Please explain the calculation of the interest provision that is**  
4 **applicable to the FCR and CCR true-ups.**

5 A. The calculation of the interest provision follows the same  
6 methodology used in calculating the interest provision for the other  
7 cost recovery clauses, as previously approved by this Commission.  
8 The interest provision is the result of multiplying the monthly average  
9 true-up amount times the monthly average interest rate. The average  
10 interest rate for the months reflecting actual data is developed using  
11 the 30 day commercial paper rates as published in the Wall Street  
12 Journal on the first business day of the current and subsequent  
13 months. The average interest rate for the projected months is the  
14 actual rate as of the first business day in June 2008.

15

16 **FUEL COST RECOVERY CLAUSE**

17 **Q. Please explain the calculation of the FCR Estimated/Actual True-**  
18 **up amount you are requesting this Commission to approve.**

19 A. Appendix I, pages 2 and 3, show the calculation of the FCR  
20 Estimated/Actual True-up amount. The estimated/actual true-up  
21 amount for the period January 2008 through December 2008 is an  
22 under-recovery, including interest, of \$354,844,749 (Appendix I, Page  
23 3, Column 13, Line C7 plus C8). This \$354,844,749 under-recovery  
24 is to be carried forward and included in the fuel factor for January

1 through December 2009.

2

3 On June 3, 2008, FPL filed a petition for a mid-course correction to its  
4 2008 fuel adjustment factors to recover a \$746,153,416 under-  
5 recovery during the August through December 2008 period. At the  
6 July 1, 2008 Agenda Conference, the Commission approved recovery  
7 of 50% of this under-recovery, or \$373,076,708, during the August  
8 through December 2008 period, and deferred recovery of the  
9 remaining 50% to 2009. FPL is now calculating a 2008  
10 estimated/actual under-recovery of \$354,844,749, including interest.  
11 This is slightly lower than the remaining 50% of FPL's mid-course  
12 correction under-recovery, because FPL now projects slightly lower  
13 fuel costs for August through December 2008 than were reflected in  
14 its mid-course correction filing.

15

16 Appendix I, pages 2 and 3 also provide a summary of the Fuel and  
17 Net Power Transactions (lines A1 through A7), kWh Sales (lines B1  
18 through B3), Jurisdictional Fuel Revenues (line C1 through C3), the  
19 True-up and Interest Provision for this period (lines C4 through C10)  
20 and the End of Period True-up amount (line C11).

21

22 The data for January 2008 through June 2008, columns (1) through  
23 (6) reflect the actual results of operations, and the data for July 2008  
24 through December 2008, columns (7) through (12) are based on

1 updated estimates.

2

3 The true-up calculations follow the procedures established by this  
4 Commission as set forth on Commission Schedule A2 "Calculation of  
5 True-Up and Interest Provision" filed monthly with the Commission.

6 **Q. Were these calculations made in accordance with the**  
7 **procedures previously approved in predecessors to this**  
8 **Docket?**

9 A. Yes, they were.

10 **Q. Please summarize the variance schedule provided as page 4 of**  
11 **Appendix I.**

12 A. The variance calculation compares the Estimated/Actual data to the  
13 mid-course correction filing for the January 2008 through December  
14 2008 period. FPL's mid-course correction filing projected  
15 Jurisdictional Total Fuel and Net Power Transactions to be \$6.398  
16 billion for January through December 2008 (See Appendix I, Page 4,  
17 Column 2, Line C6). The estimated/actual Jurisdictional Total Fuel  
18 Cost and Net Power Transactions are now projected to be \$6.393  
19 billion for that period (Actual data for January through June 2008 and  
20 revised estimates for July through December 2008) (See Appendix I,  
21 Page 4, Column 1, Line C6). Therefore, Jurisdictional Total Fuel  
22 Cost and Net Power Transactions are \$4.7 million or 0.1% lower than  
23 the mid-course correction filing (See Appendix I, Page 4, Column 3,  
24 Line C6).

1 Jurisdictional Fuel Revenues for 2008 are \$ 11.4 million higher than  
2 in the mid-course correction filing (Appendix I, Page 4, Column 3,  
3 Line C3).

4 **Q. Please explain the variances in Jurisdictional Total Fuel Costs**  
5 **and Net Power Transactions.**

6 A. As shown on Appendix I, Page 4, Line C6, the variance in  
7 Jurisdictional Total Fuel Costs and Net Power Transactions of \$4.7  
8 million is a 0.1% decrease from the mid-course correction filing. This  
9 variance is primarily due to slightly lower than projected Total Fuel  
10 Costs and Net Power Transactions (\$0.9 million), plus higher  
11 revenues from sales to FKEC and CKW contracts (\$2.8 million) and  
12 higher Reactive and Voltage Control Fuel revenues (\$1.1 million)  
13 than were included in the mid-course correction.

14 **Q. What is the appropriate estimated benchmark level for calendar**  
15 **year 2009 for gains on non-separated wholesale energy sales**  
16 **eligible for a shareholder incentive as set forth by Order No.**  
17 **PSC-00-1744-PAA-EI, in Docket No. 991779-EI?**

18 A. For the forecast year 2009, the three-year average threshold consists  
19 of actual gains for 2006, 2007, and January through June 2008, and  
20 estimates for July through December 2008. Gains on sales in 2009  
21 are to be measured against this three-year average threshold, after it  
22 has been adjusted with the true-up filing (scheduled to be filed in  
23 March 2009) to include all actual data for the year 2008.

1                                   2006   \$19,438,254  
2                                   2007   \$18,545,406  
3                                   2008   \$18,971,264  
4           Average threshold   \$18,812,528

5

6

#### **CAPACITY COST RECOVERY CLAUSE**

7   **Q.   Please explain the calculation of the CCR Estimated/Actual True-**  
8       **up amount you are requesting this Commission to approve.**

9   A.   Appendix II, Pages 2 and 3 show the calculation of the CCR  
10       Estimated/Actual True-up amount. The calculation of the  
11       Estimated/Actual True-up for the period January 2008 through  
12       December 2008 is an under-recovery of \$26,555,378 including  
13       interest (Appendix II, Page 3, Column 13, Lines 17 plus 18).

14   **Q.   Is this true-up calculation made in accordance with the**  
15       **procedures previously approved in predecessors to this**  
16       **Docket?**

17   A.   Yes, it is.

18   **Q.   Have you provided a schedule showing the variances between**  
19       **the Estimated/Actuals and the Original Projections?**

20   A.   Yes. Appendix II, Page 4, shows the Estimated/Actual capacity  
21       charges and applicable revenues (January through June 2008  
22       reflects actual data and the data for July through December 2008 is  
23       based on updated estimates) compared to the original projections for  
24       the January 2008 through December 2008 period, filed September 4,



1 2007.

2 **Q. Please explain the variances related to capacity charges.**

3 A. As shown in Appendix II, Page 4, Column 3, Line 13, the variance  
4 related to capacity charges is a \$3.8 million decrease. The primary  
5 reasons for this variance are a \$2.5 million decrease in Capacity  
6 Payments to Non-cogenerators, and a \$1.9 million decrease in  
7 incremental plant security costs, offset by a \$1.1 million increase in  
8 transmission of electricity by others, and a \$0.4 million decrease in  
9 transmission revenues from capacity sales.

10

11 The decrease in Payments to Non-cogenerators is primarily due to  
12 lower than estimated capacity payments to Southern Company for  
13 UPS during the first six months of 2008 due to an unanticipated credit  
14 in February for a transmission service true up. This decrease was  
15 partially offset by higher than anticipated SJRPP capacity charges of  
16 approximately \$300,000 for the first six months of 2008.

17

18 The decrease in incremental plant security costs is primarily due to a  
19 change in work scope.

20

21 The increase in the Transmission of Electricity by Others is due to the  
22 fact that the transmission provider that FPL utilizes for its Indian River  
23 PPA raised its firm transmission rate beginning in February 2008.

24

1           The decrease in Transmission Revenues from Capacity Sales is  
2           primarily due to lower than projected off-system (economy) sales.  
3           Combining actuals through June with new projections for the  
4           remainder of the year, FPL projects to sell approximately 400,000  
5           MWh less economy power than originally projected (resulting in lower  
6           transmission revenues). Of this total, 368,000 MWh of the total  
7           reduction in economy sales occurred in the January through June  
8           actual period.

9  
10           In addition to the cost variances, Appendix II, Page 4, Column 3, Line  
11           14, Capacity Cost Recovery Revenues, Net of Revenue Taxes, are  
12           \$29.4 million lower than originally projected. The \$3.8 million lower  
13           costs offset by the \$29.4 million revenue variance, including interest,  
14           results in an estimated/actual 2008 true-up amount of \$26.6 million  
15           under-recovery (Appendix II, Page 4, Column 3, Lines 17 plus 18).  
16           This under-recovery of \$26.6 million including interest, and the final  
17           2007 under-recovery of \$3.7 million filed on March 3, 2008 results in  
18           an under-recovery of \$30.3 million to be carried forward to the 2009  
19           capacity factor.

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

21       **A. Yes, it does.**

1           **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2                           **FLORIDA POWER & LIGHT COMPANY**

3                                   **TESTIMONY OF KOREL M. DUBIN**

4   **DOCKET NO. 080001-EI**

5   **September 2, 2008**

6

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

8    A.    My name is Korel M. Dubin and my business address is 9250  
9           West Flagler Street, Miami, Florida 33174.

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

11 A.    I am employed by Florida Power & Light Company (FPL) as  
12           Senior Manager of Purchased Power in the Resource  
13           Assessment and Planning Department.

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

15 A.    Yes, I have.

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

17 A.    My testimony addresses the following subjects:

18           -       I present for Commission review and approval the Fuel  
19                    Cost Recovery (FCR) factors for the period January 2009  
20                    through December 2009. I propose that the FCR factors  
21                    be adjusted during the period in order to offset the impact  
22                    of the Generation Base Rate Adjustments (GBRAs) for  
23                    West County Energy Center (WCEC) Units 1 and 2 and

- 1           thus levelize the 1,000 kWh residential customer bill  
2           throughout the period. I also present as an alternative  
3           FCR factors that are uniform throughout the period, which  
4           would not result in levelizing the overall bill.
- 5           - I present for Commission review and approval a revised  
6           2008 FCR estimated/actual true-up amount, which has  
7           been updated to include July actual data and which is  
8           incorporated into the calculation of the 2009 FCR Factors.
- 9           - I present for Commission review and approval the  
10          Capacity Cost Recovery (CCR) factors for the period  
11          January 2009 through December 2009.
- 12          - I present for Commission review and approval a revised  
13          2008 CCR estimated/actual true-up amount, which has  
14          been updated to include July actual data and which is  
15          incorporated into the calculation of the 2009 CCR Factors.
- 16          - I present for Commission review and approval FPL's  
17          projected incremental security costs for 2009, to be  
18          recovered through the CCR Clause.
- 19          - Finally, I provide on pages 73-74 of Appendix II FPL's  
20          proposed COG tariff sheets, which reflect 2009 projections  
21          of avoided energy costs for purchases from small power  
22          producers and cogenerators and an updated ten year  
23          projection of Florida Power & Light Company's annual

1 generation mix and fuel prices.

2 **Q. Have you prepared or caused to be prepared under your**  
3 **direction, supervision or control any exhibits in this**  
4 **proceeding?**

5 A. Yes, I have. They are as follows:

- 6 - KMD-5 -- Schedules E1, E1-A, E1-B, E1-C, E1-D E1-E, E2,
- 7 E10, H1, and pages 8a-8c and 73-74 included in Appendix II
- 8 - KMD-6 -- the entire Appendix III

9 Appendix II contains the FCR related schedules, Appendix III  
10 contains the CCR related schedules, and Appendix IV provides  
11 the alternate FCR schedules prepared using the standard  
12 methodology.

13

#### 14 **FUEL COST RECOVERY CLAUSE**

##### 15 **Adjusted FCR Factors to Levelize the Overall Bill**

16 **Q. Is FPL proposing to levelize the Residential 1,000 kWh bill in**  
17 **2009?**

18 A. Yes. In order to provide customers with a more stable, level bill in  
19 2009, FPL proposes to levelize the Residential 1,000 kWh bill by  
20 offsetting the GBRA's for WCEC Units 1 and 2 with the fuel  
21 savings attributable to these new units. FPL has filed affidavits of  
22 Dr. Steven Sim and Ms. Renae Deaton documenting and  
23 describing the calculation of those GBRA's. The fuel savings of

1           \$164,850,000 attributable to WCEC Units 1 and 2 are presented  
2           in the testimony of FPL witness G. Yupp.

3  
4           Without levelization, the overall 1,000 kWh residential bill would  
5           increase in June 2009 from the level in effect for January to May  
6           2009, when WCEC Unit 1 begins commercial operations and the  
7           WCEC 1 GBRA becomes effective. Then, the overall 1,000 kWh  
8           residential bill would increase again in November 2009, when  
9           WCEC Unit 2 begins commercial operations and the WCEC 2  
10          GBRA becomes effective. FPL's proposal will eliminate these two  
11          step increases.

12       **Q.    How does FPL propose to calculate the FCR factors that will**  
13       **implement this levelized 1,000 kWh residential bill?**

14       A.    FPL proposes to offset the GBRA's that become effective in June  
15           2009 (WCEC 1) and November 2009 (WCEC 2), by crediting an  
16           equivalent amount of the units' fuel savings to customers over the  
17           same timeframe that the GBRA's will be in effect for 2009. This is  
18           in contrast to the standard methodology for calculating FCR  
19           factors, in which fuel costs for a given year (including any fuel  
20           savings) are levelized over the twelve month period. Offsetting the  
21           GBRA impacts will not require all of the projected fuel savings  
22           associated with operation of WCEC Units 1 and 2 in 2009; the  
23           remaining savings will be spread over the five month period of

1 January through May 2009.

2

3 Specifically, as shown in Mr. Yupp's testimony, FPL projects total  
4 fuel savings of \$164,850,000 in 2009, with the jurisdictional  
5 savings being \$164,637,858. \$93,085,358 of those savings are  
6 credited to June through October 2009 to offset the impact of the  
7 WCEC Unit 1 GBRA, and \$52,955,000 of the savings are credited  
8 in November through December 2009 to offset the combined  
9 impacts of the WCEC Units 1 and 2 GBRA's in that period. The  
10 remaining fuel savings of \$18,597,500 are credited in January  
11 through May 2009.

12

13 By spreading the fuel savings from WCEC Units 1 and 2 in this  
14 fashion, FPL has calculated levelized fuel factors for January  
15 through May 2009 of 6.744¢ per kWh, for June through October  
16 2009 of 6.603¢ per kWh, and for November through December  
17 2009 of 6.475¢ per kWh. The calculation of these FCR factors is  
18 further detailed on Schedule E1, pages 3a – 3c of Appendix II.  
19 Applying these factors results in a consistent 1,000 kWh  
20 residential bill of \$119.41 over the entire January through  
21 December 2009 period.

1 **Q. Will all rate classes see a levelized bill for the January**  
2 **through December 2009 period?**

3 A. Only the "Typical" 1,000 kWh Residential Bill will be completely  
4 levelized, while for other residential consumption levels and other rate  
5 classes there will remain small differences between their bills for  
6 January through May, June through October and November through  
7 December. However, all customer classes and consumption levels  
8 will see less of a fluctuation in their bills throughout the year than they  
9 would without FPL's proposed levelization.

10 **Q. Is FPL's levelization proposal revenue neutral?**

11 A. Yes. The FCR Factors that FPL proposes for levelizing the bill are  
12 designed to recover the same total FCR revenues over 2009 as  
13 would standard, non-levelized FCR Factors.

14 **Q. Has the Commission previously approved using the "levelized**  
15 **bill" methodology when a GBRA became effective?**

16 A. Yes. In Order No. PSC-06-1057-FOF-EI, dated December 22, 2006,  
17 the Commission approved FPL's use of the "levelized bill"  
18 methodology for setting the 2007 FCR factors, to offset the impact of  
19 the GBRA that became effective when Turkey Point Unit 5 went into  
20 commercial operation.

21 **Alternative, "Standard" FCR Factors**

22 **Q. As an alternative, is FPL also providing fuel factors using the**  
23 **standard methodology?**

24 A. Yes. Although FPL requests approval of its "Levelized Bill



1 Methodology,” in the alternative FPL has also provided fuel factors  
2 using the standard methodology. Appendix IV includes Schedules  
3 E1, E1-D, E1-E, E2, and E10, which calculate the twelve-month  
4 levelized fuel factor (standard methodology). This twelve-month  
5 levelized fuel factor spreads the savings resulting from WCEC Units  
6 1 and 2 throughout the twelve months of 2009.

7 **Q. What is the proposed “standard methodology” levelized fuel**  
8 **cost recovery (FCR) factor?**

9 A. 6.636¢ per kWh. Schedule E1, Page 3 of Appendix IV shows the  
10 calculation of this twelve-month levelized FCR factor. Schedule  
11 E2, Pages 6 and 7 of Appendix II shows the monthly fuel factors  
12 for January 2009 through December 2009 and also the twelve-  
13 month levelized FCR factor for the period.

14

15 **FCR Factors for Time of Use Rates**

16 **Q. Has the Company developed levelized FCR factors for its**  
17 **Time of Use rates, under both its “levelized bill” and**  
18 **standard methodologies?**

19 A. Yes. Schedule E1-D, Pages 6a through 6c of Appendix II,  
20 provides our Time of Use rate schedules. The on-peak and off-  
21 peak FCR factors are 7.546¢ and 6.383¢ for January through  
22 May, 7.405¢ and 6.242¢ for June through October, and 7.277¢  
23 and 6.114¢ for November through December. Schedule E-1D,

1 Page 4 of Appendix IV provides the Time of Use rates based on  
2 the standard methodology.

3  
4 The time of use rates for the Seasonal Demand Time of Use  
5 Rider (SDTR) are 7.394¢ (on-peak) and 6.354¢ (off-peak) and  
6 are provided on Schedule E-1D, Page 6d of Appendix II. The  
7 SDTR was implemented pursuant to the Stipulation and  
8 Settlement Agreement approved in Docket No. 050045-EI, which  
9 incorporates a different on-peak period during the months of June  
10 through September.

11  
12 Utilizing the levelized bill approach, FCR factors by rate group for  
13 the periods January through May, June through October and  
14 November through December 2009, respectively, are presented  
15 on Schedule E1-E, Pages 7a through 7c of Appendix II. FCR  
16 factors by rate group for the SDTR are provided on Schedule E-  
17 1E, Page 7d of Appendix II.

18 **Q. Were these calculations made in accordance with the**  
19 **procedures approved in predecessors to this Docket?**

20 **A. Yes.**

1 **Q. Has FPL calculated the residential fuel charges using the**  
2 **inverted rate structure for both its “levelized bill” and**  
3 **standard methodologies?**

4 A. Yes.

5

6 **Revised 2008 FCR Estimated/Actual True-up**

7 **Q. Has FPL revised its 2008 FCR Estimated/Actual True-up**  
8 **amount that was filed on August 4, 2008 to reflect July actual**  
9 **data?**

10 A. Yes. The 2008 FCR Estimated/actual True-up amount has been  
11 revised to an under-recovery of \$296,048,402 reflecting July  
12 2008 actual data. The calculation of the revised 2008 FCR  
13 Estimated/actual true-up amount is shown on Revised Schedule  
14 E1-B, on Pages 4a-4b of Appendix II. This \$296,048,402 under-  
15 recovery is to be included for recovery in the FCR factor for the  
16 January 2009 through December 2009 period.

17 **Q. What adjustments are included in the calculation of the**  
18 **levelized FCR factor shown on Schedule E1, Pages 3a – 3c of**  
19 **Appendix II?**

20 A. As shown on line 29 of each Schedule E1, Pages 3a-3c of  
21 Appendix II, the total net true-up to be included in the 2009  
22 factors is a revised under-recovery of \$296,048,402. This  
23 amount divided by the projected retail sales of 105,989,914 MWh

1 for January 2009 through December 2009 results in an increase  
2 of .2793¢ per kWh before applicable revenue taxes. The  
3 Generating Performance Incentive Factor (GPIF) Testimony of  
4 FPL Witness Frank Irizarry, filed on April 3, 2008, calculated a  
5 reward of \$5,383,572 for the period ending December 2007,  
6 which is being applied to the January 2009 through December  
7 2009 period. This \$5,383,572 reward divided by the projected  
8 retail sales of 105,989,914 MWh during the projected period  
9 results in an increase of .0051¢ per kWh, as shown on line 33 of  
10 Schedule E1, Pages 3a – 3c of Appendix II.

11

12

#### CAPACITY COST RECOVERY CLAUSE

13 **Q. Has FPL revised its 2008 CCR Estimated/Actual True-up**  
14 **amount that was filed on August 4, 2008 to reflect July actual**  
15 **data?**

16 **A.** Yes. The 2008 CCR Estimated/actual True-up amount has been  
17 revised to an under-recovery of \$26,832,716 reflecting July 2008  
18 actual data plus interest. The calculation of the revised 2008  
19 CCR Estimated/actual true-up amount is shown on Pages 3a-3b  
20 of Appendix III.

1 **Q. What is the revised net true-up amount that FPL is**  
2 **requesting to include in the CCR factor for the January 2009**  
3 **through December 2009 period?**

4 A. FPL is requesting approval of a net true-up under-recovery of  
5 \$30,540,170. This \$30,540,170 under-recovery represents the  
6 revised estimated/actual under-recovery for the period January  
7 2008 through December 2008 of \$26,832,716 plus the final true-  
8 up under-recovery of \$3,707,455 that was filed on March 3, 2008  
9 for the period January 2007 through December 2007. This  
10 \$30,540,170 under-recovery is to be included for recovery in the  
11 CCR factor for the January 2009 through December 2009 period.

12 **Q. Have you prepared a summary of the requested capacity**  
13 **payments for the projected period of January 2009 through**  
14 **December 2009?**

15 A. Yes. Page 3 of Appendix III provides this summary. Total  
16 Recoverable Capacity Payments are \$836,786,814 (line 18) and  
17 include payments of \$223,732,036 to non-cogenerators (line 1),  
18 Short-term Capacity Payments of \$47,319,630 (line 2), payments  
19 of \$320,771,227 to cogenerators (line 3), \$2,405,832 relating to  
20 the St. John's River Power Park (SJRPP) Energy Suspension  
21 Accrual (line 4), \$31,439,262 in Incremental Power Plant Security  
22 Costs (line 6), and \$4,354,655 for Transmission of Electricity by  
23 Others (line 7). These amounts are offset by \$5,689,352 of

1 Return Requirements on SJRPP Suspension Payments (line 5),  
2 by Transmission Revenues from Capacity Sales of \$3,196,384  
3 (line 8), by \$56,945,592 of jurisdictional capacity related  
4 payments included in base rates (line 12) and a refund of  
5 \$9,296,089 related to the true-up of the Turkey Point Unit 5  
6 Generating Base Rate Adjustment (GBRA) for the period May  
7 2007 through December 2008 (line 15). The resulting amount is  
8 then increased by the net under-recovery for 2008 of \$30,540,170  
9 (line 13) plus the Nuclear Cost Recovery amount of \$258,406,183  
10 (line 14).

11 **Q. Has FPL included costs associated with its Nuclear Power**  
12 **Plant Cost Recovery (NPPCR) in the calculation of its**  
13 **Capacity Cost Recovery (CCR) Factors?**

14 A. Yes. FPL has included \$258,406,183 on Appendix III, page 3,  
15 Line 14 for the NPPCR in the calculation of its CCR Factors. Per  
16 Order No. PSC-07-0240-FOF-EI, issued on March 20, 2007, the  
17 Commission adopted the Rule to implement Section 366.93,  
18 Florida Statutes, which was enacted by the Florida Legislature in  
19 2006. The stated purpose of the Statute is to promote utility  
20 investment in nuclear power plants, and it directed the  
21 Commission to establish alternative mechanisms for cost  
22 recovery and step-wise, periodic prudence determinations with  
23 respect to costs incurred to build nuclear power plants. The Rule

1 provides the mechanism and the annual recovery of these costs  
2 through the CCR.

3

4 On May 1, 2008, in Docket No. 080009-EI, FPL filed a petition for  
5 cost recovery of its NPPCR amount of \$258,979,772, which was  
6 subsequently revised on August 6, 2008 to \$258,406,183.

7

8 This \$258,406,183 is made up of 2006-2007 actual costs, 2008  
9 estimated/actual costs and 2009 projected costs. It includes  
10 \$7,766,748 of site selection costs, \$230,414,344 of pre-  
11 construction costs and associated carrying charges for Turkey  
12 Point Units 6 & 7 and \$20,225,091 of carrying charges on  
13 construction costs associated with the St. Lucie and Turkey Point  
14 Nuclear Uprate Projects.

15 **Q. Has FPL included an adjustment associated with its**  
16 **Generating Base Rate Adjustment (GBRA) for Turkey Point**  
17 **Unit 5?**

18 A. Yes. FPL has included a credit of \$9,296,089, including interest,  
19 (Appendix III, page 3, Line 15) for the true-up of Turkey Point Unit  
20 5 costs for the period May 1, 2007 through December 31, 2008  
21 as a reduction in the calculation of its CCR Factors. The  
22 calculation of this credit is discussed in the affidavit and exhibits  
23 of Renae B. Deaton.

1 **Q. Have you prepared a calculation of the allocation factors for**  
2 **demand and energy?**

3 A. Yes. Page 4 of Appendix III provides this calculation. The  
4 demand allocation factors are calculated by determining the  
5 percentage each rate class contributes to the monthly system  
6 peaks. The energy allocators are calculated by determining the  
7 percentage each rate contributes to total kWh sales, as adjusted  
8 for losses, for each rate class.

9 **Q. Have you prepared a calculation of the proposed CCR factors**  
10 **by rate class?**

11 A. Yes. Page 5 of Appendix III presents this calculation.

12 **Q. What effective date is the Company requesting for the new**  
13 **FCR and CCR factors?**

14 A. FPL is requesting that the FCR and CCR factors become  
15 effective with customer bills for January 2009 through December  
16 2009. This will provide for 12 months of billing on the FCR and  
17 CCR factors for all our customers.

18 **Q. What will be the charge for a Residential customer using**  
19 **1,000 kWh effective January 2009?**

20 A. For January through December, the "typical" Residential 1,000  
21 kWh bill will be \$119.41. Of this amount, the Capacity Cost  
22 Recovery charge is \$8.55, the Conservation charge is \$2.04, the  
23 Environmental Cost Recovery charge is \$0.94, the Storm charge



1 is \$1.45 and the Gross Receipts Tax is \$2.99.

2

3 In addition, the January through May period includes a base  
4 charge of \$39.31 and the fuel cost recovery charge is \$64.13. For  
5 June through October, the bill includes a base charge of \$40.72  
6 and the fuel cost recovery charge is \$62.72. For November  
7 through December, the bill includes a base charge of \$42.00 and  
8 the fuel cost recovery charge is \$61.44.

9

10 A comparison of the current Residential (1,000 kWh) Bill to FPL's  
11 2009 projected Residential (1,000 kWh) Bills is presented in  
12 Schedule E10, Page 71 of Appendix II. As shown on Schedule  
13 E10, the 1,000 kWh Residential Bill will increase by 7.80% in  
14 January 2009.

15 **Q. How do these increases compare to the increases sought  
16 and received by other utilities around the country?**

17 A. They are consistent with, and in some instances significantly  
18 lower than, fuel-related increases seen elsewhere recently. For  
19 example, in June 2008 Dominion Virginia Power received an 18%  
20 increase in its residential rates to cover higher fuel costs.  
21 Similarly, in July 2008, Appalachian Power Company sought an  
22 increase in its fuel factors that would raise residential rates by  
23 about 15%, and in August 2008, Alabama Power Company

1 sought a 14.6% increase in residential rates due to rising costs for  
2 coal and natural gas. All of these increases reflect the same  
3 reality of sharply increasing fuel costs that FPL faces. I also  
4 would like to point out that a significant portion of the increase in  
5 FPL's bills reflects investment in clean power technologies such  
6 as nuclear, solar and highly efficient combined cycle gas-fired  
7 plants, which will help FPL to reduce its reliance on fossil fuels  
8 and cut its greenhouse gas and other air emissions in the years to  
9 come.

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 KOREL M. DUBIN**

4   **DOCKET NO. 080001-EI**

5   **October 15, 2008**

6

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

8   A.     My name is Korel M. Dubin and my business address is 9250  
9           West Flagler Street, Miami, Florida 33174.

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

11 A.     I am employed by Florida Power & Light Company (FPL) as  
12           Senior Manager of Purchased Power in the Resource  
13           Assessment and Planning Department.

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

15 A.     Yes, I have.

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

17 A.     The purpose of my testimony is to present for Commission review  
18           and approval revised Capacity Cost Recovery (CCR) factors for  
19           the period January 2009 through December 2009 that reflect (1)  
20           the Nuclear Power Plant Cost Recovery (NPPCR) amount  
21           approved by the Commission on October 14, 2008; and (2) a  
22           revised credit amount for the true-up of Turkey Point Unit 5  
23           Generation Base Rate Adjustment (GBRA) costs.

- 1 **Q. Have you prepared or caused to be prepared under your**  
2 **direction, supervision or control any exhibits in this**  
3 **proceeding?**
- 4 **A.** Yes, I have. KMD-8 provides the revised CCR schedules as well  
5 as a revised E-10 Schedule reflecting the impact of those  
6 revisions on a 1,000 kWh residential bill.
- 7 **Q. What is the NPPCR amount that the Commission approved**  
8 **for recovery through the CCR during the January 2009**  
9 **through December 2009 period?**
- 10 **A.** At the October 14, 2008 agenda conference the Commission  
11 authorized FPL to recover \$220,529,243 through the CCR during  
12 that period.
- 13 **Q. Is this the same amount that FPL included in the 2009 CCR**  
14 **Factors at the time of FPL's September 2, 2008 projection**  
15 **filing?**
- 16 **A.** No. In its September 2, 2008 filing in this docket, FPL included  
17 \$258,406,183 for the NPPCR in the calculation of its 2009 CCR  
18 Factors, which was the amount that FPL had originally requested  
19 in its August 6, 2008 filing in Docket No. 080009-EI. However, at  
20 the cost recovery hearing held on September 11 and 12, 2008,  
21 FPL witness Steven Scroggs presented an adjustment to the  
22 2008 actual/estimated pre-construction costs, which eliminated  
23 the long lead procurement line item from the October, November

1 and December 2008 estimate. This adjustment reduced the  
2 requested NPPCR from \$258,406,183 to \$220,529,243. As I  
3 noted previously, the Commission approved recovery of this  
4 revised amount at its October 14, 2008 agenda conference.

5 **Q. Has FPL included any other revisions to its CCR factors for**  
6 **the period January through December 2009?**

7 A. Yes. FPL has revised the credit of \$9,296,089, including interest,  
8 for the true-up of Turkey Point Unit 5 costs for the period May 1,  
9 2007 through December 31, 2008, which was included as a  
10 reduction to the 2009 CCR factors in the September 2, 2008  
11 filing. As presented in the revised affidavit and exhibits of Renae  
12 B. Deaton that is being filed in conjunction with this testimony, this  
13 credit has been increased from \$9,296,089 to \$9,307,126, in  
14 order to include the Commercial Industrial Demand Reduction  
15 Rider adjustment of approximately \$11,000 that was inadvertently  
16 omitted from the original calculation of the credit.

17 **Q. What will be the revised charge for a Residential customer**  
18 **using 1,000 kWh effective January 2009?**

19 A. As shown on the revised Schedule E-10 that is part of my Exhibit  
20 KMD-8, the "typical" Residential 1,000 kWh bill will be \$118.99  
21 instead of \$119.41 as shown on the Schedule E-10 that was filed  
22 on September 2, 2008. Of this amount, the revised Capacity  
23 Cost Recovery charge is \$8.16, instead of \$8.55 as originally

1 filed.

2

3 As a result of these revisions, the "typical" 1,000 kWh Residential  
4 Bill will now increase by 7.42% in January 2009 instead of 7.80%  
5 as originally filed.

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

7 **A. Yes, it does.**

1 **BY MR. BUTLER:**

2 **Q** Would you please summarize your testimony,  
3 Ms. Dubin?

4 **A** Yes. Good morning, Commissioners. The  
5 purpose of my testimony is to present for Commission  
6 review and approval FPL's fuel and capacity cost  
7 recovery factors for the period January through  
8 December, 2009. My testimony also addresses an issue  
9 raised by the Office of Public Counsel regarding  
10 replacement fuel costs incurred as a result of an outage  
11 extension in 2006 at Turkey Point Unit 3, which was  
12 caused by a drilled hole in the pressurized piping. OPC  
13 argues that such cost be borne by FPL, irrespective of  
14 whether FPL's actions were prudent.

15 Replacement power costs constitute  
16 out-of-pocket fuel and/or purchased power costs actually  
17 incurred by a utility in providing electric service to  
18 its customers. As such, they are properly recoverable  
19 through the fuel cost, just like any other power cost.  
20 The Commission has consistently based determination for  
21 recovery on whether a utility's actions were prudent in  
22 whatever circumstances led to the need for replacement  
23 power. These prudence determinations essentially looked  
24 to whether a utility acted prudently based on the  
25 information available to it at the time without the

1 benefit of hindsight. So long as the utility's actions  
2 are prudent by this measure, the utility has been  
3 permitted to recovery the replacement power cost.

4           Likewise, FPL should be allowed to recover the  
5 replacement power cost associated with the 2006 Turkey  
6 Point 3 extension under the prudence standards since, as  
7 Mr. Jones explained, FPL's actions at each step in this  
8 process were reasonable and prudent. FPL complied fully  
9 with NRC requirements and industry standards.

10           It's important to note that FPL's nuclear  
11 fleet performance in 2006 was excellent. Even with the  
12 outage, FPL's nuclear units performed better than  
13 projected in 2006, resulting in additional nuclear  
14 generation that saved customers about a half a million  
15 dollars. And even with the outage, Turkey Point Unit 3  
16 achieved an extremely high equivalent availability  
17 factor, 91.3 percent.

18           In view of this strong performance, any  
19 suggestion that FPL's customers need special protection  
20 from the cost of the -- FPL's 2006 nuclear operation  
21 simply does not ring true. To deny recovery replacement  
22 power costs even where a utility has acted prudently  
23 would be completely inconsistent with the purpose of the  
24 fuel clause and would put the utility at risk of not  
25 recovering its actual fuel costs whenever a nuclear



1 plant is unexpectedly offline.

2 That concludes my summary.

3 **MR. BUTLER:** Thank you, Ms. Dubin. I tender  
4 the witness for cross-examination.

5 **CHAIRMAN CARTER:** Mr. Burgess.

6 **MR. BURGESS:** Thank you, Mr. Chairman.

7 **CROSS-EXAMINATION**

8 **BY MR. BURGESS:**

9 **Q** Ms. Dubin, so do I understand correctly that  
10 what you are saying is that the standard that the  
11 Commission has to apply is whether the -- FP&L acted  
12 prudent; is that correct?

13 **A** Yes.

14 **Q** Do you agree that Florida Power & Light has  
15 the burden of proving that it acted prudently?

16 **A** Yes. And as Mr. Jones said, we comply fully  
17 with all NRC requirements.

18 **Q** And would you -- then are you saying -- is  
19 your testimony that if the Commission said, we don't see  
20 enough information brought before us that FP&L carried  
21 its burden of demonstrating that it acted prudently in  
22 this particular hire, that that would, under your  
23 understanding, be something that would lead the  
24 Commission to disallow these costs?

25 **A** The Commission has to look at whether the

1 actions were prudent, and as I believe Mr. Jones went  
2 over time and time again yesterday, that FPL complied  
3 fully with the NRC requirements every step of the way  
4 prior to the outage, during the outage, and  
5 expeditiously returned the unit to in-service.

6 **Q** I apologize. I was not clear in my question.  
7 My question is, if the Commission determines that  
8 Florida Power & Light has not carried its burden of  
9 proving that it was prudent, then is the Commission  
10 justified in disallowing the cost?

11 **A** If the Commission said that we were imprudent?

12 **Q** No. If the Commission determines that you did  
13 not carry your burden of proving that you were prudent,  
14 is the Commission justified in disallowing the cost?

15 **A** I believe it is the company's burden to show  
16 that we were prudent, and I believe that Mr. Jones all  
17 day yesterday explained that we were.

18 **Q** Okay. Let me ask the question again. If the  
19 Commission determines that Florida Power & Light has  
20 failed to meet its burden that -- to demonstrate that  
21 its actions were prudent, is the Commission justified in  
22 disallowing the cost?

23 **A** The Commission is justified in approving costs  
24 when they are deemed to be prudent.

25 **Q** Are they justified in disallowing costs when

1 they determine that the company, the moving party, has  
2 failed to meet its burden of demonstrating that they're  
3 prudent?

4 **A** If you're saying if there's a determination of  
5 imprudence.

6 **Q** No. I'm saying if the Commission -- if the  
7 Commission decides that you did not -- that Florida  
8 Power & Light did not carry its burden of proving that  
9 it was prudent, is the Commission justified in  
10 disallowing the cost?

11 **A** The Commission is justified in approving costs  
12 for recovery when they're prudent and disallowing them  
13 if they have been imprudent.

14 **Q** What if they have not been demonstrated to be  
15 prudent?

16 **A** Well, I think that -- that the standard is  
17 prudence and it has to be demonstrated.

18 **Q** And is the affirmative burden of the company  
19 to demonstrate to the Commission's satisfaction that it  
20 is prudent?

21 **A** Yes. The company has to prove that it's  
22 prudent. And, as I stated and Mr. Jones stated all day  
23 yesterday, the company's actions have been prudent, have  
24 been reasonable, and that they complied with all of the  
25 NRC requirements.

1           **MR. BURGESS:** Thank you, Ms. Dubin. That's  
2 all we have. Thank you.

3           **CHAIRMAN CARTER:** Mr. Wright? Mr. McWhirter,  
4 you're recognized, sir.

5           **MR. McWHIRTER:** Thank you, Mr. Chairman.

6                           **CROSS-EXAMINATION**

7 **BY MR. McWHIRTER:**

8           **Q**     In the prehearing order, Mrs. Dubin -- it's  
9 Ms. Dubin.

10          **A**     Either way, Mr. McWhirter.

11          **Q**     Huh?

12          **A**     Either way.

13          **Q**     Good. You were assigned the task of proving  
14 issues 1 through 11, 13C through G, and 23 through 30A;  
15 is that correct?

16          **A**     That is correct.

17          **Q**     And --

18                 **MR. BUTLER:** Excuse me.

19          **Q**     -- in the summary you just gave, does that  
20 relate to all of these issues?

21          **A**     Excuse me, Mr. McWhirter. I believe  
22 Mr. Butler was going to --

23                 **MR. BUTLER:** I'm sorry. I was trying to  
24 interject here. Did you say, Mr. McWhirter, that  
25 she has the burden of proving all of those issues

1 or that she is assigned to address those issues?

2 **MR. McWHIRTER:** Did I say she has the burden  
3 of proving?

4 **MR. BUTLER:** Yeah.

5 **MR. McWHIRTER:** I presume that when the  
6 utility seeks a rate increase it has the burden of  
7 proving the need for the fuel costs.

8 **MR. BUTLER:** I understand. Some of the issues  
9 though are worded in ways that probably they aren't  
10 issues that have a burden of proof associated with  
11 them. I just want to make clear, you were asking  
12 her if she is responsible as FPL witness to address  
13 each of those issues?

14 **MR. McWHIRTER:** I think that's what I was  
15 asking, yes.

16 **MR. BUTLER:** Thank you.

17 **MR. McWHIRTER:** I may be wrong.

18 **BY MR. McWHIRTER:**

19 **Q** Ms. Dubin, you were -- early on in the order  
20 in these proceedings, and a lot of other witnesses have  
21 come ahead of you. Would you agree with me that in all  
22 probability Chairman Carter is following the dictates of  
23 his predecessor, Saint Matthew, when he says the first  
24 shall be last? You don't have to answer that question.

25 As I understand the issues that have been

1 assigned to you, there are three basic components of  
2 your testimony. In issues 1 through 11, you're talking  
3 about the fuel costs that the utility incurred and the  
4 allocation of those costs to the respective customer  
5 class and the appropriateness of that; is that correct?

6 **A** That is correct.

7 **Q** And in the issues, beginning with 13C, those  
8 are company issues, specific issues that come before the  
9 Commission with respect to Florida Power & Light that  
10 are unique to Florida Power & Light; is that correct?

11 **A** Yes, that is correct.

12 **Q** And I'm not going to ask you any questions  
13 about 13C, but with respect to 13D through 13G, is --  
14 are those issues that relate to a base rate increase  
15 that Florida Power & Light is seeking with respect to  
16 the commencement of its West County Energy Center, Units  
17 1 and 2, and an update on the cost of Turkey Point 5?

18 **MR. BUTLER:** Excuse me. Mr. Chairman, I  
19 believe that those issues were stipulated at the  
20 beginning of the hearing. Didn't show up in the  
21 prehearing order because it had been issued before  
22 the stipulation was approved. But there were  
23 stipulations on all of the issues Mr. McWhirter  
24 just referenced concerning the GBRA.

25 **CHAIRMAN CARTER:** Mr. McWhirter?

1           **MR. McWHIRTER:** I didn't hear what he said,  
2 Mr. Chairman.

3           **CHAIRMAN CARTER:** Oh, okay. Mr. Butler, would  
4 you repeat -- repeat, please?

5           **MR. BUTLER:** Certainly. I said, although it  
6 is not reflected in the prehearing order as such  
7 because it was issued before the approval of the  
8 stipulations, I believe that there are stipulations  
9 on each of the issues you just referred to  
10 regarding the GBRA mechanism and its  
11 implementation. And so, to the extent you are  
12 intending to ask questions about them, I would  
13 object because they've already been stipulated.

14           **MR. McWHIRTER:** Mr. Butler, what I want to do  
15 is get some clarification of what's involved in  
16 those issues. I'm not challenging in any fashion  
17 the amount of money that's sought, but the  
18 prehearing order and the stipulation don't identify  
19 the rate impact on consumers with respect to these  
20 issues which -- and the rate impact on consumers I  
21 believe is an issue that is of concern to -- should  
22 be of concern to the Commission when it makes its  
23 determination on the other issues in this case.

24           So I'm not objecting to the amount of money  
25 you're seeking, because we stipulated that you were

1 entitled to do that. I'm not objecting to the  
2 process. What I'm trying to delineate are the sums  
3 involved.

4 **MR. BUTLER:** Given the stipulation of the  
5 issues, I don't see how that is relevant to the  
6 proceeding, but I defer to the Chairman's judgment  
7 on that point.

8 **CHAIRMAN CARTER:** Ms. Helton?

9 **MS. HELTON:** I have to confess I'm having a  
10 hard time understanding the relevance also with  
11 respect to issues that have been stipulated. But  
12 it's within your discretion, if you feel like that  
13 you need to hear this line of questioning, you may  
14 do so.

15 **CHAIRMAN CARTER:** Well, you know, we've been  
16 on so many rabbit trails I really would like to  
17 stick to the issue at hand. So if possible -- not  
18 if possible, but, Mr. McWhirter, if you could just  
19 zero in on the issue that we're really actually  
20 talking about, that would be very helpful, and I  
21 would consider it a favor from you.

22 **MR. McWHIRTER:** It's my great pleasure to  
23 accommodate you. And when I do it, I'll go through  
24 it very rapidly, if that's acceptable to you,  
25 Mr. Chairman.



1           **CHAIRMAN CARTER:** But stay -- stay clear.  
2           Don't -- let's not violate the spirit of the  
3           stipulation. I mean, the parties entered into it  
4           and you were part of that too in good faith. So  
5           let's not redo that, okay?

6           **MR. McWHIRTER:** All right.

7 **BY MR. McWHIRTER:**

8           **Q** Let me ask you about --

9           **CHAIRMAN CARTER:** Mr. Butler, obviously as --  
10          as we get there, if we get close, let's -- I mean,  
11          make your objections timely so we can stay focused.  
12          Mr. McWhirter, you're recognized.

13          **MR. McWHIRTER:** I'm going to put on the  
14          official hearing aid.

15          **CHAIRMAN CARTER:** You mean I got to say all of  
16          that again?

17          **MR. McWHIRTER:** No, sir. I'm going to go as  
18          though I understood what you said. If you need to  
19          stop me, you can do that.

20 **BY MR. McWHIRTER:**

21          **Q** Now, issues 23 through 28 and 30A, those  
22          issues relate to capacity charges that the utility is  
23          seeking to collect, is that correct, in this proceeding?

24          **A** Yes, they are.

25          **Q** All right. Now, I'd like to start first with

1 the fuel issues. And I think the easiest way to deal  
2 with this is to walk through your schedule E-1. Do you  
3 have that available? It's on page 3 of -- I think it's  
4 Exhibit 3. Appendix 3. Oh, here it is.

5 On line 1 of that exhibit, which is the fuel  
6 cost of system generation, you indicate that the fuel  
7 cost for generating electricity from your power plants  
8 is \$6.2 billion for this year; is that correct?

9 **A** Yes, that is correct.

10 **Q** And you indicate that you've got 97 million  
11 megawatt hours, and having used megawatt hours in column  
12 B, you translate megawatt hours to the impact not in  
13 megawatt hours but in cents per kilowatt hour. Would it  
14 be fair if I were trying to compare apples to apples to  
15 state that 6.3635 cents per kilowatt hour is comparable  
16 to \$63.63 per megawatt hour?

17 **A** Yes, that is correct.

18 **Q** And a megawatt hour is a thousand kilowatt  
19 hours?

20 **A** Yes, that is correct.

21 **Q** And a thousand kilowatt hours is the standard  
22 you normally use for public relations in showing the  
23 impact of rate increases?

24 **A** The typical residential bill is based on a  
25 thousand kWhs, yes.

1           **Q**     All right. Now, line 2 of that exhibit is  
2 nuclear fuel disposal cost, and that's \$21 million.  
3 Does -- does -- is that a fixed cost that's based upon  
4 the number of megawatt hours that is produced from the  
5 nuclear plants, or does that price vary with the cost --  
6 the price of fuel when you buy gas or nuclear fuel?

7           **A**     That's a requirement for the department -- a  
8 payment to the Department of Energy. It's 1 mill per  
9 kWh and it's based on amount of fuel that is used.

10          **Q**     The amount of nuclear fuel that's used?

11          **A**     Yes.

12          **Q**     And it -- if the nuclear fuel goes up in price  
13 or the gas goes up in price, that sum doesn't change.  
14 It's based on the number of kilowatt hours or megawatt  
15 hours that are produced with the nuclear plants; is that  
16 correct?

17          **A**     Based on nuclear generation, yes.

18          **Q**     Now, fuel-related transactions, briefly  
19 describe what that \$2 million is all about.

20          **A**     That \$2.6 million there is -- has to do with  
21 rail cars.

22          **Q**     And that is a return that you get on the  
23 capital investment in rail cars that transports your  
24 coal?

25          **A**     It's the carrying costs and the depreciation

1 on rail cars.

2 **Q** And the rail cars are used to transport coal?

3 **A** Right. It's -- it's a fuel transportation  
4 expense that's recoverable through the fuel clause.

5 **Q** And I understand that. If the price of coal  
6 goes up, does that price for depreciation and a profit  
7 on your coal cars, does that price -- that cost go up as  
8 well, or does it stay fixed?

9 **A** Well, first, Mr. McWhirter, I wouldn't  
10 classify it as profit. It's a carrying cost and  
11 depreciation on the rail cars.

12 **Q** I see. The carrying costs on your rail cars  
13 does not include a return on your investment in the rail  
14 cars?

15 **A** Yes, but it's a carrying cost. And to put it  
16 in perspective as well, these rail cars were approved  
17 for recovery through the clause because it was the most  
18 economical transportation option. Furthermore, it  
19 was -- it was able to be able to bring low cost Powder  
20 River Basin coal to our generation system to the benefit  
21 of our customers. So I think it just needs to be looked  
22 at in total.

23 **Q** I'm glad you pointed all that out. My only  
24 question to you was, if the price of coal goes up, does  
25 the return you get on the coal cars and the depreciation

1 you get on them and the other carrying costs, does that  
2 change?

3 **A** No, it does not.

4 **Q** That's a fixed cost. And then incremental  
5 hedging costs, those are the salaries that you pay to  
6 people that are involved in your hedging operations?

7 **A** Those are incremental O&M costs associated  
8 with an expanded hedging program. They include some  
9 salary expenses as well as software costs.

10 **Q** If the futures price of natural gas or oil go  
11 up, does that change or is that just a salary of people  
12 that are working in that department and the software in  
13 that department?

14 **A** It does not vary, no.

15 **Q** All right. Now, if you go to line 6, and when  
16 you take all these things into consideration, the cost  
17 that you pay for the fuel that you generate is \$63.79 a  
18 megawatt hour, in round terms; is that correct?

19 **A** Yes.

20 **Q** Now, 96 million megawatt hours is insufficient  
21 to meet the demand on your system, so you buy  
22 electricity from other people; is that correct?

23 **A** We also include purchased power, yes.

24 **Q** You do what?

25 **A** We also purchase power, yes.

1           **Q**    Yeah. Well, that's what I meant, buy and  
2 purchase, that's the same thing, isn't it?

3           **A**    Yes.

4           **Q**    Okay. And I'm pleased to see that the fuel  
5 cost of purchased power, exclusive of economy, is \$29.94  
6 a megawatt hour. And yesterday we had -- or day before  
7 we had Mr. Aldazabal on the stand, and he testified that  
8 TECO also purchases power and it pays \$131.71 per  
9 megawatt hour for its purchases. And I know you don't  
10 know anything about theirs, but can you explain to me in  
11 brief terms how it is that you were able to get such a  
12 good deal with respect to your purchased power  
13 purchases? That's a great tribute to your company, by  
14 the way.

15          **A**    We have various contracts and some of which  
16 are at a very -- a very good price for -- negotiated at  
17 a very good price.

18          **Q**    And then you have economy purchases and then  
19 Schedule C purchases. I won't go into the price you pay  
20 for those. But qualifying facilities, what is a  
21 qualifying facility that's identified on line 10?

22          **A**    Payments to a qualifying facility are usually  
23 facilities that are renewable in nature.

24          **Q**    They're renewable?

25          **A**    Renewable energy.

1           **Q**     Now, by qualify, what is it that makes these  
2 facilities qualified, entitle them to that designation?

3           **A**     The size of the generating unit and the -- and  
4 the fuel source.

5           **Q**     Isn't it also a fact that those entities do  
6 two things with their energy that they buy or create,  
7 their own renewable source. And as a result, instead of  
8 just generating electricity, they get a second and more  
9 efficient use of the energy, the Btus input into that  
10 generator, and because of that, they're called  
11 qualifying facilities; is that correct?

12          **A**     That they have a better heat rate, is that  
13 what you're asking?

14          **Q**     Well, they may not have a better heat rate but  
15 they may use the waste heat for some other part of the  
16 process, and the end result is they're more efficient  
17 than just a run-of-the-mine generator that you pump fuel  
18 into and it pumps electricity out.

19          **A**     There's various qualifying facilities, but  
20 yes, some use waste heat.

21          **Q**     Uh-huh. So the payments to qualifying  
22 facilities are \$42.34 a megawatt hour, compared to what  
23 it costs you to generate the fuel that you pay to  
24 generate from your own facilities; is that correct?

25          **A**     That's correct.

1           **Q**     And from all your purchased power, the  
2 purchased power agreements provide power to Florida  
3 Power & Light at \$38.02 compared to \$36.79 for your own  
4 generated power?

5           **A**     That's the average, yes.

6           **Q**     Now, are you familiar with -- I've asked the  
7 Commission to take official recognition of the 10-year  
8 site plan that you filed on April the 1st. Are you  
9 familiar with that, and in particular schedule 7.1 of  
10 that 10-year site plan?

11          **A**     I'm familiar with it.

12           **MR. BUTLER:** I'm sorry, Mr. McWhirter. If you  
13 want to ask her questions about that, can you  
14 provide her a copy of what you are referring to?

15                    Otherwise, Ms. Dubin, do you have a copy of  
16 it?

17           **THE WITNESS:** I do not.

18           **MR. BUTLER:** Okay.

19           **MR. McWHIRTER:** This is the only copy I have,  
20 John. Do you have a copy for yourself?

21           **MR. BUTLER:** Yes, I do.

22 **BY MR. McWHIRTER:**

23           **Q**     Now, Ms. Dubin, on the top line of that  
24 schedule 7.1, you show the 2008 available capacity to  
25 deliver to your customers; is that correct?



1           **A**     Yes.

2           **Q**     And in the second column we see the capacity  
3 that you buy from other parties, and I presume that is  
4 the same capacity that's listed on the lines we just  
5 talked about in your schedule E-1; is that correct?

6           **MR. BUTLER:** Mr. Chairman?

7           **CHAIRMAN CARTER:** Yes, sir.

8           **MR. BUTLER:** I am going to make an objection.  
9 It's probably more precautionary than cutting off  
10 this line of questions. But Ms. Dubin is not  
11 sponsoring this schedule. To the extent she's able  
12 to answer questions about it, I do not object to  
13 her doing so. But, you know, the questions are  
14 sort of the nature of "you are stating" and "isn't  
15 this correct that you mean." Just make it clear  
16 that Ms. Dubin is not a sponsor of this schedule,  
17 and Mr. McWhirter is free to ask her about it to  
18 the extent of her knowledge concerning it.

19           **CHAIRMAN CARTER:** Mr. McWhirter.

20           **MR. McWHIRTER:** That point is well taken.  
21 And, Ms. Dubin, even if I slip and say, you have  
22 some knowledge of this, please understand that I'm  
23 asking you to testify from the schedule that your  
24 company has filed and your knowledge of it, and if  
25 you don't have knowledge of it, please say you

1 don't and we'll go on to something else.

2 **BY MR. McWHIRTER:**

3 **Q** Now, on that top line, what does it show the  
4 available capacity that -- you call it import capacity I  
5 believe -- what does it show for the year 2008?

6 **A** Mr. McWhirter, I'm not sure where you're  
7 pointing.

8 **Q** Look at column 3 of schedule 7.1. It's firm  
9 capacity import.

10 **A** The -- column 3 states 2,255.

11 **Q** 2255 megawatts; is that correct?

12 **A** That's what it states, yes.

13 **Q** Now, in the year 2017 it would appear that --  
14 what do you show there for the import capacity from  
15 third parties for your company?

16 **A** To go back to what Mr. Butler said, the  
17 schedule shows, and of course I don't --

18 **Q** I understand.

19 **A** -- file the schedule. On column 3 it shows  
20 126.

21 **Q** So you're presently buying power from third  
22 parties at a pretty good price, and 10 years from now,  
23 you're going to get rid of those contracts. And I think  
24 you talk about those contracts in your schedules  
25 relating to the capacity charge. Would you look at --

1 can you help me in finding that exhibit where you talk  
2 about your capacity? I think it's Appendix II or III to  
3 your testimony. And I think it's schedule 8 to that.

4 **A** I'm sorry, Mr. McWhirter. You're asking --

5 **Q** I'm asking you to look at the schedule where  
6 you state the capacity payments that you're going to  
7 pass along to customers in this year, in 2009.

8 **A** They're included in Appendix III, page 3.

9 **Q** All right.

10 **A** Of my September 2nd testimony.

11 **Q** Bear with me just a minute, if you please. I  
12 don't want to slow us down but I have to find it.

13 Okay. On your schedule E-12, page 1 of 2, you  
14 delineate the qualifying facilities and the unit  
15 purchase agreement you have with other utilities; is  
16 that correct?

17 **A** On schedule E-12? I'm sorry, Mr. McWhirter.  
18 I'm not sure where you are.

19 **Q** Okay. The document I have, at the top of the  
20 schedule, says Florida Power & Light schedule  
21 E-12-capacity cost, page 1 of 2, and at the bottom of  
22 the page it says 6. So it's the sixth page of -- it's  
23 very near the end of your appendix. It's page 251 of  
24 260, according to what I have in my computer. And we're  
25 looking at Appendix III.

1           **A**     Okay. I'm there.

2           **Q**     Okay. Now, you make capacity payments to  
3 these people, and last year you made something like  
4 \$553 million in capacity payments to these various  
5 entities, utilities and qualifying facilities; is that  
6 correct?

7           **A**     That is correct.

8           **Q**     And those capacity charges are collected  
9 through the capacity charge?

10          **A**     Yes, they are.

11          **Q**     And that capacity charge, in round numbers, is  
12 \$8.10 a megawatt hour for residential customers for the  
13 ensuing year; is that correct?

14          **A**     Yes, I believe so.

15          **Q**     Now, it looks like, based on schedule 7, that  
16 these contracts you're going to let expire. Do you have  
17 any reason or any explanation of why Florida Power &  
18 Light has determined to let these contracts expire, even  
19 though they presently have apparently very favorable  
20 fuel prices with respect to them, and I presume  
21 favorable capacity payments or you wouldn't have entered  
22 into them?

23          **A**     Mr. McWhirter, the -- you're assuming that  
24 they're expiring because you're looking at the 10-year  
25 site plan? I'm not quite sure.

1           **Q**     Well, if you look back at your -- the schedule  
2 we were talking about a minute ago, it says term end --

3           **MR. BUTLER:** You're referring to the contract  
4 end dates on page --

5           **Q**     Yes, term end. The Broward North agreement  
6 expires in 2010, Palm Beach Solid Waste Authority  
7 expires in 2010, the Broward South expires in 2009, the  
8 Southern Company UPS agreement expires in 2010, and  
9 that's 931 megawatts. And in your schedule 1, you show  
10 that now you have 2200 and something megawatts capacity  
11 of purchased power, and in 2017 before your nuclear  
12 plant comes on, that's going to drop to 126. So I  
13 presume these contracts are going to expire.

14           **A**     They are going to expire but that does not  
15 mean that we would not renegotiate or -- or extend them  
16 in some way. This schedule itself, just the -- the  
17 requirements are -- of the schedule, put the term dates  
18 of the contracts there.

19           **Q**     I see. So your company would do the prudent  
20 thing and if the price was right, you would contract  
21 again with these people if it was more economical to do  
22 so; is that correct?

23           **A**     Yes, Mr. McWhirter. And in my new position,  
24 where I'm manager of purchased power, I can assure you  
25 that we are talking with counter parties on these

1 contracts.

2       **Q**     Good. Tell me about -- your new position,  
3 you're now in charge of purchased power, is that --

4       **A**     Yes.

5       **Q**     -- fuel as well as contracts with independent  
6 power producers?

7       **A**     I am manager of purchased power and resource  
8 planning.

9       **Q**     Did you help prepare that schedule 7.1?

10      **A**     No, I did not. Just recently though.

11      **Q**     Will you help prepare it next year?

12      **A**     No, that would not be my responsibility.

13      **Q**     What does that schedule show your reserve  
14 margin to be after these contracts are -- schedule 7.1,  
15 after these contracts expire? You'll have something  
16 like a 20 percent reserve margin?

17      **A**     20 percent reserve margin is what's shown  
18 there.

19      **Q**     And that's before the nuclear plants come on  
20 line?

21      **A**     I -- I'm not sure, Mr. McWhirter.

22      **Q**     They're planned to come on line in 2018 and  
23 2019?

24      **A**     Yes, that's correct.

25      **Q**     All right. So your 10-year site plan doesn't

1 include the nuclear plants yet?

2 **A** I believe it goes through 2017. And the  
3 20 percent there is consistent with the Commission's  
4 order on -- on approving the stipulation on the reserve  
5 margin at 20 percent.

6 **Q** I wasn't going to get into that but now that  
7 you've raised it, what happened was the utilities agreed  
8 that they would -- by 2004 they would have a 20 percent  
9 reserve margin and that order was issued back in 1991  
10 when independent power producers wanted to provide  
11 power, and you said that you had adequate capacity then  
12 and by 2004 you would agree to do 20 percent. Is that  
13 essentially what that stipulation said? And that was  
14 the thrust of the Commission order?

15 **A** The stipulation is that the utilities agreed  
16 to use 20 percent, and that was approved by the  
17 Commission.

18 **Q** And that was a stipulation between whom?

19 **A** As -- as I understand it, the investor-owned  
20 utilities, and then approved by the Commission.

21 **Q** And they approved the stipulation, and there  
22 were other parties in those -- in that proceeding. Did  
23 they approve the stipulation as well?

24 **A** I am not sure, Mr. McWhirter.

25 **Q** Okay. Let's go on down in this schedule E-1,

1 if you don't mind. On line 28, you have a carryover  
2 from year 2008 of \$296 million. And that's what we call  
3 a true-up. Can you give us a little more detail on what  
4 that's all about?

5 **A** In each fuel adjustment there's the three  
6 pieces. It's a final recovery from the previous year,  
7 the true-up for the current year, and projections for  
8 the subsequent year. And this is the true-up amount for  
9 the current year, which will be 2008.

10 **Q** Now, am I correct that in June of 2008, you  
11 requested an emergency midcourse correction for Florida  
12 Power & Light and you sought an increase of \$746 million  
13 to be paid in the last five months of the year; is that  
14 correct?

15 **A** That is correct.

16 **Q** And the Commission determined that, maybe  
17 instead of requiring customers to pay that amount in  
18 five months, they should -- customers should be required  
19 to pay it in 17 months; is that correct?

20 **A** That's correct. They spread it over two --  
21 two periods.

22 **Q** Is it two years or 17 months?

23 **A** Seventeen months.

24 **Q** All right. Now, on your proposal, you were  
25 going to raise your fuel charges \$149 million a month,



1 and under the Commission proposal, if you'll agree with  
2 me subject to check, when you spread it out -- they  
3 granted the 746 but they spread it out over 17 months,  
4 the month collected from customers dropped to  
5 \$43 million a month. Will you agree that that's the  
6 case subject to check?

7 **A** Subject to check. What the Commission did was  
8 spread out the underrecovery to have a smoothing effect.

9 **Q** And under that scenario, you told the  
10 Commission at the time that your true-up at the end of  
11 2008 would be somewhere in the range of \$527 million.

12 **A** Subject --

13 **Q** Is that correct?

14 **A** Subject to check, yes.

15 **Q** Yes. And now we find it's only \$296 million  
16 and we still have two months to run; is that correct?

17 **A** The -- the true-up amount is lower than what  
18 was included in the midcourse correction, and that's  
19 what we've included here, the 296 million, yes.

20 **Q** Would it be fair to say that customers have  
21 benefitted to the degree of about -- I did the math here  
22 somewhere. I think it's about \$310 million as a result  
23 of the fact that they delayed the collection; is that  
24 fair to say? The difference between 527 and 296?

25 **A** Customers benefit in that it was a smoothing

1 out effect, yes.

2 **Q** And you benefitted because you don't have to  
3 pay interest and because you'd have a refund instead of  
4 a true-up. So you benefitted by having -- avoiding the  
5 interest payment; is that correct?

6 **A** Well, it works both ways, Mr. McWhirter.

7 **Q** Now, am I correct that your bottom line here  
8 is \$7 billion, -- \$7,033,000,000 that you propose to  
9 collect in the year 2009 from customers for purchased  
10 power and power you generate and the true-up from the  
11 preceding year less line losses; is that correct?

12 **MR. BUTLER:** Could you give a reference for  
13 that figure, Mr. McWhirter?

14 **MR. McWHIRTER:** Well, it's line 33 on schedule  
15 E-1.

16 **MR. BUTLER:** Thank you.

17 **BY MR. McWHIRTER:**

18 **Q** Is that correct?

19 **A** That's correct.

20 **Q** And am I correct in stating that that number  
21 is \$880 million more than the fuel price that you sought  
22 from the Commission this time last year?

23 **A** I'm sorry, Mr. McWhirter. Can you rephrase  
24 that?

25 **Q** If you compare, and maybe you have to do this

1 subject to check to save -- avoid the need for detailed  
2 analysis and calculations and so forth. Would you agree  
3 subject to check that the fuel factor this year is based  
4 on an estimated fuel cost for 2009 that is \$880 million  
5 greater than the fuel cost that was projected this time  
6 last year for the year 2008?

7 **A** I would have to check.

8 **Q** Okay. Can you do that? Have you got the  
9 figures there available?

10 **A** I -- I'm not sure. (Examining documents.) I  
11 do not have them, Mr. McWhirter.

12 **Q** All right. Do you agree that the amount you  
13 estimate for 2009 is higher than you estimated it would  
14 be in 2008?

15 **A** Subject to check, yes.

16 **Q** Okay. Now, when you translate the amount of  
17 money you want to collect in 2009 from customers, it  
18 comes to \$66.36 per megawatt hour.

19 **MR. BUTLER:** Can you provide a reference for  
20 that?

21 **Q** And that's on line 34, column C. Is that  
22 correct?

23 **A** I think you're perhaps looking at the wrong  
24 schedule. I'm on page 3A of -- it's schedule E-1.  
25 There are several E-1's in the filing because of the

1 smoothing out effect that FPL is proposing with the  
2 GBRA.

3 **Q** I'm going to get to that in a minute. I'm  
4 looking at page 3. Look at that.

5 **A** Page 3 of -- then are you on --

6 **Q** Page 3 of your exhibit, Appendix III, I guess.

7 **MR. BUTLER:** Mr. McWhirter, I'm confused. I  
8 see a 3A, 3B, and 3C. I don't see a page 3.

9 **MR. McWHIRTER:** You don't see a page 3 before  
10 3A and 3B?

11 **MR. BUTLER:** I don't. We must be looking  
12 somewhere different. I have for appendix 2, KMD-5  
13 is page 1, a cover sheet, page 2 is a table of  
14 contents, and then a 3A, 3B, 3C.

15 **MR. McWHIRTER:** Bear with me just a minute,  
16 John. (Examining document.)

17 Okay. The very first page on the testimony  
18 you filed with the attached exhibit is what I  
19 printed out as 3A. Okay. Well, I must have  
20 printed something else. I don't know how I got  
21 this.

22 **BY MR. McWHIRTER:**

23 **Q** In any event, that shows the price to be  
24 \$67.44. Is that 3A; is that what you have?

25 **A** That's correct. And I would point out that it

1 goes January through May at 6.7 and decreases to 6.6 in  
2 June, and then to 6.4 in November.

3 **Q** Okay.

4 **A** It's a smoothing out effect with the --  
5 there's \$164 million in fuel savings associated with  
6 West County, and those are spread out to levelize the  
7 bill for customers.

8 **Q** Okay. Now, let's get into that just a minute.  
9 West County --

10 **MR. BUTLER:** Excuse me. I'm going to object  
11 again. This is the subject that we had discussed  
12 earlier as having been stipulated. The issue --

13 **MR. McWHIRTER:** We stipulated that --

14 **MR. BUTLER:** -- 13I was, should the Commission  
15 approve FPL's proposal to levelize the residential  
16 thousand-kilowatt-hour bill, et cetera. It sounds  
17 like that that's exactly what Mr. McWhirter is  
18 addressing in his questions too.

19 **CHAIRMAN CARTER:** Remember, Mr. McWhirter, we  
20 were not going to go down rabbit trails. We were  
21 going to stay focused. And you said that you would  
22 do that, and I trust you.

23 **MR. McWHIRTER:** And I can hear you very well  
24 with the PSC-supplied hearing aid. But I would --  
25 I'm not contesting what we agreed that they were

1 going to do. What I think you will find  
2 interesting and helpful to you in making your  
3 ultimate decision in this case is what we've  
4 agreed -- what we've agreed can be done because we  
5 stipulated to it back in 2005 has a rate impact on  
6 customers. And I would presume that the Commission  
7 would like to know what that rate impact of the  
8 action you're going to take in this case would be  
9 on consumers. So you can determine perhaps that  
10 there is some way that we can ameliorate that  
11 impact, and I wanted to work with you, and the only  
12 way we can find out what it is is find out first  
13 what the impact is, and the fact that we agreed to  
14 a 3.1 percent of something doesn't tell you  
15 anything. You have to look at the magnitude of the  
16 dollars. And it won't take long to get that. We'd  
17 have already gotten it if I haven't been slowed  
18 down.

19 **MR. BUTLER:** I would reiterate my objection.  
20 Mr. McWhirter is now indicating that he's basically  
21 wanting to reexplore a 2005 stipulation, and it  
22 seems like that if -- if indeed it could have been  
23 a proper issue at all, it should have been  
24 identified explicitly as such at the time of the  
25 prehearing conference.

1           **CHAIRMAN CARTER:** And, Mr. McWhirter, I have  
2 given you great leeway on this, so let's move on.  
3 Let's stick with the issue that's before us.  
4 We've -- I mean, we've had several days of this.  
5 Let's stick with the issue before us and let's move  
6 on, please, sir.

7           **MR. McWHIRTER:** I'm very happy to move on.

8           **CHAIRMAN CARTER:** Well, let's stay away from  
9 the issues that have been stipulated. I mean,  
10 they've been stipulated to, you were a party to  
11 that, and let's move on.

12           **MR. McWHIRTER:** I'm a party to it but you  
13 don't know what the impact of it is. Or maybe you  
14 do know but the public doesn't.

15           **CHAIRMAN CARTER:** You knew the impact of it,  
16 right?

17           **MR. McWHIRTER:** I certainly do, yes.

18           **CHAIRMAN CARTER:** Good. Okay. That's why you  
19 signed the stipulation. So, Mr. McWhirter --

20           **MR. McWHIRTER:** All right, sir. Yeah,  
21 Mr. Chairman, I certainly want to do what you want  
22 me to do.

23 **BY MR. McWHIRTER:**

24           **Q**     Essentially what I wanted to talk to you about  
25 is your ratemaking philosophy with respect to penalizing

1 consumers, and this has already been approved by the  
2 Commission. But on your schedule 3A that you were  
3 looking at, the cost to produce electricity after line  
4 losses is \$67.44 a megawatt hour. Can you tell me --

5 **A** I'm sorry. Mr. McWhirter, let me just  
6 interrupt you. I don't have a ratemaking philosophy to  
7 penalizing customers. Let's make sure we're clear on  
8 that.

9 **Q** Okay. Good. I'm glad you don't have that.  
10 But look at -- once again, schedule E-1 on page 3A of  
11 your appendix, and tell me what the number is on line 35  
12 and translate it from cents per kilowatt hour to dollars  
13 per megawatt hour.

14 **A** On line 35?

15 **Q** Yes.

16 **A** Line 35 is strictly the fuel factor rounded at  
17 6.744.

18 **Q** And that's cents per kilowatt hour. And if  
19 you -- a customer consumed a thousand kilowatt hours,  
20 how many cents would that be?

21 **A** It would be 67 -- 67.44. \$67.44.

22 **Q** Now, what does your company plan to charge a  
23 customer that consumes a thousand kilowatt hours or  
24 less? What are you going to charge him per kilowatt  
25 hour?



1           **A**     We have the inverted rate, and that amount  
2 is -- for the first thousand kWh it's 64.13.

3           **Q**     Okay. So that's \$3.30 in round numbers less  
4 than the cost to provide that service?

5           **A**     Well, it's an incentive there to use less.  
6 It's 64.13. If they use additional kWh over the  
7 thousand, it's 74.13.

8           **Q**     I see. So what happens is the people that use  
9 more than a thousand are charged more than the cost to  
10 provide the electricity, and the people who consume less  
11 are charged less than it costs to provide it. Is that  
12 correct?

13          **A**     It's based on -- solely on the residential  
14 class. It's rate class neutral.

15          **Q**     Now, what I'm trying to get at here is, have  
16 you done any demographic studies to demonstrate that --  
17 a rationale for serving customers that consumed less  
18 than a thousand kilowatt hours at a price less than it  
19 costs you for the fuel alone?

20          **A**     I have not.

21          **Q**     Has anybody in your company done it and  
22 disclosed it to you?

23          **A**     I -- I don't have any information on that,  
24 Mr. McWhirter.

25          **Q**     Now, you used the word "as an incentive to

1 conserve," and I used the word "penalized." But let's  
2 use your term. If you -- you're charged more for your  
3 fuel costs than it costs the company to provide it, what  
4 is the incentive that you're trying to encourage the  
5 customer to do?

6 **MR. BUTLER:** I'm going to object to this line  
7 of questions. I don't think it goes to an issue  
8 that has been identified for resolution in the  
9 proceeding. We've had this inverted rate structure  
10 for at least a couple of years. It's not changed  
11 this year in what we're presenting. And I think if  
12 Mr. McWhirter had wanted to identify this as  
13 something for hearing, he should have identified an  
14 issue challenging or questioning the inverted rate  
15 structure and made it something for the Commission  
16 to address.

17 **MR. McWHIRTER:** Mr. Chairman, I'll tie it in  
18 and I'll do it quickly if you'll let me.

19 **CHAIRMAN CARTER:** Wait. Hang on a second.  
20 Ms. Helton -- Mr. McWhirter, really, I mean, I try  
21 to afford the nth degree of courtesy to all  
22 parties. And, I mean, I really don't have Job's  
23 patience. I wish I did.

24 Ms. Helton, recommendation there?

25 **MS. HELTON:** I know that Florida Power & Light

1 has had an inverted rate for a while, and it's my  
2 understanding that there is no issue in this  
3 proceeding concerning Florida Power & Light's  
4 inverted rates, so I'm struggling with the  
5 relevance as well.

6 **CHAIRMAN CARTER:** Mr. McWhirter, would you --  
7 again, I'm going to ask you to zero in on the issue  
8 and move forward on there. I really do want to  
9 give you ample opportunity to ask legitimate  
10 questions, but the issues that have been stipulated  
11 to and that you're a party to, let's don't rehash  
12 those, Mr. McWhirter.

13 **MR. McWHIRTER:** I'm not fussing about what  
14 they've done. I was trying to determine from the  
15 witness who's responsible for ratemaking what  
16 studies they've done with respect to this incentive  
17 since it was awarded, and obviously you don't want  
18 me to ask that and I won't do it if you don't want  
19 me to.

20 **CHAIRMAN CARTER:** Obviously, Mr. McWhirter, we  
21 can play word games all day long, but the issue  
22 de jour is what we're dealing with. And I would  
23 ask you to stay with the issue and let's move  
24 forward. If you don't have any questions related  
25 to the issue, I'll move on to Ms. Bradley.

1           **MR. McWHIRTER:** I do have questions with the  
2 issues, sir.

3           **CHAIRMAN CARTER:** Okay. Well, let's zero in  
4 on that.

5           **MR. McWHIRTER:** All right.

6           **CHAIRMAN CARTER:** And let's keep our fishing  
7 for the weekend.

8 **BY MR. McWHIRTER:**

9           **Q** You filed a petition, as we've talked about  
10 earlier today, for a \$746 million rate increase in June,  
11 and in Paragraph 11 of that petition, you said  
12 \$329 million, 5.4 percent of the need for additional  
13 money from customers was because sales fell off. Let me  
14 read you the paragraph.

15                   "The 329,450,601 (5.4 percent) decrease in  
16 jurisdictional fuel revenues is primarily due to lower  
17 than originally projected jurisdictional sales, which  
18 are now based on actuals through 2008 for May and  
19 projections for May through December. The current  
20 projections is for jurisdictional sales to be 5. --  
21 5,697,643,867 kilowatt hours, 5.1 percent lower than the  
22 original projection."

23                   Now, it looks to me like if you're providing  
24 people an incentive to consume less electricity, based  
25 on your petition filed earlier this year in this case,

1 that is not in the consumer's best interest, because if  
2 people consume less, their rates will go up. Is there  
3 something that I don't understand, Ms. Dubin?

4 **A** I think the -- that petition included a  
5 comparison using a schedule following the conventions of  
6 a certain schedule there. I believe it's footnoted on  
7 the schedule as well. And, in fact, Mr. McWhirter, I  
8 believe you were served with discovery from staff that  
9 we responded to which really looked at that on a dollar  
10 per megawatt hour basis. And staff had asked us, isn't  
11 this a better way to look at it, and it certainly is.  
12 And I would agree with you. As consumption goes down,  
13 fuel costs go down, and you are then -- would be  
14 overrecovered.

15 As fuel prices go up, your fuel costs go up  
16 and -- and you would be underrecovered. In this  
17 situation, you had both things occurring at the same  
18 time and costs went up, gas went up to \$14 for an MBtu,  
19 and that outweighed the lower load.

20 **Q** But if consumers consume less electricity, I  
21 would think you would not have to buy as much fuel, so  
22 you're not buying expensive fuel. Why does the price  
23 have to go up?

24 **A** Well, at that time the price of fuel did go  
25 up.

1           **Q**    I understand that.

2           **A**    It did go up, and it outweighed the decrease  
3 that you had in consumption. For example, if you  
4 have -- if all that occurred was load going down, I  
5 would agree. If your load goes down, your fuel costs go  
6 down, you're less into the less efficient dispatch and  
7 your fuel costs go down. If that was the only thing  
8 that was occurring, we would have been in an  
9 overrecovery situation. We were not.

10                   What we had occurring was prices going up.  
11 Prices went up -- gas prices went up to \$14. What we  
12 had was a situation where load coming down was more than  
13 offset by the higher costs going up.

14           **Q**    So there must be costs other than fuel cost to  
15 cause that to happen; would that not be fair to say?

16           **A**    No. What -- I think that the -- the better  
17 way to look at it is the way that staff did. I do have  
18 a copy of that response if you'd like to take a look at  
19 it.

20           **Q**    Yeah, go ahead. I don't -- read it to me.

21           **A**    The staff asked us to take a look at the --  
22 the midcourse based on a dollar-per-megawatt-hour basis  
23 and asked us that wouldn't that be more appropriate, a  
24 better way to look at it, and we agreed. That they  
25 looked at it on -- the \$55.36 to \$55.49 was a better way

1 to take a look at it. But I agree, that when load goes  
2 down, fuel costs go down.

3 **Q** Fuel costs go down but why do rates have to go  
4 up? That's what I don't understand.

5 **A** Well, again, the rates went up during that  
6 time because fuel costs went up because gas prices went  
7 to \$14 for an MBtu. The cost increase more than  
8 outweighed the decrease in load.

9 **Q** Would that indicate to you then that this year  
10 when you had an incentive that encouraged people to use  
11 less electricity, that incentive was really causing  
12 greater costs on the company and therefore causing a  
13 rate increase for everyone else?

14 **A** No, I don't. Again, the costs go down when  
15 load goes down. But in addition, we had something else  
16 occurring. We had fuel prices going up, which more than  
17 outweighed it.

18 **Q** Can you give me a specific example of a fuel  
19 price going up and somebody not using electricity and  
20 you don't have to pay that price, why that would cause  
21 the rates for everybody else to go up?

22 **MR. BUTLER:** I'm going to object this line of  
23 questioning again. It all comes back to his  
24 apparent dissatisfaction with the inverted rate  
25 structure, something that's not a proper issue in

1           this proceeding. I fail to see how this is  
2           advancing the ball on the issues that are before  
3           the Commission for a decision today.

4           **CHAIRMAN CARTER:** Mr. McWhirter?

5           **MR. McWHIRTER:** Mr. Chairman, it's hard for me  
6           to cope with a situation in which the utility has  
7           an incentive to cause people to consume less  
8           electricity, and when they consume less  
9           electricity, the price goes up. That seems to be  
10          contradicted by your conservation efforts. And she  
11          says, her answer to the question that I can't  
12          understand, and maybe I'm just stupid, she says if  
13          you use less electricity and the price of fuel goes  
14          up and you don't have to buy the fuel for --  
15          because people consume less, then the price for  
16          everybody else has to go up. That just doesn't  
17          make sense to me, and I'm trying to figure out why  
18          that would happen.

19          **CHAIRMAN CARTER:** She's -- you've asked that  
20          question at least four times.

21          **MR. McWHIRTER:** That's correct.

22          **CHAIRMAN CARTER:** She's given you the same  
23          answer all four times. So I think you may want to  
24          accept her answer and move on.

25          **MR. McWHIRTER:** Okay. Well, I'll accept the



1 answer, sir, and move on.

2 **BY MR. McWHIRTER:**

3 **Q** I'd now like to go to the capacity charge.

4 And this year your capacity charge is moving from  
5 somewhere in the range of 556 million to 798.9 million,  
6 and that's an increase of 233 million or 41 percent over  
7 last year. 220 million of that has to do with advance  
8 payments for the nuclear plant; is that correct?

9 **A** 220 million has to do with the nuclear cost  
10 recovery.

11 **Q** Has that money been spent to date, or is it  
12 money that you think you will spend in 2009?

13 **A** I believe some monies have been spent. I'm  
14 not the witness in that, Mr. McWhirter.

15 **Q** So you believe some, but would it be fair to  
16 say that a lot of the costs are projected costs?

17 **A** A lot of costs are projected costs, consistent  
18 with the way all the cost recovery clauses work. That  
19 part of it is based on a projected basis, yes.

20 **Q** And you don't know of your own knowledge what  
21 percentage of the 220 million is for costs that will be  
22 spent in the future and what percentage is for costs  
23 that have already been spent in 200 -- well, you haven't  
24 spent anything in 2009 yet; is that right?

25 **A** That's right. I'm not the witness on that,

1 Mr. McWhirter.

2 **Q** Okay.

3 **A** I believe that this was completely reviewed in  
4 a prior proceeding.

5 **Q** When Florida Power & Light collects money to  
6 build a capital asset, you expense that money in the  
7 same year the money is collected?

8 **A** Could you repeat the question, Mr. McWhirter?

9 **Q** Well, this is an accounting question, and  
10 perhaps you're not familiar with it, but you seem so  
11 bright about everything else, I think you're pretty good  
12 at it.

13 **A** I am not an accountant.

14 **Q** Okay. But you understand that there's a  
15 difference in capital expenditures and expenditures to  
16 meet current operating expenses; do you understand that  
17 difference?

18 **A** I understand that capital expenditures are  
19 handled different ways depending on what type of capital  
20 expenditures there are. Sometimes they're included as a  
21 current period expense, sometimes not.

22 **Q** And you wouldn't know anything about the  
23 federal and state income tax that applies to the money  
24 that you collect for making capital expenditures, would  
25 you?

1           **MR. BUTLER:** I'm going to object to this line  
2 of questioning again. I don't see how it --

3           **MR. McWHIRTER:** Well, she doesn't know about  
4 it, so I'm not going to ask her anything about it.  
5 How about that?

6           **CHAIRMAN CARTER:** We all appreciate it.

7 **BY MR. McWHIRTER:**

8           **Q**    Okay. Look at your schedule H.1. That's the  
9 last page in your testimony and exhibit.

10          **MR. BUTLER:** I'm sorry, Mr. McWhirter, the  
11 last page I have is schedule E-10 in Appendix IV.  
12 Where are you referring to?

13          **MR. McWHIRTER:** Well, you're exactly right. I  
14 mischaracterized it. It is schedule E-10.

15          **Q**    And what is that schedule, Ms. Dubin?

16          **A**    I'm sorry, you're looking at E-10?

17          **Q**    Yes.

18          **A**    That is the typical thousand kWh residential  
19 bill for the period.

20          **Q**    That's for someone consuming a thousand  
21 kilowatt hours at the subsidized rate?

22          **MR. BUTLER:** Object to the characterization of  
23 the rate.

24          **CHAIRMAN CARTER:** Mr. McWhirter.

25          **Q**    A residential consumer consuming a thousand

1 kilowatt hours under your proposed rate schedule?

2 **A** It's a residential customer consuming a  
3 thousand kWh.

4 **Q** And that has a base charge, a fuel charge, and  
5 a conservation charge. You didn't testify for the  
6 conservation charge, but what is the increase on the  
7 conservation charge that your exhibit shows will be  
8 imposed upon customers for 2009? Percentage increase?

9 **MR. BUTLER:** I'm going to object. I fail to  
10 see how the increase in a charge that was resolved  
11 in the docket stipulated two days ago affects our  
12 hearing at this point.

13 **CHAIRMAN CARTER:** Mr. McWhirter?

14 **MR. McWHIRTER:** I agree it's -- we -- that it  
15 was consented to and that you -- we've all agreed  
16 that they can increase the conservation charge. I  
17 just want to know what the percentage increase was.

18 **CHAIRMAN CARTER:** It's -- and it's in the  
19 record.

20 **MR. McWHIRTER:** It's already in the record  
21 and --

22 **CHAIRMAN CARTER:** So that's why we're confused  
23 with the --

24 **MR. McWHIRTER:** I have no further questions of  
25 the witness.

1                   **CHAIRMAN CARTER:** Thank you. Ms. Bradley.

2                   **CROSS-EXAMINATION**

3                   **BY MS. BRADLEY:**

4                   **Q** Thank you. Ms. Dubin, I want to shift and  
5 talk about the drill hole incident that you mentioned  
6 briefly. It helps me to try to simplify things. And I  
7 don't want to put words in your mouth, but my  
8 understanding of your testimony is that the Commission  
9 should not determine whether or not your company acted  
10 unreasonably by looking at the sabotage event, but  
11 instead should make their analysis of whether it was  
12 unreasonable by looking at all the facts and information  
13 that was known to your company at the time that they  
14 granted -- I'm sorry, I'm about to mess up again --  
15 unescorted access to this individual that committed the  
16 act?

17                   **A** Right. The Commission has consistently  
18 reviewed outages of that nature and not looked at it  
19 with a hindsight review, that it has to be reasonable at  
20 the time that the company took actions.

21                   **Q** I frequently hear witnesses refuse to give  
22 opinions on questions because they say they need to know  
23 all the facts and information relevant to this issue  
24 before giving an opinion. Would you agree with that?

25                   **MR. BUTLER:** I'm sorry. What are you asking

1 her to agree with, that you often hear that from  
2 witnesses?

3 **MS. BRADLEY:** No, I'm asking her if she agrees  
4 with the statement that a witness should not give  
5 an opinion unless they know all the facts and  
6 circumstances.

7 **A** I think it depends on the circumstances that  
8 you're in.

9 **Q** Well, would you agree that in performing any  
10 type of analysis, it's important to have all relevant  
11 facts and circumstances known?

12 **A** I think it's important to know the facts, and  
13 I think what's important, particularly in this case, is  
14 that the NRC has reviewed the outage every step of the  
15 way, before the outage, during the outage, and how FPL  
16 returned the unit to service. I think that is the  
17 relevant factor here.

18 **Q** Thank you, even though it had nothing to do  
19 with my question. But --

20 **CHAIRMAN CARTER:** We're way beyond the --

21 **Q** Withdrawn. Would you agree, and I've heard I  
22 think you and Mr. Jones refer to the federal guidelines;  
23 is that correct?

24 **A** The NRC guidelines?

25 **Q** Yes.

1           **A**     Would you agree that guidelines can't possibly  
2 address every single factual circumstance that comes  
3 before the company, and that they are required to use  
4 their own discretion in applying guidelines to facts and  
5 circumstances that they face?

6           **MR. BUTLER:** I'm sorry. Is this question  
7 going specifically to the NRC's guidelines on  
8 access, or is she --

9           **MS. BRADLEY:** Yes.

10          **MR. BUTLER:** -- asking a general question?  
11 Well, if it's specifically to that point, I would  
12 think that would have been better addressed to  
13 Mr. Jones, because he is certainly our subject  
14 matter expert on complying with the NRC guidelines.

15          **CHAIRMAN CARTER:** Let's don't call -- let's  
16 see if she can give a shot at it. I mean,  
17 Mr. Jones, we've had Jones version 1, 2, 3, and  
18 Jason the 15th too, so let's -- if you can answer  
19 it, then --

20 **BY MS. BRADLEY:**

21          **Q**     Can you answer the question, or do I need to  
22 repeat it, or --

23          **A**     I think you need to repeat it, please.

24          **CHAIRMAN CARTER:** Yeah, repeat it.

25          **Q**     Do you agree that guidelines cannot address

1 all specific factual circumstances that the company may  
2 be faced with and that the company has to use their own  
3 discretion in applying the guidelines to the facts and  
4 circumstances they're faced with at any particular time?

5 **A** I think that the company works within those  
6 guidelines. I'm not sure at what point they would use  
7 discretion. I do believe that Mr. Jones would probably  
8 be better at responding to it since he is the one  
9 working within those guidelines.

10 **Q** Would you agree that, when performing any type  
11 of analysis, that if there is information that may be --  
12 or terminology that is not self-explanatory, that it's  
13 necessary to do follow-up on that?

14 **A** I -- I'm -- if you're specifically talking  
15 about follow-up on -- again, on the -- on the interviews  
16 and that type of thing, again, I think, that's  
17 Mr. Jones's responsibility.

18 **Q** Well, you did give an opinion that your  
19 company had acted prudently, did you not?

20 **A** I did and I do. And I think what I've said is  
21 that we have followed the guidelines and the  
22 requirements of the NRC.

23 **Q** In making that analysis and giving that  
24 opinion, would you agree that information that is -- or  
25 terminology that is not self-explanatory would require



1 follow-up?

2 **A** It could.

3 **MS. BRADLEY:** No further questions.

4 **CHAIRMAN CARTER:** Thank you. Commissioner  
5 Edgar?

6 **COMMISSIONER EDGAR:** Thank you. Just a couple  
7 of quick questions to follow up a little bit on the  
8 questions that I asked Mr. Jones late yesterday.

9 Okay. Reading your testimony on page 6, it  
10 says in your written testimony that FPL complied  
11 with the NRC requirements and with industry  
12 standards. And I'm sorry, if you want to get  
13 there, that's my only reference to that, but  
14 I'll -- it's page -- I'm sorry, page 6 of the  
15 section that is -- with the header Turkey Point.

16 **THE WITNESS:** Yes.

17 **COMMISSIONER EDGAR:** Okay. And at the very  
18 top of the page, the statement is, in your words,  
19 "FPL complied fully with NRC requirements and  
20 industry standards in order to prevent improper  
21 access and deliberate criminal acts."

22 And so my question is, when you say that FPL  
23 complied fully with NRC requirements and industry  
24 standards, are you referring to the protocol and  
25 process that we discussed yesterday with the matrix

1 and the testing and what other steps were referred  
2 to in that?

3 **THE WITNESS:** Yes. I'm referring to the  
4 testimony that Mr. Jones submitted.

5 **COMMISSIONER EDGAR:** I guess one of the things  
6 I'm trying to wrestle with, and I will pose this to  
7 Mr. Larkin, and maybe it's better put to Mr. Jones  
8 when we get to rebuttal. But is -- I feel like  
9 we're kind of doing this circular -- I'll try to  
10 come up with a question out of this here in a  
11 moment. This sort of circular logic that FPL is  
12 saying in your testimony and I think in Mr. Jones's  
13 testimony that the utility followed the NRC  
14 approved required process and, therefore, the  
15 utility acted prudently.

16 But yet the flip of that is, by virtue of that  
17 review process still allowing an individual to have  
18 unescorted access, and that individual then in turn  
19 being somebody who would commit an act of vandalism  
20 means that following that process was not prudent.

21 So let me, with that just general comment -- I  
22 appreciate your indulgence -- ask you this  
23 question. Is it your testimony that, by following  
24 that protocol, the utility acted prudently?

25 **THE WITNESS:** Yes.

1           **COMMISSIONER EDGAR:** And from that then flows  
2 your opinion that this Commission should grant  
3 recovery of the purchased power dollars necessary  
4 because of the outage?

5           **THE WITNESS:** Yes. The prudent standard has  
6 been applied time and time again by this Commission  
7 and -- consistent with the Commission's prior  
8 reviews of prior outages as well as the Supreme  
9 Court of the State of Florida time and time again,  
10 prudence has been the standard.

11           **COMMISSIONER EDGAR:** And I agree with that.  
12 And what I'm trying to make that step from  
13 following a protocol being what -- what meets the  
14 requirement of prudence, if indeed that protocol in  
15 this instance did not completely work 100 percent.  
16 And that's a statement, so --

17           Okay. One other question then about your  
18 testimony. On the next page at the bottom of page  
19 7 and then flowing into the top of page 8, you make  
20 the statement that -- that if the cost of the  
21 purchased power were to be disallowed for recovery,  
22 that that would be, quote, "a major disincentive  
23 for investments in any technology that has low  
24 energy costs, such as solar." And I'm just not  
25 quite getting the leap there, so if you could maybe

1 elaborate on that point.

2 **THE WITNESS:** The -- for disallowance of fuel  
3 costs where the company has done something that has  
4 been prudent, reasonable, and particularly if you  
5 look in light of how the unit performed. This is a  
6 unit that has a 91.3 percent availability factor.  
7 Excellent. The nuclear fleet performed better than  
8 projected, saving customers a half a million  
9 dollars.

10 So to penalize the company or disallow of the  
11 fuel costs, even when there is no -- where it's not  
12 to be shown imprudent, is then -- don't you --  
13 isn't there some kind of a disincentive for all  
14 types of units that are acting -- that are  
15 operating effectively, efficiently, and with a low  
16 fuel cost.

17 **COMMISSIONER EDGAR:** I'm not sure I completely  
18 agree. But I appreciate your elaboration. I do  
19 very much. And I guess then -- and I do look  
20 forward for more discussion on this with the  
21 remaining witnesses. I guess, again, it kind of --  
22 seems to kind of come down to this point of was  
23 following the review process, did that meet the  
24 standard of prudence, or if indeed following that  
25 process still allowed an outage to occur due to

1 vandalism, does that mean that there should have  
2 been something flagged earlier. And I'm just  
3 trying to think it through. And thank you,  
4 Ms. Dubin.

5 **THE WITNESS:** Uh-huh.

6 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.

7 **CHAIRMAN CARTER:** Commissioner Skop.

8 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

9 I was planning on not asking a question but I'll  
10 try and make this brief. Good afternoon,  
11 Ms. Dubin.

12 **THE WITNESS:** Good afternoon.

13 **COMMISSIONER SKOP:** Just a quick question.

14 You mentioned you're not an accountant. Is your  
15 husband an accountant by any chance?

16 **THE WITNESS:** No, he's not.

17 **COMMISSIONER SKOP:** Okay.

18 **THE WITNESS:** But I'm afraid it's worse. He's  
19 a lawyer.

20 **COMMISSIONER SKOP:** That's a good thing.

21 Well, the reason I asked is the name was familiar  
22 and I actually used to work with someone with the  
23 same name, and in the interest of full disclosure I  
24 would have wanted to disclosure that.

25 Briefly -- but I've never spoke with you, and

1           congratulations on your new position with the  
2           company.

3           **THE WITNESS:** Oh, thank you.

4           **COMMISSIONER SKOP:** Just with respect to the  
5           assertion made on page 4 of your prefiled  
6           testimony, and frankly, with respect to the  
7           proposition that hindsight should not serve as the  
8           basis for liability, I really think that that's a  
9           stretch of the cited case to the extent that  
10          actually I used one of -- the exact same case in a  
11          concurring opinion I wrote, and in that particular  
12          entrance -- or particular instance -- I'm having  
13          problems talking at times -- in that particular  
14          instance, actually the Commission looked back 19  
15          years to see whether the decision of a company was  
16          prudent at the time it was made.

17                 So actually in that case, unlike what's stated  
18          here, they actually -- we looked back, and that was  
19          a case where administrative finality came into  
20          play. So I think I would respectfully disagree  
21          with the characterization of that case, and I would  
22          also distinguish it on the basis that it dealt with  
23          a design issue rather than an intentional act or a  
24          failure to report an issue. So I just wanted to  
25          try and clarify that.

1           But the question that I had, and I think as  
2           Mr. Jones previously testified, and my question is,  
3           I think that through his answer to my question, we  
4           concluded that the purchased power that has already  
5           been recovered through the clause subject to refund  
6           with interest could have been avoided altogether  
7           had an individual who had actual knowledge of a  
8           hole brought that to light prior to the leak being  
9           found two weeks later.

10           So would you agree that that would be relevant  
11           as to whether such costs should be allowed to be  
12           passed on to the consumers?

13           **THE WITNESS:** Whether we had known about -- if  
14           that person had come forward to begin with?

15           **COMMISSIONER SKOP:** Yes. That would have  
16           avoided the purchased power altogether, the need to  
17           purchase power.

18           **THE WITNESS:** If we had known sooner, I'm sure  
19           we would have, yes.

20           **COMMISSIONER SKOP:** Okay. Thank you. And  
21           then with respect to the cost recovery clauses,  
22           certainly you would agree that, although these  
23           costs have already been recovered through the  
24           clause subject to refund, certainly if they could  
25           be minimized by seeking a contribution for -- from

1 a party that may have some responsibility for FPL  
2 having to incur those costs, certainly that would  
3 be an option of first resort, prior to just asking  
4 that the consumer bear the burden of the entire  
5 cost; is that correct?

6 **THE WITNESS:** Commissioner, what we've done in  
7 the past, there's been several instances where the  
8 same situations occurred. The utility has been  
9 permitted to recover the replacement cost and that  
10 any monies recovered, whether insurance or however,  
11 have been refunded or flowed back through the  
12 clause to the customers.

13 Mr. Butler talked a little bit about the case  
14 in 1996 where we were able to go after the driver's  
15 car insurance, and it took a while and we finally  
16 got it and we refunded that back through the  
17 clause. Also the thermal shield that happened in  
18 1984 when we received monies, we were able to flow  
19 that back. So there's precedent for doing that,  
20 and of course we would continue that.

21 **COMMISSIONER SKOP:** Again, on the thermal  
22 shield, I think that was a separate and distinctive  
23 issue. The one with the -- the teenagers driving  
24 into the discharge canal (phonetic) berm, I think  
25 that's more proximate to the discussion. But



1           again, I think that the issue at hand, being  
2           actually inside the plant, causing -- you know,  
3           effectively causing the problem and then also  
4           failing to report a problem that, had it been  
5           brought to light in a timely manner, could have  
6           avoided the incurred costs that are being passed to  
7           the consumer to begin with, I think is certainly  
8           relevant.

9           But I guess the point I'm trying to make is  
10          that, what incentive does the company have if we  
11          allow recovery completely up front? I mean,  
12          recovery has been granted. Now it's just a  
13          question of if any amount -- I mean, what amount,  
14          if any, along with interest should be refunded back  
15          to the consumers? And then what -- if we just  
16          bless off on this, what incentive does the company  
17          have to vigorously pursue indemnification from a  
18          party that might have, you know, some  
19          responsibility? If not, the company has some  
20          responsibility itself.

21                 **THE WITNESS:** We have an obligation certainly.  
22          And I -- I'm -- and in referencing those prior  
23          times, just to show you that we do have the track  
24          record, certainly the case where we have the  
25          vehicle in the discharge canal, it's an act of

1           vandalism. It's closer to this. But the thermal  
2           shield outage is certainly -- it's also an outage,  
3           the replacement fuel cost, we were able to recover  
4           monies and flow those back through the clause. So  
5           again, I think that we have a track record of doing  
6           that and we would do the same here.

7                   **COMMISSIONER SKOP:** I guess actions speak  
8           louder than words, because, I mean, I would -- I  
9           understand the thermal shield, and again, I can  
10          distinguish that and I really think it has no  
11          relevance on the instant case. But, you know, I  
12          would like to see that.

13                   I'm actually kind of surprised that, given  
14          FPL's talented legal team that, you know, that they  
15          haven't, you know, pursued that more vigorously.  
16          It's almost like -- I truly feel that if the -- you  
17          know, issue had not been raised here or not been  
18          raised by OPC and some of the other intervenors,  
19          that, you know, there's no incentive for FPL to go  
20          pursue it. It's almost like you guys haven't  
21          thought of that.

22                   I mean, I guess my concern --

23                   **THE WITNESS:** Commissioner --

24                   **COMMISSIONER SKOP:** Just for one second. My  
25          concern and I guess frustration is that there

1 always seems to be an excuse rather than a try and  
2 find a way to -- to do something constructive to  
3 help the ratepayer. And I guess that's the source  
4 of my frus -- ongoing frustration. I mean,  
5 hopefully there'll be a commitment and a  
6 willingness to try and go seek some contribution  
7 from -- from the responsible parties. And that may  
8 include FPL to some degree.

9 But again, this -- trying to resolve this  
10 issue, I think that Mr. Jones's testimony was --  
11 was -- clearly articulated that point. If -- if  
12 something would have come to light, you know, maybe  
13 all of this could have been avoided. But right now  
14 I'm just trying to protect the ratepayer and  
15 mitigate the impact to them, and I think that  
16 should be a common goal of FPL and it should be  
17 pursued very vigorously.

18 **THE WITNESS:** If I may comment on it. The --  
19 we have been reviewing and reviewed to see whether  
20 we had any recourse. And this new report, if you  
21 will, has recently come to light and we will be  
22 reviewing that. And as we have done in the past,  
23 whether it's been an outage, contract negotiation,  
24 contract dispute, whatever, when there has been  
25 a -- when we were able to go back and recover

1 money, we flow that back through the clause to the  
2 customer. We've done that time and time again.

3 I've been involved in the fuel adjustment  
4 clause for more than 25 years, and I can tell you,  
5 whenever we've had a situation like that, we have  
6 flown those dollars back to customers.

7 **COMMISSIONER SKOP:** And I appreciate that, and  
8 I hope that would be pursued vigorously for the  
9 benefit of your ratepayers. You know, I just think  
10 that there's the ability to at least try and do  
11 something, and you don't know unless you try. And  
12 I know there's a cost associated with doing that  
13 too. But again, I think that passing the cost  
14 directly to the ratepayer should be an option of  
15 last resort, particularly in light of some of the  
16 circumstances we see here. And I'm not saying that  
17 warrants a complete refund, but I'm looking for  
18 options to try and mitigate impact to the  
19 ratepayer.

20 **CHAIRMAN CARTER:** Commissioners, I'm going to  
21 go to staff, and I'll obviously come back to the  
22 bench at any time you feel appropriate.

23 Staff.

24 **MR. YOUNG:** Thank you, sir.

25 **CROSS-EXAMINATION**

1 **BY MR. YOUNG:**

2 **Q** Good afternoon, Mr. Jones -- I mean, excuse  
3 me. Ms. Dubin.

4 **A** Dubin.

5 **CHAIRMAN CARTER:** It's like Groundhog Day all  
6 over again.

7 **Q** In your words, you believe that FPL's actions  
8 in each step of the process were unquestionably  
9 reasonable and prudent as it relates to the Turkey Point  
10 hole drilling incident, correct?

11 **A** Yes.

12 **Q** All right. Now, is that a statement -- is  
13 that a statement, a direct statement from the NRC  
14 report?

15 **A** No, that is my assessment after looking at  
16 Mr. Jones's testimony and the fact that we do have the  
17 NRC concurring with what we did was reasonable.

18 **Q** All right. And is that a statement from the  
19 FBI notes in Exhibit No. 54 related to the investigation  
20 in the pressurized pipe drilling incident?

21 **A** Is my testimony quoting the FBI notes, is that  
22 what you're saying?

23 **Q** Yes.

24 **A** I have not quoted that, no.

25 **Q** Okay. And that statement is, in fact, your

1 understanding from Mr. Jones's testimony, correct?

2 **A** Yes.

3 **Q** And that Mr. Jones's testimony was  
4 misstated -- misstated a fact in his testimony, that  
5 could alter your conclusion that you think FPL was  
6 reasonable and prudent in each step of the process of  
7 the hole drilling incident, correct?

8 **A** Nothing that I've heard from Mr. Jones has --  
9 has changed my opinion, that every step of the way FPL  
10 was reasonable and prudent in complying with the NRC's  
11 requirements.

12 **Q** But if he misstated a fact, and it turned out  
13 that he was not correct in his assessment of being  
14 reasonable and prudent, that would alter your  
15 conclusion, correct?

16 **A** It could, yes.

17 **Q** Okay. Now, your testimony is based on Mr. --  
18 as it relates to the pressurized piping, is solely based  
19 on Mr. Jones' testimony, correct?

20 **A** Yes.

21 **Q** All right. If his conclusion turns out to be  
22 wrong, that would make your conclusion wrong, correct?

23 **A** If his conclusion is incorrect, I'm relying on  
24 his -- his testimony as far as being reasonable and  
25 prudent, yes.

1           **Q**     Okay. Now, if -- if FPL failed to demonstrate  
2 that it was prudent in the events leading up to the  
3 pressurized piping incident, would you agree with me  
4 that FPL would not be entitled to recover those costs?

5           **A**     I agree that the standard for recovery is  
6 prudence, yes.

7           **Q**     And they won't be entitled to recover the  
8 cost; would you agree with me then?

9           **A**     If they were imprudent.

10          **Q**     If they were imprudent.

11          **A**     Yes, the other side works as well.

12          **Q**     Let me ask you this. If the individual  
13 responsible for drilling this hole -- the hole in the  
14 pressurized pipe had been a full-time employee of FPL  
15 instead of a contract employee, is it true that FPL  
16 requests treatment of this proceeding in the same  
17 manner?

18          **A**     That if this would have been an FPL  
19 employee -- could you please restate that? I'm not sure  
20 what you're asking.

21          **Q**     If this would have been an FPL employee  
22 instead of a contract employee, would FPL request  
23 treatment in this proceeding in the same manner as it's  
24 requesting right now?

25          **A**     I think that's better for Mr. Jones to -- I'm

1 not sure the guidelines and standards that require  
2 access to -- for an employee. I think that's better for  
3 Mr. Jones to explain.

4 **Q** All right. Walk me through this for a second.  
5 You stated just a minute ago that you were -- you've  
6 been handling the fuel clause for 25-plus years,  
7 correct?

8 **A** Yes.

9 **Q** Based on your knowledge and your experience,  
10 if it would have been an FPL employee instead of a  
11 contract employee, would you be requesting the same --  
12 would you be requesting treatment of the dollars in the  
13 same manner?

14 **A** Yes.

15 **MR. BUTLER:** I'm sorry.

16 **A** Yes, I'm sorry. I misunder -- I'm sorry.

17 **THE WITNESS:** John?

18 **MR. BUTLER:** No, that's fine. If you  
19 understand --

20 **A** I'm sorry, Mr. Young, I misunderstood. Yes,  
21 the answer would be the same, that FPL was prudent and  
22 reasonable and should be able to recover the replacement  
23 power costs.

24 **Q** Okay. Now, if the Commission were to disallow  
25 the \$6.2 million plus interest that had previously been



1 recovered through the 2007 fuel factor, do you know what  
2 the impact would be on the residential 1,000 watt  
3 kilowatt -- 1,000-kilowatt-hour bill?

4 **A** I have not done that calculation.

5 **Q** Is that something that you can provide in a  
6 late-filed exhibit?

7 **MR. BUTLER:** I'm sorry. What are you asking  
8 as the exhibit?

9 **MR. YOUNG:** The disallowance of the -- what  
10 would the residential 1,000-kilowatt-hour -- excuse  
11 me. What would the 1,000-kilowatt-hour residential  
12 bill be, the impact, if the Commission would have  
13 disallowed the \$6.2 million.

14 **MR. BUTLER:** So if it were disallowed in this  
15 proceeding, what would the 2009 fuel factor be,  
16 what would the impact on that be?

17 **MR. YOUNG:** Yes.

18 **MR. BUTLER:** Okay. You can answer the  
19 question.

20 **A** I have not done the calculation, but we can  
21 provide that as a late-filed.

22 **CHAIRMAN CARTER:** Mr. Butler?

23 **MR. BUTLER:** Yes?

24 **CHAIRMAN CARTER:** Would you be able to do  
25 that?

1           **MR. BUTLER:** Yes, we would agree to do that.

2           **CHAIRMAN CARTER:** Any objection from the  
3 parties? Okay. That will be Exhibit No. 56,  
4 Commissioners. And without objection show it done  
5 as a late-filed exhibit.

6           Mr. Young, give me a title for that, please.

7           **MR. YOUNG:** The disallowance of the 6.2  
8 million plus interest rate impact on the  
9 thousand-kilowatt-hour bill.

10          **COMMISSIONER EDGAR:** Mr. Chairman, can we get  
11 that today or will that be later? I'm not sure how  
12 complicated that --

13          **CHAIRMAN CARTER:** Let's ask Mr. Butler.  
14 Mr. Butler, any kind of timeframe on that you  
15 think?

16          **MR. BUTLER:** I expect I'd probably have to  
17 defer to Ms. Dubin to confirm, but I would expect  
18 we can provide that before the end of the hearing  
19 today.

20          **CHAIRMAN CARTER:** Okay. Give me one second  
21 here.

22          **MR. BUTLER:** Is that right, Ms. Dubin?

23          **THE WITNESS:** I believe so.

24          **MR. BUTLER:** Thank you.

25          **CHAIRMAN CARTER:** Okay. That will be Exhibit

1           No. 56.

2           Staff, you may continue.

3           (Exhibit No. 56 was identified.)

4 **BY MR. YOUNG:**

5           **Q**     Now, Ms. Dubin, you were in the room when  
6 Mr. Jones testified, correct?

7           **A**     Yes, correct.

8           **Q**     And you heard him state that the NRC -- you  
9 heard him state that the NRC reports cite that the NRC  
10 believes FPL's security access program is more  
11 conservative than industry norms?

12          **A**     Yes, I heard him say it was more conservative  
13 than industry norms, and in fact they are using it as an  
14 example for other -- other companies.

15          **Q**     Do you know if that was documented in the NRC  
16 report?

17          **A**     I'm sorry?

18          **Q**     Do you know if that is documented, that  
19 statement, in the NRC report?

20          **A**     I do not know.

21          **Q**     All right. So that -- that's just a verbal  
22 statement, not a written statement?

23          **A**     Right. I'm relying on Mr. Jones.

24          **Q**     Okay. Now, switching subjects, okay?

25          **A**     Okay.

1           **Q**     On page 10 of your exhibit, KMD-8 -- I mean,  
2 page -- on line 10, page 1 of Exhibit KMD-8.

3           **A**     Sorry, Mr. Young, what page?

4           **Q**     Page 1 of KMD-8. This is the October 15th  
5 exhibit that you filed along with your testimony.

6           **A**     Right. Page 1 is the title page.

7           **Q**     I'm sorry. Page -- excuse me. The second  
8 page.

9                   **CHAIRMAN CARTER:** Let's do this. While  
10 you're -- everybody kind of run in place while  
11 you're doing -- you're getting your paperwork  
12 together. Let's just take like -- not five PSC  
13 minutes but five minutes while we're going to  
14 switch out our court reporter. Okay? Nobody leave  
15 the building, okay?

16                   (Break taken.)

17                   (Please go to Volume 8.)

18                                   \*     \*     \*

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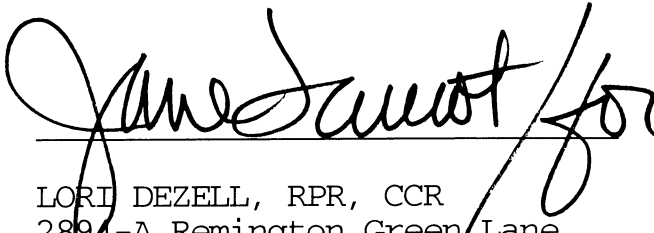
## CERTIFICATE OF REPORTER

STATE OF FLORIDA            )  
COUNTY OF LEON            )

I, LORI DEZELL, RPR, CCR, certify that I was authorized to and did stenographically report the proceedings herein, and that the transcript is a true and complete record of my stenographic notes.

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

WITNESS my hand and official seal this 10th day of November, 2008.

  
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