

1 BEFORE THE
2 FLORIDA PUBLIC SERVICE COMMISSION

3 In the Matter of:

4 PETITION FOR INCREASE IN RATES DOCKET NO. 080677-EI
BY FLORIDA POWER & LIGHT COMPANY.

5 -----
6 2009 DEPRECIATION AND DISMANTLEMENT DOCKET NO. 090130-EI
STUDY BY FLORIDA POWER & LIGHT
COMPANY.
7 _____/

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9
10 VOLUME 3
Pages 268 through 417

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12 A CONVENIENCE COPY ONLY AND ARE NOT
13 THE OFFICIAL TRANSCRIPT OF THE HEARING,
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14 PROCEEDINGS: HEARING

15 COMMISSIONERS
16 PARTICIPATING: CHAIRMAN MATTHEW M. CARTER
COMMISSIONER LISA POLAK EDGAR
17 COMMISSIONER KATRINA J. McMURRIAN
COMMISSIONER NANCY ARGENZIANO
18 COMMISSIONER NATHAN A. SKOP

19 DATE: Tuesday, August 25, 2009

20 TIME: Commenced at 9:37 a.m.

21 PLACE: Betty Easley Conference Center
Room 148
22 4075 Esplanade Way
Tallahassee, Florida

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

FLORIDA PUBLIC SERVICE COMMISSION

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P R O C E E D I N G S

(Transcript follows in sequence from
Volume 3.)

CHAIRMAN CARTER: Good morning to one and all.

COMMISSIONER EDGAR: Good morning.

CHAIRMAN CARTER: I'd like to call this hearing to order. Also, just kind of a heads up for everyone, we'll be going late this afternoon, so we'll get a word in to DMS to give us some additional air conditioning. Now I can't do anything about the electronic locks on the doors. They lock automatically at 5:00. Chris, is that right?

MR. POTTS: No. 6:00.

CHAIRMAN CARTER: Oh, 6:00? Oh, got 30 minutes later. So you might have to practice the buddy system. I wouldn't want you to miss your cross-examination or your big moment. Okay?

So let's do this, preliminary matters.

MR. BUTLER: One preliminary -- I'm sorry, Mr. Chairman.

CHAIRMAN CARTER: You're recognized.

MR. BUTLER: One preliminary matter.

Mr. Stall, who is listed as our seventh witness, needs to testify tomorrow, if at all possible, or at least by tomorrow, if at all possible. We've

1 checked with the parties, and none of the parties
2 here -- we've not been able to check with counsel for
3 AFFIRM or City of South Daytona because we haven't seen
4 them yet -- but none of the parties here has any
5 objection to him taking the stand first thing tomorrow
6 morning. If that's out of order, I'd just ask that he
7 be permitted to take the stand at that point and give
8 his testimony.

9 **CHAIRMAN CARTER:** Are the parties okay with
10 that? Okay. We'll do that. We'll try to accommodate
11 each other whenever possible.

12 **MR. BUTLER:** Thank you.

13 **CHAIRMAN CARTER:** Ms. Clark.

14 **MS. CLARK:** Yes. I have two things, Mr.
15 Chairman.

16 First of all, I would like to advise the
17 Commission about the use of confidential information
18 regarding employees earning more than \$165,000. I would
19 like to make it clear that this information is kept
20 confidential within the company as well. So regarding
21 FP&L employees involved in this hearing, only
22 Mr. Olivera and Ms. Slattery have actually seen this
23 exhibit. We have advised all the Intervenors, except I
24 guess with, with regard to AFFIRM and City of South
25 Daytona, that they should direct their questions to, on

1 the confidential compensation exhibit to Mr. Olivera,
2 and he may defer certain specifics for Ms. Slattery as
3 necessary.

4 **CHAIRMAN CARTER:** Okay.

5 **MS. BENNETT:** Mr. Chairman?

6 **CHAIRMAN CARTER:** Yes, ma'am. Ms. Bennett.

7 **MS. BENNETT:** I had spoken with Mr. Butler
8 earlier. We request that the questions -- we start with
9 Ms. Slattery for the employee compensation questions,
10 and that if there are any that Mr., that she can't
11 answer and Mr. Olivera can, that we address that perhaps
12 when he comes back up for rebuttal instead.

13 **CHAIRMAN CARTER:** Is that, is everyone
14 comfortable with that? Mr. Moyle.

15 **MR. MOYLE:** I have a few questions that I'm
16 going to use that document for. I don't know if they're
17 going to get in great detail, but I don't, I don't -- I
18 mean, it's, it's his direct. It's part of the case. I
19 don't, I don't want to get into the weeds on it, but I
20 have a few questions. I don't want to be foreclosed
21 from --

22 **CHAIRMAN CARTER:** We, we will, we will
23 accommodate you, Mr. Moyle. We will accommodate you.
24 And like I said yesterday -- I hope y'all remember my
25 opening statement. We will accommodate you.

1 Mr. Wright.

2 **MR. WRIGHT:** Thank you, Mr. Chairman. Just so
3 that I am clear, we are presently speaking of the
4 compensation of those individuals who make less than the
5 amount shown for FPL's top management which are public
6 and more than \$165,000 a year; is that accurate?

7 **CHAIRMAN CARTER:** That's my understanding. Is
8 that right?

9 **MS. CLARK:** That's my understanding as well.

10 **MR. WRIGHT:** Okay. With that then I'm
11 completely fine with whatever you rule. Thank you.

12 **CHAIRMAN CARTER:** Okay. Mr. Moyle.

13 **MR. MOYLE:** I guess one thing. And I don't --
14 FIPUG, you know, has not gotten into this issue
15 previously. It's been a staff issue and a Commission
16 issue. You know, I have a few general points I want to
17 try to make with the witness related to that exhibit, so
18 I want to be able to use it. But I'm not sure I
19 understand the state of the record with respect to that
20 issue in that, you know, the other day you all heard
21 extensive argument on confidentiality and I understood
22 that you ruled that it wasn't a confidential document.
23 Now it's been filed with a claim of confidentiality.
24 You know, some might say that's the law of the case,
25 it's already been before you, it's already been ruled

1 upon. So I just am not real clear as to, you know, what
2 it is and how we're going to handle it.

3 I'm happy to handle it confidentially. I
4 presume if it's handled confidential and there's an
5 appeal, it would be moot. But I just am not sure. Any
6 clarity on sort of the legal status of that would be
7 helpful.

8 **CHAIRMAN CARTER:** I understand where you are,
9 because the time for appeal is still running and so we
10 don't really know that. So what we'll do is we'll
11 coordinate between the parties and our staff to make
12 sure that we're all on the same page as much as possible
13 so that you'll have ample opportunity for
14 cross-examination as well as reviewing all of the
15 information within the confines of this, and we'll
16 accommodate you on that. I think it's, it's -- we'll
17 get an opportunity to kind of do that. Maybe when we
18 take a break if there's a question or something, staff
19 will get with you and say this is how we're going to do
20 it pending -- I mean, we obviously don't want to get in
21 the middle of a case that may be appealed or anything
22 like that, but we certainly will be able to accommodate
23 you. How about that? Is that okay?

24 **MR. MOYLE:** Thank you. You always have and I
25 appreciate, appreciate it.

1 **CHAIRMAN CARTER:** You're a gentleman and a
2 scholar, sir, and you dress nice too.

3 Any more preliminary matters?

4 **MR. BUTLER:** Mr. Chairman.

5 **CHAIRMAN CARTER:** Mr. Butler.

6 **MR. BUTLER:** Just to be very clear on this
7 point, we do continue to assert our claim of
8 confidentiality. We are asking that it be treated that
9 way. Obviously how it ultimately ends up is something
10 that none of us can determine at this point. But that
11 is our plan. We are making them available.

12 **CHAIRMAN CARTER:** Okay.

13 **MR. BUTLER:** The areas are, you know,
14 highlighted in yellow that we ask the people not to
15 disclose publicly on the record. And we'll work with
16 the parties to be sure that questions can be asked
17 within that construct.

18 **CHAIRMAN CARTER:** Absolutely.

19 **MR. BUTLER:** Thank you.

20 **CHAIRMAN CARTER:** Cooperation is always
21 appreciated.

22 **MR. BUTLER:** Thank you.

23 **COMMISSIONER ARGENZIANO:** Mr. Chair?

24 **CHAIRMAN CARTER:** Commissioner Argenziano.

25 **COMMISSIONER ARGENZIANO:** Yeah. Just a

1 question, and I realize there's time, but I don't know
2 what happened. Did FPL file an appeal yet on that
3 issue?

4 **CHAIRMAN CARTER:** I don't know.

5 **MR. BUTLER:** We have not filed an appeal yet.
6 We're in the period in which -- I'm sorry?

7 **COMMISSIONER ARGENZIANO:** Right. Okay. Thank
8 you.

9 **CHAIRMAN CARTER:** Yeah. My comments,
10 Commissioner, ran to the fact that the time for appeal
11 has not elapsed yet. They still --

12 **COMMISSIONER ARGENZIANO:** Right. I know that.
13 I just wanted to know if they had. I didn't hear
14 whether they had or not. I wasn't sure. Thank you.

15 **CHAIRMAN CARTER:** Yes. It's no problem at
16 all. And that's why we'll be -- we still, Mr. Moyle, we
17 still will accommodate you.

18 **MR. MOYLE:** Okay.

19 **CHAIRMAN CARTER:** So you'll be able to
20 cross-examine on the information, I think, based on the
21 representation made to us yesterday, you have been a
22 party to the confidentiality agreement, so you'll be
23 able to see that and conduct your cross-examination as
24 appropriate.

25 Ms. Clark.

1 **MS. CLARK:** Yes. Mr. Chairman, I had one
2 other item. When Mr. Olivera takes the stand again, I
3 have a clarifying question to ask him that might
4 engender another question, other questions from OPC, and
5 I'd like to do that when he comes back on the stand.
6 When we were reading the transcripts from the hearing,
7 we noticed that and would like to clarify it.

8 **CHAIRMAN CARTER:** Okay. Let me do this,
9 because I think that may be appropriate to do now.

10 Staff, are there any other preliminary
11 matters? Because I think with what Ms. Clark has just
12 said, if we could probably do that now, and that will
13 give OPC an opportunity to think about it. If that
14 engenders some additional questions, we can go back on
15 that. All right?

16 Staff.

17 **MS. BENNETT:** Staff is not aware of any other
18 preliminary matters.

19 **CHAIRMAN CARTER:** Okay. Ms. Clark, let's do
20 that now. Let's call Mr. Olivera back to the stand.
21 Well, let me -- are there any other preliminary matters
22 from any of the parties before we do this? Okay.

23 Mr. Olivera, good morning. Come on up.

24 While he's coming up, Commissioners, we will
25 be going late today. I don't know how late, but we'll

1 be going late. I just want to get a flow for things and
2 see how we progress, and then we'll kind of -- I'll
3 probably let you know something later on today.

4 Ms. Clark.

5 **MS. CLARK:** Thank you, Mr. Chairman.

6 **EXAMINATION CONTINUED**

7 **BY MS. CLARK:**

8 **Q.** Are you ready, Mr. Olivera?

9 **A.** Yes, ma'am.

10 **Q.** Okay. Yesterday Mr. McGlothlin asked you
11 about the base rates for 2011 shown on your Exhibit
12 AJO-2. Do you recall that?

13 **A.** I do.

14 **Q.** He asked you whether the bar for 2011 included
15 the GBRA adjustment for West County 3, and you responded
16 that you thought it did. Do you remember that question
17 as well?

18 **A.** I do.

19 **Q.** Would you like to clarify your response?

20 **A.** I would. West County 3 is scheduled to go in
21 service the summer of 2011, and therefore it was not
22 included in the 2011 chart that we had.

23 **Q.** Because it indicated it was January 2011;
24 correct?

25 **A.** Correct.

1 **MS. CLARK:** Okay. Thank you, Mr. Chairman.

2 **CHAIRMAN CARTER:** Thank you. Before I go back
3 to the South Florida Hospital Healthcare Association,
4 let me do this. Let me ask you to kind of just hold
5 your questions in abeyance for a moment.

6 Mr. McGlothlin, is it -- would you like
7 further questions from Mr. Olivera based upon this
8 morning's statement?

9 **MR. MCGLOTHLIN:** Yes. Yes. At the time I
10 posed the question yesterday, I thought that West
11 County 3 was not included in the bar. So the different
12 answer sort of curtails the questions I had in mind. If
13 it's appropriate to do so, I'd like to follow up while,
14 while the --

15 **CHAIRMAN CARTER:** Why don't we do that now
16 before we go back to the South Florida Healthcare and
17 Hospital Association, since they've already kind of held
18 him in abeyance. Why don't we do that to accommodate
19 you, Mr. McGlothlin.

20 **MR. MCGLOTHLIN:** Thank you.

21 **EXAMINATION CONTINUED**

22 **BY MR. MCGLOTHLIN:**

23 Q. Mr. Olivera, you agreed with me yesterday that
24 the generation base rate adjustment is, as designed and
25 structured by FPL, a portion of base rates; is that

1 correct?

2 **A.** Correct.

3 **Q.** And I understand that the, looking at,
4 referring you to your exhibit, what I have is called the
5 RBD-2, Page 1 of 1, which is the same bar graph. Do you
6 have that in front of you?

7 **A.** I'm sorry. Could you repeat the number of the
8 exhibit?

9 **Q.** Well, mine is shown RBD-2.

10 **A.** RB --

11 **Q.** It's this handout that has the bar graphs on
12 it showing the --

13 **A.** I'm sorry. I can't see that far. Is that the
14 one that was in the original prefiled testimony or is
15 that the revised one?

16 **Q.** It's the revised that was distributed
17 yesterday.

18 **A.** Okay.

19 **MS. CLARK:** Mr. McGlothlin, just so I'm sure,
20 at the top does it say "Fuel and Capacity Clause
21 Projections as of August 20, 2009," at the top under the
22 blue --

23 **MR. MCGLOTHLIN:** That's correct. August 20.

24 **MS. CLARK:** Okay.

25 **BY MR. MCGLOTHLIN:**

1 **Q.** So I understand that the bar graph on the
2 right captioned January 2011 reflects what the company
3 proposes as of the first of the year 2011. But would it
4 be fair to say that with -- if we wanted to see the
5 impact of the overall case on customers for all of 2011,
6 we would have to have another bar graph showing the
7 impact of another base rate adder, which would be the
8 GBRA in the summer of 2011?

9 **A.** If you wanted to see the impact of GBRA, you
10 would look at the December 2011 calculation, which would
11 show a net increase of 80 cents, of which approximately
12 \$1.80 would reflect the revenue associated with West
13 County 3, offset by about a dollar or so of fuel
14 savings.

15 **Q.** Well, for purposes of my questions, let's
16 focus on the base rate component of that, because if I
17 --

18 **A.** I believed that's what you were asking me
19 about. I'm sorry if I misunderstood.

20 **Q.** Yes. In terms of the revenue requirements
21 associated with West County 3, which would be
22 implemented under the company's proposal through the
23 GBRA in the summer of 2011, you did not quantify that in
24 your testimony, did you, the overall revenue
25 requirements?

1 **A.** I don't believe that I quantified it. I think
2 it's in others' testimony. In Mr. Barrett's testimony,
3 I believe he has it. I do know the number. It's,
4 it's -- the total revenue requirements is approximately
5 \$180 million for West County 3.

6 **Q.** \$180 million. And with respect to the base
7 rate portion of the bill, that \$180 million would be
8 added to what is shown as the base rate component or the
9 purple shaded component of the bar graph; correct?

10 **A.** That's correct. As I stated earlier, the net
11 impact is about 80 cents in the average residential
12 bill.

13 **Q.** That's net of fuel savings again?

14 **A.** Correct. It's the total of \$1.80, of which
15 about a dollar is the benefit from the greater
16 efficiency of the plant, and it represents the fuel
17 savings.

18 **Q.** And the fuel component was shown in what's
19 shaded as green on this bar chart; right?

20 **A.** Correct.

21 **Q.** And if we were to focus on the base rate
22 portion, which is what is in front of the Commission in
23 this, in this proceeding, that would be the \$180 million
24 added to the purple shaded; correct?

25 **A.** Well, it depends what the time line is. It

1 wouldn't be -- a hundred -- you're comparing revenue
2 requirements with impact on the bill. So the
3 appropriate comparison is what's the impact on the bill,
4 because this is the average residential bill that we're
5 talking about. So I couldn't agree that I would
6 characterize it the same way.

7 Q. But the impact would be broken into base rate
8 components and fuel components; correct?

9 A. Correct. I go back to the \$1.80, of which a
10 dollar is the fuel efficiency, so it's a reduction, and
11 \$1.80 is the total revenue requirement.

12 Q. And to focus on the impact on base rates, we
13 would focus on the \$180 million, which is the revenue
14 requirements associated with West County 3; correct?

15 A. The base rates portion alone would be
16 \$180 million.

17 Q. Thank you. Now looking for a moment at the
18 January 2010 bar graph, which is the middle of the three
19 shown on this chart, that is the impact of a subsequent
20 year adjustment of \$240 million annually; correct?

21 A. I'm sorry. Could you repeat your question?
22 You said 2010 or 2011?

23 Q. I beg your pardon. I misspoke. It's 2011,
24 which is the subject of the subsequent year adjustment.
25 And that is the impact of a subsequent year adjustment

1 of \$240 million annually; correct?

2 **A.** That is correct.

3 **Q.** And that's based upon projections made by the
4 company with respect to the anticipated operations of
5 the company in 2011; correct?

6 **A.** Yeah. \$240 million, excuse me, of revenue
7 requirement was derived at by doing a forecast of our
8 planned capital and O&M expenditures for 2011.

9 **Q.** Assume for the purposes of the next question
10 that the Commission were to approve the subsequent year
11 adjustment in the amount requested by the company of
12 \$240 million, and when we arrived at the summer of 2011,
13 it's clear that that amount overshot and that the
14 company is then in an overearnings situation.

15 As I understand the GBRA as proposed by the
16 company, is it correct that the \$180 million of annual
17 revenue requirements would be added to the customers'
18 bill, notwithstanding the fact that the company was in
19 an overearnings situation?

20 **A.** When you say overearning, can you elaborate a
21 little more your definition of overearning?

22 **Q.** Exceeding the ceiling of an approved range of
23 return.

24 **A.** Okay. Well, first of all, we, every month we
25 file a surveillance report that shows you what the

1 return on the company is. And so I assume that if we
2 were gliding into this process and we were above our
3 allowed rate of return, this Commission has the
4 wherewithal to bring us in for a show cause order. So
5 let's just take that as kind of the starting point, and
6 every month we file it, every month we all look at it.

7 The GBRA in general would have the impact --
8 if you're a little higher, let's use the midpoint, the
9 12.5 percent. So the GBRA will have the benefit, if
10 you're earning above 12.5 percent and you're going in
11 and you get GBRA, it will lower that return and get it
12 closer to 12.5. It's the math. And conversely, if
13 you're earning below 12.5 percent, it will have the
14 impact of getting you closer to that 12.5 percent.

15 I think the point that's worth making with the
16 GBRA is that we go through a process where we show the
17 need for the facility. In this case, we're talking
18 about a facility that went through an RFP process.
19 There was a purchased power agreement associated with
20 that facility. Had you approved a purchased power
21 agreement, which is a more expensive proposal than what
22 we have, we would flow that through clauses. It would
23 be a purchased power contract, and it would go in effect
24 exactly the day that that facility goes in service.

25 So not to allow us to start making, getting a

1 return on that investment when it goes into service,
2 when the customer begins to get the benefits, sort of
3 penalizes us for putting forward a proposal, our
4 self-build proposal.

5 Q. The question to you, Mr. Olivera, was in terms
6 of an overearnings situation and the actions that the
7 company would take or would not take with respect to the
8 implementation of the GBRA.

9 Assuming -- excuse me, sir. Assuming that the
10 overearnings situation, you're earning above the ceiling
11 of the approved range of return, the West County 3
12 enters commercial service, the annual revenue
13 requirements have been quantified as \$180 million, do I
14 understand correctly that as designed and proposed by
15 Florida Power & Light Company the adder to base rates
16 would be based upon the full revenue requirements of
17 \$180 million?

18 A. Well, I'm not sure what the question is, but
19 let me try to break it up into two pieces.

20 Q. Well, if you're not sure what the question is,
21 I'd rather make sure we're communicating before you
22 begin your answer.

23 A. Why don't you repeat the question then?

24 Q. All right. The assumption is that at the time
25 West County 3 begins commercial service, the effect of

1 the subsequent year adjustment as requested by you and
2 approved by the Commission has been to put the company
3 in an overearnings situation, which I define to be
4 you're earning above the ceiling or the approved overall
5 return. Do you -- are we clear on that much of it?

6 **A.** I'm not, still not sure what your question is.

7 **Q.** Okay. The question is this. Under that
8 scenario where you are overearning and where the annual
9 revenue requirements of West County 3 have been
10 quantified as \$180 million, does the company, would the
11 company increase base rates by the full \$180 million,
12 notwithstanding the overall financial condition of the
13 company?

14 **A.** Well, you're asking a hypothetical question.

15 **Q.** Yes, sir.

16 **A.** And it's difficult for me to give you a
17 precise answer to a hypothetical question. But I will
18 say to you that the GBRA is a mechanism to ensure that
19 the customer, that the company begins to earn a return
20 the minute that the facility goes in service.

21 Now I think in my mind these are two separate
22 processes. One is the surveilling process that this
23 Commission has based on surveillance reports that we
24 filed every month. The separate is the GBRA process,
25 which is associated with a single asset, the generating

1 asset, when it goes into, into service and when the
2 customers begin to get the benefits from that asset. So
3 you're mixing the two things.

4 **Q.** Let me see if I understand your answer
5 correctly. I understand your answer to be that, in the
6 scenario that I described, which I agree is a
7 hypothetical scenario, but it's also one that is
8 possible because we're dealing with projections two
9 years in advance, in that overearnings situation, the
10 company would not adjust the amount of the GBRA in light
11 of its overearnings but would -- and if any action were
12 taken, it would be by the Commission or affected parties
13 based upon the results of or the indications of
14 surveillance reports. Do I understand you correctly?

15 **A.** Well, first I want to make a point of
16 clarification. I mean, I believe that our subsequent
17 year adjustment forecast for O&M and capital is
18 reasonable. It's based on a lot of processes that we've
19 gone through internally, and we have a whole host of
20 witnesses that will follow me that will go through the
21 justification of those expenses. So that's kind of the
22 first, the first premise of your, of your question.

23 But I'm not prepared here today to, based on a
24 vague hypothetical case to tell you that we would not do
25 GBRA, that we would not request a GBRA recovery.

1 Q. Well, as, as designed and structured and
2 proposed to be implemented by FP&L, is there any
3 provision for either altering or withholding the, the
4 full impact of the power plant in light of overall
5 circumstances?

6 A. What I would say to you is in my, in my view,
7 we're asking for the GBRA. The GBRA goes into effect.
8 This Commission through a separate process and through
9 the surveillance reports can decide, when they look at
10 the total in aggregate, if we have other expenses that
11 have gone down and therefore the returns have gone up,
12 this Commission, any one month at any point in time can
13 bring us in and make the adjustment accordingly. I
14 would not suggest that giving up the GBRA mechanism is,
15 is the right regulatory approach.

16 Q. Thank you for that. That clarifies your
17 earlier answers.

18 I have just one more hypothetical scenario to
19 present to see if it makes any difference.

20 Assume that the Commission has approved the
21 subsequent test year adjustment in the form and in the
22 amount the company requested, and that at the time West
23 County 3 is about to go into commercial service, of the
24 \$180 million annual revenue requirement, only
25 \$50 million would be required to put the company at the

1 midpoint of its range. In that scenario would the
2 company adjust the amount of the \$180 million as the
3 GBRA is designed?

4 **A.** No. I think I explained that. It's the same
5 point that I made earlier. You should let the GBRA go
6 in. You have the surveillance report. If we're above
7 the ceiling of our ROE, then we come in and you do a
8 full-blown rate case and look at all the expenses and
9 look and see if there's been a fundamental change. This
10 Commission has the ability to do that at any point in
11 time. But to give up the GBRA, which we think is
12 critical, we think it's fairly symmetrical in terms of
13 the risk rewards for the company and for the customers,
14 would be inappropriate.

15 **Q.** And one more question on the subject of the
16 GBRA. We've been talking in terms of West County 3,
17 which is projected to come online in the summer of 2011.
18 But as I understand the company's proposal, this
19 mechanism would be in place not only for West County 3,
20 but for all future power plants that are the subject of
21 determinations of need possibly for decades to come;
22 correct?

23 **A.** That is correct. We think it's a,
24 fundamentally it's a good regulatory tool.

25 **MR. McGLOTHLIN:** Thank you for the opportunity

1 to follow up. I'm through with my questions.

2 **CHAIRMAN CARTER:** Thank you, Mr. McGlothlin.

3 Mr. Mendiola, did I get your name right today?

4 **MR. MENDIOLA:** Yes. Yes. Thank you very
5 much, Mr. Chairman.

6 **CROSS EXAMINATION**

7 **BY MR. MENDIOLA:**

8 **Q.** Good morning, Mr. Olivera. How are you?

9 **A.** Well, thank you. Good morning.

10 **Q.** For the record, Lino Mendiola on behalf of the
11 South Florida Hospital and Healthcare Association.

12 If you could turn with me to Page 32 of your
13 direct testimony. We discussed yesterday a little bit
14 about the amount of revenue requirement increase the
15 company is seeking in this case. I wanted to confirm
16 with you that the company is seeking both a 2010 and a
17 2011 revenue requirement increase, is it not?

18 **A.** That is correct. We're asking for an increase
19 in 2010 and a subsequent year adjustment in 2011.

20 **Q.** And what is the sum of those two adjustments
21 that the company is seeking? I'm just trying to get the
22 record clear on this, because I think the testimony as
23 it stands on Page 32 is not correct.

24 **A.** Yeah. I think yesterday, and I will, I
25 deferred this to Bob Barrett to walk you through all the

1 numbers.

2 Q. So you're the CEO of Florida Power & Light,
3 and my question to you is can you tell me right now how
4 much of a revenue requirement increase you're asking
5 this Commission to approve?

6 A. The reason that I want to have Mr. Barrett is
7 that there's several moving pieces. This is not just
8 two points, two data points. There's also a shift from
9 clauses to base. And I think Mr. Barrett is probably
10 better qualified to walk you through and give you the
11 whole picture.

12 So if it was just a simple addition of two
13 numbers, obviously that's an easy thing to do, but it's
14 a little bit more complicated than that. And I think he
15 is, he would be prepared to walk you through the
16 changes, including kind of a justification to show why
17 the changes were made from the original filing to the
18 current filing.

19 Q. All right. Now suffice it to say that the sum
20 is well over \$1.2 or \$3 billion?

21 MS. CLARK: Mr. Chairman, I'm going to object
22 to the characterization of it being "well over." I
23 would ask him to rephrase his question. It's a vague
24 term.

25 CHAIRMAN CARTER: Just rephrase.

1 **BY MR. MENDIOLA:**

2 **Q.** Sure. Is it -- I'm just trying to get a sense
3 of the magnitude of the increase. Is it over
4 \$1.2 billion?

5 **A.** I think I -- in my testimony I talk about
6 1.12 billion.

7 **Q.** For 2010?

8 **A.** Right. And we've made adjustments, so the
9 number would be less than that.

10 **Q.** Well, but I'm talking about the sum of
11 2010 and 2011.

12 **A.** And that's what I'm answering your question
13 on. I said it's -- I filed in the testimony on Page 32,
14 Line 17. And as I said yesterday, there have been a
15 number of adjustments that Mr. Barrett can walk you
16 through, and the adjustments are downward adjustments.
17 So simple math would say that it would be less than
18 \$1.12 billion.

19 **Q.** All right. So your testimony is that with the
20 adjustments, the sum of the 2010 and 2011 revenue
21 requirement requested increase is less than 1.2 billion?

22 **MS. CLARK:** Mr. Chairman, I'm going to object
23 to this question. I think the witness has indicated
24 that Witness Barrett would be a better person to walk
25 through the numbers, and I don't think it's appropriate

1 to continue on this line.

2 **CHAIRMAN CARTER:** Speak to the objection,
3 Mr. Mendiola.

4 **MR. MENDIOLA:** Mr. Chairman, on Page 32 of the
5 direct testimony, which is the prefiled direct testimony
6 of the CEO of Florida Power & Light, he testified about
7 the level of increases in 2010 and 2011. Those -- that
8 testimony on Lines 14, 17 and 23 apparently has been
9 changed, and I want to know just within 100 million or
10 so what the change is. I'm not asking for exact
11 numbers. I want to know if it's 1.1, 1.2, 1.3 or 1.4.
12 That's all I want to know.

13 **CHAIRMAN CARTER:** Ms. Helton.

14 **MS. HELTON:** It sounds to me, Mr. Chairman,
15 that the counsel for the hospital association is merely
16 trying to ascertain the change in the testimony, and
17 that seems like it's appropriate questions to me.

18 **MS. CLARK:** Mr. Chairman, if I could just make
19 one more comment. We have indicated the numbers have
20 changed based on some of the testimony that has been
21 filed, filed here, the numbers have also changed through
22 the passage of time, and Mr. Olivera has indicated the
23 person to get those numbers from. So, as the attorney
24 has suggested, so it's clear, the best is to ask Witness
25 Barrett. We're not disputing that we should provide the

1 information. We just want to provide the best
2 information.

3 **CHAIRMAN CARTER:** I think that he's asking for
4 the gross as opposed to the step process that
5 Mr. Barrett will be able to walk him through. Is that
6 not the genesis of the question?

7 **MR. MENDIOLA:** Yes, sir.

8 **CHAIRMAN CARTER:** Let's try it again.

9 **BY MR. MENDIOLA:**

10 **Q.** All right. Mr. Olivera, as the Chairman of,
11 and CEO of Florida Power & Light my question to you is,
12 the sum of the 2010 and 2011 revenue requirement
13 increases, can you tell me within 100 or 150 or even
14 200 million what the sum would be?

15 **A.** The equivalent number for the billion 121
16 would be, using the same calculation would be
17 approximately a billion 60. Now that's an approximate
18 number, and Mr. Barrett can give you more clarity on the
19 specific numbers.

20 **Q.** That's for 2010.

21 **A.** That would be for 2010.

22 **Q.** And my question is with respect to the sum of
23 the 2010 and 2011 increases.

24 **A.** And as I believe that I indicated yesterday,
25 the 2011 number would go from 247 to 240..

1 **Q.** All right. So approximately, I'm not going to
2 hold you to the exact number, but it's approximately one
3 billion and 60 plus around 240 million, so around
4 \$1.25 billion or so.

5 **A.** I'll let you do the math.

6 **Q.** All right. Fair enough.

7 My next question is whether you have conducted
8 any analysis to determine -- and I wanted to step back a
9 little bit and talk about the forest instead of the
10 trees.

11 A \$1.2 billion or so increase, base rate
12 increase, do you know where that stands with respect to
13 increases, base rate increases sought by any other
14 regulated utility in the history of regulation in this
15 country? Is it the largest?

16 **A.** It is not the largest.

17 **Q.** You've conducted that analysis?

18 **A.** We have looked at some of the other increases
19 around. But, frankly, that's not the point. The point
20 is to look at what is the relative standing of the
21 company and what our bills will look like after this
22 increase goes in place. And I think we have shown that
23 the bills will go down in 2010, and it will still be
24 among the lowest bills in the State of Florida and
25 significantly lower than the national average.

1 Q. And your testimony is the bills will go down
2 because of fuel?

3 A. I'm sorry. Would you repeat your question?

4 Q. Your testimony is that bills will go down
5 because of fuel?

6 A. The bills will go down through a combination
7 of lower fuel prices and, as I mentioned yesterday, the
8 investments that we've made to make the system more
9 efficient.

10 Q. You would agree with me that, that this
11 increase is certainly one of the largest increases, base
12 rate increase requests in the history of regulation in
13 the United States?

14 A. No, I would not.

15 Q. You wouldn't agree with that?

16 A. No, I wouldn't. I just told you that there
17 are other increases that are larger.

18 Q. For regulated electric utility companies?

19 A. For regulated electric utilities. And --

20 Q. For base rates?

21 **MS. CLARK:** Mr. Chairman, I would ask --

22 **CHAIRMAN CARTER:** I think Ms. Clark is right
23 this time. Move on.

24 **MR. MENDIOLA:** I'll move on, Your Honor.

25 **MS. CLARK:** Well, and the other point I'd like

1 to ask is he allow the witness to finish his answer.

2 **MR. MENDIOLA:** I'll be glad to do that, Your
3 Honor.

4 **CHAIRMAN CARTER:** No coffee today for you.
5 Okay? All right.

6 **MR. MENDIOLA:** Very good.

7 **BY MR. MENDIOLA:**

8 **Q.** Turn with me, if you will, Mr. Olivera, to
9 Page 7 of your testimony. You testify at Lines 10 and
10 11 that Florida Power & Light is developing two new
11 nuclear units at our Turkey Point site. Do you see
12 that?

13 **A.** I do. On Line 12 of Page 7; is that where you
14 are?

15 **Q.** Yes, sir. It shows up as Line 11 on my copy,
16 but, yes. And these are the two new nuclear units that
17 the company has requested licensing approval of by the
18 Nuclear Regulatory Commission; isn't that correct?

19 **A.** That is correct.

20 **Q.** And the earliest that those units would go
21 into service are 2018 and 2020; isn't that correct?

22 **A.** Those are the current projected in-service
23 dates.

24 **Q.** And in fact the company hasn't even decided
25 whether or not to commence construction on those units;

1 isn't that correct?

2 **A.** The company is taking a step, step approach to
3 the nuclear plants, and so we are, we want to make sure
4 that we have approval from, approval of the application,
5 which is the next step in the process, from the Nuclear
6 Regulatory Commission, and some sense for the time line
7 before we get the construction operating license from
8 the Nuclear Regulatory Commission, before we take any
9 further steps on the nuclear. We expect to hear that
10 sometime this fall.

11 **Q.** So the company has requested the licensing
12 approval. If the license is granted, then the company
13 will decide whether or not to proceed on the
14 construction of those units; is that correct?

15 **A.** I did not say that.

16 **Q.** Well, I'm asking if that's correct though.

17 **A.** It's not correct.

18 **Q.** All right. The company is first requesting a
19 license approval by the NRC; is that correct?

20 **A.** No. That's not what I said.

21 **Q.** Yes, sir. And what I'm asking is, is just
22 whether this is a correct fact. The company has
23 requested a license approval by the NRC for these two
24 new units; is that correct?

25 **A.** The company has filed for a license to

1 construct and operate the plant.

2 Q. All right. Thank you. Now, but the company
3 has not yet decided to actually begin construction of
4 those plants; is that correct?

5 A. And as I mentioned earlier, the company has
6 chosen kind of a step-wise approach. We want to know
7 that the application has, as filed is approved by the
8 NRC. We want to get some sense for how long the process
9 is going to take. You may recall that originally we
10 were being told that it would be a 42-month approval
11 process. That may turn out to be a little on the short
12 side. It may take longer to get approval from the NRC.
13 So we want to have a little bit more clarity around all
14 of that before we go public and say what the next step
15 is and when we're going to take that step and what's,
16 what's entailed in taking that step.

17 Q. And those costs associated with pursuing that
18 license are recovered as preconstruction costs of the
19 nuclear clause; isn't that correct?

20 A. As long as you're in the preconstruction
21 phase, you are recover -- we are recovering those costs.

22 Q. So you're not suggesting that this Commission
23 should take into account new nuclear units at Turkey
24 Point for this base rate case when the decision hasn't
25 yet been made even to grant the license on those units;

1 isn't that correct?

2 **A.** No, it's not correct. I think it is very
3 important that this Commission consider what the impacts
4 are to a company that announces that they're going to
5 be, that they're developing a nuclear plant. I will
6 tell you and Mr. Pimentel can tell you in a lot more
7 detail that we routinely get asked questions by credit
8 rating agencies, by investors about the risks associated
9 with building a nuclear plant. If you think about it,
10 it's -- for us, at best it represents a doubling of our
11 plant-in-service. And so investors are naturally very
12 concerned about it.

13 Even though we have from this Commission and
14 from the Legislature some cost recovery associated with
15 that, there are only about five companies that have
16 announced that they're building nuclear plants. They
17 all have some measure of cost recovery. But the risks
18 are still absolutely huge. It is, we said publicly it's
19 a \$14 to \$18 billion investment for a company, for our
20 company. We have about \$15 billion in rate base today.
21 So it's effectively doubling.

22 So it is very risky. It's a huge risk for
23 anybody. When this Commission makes a decision, I think
24 they have to factor in the messages that you will send
25 to the investment community. And they're listening to

1 this proceeding today, the credit rating agencies and
2 the major investors. And you can send a signal that
3 says, you know, we have a long-term view and we
4 recognize that for, not just our company but really for
5 our country, to develop nuclear power we have to have a
6 very long-term view, because it's going to take a long
7 time. It's going to take us eight years at minimum to
8 build a nuclear plant. And I think you have to have a
9 very, very long-term view to do that and to have very
10 clear and very consistent signals.

11 So I strongly disagree with the premise that
12 the decisions you make today have no bearing on new
13 nuclear. It has a huge impact on new nuclear.

14 Q. So, Mr. Olivera, you're suggesting that even
15 though the Legislature has allowed dollar-for-dollar
16 cost recovery of preconstruction expense, that 2010
17 Florida ratepayers should begin to compensate Florida
18 Power & Light for nuclear plants to build plants that
19 won't go into service until the earliest at 2018 and for
20 which a decision to build the plant hasn't even yet been
21 made. Is that what you're saying?

22 A. What is your question?

23 MS. CLARK: Mr. Chairman. Yes, I would like
24 to object. The attorney here is testifying, not
25 answering questions -- not asking questions.

1 **MR. MENDIOLA:** No. I'm asking him if that's
2 what his --

3 **CHAIRMAN CARTER:** Break it up, Mr. Mendiola.
4 Just break it up and ask him a question and --

5 **MR. MENDIOLA:** All right. Very good.
6 You're -- I'll break it up.

7 **BY MR. MENDIOLA:**

8 **Q.** We're in a base rate case to determine base
9 rates in 2010; isn't that correct?

10 **A.** That is correct.

11 **Q.** All right. And you're testifying, you're
12 suggesting that ratepayers beginning in January 1 of
13 2010 should pay increased rates for a nuclear power
14 plant that might come on in 2018 and for which the
15 utility has not yet even made a decision whether or not
16 to proceed with construction. Is that what you're
17 asking this Commission to do?

18 **A.** Again, you have two questions. I think you
19 have two questions.

20 **Q.** My question is a yes or no.

21 **CHAIRMAN CARTER:** Let him try. Let him try.
22 I mean, it was kind of long. Let him try to answer and
23 we'll see where we go from there. You may proceed.

24 **THE WITNESS:** The first part is the nuclear
25 cost recovery was passed by the Legislature to promote

1 the development of nuclear plants, nuclear plants in
2 Florida. I think that there was a clear recognition by
3 the legislators that Florida has some unique issues. We
4 are so dependent on fossil fuels in Florida. And as I
5 talked about this yesterday and talked about the
6 volatility associated with, with natural gas, they
7 recognized, and I think this Commission has recognized
8 that as well, that there's a need to diversify the fuel
9 mix in Florida, and nuclear is one of our best options,
10 not to mention the environmental benefits that we get
11 from nuclear.

12 And I'll just give you one, one data point.
13 When you look at FPL's fuel bill last year, nuclear
14 represented -- our total fuel bill was roughly
15 \$6 billion. Nuclear fuel bill was about \$110 million,
16 and that produced 20 percent of the energy that we
17 generated.

18 So I think the Legislature is very cognizant
19 of that, but they also recognize that it has huge risks.
20 And as I said earlier, any state, the five companies
21 that are actively involved in developing nuclear plants,
22 all five have some sort of cost recovery, but it still
23 represents a huge risk to the companies.

24 **COMMISSIONER ARGENZIANO:** Mr. Chair?

25 **CHAIRMAN CARTER:** Commissioner Argenziano.

1 **COMMISSIONER ARGENZIANO:** Yes. Can I ask a
2 question of Mr. Olivera? Can you tell me in detail what
3 the huge risk is? I'd like to have a better
4 understanding.

5 **THE WITNESS:** Absolutely. You have -- you
6 know, we've been closely monitoring what's going on in
7 the plants that are currently under construction. And,
8 Commissioner, we made a, we've made a conscious decision
9 not to be in the first wave of nuclear plants because
10 you have the same risk that we had the last time that
11 this country went through a major build out of nuclear
12 plants, and that is that the cost, that you're going to
13 get huge cost overruns and that these plants will be
14 delayed when they come in service. And in some ways the
15 two kind of go together. The longer it takes you to
16 finish the plants, the more that the cash register is
17 going and the more interest that you're paying on that.

18 And so when you talk to people in the
19 investment community, they worry about the ability of
20 the industry, because nobody has built, in this country
21 we haven't built a nuclear power plant in over 25 years.
22 So there isn't a lot of skill in place, there isn't
23 necessarily the construction and manufacturing,
24 manufacturing of all the components that go into a
25 nuclear plant, expertise.

1 So there's a lot of skepticism whether we can
2 build these plants in the time frame and at the cost
3 that we have developed as preliminary estimates.

4 **COMMISSIONER ARGENZIANO:** But at --

5 **THE WITNESS:** And because the numbers are so
6 huge, everybody is -- I'm sorry, Commissioner.

7 **COMMISSIONER ARGENZIANO:** I'm sorry. But at
8 the same point, at the same time, and I understand what
9 you're saying, it's very different since the last time
10 we built nuclear plants because of the cost recoveries.
11 Don't they also look at that and say that, well, since
12 the company, even if there are overruns, and those are
13 not good things to have or delays, of course those are
14 not beneficial, but that the company still can recover.
15 And then I think with that extra language that the
16 Legislature put in that, you know, you can -- if things
17 get bad and you do decide to walk away from that, you
18 still are able to recover the money that was spent. So
19 doesn't that factor in also?

20 I'm trying to find -- you know, I'm looking
21 back over the years and saying what were the differences
22 the last time we built nuclear power plants, and to me
23 the recoveries are the major differences. And shouldn't
24 that give security to investors also?

25 **THE WITNESS:** I think it gives the investor

1 community some comfort. But I think that they are still
2 very nervous, and in part also because, as counsel said,
3 you know, we're, we're starting to spend money today for
4 a plant that won't be in service for eight, eight or ten
5 years, and that is also part of the reason it makes them
6 very nervous. And even though we're going to be able to
7 recover the interest cost once the plant goes under
8 construction, we still have to raise a huge amount of
9 capital.

10 So, for example, there's one company that's a
11 little further ahead of us than we are, and they have
12 already had one credit downgrade. And they have really
13 a very good cost recovery mechanism, but they've been
14 downgraded once already as a result of this nuclear
15 plant that they're building. So it helps, and we're
16 very grateful that the Legislature had that kind of
17 foresight. Nevertheless, it's not, it's far from a free
18 pass.

19 **CHAIRMAN CARTER:** Commissioner?

20 **COMMISSIONER ARGENZIANO:** Yes. I just, I
21 just -- I don't know -- I guess I understand what he's
22 trying to say. I just see that the cost recovery has to
23 be a security mechanism for those investors. And I
24 think it probably factors in a little heavier than, than
25 Mr. Olivera thinks.

1 Looking at the -- I guess if those cost
2 recoveries weren't in place, I mean, even the fact that
3 you can walk away from it and still recover all those
4 dollars I think has to be a huge lessening of worry or
5 risk for the investors. I'm just trying to get more
6 information on that.

7 **THE WITNESS:** No. I understand. And I
8 certainly don't disagree with your assessment, that it
9 certainly helps. It's the story that we tell when we
10 talk to investors that both this Commission and the
11 legislators, Legislature in the state have been very
12 supportive of nuclear, and that's what's given us the
13 comfort to move ahead.

14 **COMMISSIONER ARGENZIANO:** And I'm sure,
15 likewise, the comfort of the investors to invest.
16 Because I think that was the whole purpose was to say
17 here is less risk, and that would give that comfort
18 level to the investors. I don't know where else they'd
19 rather invest or how much more secure it could get for
20 them.

21 So while I understand the cost overruns and I
22 think the ratepayer is still subject to paying those,
23 and I guess, Mr. Olivera, my real thought is that I
24 don't know how much less of a risk it could be before
25 you alleviate any, any worries -- and I'm sure there's

1 always worries, I don't mean all worries -- but
2 alleviate those worries of high risk.

3 **THE WITNESS:** Commissioner, you're telling our
4 story. That's certainly the story that we tell our
5 investors as far as nuclear.

6 And just one, if I may make just one last
7 point. I mean, we -- I don't want my comments to be
8 perceived that, you know, we are not supportive of
9 nuclear. I fundamentally believe that it's the right
10 strategy for this country, it's the right strategy for
11 the State of Florida. We just have to be cautious how
12 we proceed, and we have to do it in kind of a step-wise
13 fashion.

14 **COMMISSIONER ARGENZIANO:** Thank you.

15 **CHAIRMAN CARTER:** Thank you.

16 Mr. Mendiola.

17 **MR. MENDIOLA:** Thank you, Mr. Chairman.

18 **BY MR. MENDIOLA:**

19 **Q.** The bottom line, sir, is that as you sit here
20 today under oath you cannot testify that the company has
21 decided to pursue or not to pursue construction of the
22 nuclear power plants; isn't that correct?

23 **A.** I think our actions speak for themselves. Why
24 would we go out and spend \$100 million developing a
25 license to construct and operate a plant if we are not

1 pursuing the nuclear option?

2 Q. The possibility exists that this Commission
3 could award a higher ROE to account for the supposed
4 risk associated with pursuing the nuclear option, and
5 then the company could decide not to build the plant;
6 isn't that correct?

7 A. Well, I think this Commission when it makes
8 its decision needs to factor in, as I know you do in
9 every, every one of these decisions that you make, what,
10 what is the impact, what is the signal that we're
11 sending to the financial community by the decisions that
12 we're making here today? And the nuclear is one piece
13 of a lot of things that I'm sure this Commission will
14 weigh in when you make that decision.

15 Q. That possibility exists, does it not?

16 A. That possibility exists. But I will also tell
17 you it's unlikely that we would make that decision
18 unilaterally. We would come to you, and if we decided
19 not to pursue this, for whatever reason, and it's a long
20 road, so I can't sit here and tell you that we would or
21 we would not, but it's not a decision that the company
22 would take lightly, it's not a decision that we would do
23 unilaterally.

24 We would come to this Commission and have a
25 dialogue about what are the pros and cons of proceeding,

1 assuming that, God forbid, there's a nuclear event and
2 we have to retrofit the plant, any number of things that
3 could happen, we would, we would have a dialogue. And
4 because this is such a big, big deal, that we have to
5 make these decisions, frankly, hand in hand. I would
6 not make a decision to do something that, in nuclear
7 that this Commission is not in agreement with.

8 Q. Turning, sir, to Page 7, Line 20, of your
9 direct testimony, you testify there about the
10 development of three solar energy projects. Do you see
11 that?

12 A. On Page 7, Line 20 and 21; correct?

13 Q. Yes, sir.

14 And my question to you is those -- if you have
15 the 10K, which is Exhibit Number 385, in front of you,
16 at Page 9 --

17 A. Please bear with me for one second.

18 Q. Just take your time. There's a paragraph that
19 addresses solar operations. Do you see that?

20 A. I do.

21 Q. And can you confirm for me that the second
22 sentence says that the solar generating facilities are
23 expected to be placed into service by the end of 2010 at
24 an estimated total cost, including carrying charges, of
25 approximately \$728 million? Do you see that?

1 **A.** I do see it.

2 **Q.** All right. And that 720 --

3 **CHAIRMAN CARTER:** Mr. Mendiola, would you
4 yield for a moment, please?

5 **MR. MENDIOLA:** I'm sorry?

6 **CHAIRMAN CARTER:** Would you mind yielding for
7 a moment for the bench?

8 **MR. MENDIOLA:** Oh, no. Please.

9 **CHAIRMAN CARTER:** Commissioner Skop.

10 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.
11 Just with respect to the current line of
12 questioning, am I correct to understand that's the 10K
13 statement? It was going really quick. I was trying to
14 follow it.

15 **MR. MENDIOLA:** Yes, sir. I'm sorry. I will
16 slow down at the Commission's will.

17 **CHAIRMAN CARTER:** That's Number 385,
18 Commissioner. Exhibit Number 385 on Page 9.

19 **MR. MENDIOLA:** Yes, sir.

20 **BY MR. MENDIOLA:**

21 **Q.** And my next question is just to have you
22 confirm, Mr. Olivera, that that 728 million, which
23 reflects capital expenditures, is being recovered
24 through the environmental clause and need not be
25 recovered through base rates.

1 **A.** It is being recovered through the
2 environmental clause.

3 **Q.** All right. Thank you. Now with respect to
4 the GBRA, you testify on that at Page 33 of your direct
5 testimony, do you not?

6 **A.** Again, bear with me for a second to get to
7 Page 33.

8 **Q.** Yes.

9 **A.** Can you give me a line number?

10 **Q.** Page 4 -- excuse me. Page 33, Line 4.

11 **A.** Okay. I have it in front of me.

12 **Q.** All right. And the GBRA, as I understand it,
13 as new generation comes online, that generation would be
14 put into rate base but there would be no offsetting
15 reduction in base rates to reflect depreciation that has
16 occurred before that generation goes into rate base; is
17 that correct?

18 **A.** The GBRA has in it the, kind of the full
19 revenue requirements associated with that investment.

20 **Q.** And my question, sir, is specifically with
21 respect to depreciation. Is it the case that when
22 generation goes into rate base as a result of the GBRA,
23 is it the case or is it not the case that depreciation
24 that has occurred in invested capital up until the time
25 that generation goes into rate base will be taken into

1 account?

2 **A.** I really don't understand your question,
3 because we don't start depreciating an asset before it
4 goes in service.

5 **Q.** All right. Well, my question is this. The
6 company currently has a level of invested capital
7 reflecting all of its generation and other assets; isn't
8 that correct?

9 **A.** That is correct.

10 **Q.** And the company recovers depreciation expense
11 through its revenue requirement from ratepayers every
12 month; isn't that right?

13 **A.** On -- I'm sorry. You lost me. Are you
14 talking about on --

15 **Q.** On its invested capital.

16 **A.** -- GBRA or are you talking about all of the
17 plant assets that the company has?

18 **Q.** On its invested capital, the assets that the
19 company currently has.

20 **A.** The company files depreciation schedules,
21 they're approved by this Commission, and so we have an
22 approved depreciation expense.

23 **Q.** And that depreciation expense is being paid by
24 ratepayers every month, and the company then depreciates
25 its asset level every month as it collects that

1 depreciation expense from ratepayers; isn't that
2 correct?

3 **A.** I'm not sure I would characterize it exactly
4 the same way. The depreciation is one component of
5 rates, and it's a way to return the capital invested in
6 an asset.

7 **Q.** All right. And my question is when there's a
8 new asset, generation asset that comes online as a
9 result of the GBRA and that new asset is put into rate
10 base, base rates will increase to reflect that new
11 asset, isn't that correct, under the GBRA?

12 **A.** That is correct.

13 **Q.** All right. And my question is whether there
14 will be an accounting for a reduction in base rates to
15 account for the depreciation in invested capital that
16 has occurred prior to the time that that new asset goes
17 into rate base.

18 **A.** Whether there will be -- I'm sorry. Can you
19 break up the question in smaller pieces?

20 **Q.** Maybe it would help if I draw a picture.

21 **MS. CLARK:** Mr. Chairman, I think what the
22 attorney is asking is for depreciation that takes place
23 prior to plant being put into service. You begin to
24 depreciate a plant when you put it in service.

25 **MR. MENDIOLA:** No, that's not what I'm asking.

1 What I'm asking is whether --

2 **CHAIRMAN CARTER:** Let's do this. Let's kind
3 of, let's just take one second. Maybe you can kind of
4 rephrase it.

5 **MR. MENDIOLA:** Sure. Let me rephrase it.

6 **CHAIRMAN CARTER:** Yeah.

7 **BY MR. MENDIOLA:**

8 **Q.** When base rates are set, they're set at a
9 certain level of invested capital; isn't that right?

10 **A.** That is correct.

11 **Q.** All right. And then those base rates are set
12 and the company depreciates its invested capital over
13 time; isn't that right?

14 **A.** That is correct. As I said earlier, the
15 company, we do a depreciation study, this Commission
16 approves a depreciation rate, and that's factored into
17 the rate saving process.

18 **Q.** All right. And so the company's rates are set
19 at a certain time and then invested capital of existing
20 plant is depreciated over time, so that the, all other
21 things being equal, the invested capital balance goes
22 down. Isn't that right?

23 **A.** There's a, there's a time, a schedule to
24 return -- to get a return on the capital invested.

25 **Q.** Right. And so all other things being equal,

1 the invested capital balance goes down. Isn't that
2 right?

3 **A.** No. Not if you're continuing to make
4 investments; right?

5 **Q.** Well --

6 **A.** So if you were constantly making investments
7 and if you look at what's happening at FPL,
8 plant-in-service, the balances keep going up. They go
9 up because of the investments we're making.

10 **Q.** That's why I said all other things being
11 equal. But fair enough. My question is when this new
12 plant comes online and is put into the GBRA, the
13 company, let's say that it's been five years since the
14 last base rate case. Are you with me?

15 **A.** Uh-huh. I think so.

16 **Q.** All right. The company has collected five
17 years of depreciation expense on its existing invested
18 capital; isn't that correct?

19 **A.** I'm -- you're losing me on the five year,
20 because we collect depreciation expense all the time,
21 every year.

22 **Q.** That's my point. Right.

23 **A.** It's not five years. It's, really it's an
24 ongoing expense.

25 **Q.** And my point is at the time that a new plant

1 comes online through the GBRA, will the company reset
2 its base rates to reflect the depreciation that it has
3 collected since the last base rate case, yes or no?

4 **A.** No. Because we only do depreciation rates
5 when we do a study and when we come in here. So we're
6 not going to change the depreciation rates, if I
7 understand your question correctly, as a result of a new
8 asset coming on. We come in, I believe it's every four
9 years, and we do a study on what the depreciation rates
10 would be. I may not be following you completely. I
11 don't -- in fact, I know I'm not following you. But
12 depreciation rates are set every four years under the
13 supervision of the Commission.

14 **Q.** You answered the question. Thank you, sir.

15 With respect to the subsequent year
16 adjustment, you testify on that topic on Page 34,
17 beginning on Line 11; is that correct?

18 **A.** Bear with me, counsel. Page 34?

19 **Q.** Beginning at Line 11.

20 **A.** I'm there.

21 **Q.** And you testify at Lines 19 and 20 that the
22 justification for a subsequent year adjustment is to
23 avoid the time and expense of a separate rate proceeding
24 for 2011; is that correct?

25 **A.** Are you reading from a particular line?

1 **Q.** Lines 19 and 20.

2 **A.** That's correct.

3 **Q.** All right. And you understand that -- first
4 of all, how much does it cost to put on a rate case?

5 **A.** Millions of dollars. I think we have
6 forecasted four or five million dollars for this rate
7 case.

8 **Q.** Okay. And so your suggestion is that it's not
9 worth spending four or five million to determine whether
10 or not it's appropriate to increase revenue requirement
11 by 240 million every year?

12 **MS. CLARK:** Mr. Chairman, I object to the form
13 of this question.

14 **MR. MENDIOLA:** What is the basis of the
15 objection?

16 **MS. CLARK:** He's testifying on behalf of the
17 witness. He should ask the witness his rationale for
18 not -- that, not provide his own rationale for that.

19 **CHAIRMAN CARTER:** Speak to the objection.

20 **MR. MENDIOLA:** My question was whether that
21 was what the witness was suggesting in these lines of --

22 **CHAIRMAN CARTER:** Well, speak to the
23 objection.

24 **MS. CLARK:** His characterization is that the
25 witness does not -- is with respect to the four or five

1 million. I don't think this witness has testified to
2 that at all, in the sense of it not being worth that.
3 He has --

4 **CHAIRMAN CARTER:** Okay. I got it now.

5 **MR. MENDIOLA:** I'll be happy to rephrase, Your
6 Honor.

7 **CHAIRMAN CARTER:** I think it's been asked and
8 answered.

9 **MR. MENDIOLA:** All right.

10 **CHAIRMAN CARTER:** Let's move on. But I want
11 you to get an opportunity to ask your questions, but,
12 you know, once you get an answer --

13 **MR. MENDIOLA:** You bet.

14 **BY MR. MENDIOLA:**

15 **Q.** Okay. Mr. Olivera, you understand that at the
16 time of a rate case there's an opportunity to take into
17 account not only increases in investment, but also
18 increases in productivity, and also to reset base rates
19 to account for depreciation; isn't that correct?

20 **A.** Can you rephrase your question, because you
21 asked about three or four things in your question?

22 **Q.** Well, you testified that there is a subsequent
23 year adjustment that you propose in order to avoid the
24 time and expense of a separate rate proceeding; isn't
25 that correct?

1 **A.** That is what my testimony shows. And I'd like
2 to elaborate.

3 **MR. MENDIOLA:** Well, Your Honor, my question
4 was yes or no.

5 **MS. CLARK:** Mr. Chairman --

6 **CHAIRMAN CARTER:** He is entitled to elaborate.
7 You may proceed. Go ahead. You may explain your
8 answer.

9 **THE WITNESS:** When we -- a subsequent year
10 adjustment, we have provided all the data and all the
11 information, the same way that we've provided the data
12 for 2010 showing you what our expenses are going to be
13 in 2011. So that we believe that that justification for
14 those expenses is there. This Commission can review
15 those expenses and determine whether they agree in part
16 or not on those.

17 So in our mind it's really no different than
18 any other part of the rate case. It is, a rate case is
19 an incredible effort for the company. We don't do this
20 very often. And it goes way beyond the actual cost of
21 putting on the case. It's the amount of management
22 attention that is, has to be devoted to doing this.
23 It's a huge amount of time. Virtually everybody on my,
24 my team, the senior team, is focused on this case. They
25 will be testifying here today.

1 It takes a great deal of preparation and a
2 great deal of time to put on a rate case. And, frankly,
3 from my perspective, one of the things that, you know, I
4 like people to be generally focused on the business and
5 doing the things that we have a track record of doing
6 well. How do we keep getting better? How do we keep
7 improving the service that we provide?

8 And, frankly, that drives -- if this was like
9 rolling out of the bed to put on a rate case, you know,
10 we'd say we'd come in every year. But it's a long
11 process that, that chews up an awful lot of time for our
12 people. And it just, it's hard to stay focused on all
13 the other aspects of the business, and particularly
14 things having to do with getting better, when you're
15 going through this exercise.

16 **CHAIRMAN CARTER:** Let me, let me do this.
17 Mr. Mendiola, this is probably the first time you've
18 been here, but we do allow -- and for all of the
19 parties, any of your witnesses that testify, if they're
20 asked a yes or no question, they can answer that, but
21 they're still allowed to elaborate on it. So all of the
22 attorneys will, you know, when your witnesses are there,
23 if they are asked a question on cross-examination, if
24 they can answer yes or no, we allow them to do that, but
25 also they are entitled to explain their answer.

1 **MR. MENDIOLA:** Thank you.

2 **MR. MOYLE:** Mr. Chairman?

3 **CHAIRMAN CARTER:** Mr. Moyle, you've got a
4 question?

5 **MR. MOYLE:** Well, I was just -- because I
6 was -- you know, we've had a lot of paper in this case,
7 and I'm not sure everybody has read everything, but, you
8 know, the Prehearing Order specifically speaks to that
9 point. And before I conducted my cross, I was going to
10 ask for your help, which is, you know, yes or no,
11 followed by an explanation, you know, if necessary.

12 **CHAIRMAN CARTER:** Okay.

13 **MR. MOYLE:** You know, it's going to take a
14 long time. The witness is not giving yes or nos very
15 often. The question about the possibility of a, of an
16 increased ROE because of the nuclear plant, is it
17 possible that that nuclear decision could be withdrawn?
18 You know, it's possible, yes.

19 **MS. CLARK:** Mr. Chairman.

20 **MR. MOYLE:** But that wasn't answered. So
21 we're -- I guess, I guess my point is we're going to be
22 here a long time unless we can --

23 **MR. MENDIOLA:** Your Honor, I have about five
24 minutes left. I think I can wrap it up very, very
25 quickly.

1 **CHAIRMAN CARTER:** No. No. No. The order is
2 what it is, Mr. Moyle, and we do that all the time.
3 You've been here before. And I think that you can ask
4 your questions. You can say: "Look, this question
5 requires a yes or no answer. Can you answer yes or no?
6 But we'll allow you an opportunity to answer." I mean,
7 I'm not going to, I'm not going to write the questions
8 for the attorneys. I expect you guys to do your own
9 jobs on that. Okay?

10 You may proceed.

11 **MR. MENDIOLA:** Thank you, Mr. Chairman.

12 **BY MR. MENDIOLA:**

13 **Q.** This question requires a yes or no answer,
14 Mr. Olivera. Isn't it the case that in a full-blown
15 rate case base rates can either be increased or
16 decreased?

17 **A.** Could you repeat the question?

18 **Q.** This question requires a yes or no answer.
19 Isn't it the case, Mr. Olivera, that in a base rate,
20 full-blown base rate case the result could be either an
21 increase or a decrease in base rates?

22 **MS. CLARK:** Mr. Chairman, I would just like to
23 object to the attorney instructing the witness how to
24 answer. He knows that he should answer yes or no and
25 then elaborate.

1 **CHAIRMAN CARTER:** You may proceed.

2 **THE WITNESS:** Yes. This Commission --

3 **CHAIRMAN CARTER:** Overruled.

4 **THE WITNESS:** I'm sorry, Chairman?

5 **CHAIRMAN CARTER:** I just overruled the
6 objection. You may proceed.

7 **THE WITNESS:** Yes. This Commission can grant
8 an increase or order a decrease.

9 **BY MR. MENDIOLA:**

10 **Q.** And the result of the subsequent year
11 adjustment that forecloses the option of a full-blown
12 rate case also forecloses the option of a base rate
13 decrease; isn't that correct?

14 **A.** No. I disagree with that. As I stated
15 earlier, this Commission has the ability -- you get a
16 surveillance report from the company every month, and
17 you have the ability to bring us in at any time that you
18 feel that you see us earning above the return or,
19 frankly, you have the ability to ask us to come in at
20 any time.

21 **Q.** And so one possibility of the subsequent year
22 adjustment is a base rate decrease.

23 **A.** As I said earlier, yes. The Commission has
24 the ability to grant an increase or to order a decrease.

25 **MR. MENDIOLA:** Those are all the questions

1 that I have at this time. Thank you, Mr. Olivera.

2 And I would move for the admission --

3 **CHAIRMAN CARTER:** Whoa. Whoa. We do that at
4 the end of -- we do it at one time.

5 **MR. MENDIOLA:** Okay. Thank you, Mr. Chairman.

6 **CHAIRMAN CARTER:** Commissioner Edgar.

7 **COMMISSIONER EDGAR:** I was just going to say,
8 Mr. Chairman, that I'm glad that we don't have a rate
9 case like this every year.

10 **THE WITNESS:** So am I.

11 **CHAIRMAN CARTER:** Okay. Let's see where we
12 are now.

13 Ms. Clark, anything further before we proceed
14 with the --

15 **MS. CLARK:** No, Mr. Chairman.

16 May I ask the witness if he -- how much, I
17 guess I'd like to know how much more cross-examination
18 we have --

19 **CHAIRMAN CARTER:** Let me, let me do this --

20 **MS. CLARK:** -- to gauge when we might need to
21 take a break.

22 **CHAIRMAN CARTER:** Let me give you a short
23 answer to your question.

24 Linda, do you need a break?

25 **THE COURT REPORTER:** Sure.

1 **CHAIRMAN CARTER:** Okay. We'll give the court
2 reporter a break and you guys can kind of get together
3 then. We're on recess, and we'll come back at -- on the
4 hour.

5 (Recess taken.)

6 We're back on the record.

7 And, Commissioners, for planning purposes, and
8 also to the parties, kind of give you a heads up, we're
9 going to break at 1:00 for lunch. That way it'll give
10 you guys an opportunity to kind of plan the rest of your
11 day. We're going to go late, but we'll break for lunch
12 at 1:00. And if I have one of my over 50 moments and
13 forget it, somebody kind of gig me and remind me. We'll
14 probably break from 1:00 to 2:15. 1:00 to 2:15 for
15 lunch. Those are my plans. Okay?

16 Who's next? Mr. Moyle, you're recognized.

17 **MR. MOYLE:** Thank you, Mr. Chairman.

18 **CROSS EXAMINATION**

19 **BY MR. MOYLE:**

20 Q. Good morning, Mr. Olivera.

21 A. Good morning.

22 **CHAIRMAN CARTER:** Is your microphone on?

23 **THE WITNESS:** Should I try it?

24 **CHAIRMAN CARTER:** Okay. He's got it.

25 **BY MR. MOYLE:**

1 **Q.** You and I met briefly yesterday, but I'm Jon
2 Moyle and I represent the Florida Industrial Power Users
3 Group. They consume a lot of energy, and I have some
4 questions I wanted to ask you following up on some
5 previous questions, and then some other questions.

6 I have been doing this for a while but have
7 never been involved in an FP&L rate case. I guess it's
8 been 20 plus years since, since we've had this
9 opportunity; isn't that right?

10 **A.** That's correct.

11 **Q.** And there was a little discussion with the,
12 with the Chair. There's a lot of paper going around.
13 I'm hopeful that my cross can be done expeditiously.
14 And if you can answer a question yes or no, please do
15 so. If you need an explanation, you know, that, that is
16 allowed. But I'm hoping that most of the questions that
17 I ask you can be answered yes or no. Will you use your
18 best efforts to follow that?

19 **A.** I will do my best.

20 **Q.** Okay. I was hoping that would have been yes,
21 but --

22 (Laughter.)

23 It helps me sometimes to, to put things in
24 context. And I want to spend a minute talking about
25 what we're in, the rate case proceeding. You would

1 agree, would you not, that a rate case is a key
2 component of the regulatory compact? If you can answer
3 yes or no, and that would be appreciated.

4 **A.** No, I don't think I would agree. I think of
5 the regulatory compact in a different way. Not -- I
6 think of it more in terms of a philosophy of kind of the
7 balances that a Commission has to achieve between
8 customers and the company as opposed to kind of a
9 regulatory -- this, I think of this as a proceeding. I
10 don't think of it as a regulatory compact. It's really
11 the decisions and the policies that I think of as a
12 compact.

13 **Q.** Okay. Would you agree that a rate case is a
14 component of the policies and procedures that regulators
15 use to regulate the monopolies they are charged with
16 regulating?

17 **A.** Yes. I would say it's one of the vehicles
18 that this Commission uses to articulate those policies.

19 **Q.** Okay. And there was a little conversation
20 prior to our break about a lot of work being involved, a
21 lot of things being looked at. A rate case is a lot of
22 work, isn't it?

23 **A.** It is a lot -- yes, it is a lot of work.

24 **Q.** Okay. So you would agree that what we're in
25 today is an appropriate and reasonable regulatory tool;

1 correct?

2 **A.** Yes. I would agree that it's part of being a
3 regulated entity, that you have to have rate cases from
4 time to time.

5 **Q.** And there are a lot of parties to this
6 proceeding. You are represented by very capable
7 counsel, but the interests that are being represented is
8 that of FPL; correct?

9 **A.** Yes. I agree completely that I have a very
10 capable and able counsel.

11 **Q.** Okay. And, and while there's some talk in
12 your testimony about, about, you know, consumers and
13 impacts on consumers, the consumers are represented here
14 by the Office of Public Counsel; correct?

15 **A.** They're one of the -- yes, they're
16 representing the consumers. But I would also tell you
17 that I view us as also being responsible for consumers.
18 You can't stay in this business for very long if you
19 don't do the right thing for your customers.

20 **Q.** But your consumers are not, I mean, they're
21 not able to choose which electric provider they want to
22 go with. They're captive consumers; correct?

23 **A.** Yes. That is, that is part of the regulatory
24 compact.

25 **Q.** Okay. And just so we're clear, your lawyers

1 aren't advocating positions of consumers today. That's
2 the OPC, and a lot of Intervenors, with the exception of
3 AIF, are advocating consumer positions; correct?

4 **A.** No. I would disagree. I think we're trying
5 to come forward with what we think is a balanced
6 approach. And I think the fact that our rates are the
7 lowest in the state is a reflection of what we've tried
8 to achieve and tried to deliver value for customers. So
9 to suggest that we are, don't care about the customers
10 and have no -- don't value the customer, try to do the
11 right thing for the customer or at best are indifferent
12 is an inappropriate characterization.

13 **Q.** Okay. So then -- because I was under the
14 impression that your interests that you're representing
15 were the shareholders and trying to maximize value to
16 your shareholders. Am I incorrect in that?

17 **MS. CLARK:** Mr. Chairman?

18 **CHAIRMAN CARTER:** Yes, ma'am.

19 **MS. CLARK:** I would like to object to this
20 question. I'm not sure what issue this goes to in this
21 proceeding.

22 **CHAIRMAN CARTER:** Mr. Moyle, on the objection.

23 **MR. MOYLE:** Sure. Well, I think it goes to
24 the key issue in the proceeding, which is what's the
25 appropriate rates. I mean, we have some parties that

1 suggest it's a negative number, others that suggest it
2 is a positive number. I'm just trying to establish
3 clearly that the interest that Mr. Olivera represents is
4 that of the company and its shareholders, with the
5 desire to maximize value to shareholders; whereas, the
6 interest the consumers are representing is impacts on
7 consumers. That's all I'm trying to do with these
8 questions.

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

10 **MS. HELTON:** I do think I've heard some
11 questions about that that have been asked and answered a
12 couple of times. Perhaps if Mr. Moyle could take it to
13 a different twist, that would help the proceeding.

14 **CHAIRMAN CARTER:** Okay. Mr. Moyle, let's
15 proceed.

16 **MR. MOYLE:** I'll try to, try to move on.

17 **BY MR. MOYLE:**

18 **Q.** Mr. Olivera, you're aware as part of the rate
19 case proceedings that they have consumer hearings held
20 around the service territory?

21 **A.** Yes, I am aware.

22 **Q.** Okay. And do you know how many were held in
23 this case?

24 **A.** I believe that there were eight hearings held.

25 **Q.** Okay. Did you attend any of those hearings

1 personally?

2 **A.** No, I did not.

3 **Q.** Okay. So you didn't have the opportunity to
4 hear firsthand from the consumers as to what, what
5 their, their views were, given the fact that you didn't
6 attend; is that correct?

7 **A.** No, I did not hear directly. But I did have
8 an opportunity to be briefed on, in fact each day, what
9 the results and what the comments were.

10 **Q.** Have you ever been to a consumer meeting in a
11 rate case?

12 **A.** Yes, I have. When we filed for -- in 2005 I
13 attended a number of them. I can't remember the number,
14 but it was certainly more than one.

15 **Q.** Okay. Now, as indicated, there's a wide
16 disparity in views as to the appropriate amount of
17 rates. I just want to clarify, I don't want to spend a
18 lot of time on this, but you were asked questions by
19 counsel for the hospital, South Florida Hospital folks,
20 about the number that you are being, that you are asking
21 for in 2010. And it's part of your testimony. If
22 you're not comfortable with it and would like to
23 withdraw it, you know, that's fine. But I just want to
24 make sure that I have the correct number as to the
25 amount being requested effective January 1, 2010. I

1 understand the direct testimony when it was filed was
2 1.044 billion as set forth on Line 14; is that correct?

3 **A.** I'm sorry. You're going to have to take me
4 back to the testimony, because I was looking for --

5 **Q.** Sure. Page 32, Line 14.

6 **A.** Yes. The 1.121 billion number, and if you
7 would bear with me for one minute.

8 **Q.** I'm looking at Line 14. I just want to focus
9 on the effective January 1, 2010. And the question is,
10 is that when you originally filed your testimony, the
11 number was 1.044 billion; is that correct?

12 **A.** That's correct.

13 **Q.** Okay. And yesterday I thought you said that
14 you had to make a revision to it, and I wrote down
15 983 million. Was that what you said yesterday?

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

17 **Q.** Okay. And then today you came in and I
18 thought you said 1.060; is that correct?

19 **A.** See, this is -- yes. Well, we're talking
20 about two separate numbers.

21 **Q.** Well, I'm just talking about Line 14, the
22 number on Line 14.

23 **A.** The number on Line 14, the one billion 044, as
24 filed as a result of the adjustment, what I said was
25 that that number had changed to nine, had been adjusted

1 to 983. The billion 061 is a different number and you
2 get at it a different way.

3 Q. Okay. So what's the correct number as we sit
4 here today of those three?

5 A. Okay. The additional base revenues that we're
6 asking for adjusted is 983. Then, as I said earlier,
7 there is a shift from base to clause of \$78 million. So
8 that, and so that would be -- before in my testimony on
9 Line 17 that was the one billion 121. Right? If you
10 look at Lines 14 and 15, I talk about the adjustments
11 being made to have the shift from base to clause.
12 That's still the case here. So the equivalent number to
13 the one billion 121 is one billion 061.

14 Q. Okay. Well, I appreciate you clarifying that,
15 because I just was not, was not sure what the, what the
16 right number is. So if I refer in my questions to
17 saying over a billion-dollar increase in 2010, that
18 would be a correct reference; correct?

19 A. That gets you in the ballpark.

20 Q. Okay. Now OPC is recommending a negative
21 number of 350. You're aware of that; correct?

22 A. I am aware of that.

23 Q. Have you read the witness testimony that's
24 sponsored by OPC?

25 A. I have not read it all, no.

1 **Q.** Okay. But notwithstanding that fact, you do
2 take exception with, with their recommendation?

3 **A.** I do take exception because I know that a
4 decrease in base rates is, would have severe
5 consequences for the, for the company and ultimately for
6 our customers.

7 **Q.** Let's, let's spend a minute and shift gears
8 and talk a little bit about generation mix. You were
9 asked some questions by other counsel about that and
10 there was some discussion with respect to fuel
11 yesterday.

12 You would agree that the impacts of, of this
13 rate proceeding, assuming that they were granted in full
14 as asked, would be masked in 2010 by the lower cost of
15 fuel; correct? And if you can answer that yes or, yes
16 or no, you know, we've already heard a lot of testimony
17 on it, but I'd appreciate it.

18 **MS. CLARK:** Mr. Chairman, I would object to
19 the characterization and the use of the term "masked."

20 **MR. MOYLE:** Offset.

21 **CHAIRMAN CARTER:** Okay. Let's proceed.

22 **THE WITNESS:** Yes. I think we've talked at
23 length that there is a base rate increase and in 2010
24 there is a reduction in fuel prices. And as a result,
25 the net impact on the bill, on the average residential

1 bill is that it will go down \$9.

2 **BY MR. MOYLE:**

3 Q. Right. And that chart that you were shown
4 yesterday with the gas prices, I think you've recognized
5 gas is a volatile commodity; correct?

6 A. Correct. But I also have pointed out that
7 were it not for the investments that we have been made
8 in the past, that the total fuel bill for the customers
9 would be higher than it is today. And although we're
10 benefiting today from low gas prices, and I think we're
11 all very grateful for that, you know that eventually gas
12 prices will come back up again. And the efficiency, the
13 investments that we have made in efficiency would be
14 even more valuable to customers than they are at low
15 fuel prices. And the math is really simple. If it's
16 10 percent of a hundred, that's a lower number than
17 10 percent of a thousand dollars. And so, you know, we
18 know that in hard times the customers will be better off
19 even than today from having made those investments.

20 Q. I appreciate if you would try to stick to the,
21 you know, to the question. You've testified previously
22 about that point and I understand. You know, your
23 lawyer will have a chance to ask you questions. But the
24 question simply was to agree that natural gas prices are
25 volatile, and you agreed to that; correct?

1 **A.** Yes. I've agreed that natural gas prices are
2 volatile.

3 **Q.** Okay. So to the extent, if you, if the
4 natural gas prices went up this time next year, if they
5 went up significantly, ratepayers would have -- and you
6 came in, assume you came in for an adjustment, which you
7 have the legal right to do, correct, on fuel prices?

8 **A.** We have an opportunity to come in if gas
9 prices, within a 10 percent band, total fuel prices.
10 I'm sorry. I don't mean gas. It's total.

11 **Q.** Okay. That's all right. But just kind of
12 playing it out, I mean, if all of the sudden the natural
13 gas prices went in the other direction and they were
14 beyond the 10 percent, this time next summer you could,
15 ratepayers could be seeing the results of a base rate
16 increase combined with increased natural gas prices;
17 correct?

18 **A.** Well, your characterization of next summer,
19 we're talking about two different time frames. We're
20 asking for rates to come in effect in January 1 of 2010.
21 So you're saying the summer of --

22 **Q.** 2010.

23 **A.** -- 2010, if there's a big increase in prices
24 over 10 percent, we would come in for a fuel adjustment.

25 **Q.** Okay. You -- the way I read your testimony,

1 you indicated, I think, you're a little concerned that
2 you're maybe overrelying on natural gas; is that
3 correct?

4 **A.** Well, I think, yes, natural gas is frankly the
5 only choice that we've had in terms of expanding the
6 generation fleet, at least in the near-term. So I am
7 concerned to your earlier point as to the volatility
8 that natural gas has shown over time, and we've talked
9 about this at length over the last couple of days. And
10 the point that I was trying to make is that anything
11 that we can do to try to mitigate some of that
12 volatility is a good thing for the customers.

13 **Q.** Okay. And one of the things to mitigate
14 against that is developing more renewable energy;
15 correct?

16 **A.** That is correct.

17 **Q.** Okay. And does, does FP&L support the
18 Governor's policy of trying to achieve a 20 percent
19 renewable standard by the year 2020?

20 **A.** Yes, we do.

21 **Q.** And you were actively developing renewable
22 projects, the solar project; correct?

23 **A.** Yes. We're currently developing three solar
24 projects that came before this Commission and have been
25 approved by this Commission.

1 Q. Okay. And I, I assume also there's -- you
2 have some other renewable assets that you utilized
3 through purchased power agreements; is that correct?

4 A. Yes, we have some.

5 Q. Okay. And given, given the, the need to try
6 to diversify, I assume that you would be looking to
7 continue those renewable contracts that, those renewable
8 energy assets through purchased power agreements; is
9 that correct?

10 A. We will consider -- well, depending on the
11 circumstances, we'll consider the low-cost option
12 associated with that. Or in a number of cases, you
13 have, we have an obligation for certain qualifying
14 facilities to purchase the output of those facilities.

15 Q. Right. And you have to consider a number of
16 things. But fuel diversity is a key component in your
17 business operations; correct?

18 A. It is one of the key components.

19 Q. Okay. And you're looking also to diversify
20 through exploring a nuclear option; correct?

21 A. That is correct.

22 Q. Okay.

23 A. We are -- we talked at length about the
24 nuclear option.

25 Q. Right. And I don't want to spend a lot of

1 time on it, but you mentioned Wall Street and you
2 mentioned that you believe they're listening to, to
3 these proceedings. And it's my understanding that Wall
4 Street has, has indicated they have some concern about
5 nuclear because it's a risky venture. Is that generally
6 correct?

7 **A.** There are concerns about the level of
8 investment required for new nuclear.

9 **Q.** Okay. I represent consumers, and some of them
10 take service from you, some of them from other
11 utilities. I thought earlier somebody -- you had
12 indicated there are only five companies in the country
13 that are currently pursuing nuclear; is that right?

14 **A.** No. I didn't say it that way.

15 **Q.** Okay.

16 **A.** What I said was that there were five companies
17 that were far along, had applied for the construction
18 and operating license, and we're really pretty far along
19 in that process.

20 **Q.** Okay. And you're one of those five; correct?

21 **A.** And we're one of those five.

22 **Q.** Okay. Didn't Wall, hasn't Wall Street also
23 suggested that, that strategic partnerships be explored
24 for companies developing nuclear assets?

25 **A.** It's -- yes. It's -- one of the questions

1 that is often asked is whether the industry would be
2 better off with more partnerships.

3 Q. Do you, do you from a consumer standpoint,
4 given that you have two large investor-owned utilities,
5 you know, each pursuing nuclear assets, I mean, that's
6 a, that's a lot of risk. Don't you agree that could be
7 mitigated if a strategic partnership was, was forged?

8 A. I think it all depends on the circumstances
9 and it all depends on the timing. And I think for many
10 of the players it's still very early in the game.

11 Q. Do you think the recommendation of Wall Street
12 to consider exploring strategic partnerships is good,
13 sound, prudent advice?

14 A. Yes. I think at this stage of the game all
15 options should be on the table, including partnerships
16 for development and including sales to other entities.
17 So I certainly would not preclude any of those.

18 Q. Have you explored strategic partnerships as we
19 sit here today with, with other IOUs in the state?

20 A. We have had a number of conversations. I
21 think one of them, which is public information, is as a
22 result of the nuclear need we committed to discussing
23 the sale of part of the plant to a number of municipal
24 utilities in the state. And so some of those
25 discussions have been going on.

1 **Q.** And you had talked about looking for signals
2 from this Commission. If the Commission sent a signal
3 about, look, you know, too much risk for two key Florida
4 utilities, you guys need to explore a partnership, would
5 you consider that signal if it were sent?

6 **A.** I will consider any and all signals that come
7 out of this Commission. But recognize that, albeit a
8 very important part of the equation, it's not the only
9 part of the equation. Federal energy policy is very
10 important. The view of the Legislature is very
11 important. So there are a number of other factors
12 that's not exclusively the purview of this Commission.

13 **Q.** I read some of the testimony, I believe it was
14 Mr. Stall, who I think we're going to hear from in the
15 morning, but that, but that FPL Group has, in addition
16 to the nuclear assets within the regulated company, it
17 has nuclear assets in nonregulated companies; correct?

18 **A.** That is correct.

19 **Q.** And one of the advantages is -- I call it the
20 Wal-Mart effect. But because you have eight units or
21 so, you can, you can have some economies of scale, some
22 savings; is that correct?

23 **A.** That is correct. That is part of Mr. Stall's
24 testimony.

25 **Q.** Okay. And, And part of the reason why I think

1 the consumers would like to consider exploring
2 partnerships is because the Wal-Mart effect typically
3 results in lower prices, doesn't it?

4 **A.** I believe that's the case. And I think, in
5 our case I think our customers -- and Mr. Stall will
6 show that and will discuss that in his testimony. I
7 think our customers have benefited from being part of a
8 larger fleet.

9 **Q.** Okay. Let me turn your attention now to some
10 discussion about the capital markets. I can refer you,
11 if it helps, to Page 12, Line 22 of your testimony. And
12 I want to focus on the phrase, and I quote, "and to
13 retain investor confidence in the most uncertain and
14 volatile capital market that this country has
15 experienced since the Great Depression."

16 **MS. CLARK:** Excuse me. Could you give me the
17 page number and line again?

18 **MR. MOYLE:** Sure. It's Page 12, Line 22 on,
19 on what I have.

20 **MS. CLARK:** That's not -- okay.

21 **MR. MOYLE:** It's under the section Overview
22 and Context --

23 **MS. CLARK:** And it goes over to the --

24 **MR. MOYLE:** -- of the Base Rate, and then it
25 flows over to the next page.

1 **MS. CLARK:** Okay.

2 **BY MR. MOYLE:**

3 **Q.** Do you, do you have that?

4 **A.** I do.

5 **Q.** Okay. And referencing this is helpful and
6 fair to you, but a lot of times we don't need to have
7 the reference to the, to the conversation. But really
8 what I want to ask you about is really what, what, what
9 point are you making there? Is this in support of your
10 request for a high ROE to suggest that, that, you know,
11 it's kind of a difficult capital market, so you need a
12 high ROE?

13 **A.** Well, Mr. Armando Pimentel will go in a lot
14 more detail. But we were, at the time that we were
15 doing this, we were reflecting on the experiences that
16 the company had gone through really the end of last year
17 and the beginning of this year where the capital markets
18 virtually froze. And for a few days there you could
19 not, only companies that had the highest commercial
20 paper rate had access to the credit markets. And we
21 were one of the few companies that during that time had
22 access to commercial paper, albeit at pretty high rates.
23 We had never seen that before, and it was indicative of
24 what was going on in the capital markets.

25 And I think we've always had a great

1 appreciation for the impact of having a high credit
2 rating and so forth, but this was kind of a strong
3 validation of the importance of doing that, particularly
4 for a business that has the kind of volatility that we
5 have in fuel prices and the susceptibility that we have
6 for, for storm costs. We depend on both our credit
7 lines and the ability to roll over commercial paper.

8 Q. Thank you. In law school they tell you when
9 you're trying to do cross-examination, don't ask the
10 what question. But thank you for that explanation
11 because it is helpful to, to a point that I want to try
12 to make.

13 This reference was to a point in time last
14 year, third quarter last year; is that correct?

15 A. I think Mr. Pimentel will tell you that
16 there's still constraints in the capital markets and
17 certain aspects of the capital markets have still not
18 returned to kind of the levels that they were two years
19 ago.

20 Q. Okay. And we can talk with him about that.
21 But you also are aware of capital markets, aren't you,
22 as the president and CEO?

23 A. I'm generally aware of them, yes.

24 Q. And haven't they, haven't they gotten better
25 as compared to the point in time that you're referencing

1 in your testimony?

2 **A.** Yes. Thankfully they have improved.

3 **Q.** Okay. And it follows then, does it not, that
4 to the extent that this Commission is being asked to
5 grant an ROE, that it's better for them to consider
6 current information about markets as compared to a point
7 in time, say, September, October, November of last year?
8 You would agree with that, would you not?

9 **A.** No, I wouldn't. I think this Commission has
10 to consider really both the current circumstances, the
11 fact that the economy is still in a fragile state, and I
12 think they have to consider all the things that can
13 affect this company from a financial point of view. It
14 is -- again, I go back to the things we worry about,
15 which is high runup in natural gas prices which can
16 easily add hundreds of millions of dollars to
17 underrecovery. Hurricanes, we know we can spend a
18 billion dollars in a really bad hurricane season.

19 So I think this Commission, when they make
20 their decisions, they have to factor in a whole host of
21 factors, not just the ones I talked about. There are
22 others we've been talking about here today, including
23 the development of nuclear, the dependency on natural
24 gas. Just I think they have to look at everything.

25 **Q.** And, and I appreciate that. But you would

1 agree that they shouldn't look and premise their
2 decision on a three-week point in time last fall as it
3 relates to the appropriate return on equity; correct?

4 **A.** Yes. I would agree with you that they can't
5 look at a single point in time, and they can't base it
6 on those three weeks any more than they can base it on
7 your premise that it should be exclusively on today's
8 environment.

9 **Q.** Okay. But it's a big decision because rate
10 cases don't, don't occur very often; correct?

11 **A.** I agree that it's a big decision.

12 **Q.** Do you, do you try to keep track of the, of
13 the economic projections by the Federal Reserve Board,
14 Mr. Bernanke and his folks?

15 **A.** I try to at least read what's being said by
16 the Federal Reserve.

17 **Q.** Okay. And are you aware that the Federal
18 Reserve has indicated that credit markets are, are
19 loosening as a general proposition?

20 **A.** I did read that. Yes.

21 **Q.** Let me refer you to Page 8 -- 18, Line 20 to
22 21, of your testimony. And the specific portion I want
23 to draw your attention to, and I'll just read it for the
24 record, is, quote, "Of course it is impossible to
25 predict the 2010 bills for other companies with absolute

1 precision, but these comparisons provide an excellent
2 frame of reference based on the information we have
3 available today."

4 So I want to also direct you to the next page,
5 Page 19, Line 18. You state, quote, "It becomes
6 increasingly difficult to predict bill comparisons
7 further out in time."

8 That is your testimony; correct?

9 A. That is my testimony, and that was really in
10 reference to fuel prices.

11 Q. Okay. But, but I guess the point that you're
12 making here is it's more difficult to predict the future
13 the further out in time you go; correct?

14 A. Yes. I think that that's generally true,
15 except that I would also point out that we have gone
16 through a pretty detailed forecasting process for our
17 expenditures in 2011. So I do have a comfort level that
18 those are reasonable forecasts of capital and O&M
19 expenses. I think where we are a lot more uncertain is
20 what will happen to fuel prices in 2011.

21 Q. And you probably are anticipating where I'm
22 going with this, but I want to make sure that we're on
23 the same page with respect to that point, that it's more
24 difficult to see over the horizon the more you go over
25 the horizon; correct?

1 **A.** In a general sense I don't disagree with that.

2 **Q.** Okay. So if we were looking at a comparative
3 data, wouldn't it, wouldn't this Commission have more
4 comfort, all other things being equal, relying on data
5 from, that predicted what would happen in 2010 as
6 compared to 2011?

7 **A.** Not necessarily. I've been in this job for
8 long enough now to tell you that, you know, we've had
9 years when we've gone in and had a budget and I thought
10 that's it, we're buttoned down, and in comes something,
11 a new edict from the Nuclear Regulatory Commission or
12 something else that comes up unexpectedly, and all of a
13 sudden we have to, we have to kind of readjust.

14 So I think we have a good handle on what our
15 labor costs will be. We generally have a good handle on
16 what products and services. Ironically, one of the
17 areas that we have a hard time predicting are medical
18 costs, which continues to be a challenge for us.

19 **Q.** Yes, sir, and I'll try again. But the
20 question was, all things being equal, wouldn't, wouldn't
21 it be the data as it relates to 2010 forecast data be
22 more reliable than 2011, a further point in time?

23 **A.** I think I've answered that. I think we have a
24 reasonable forecast for both years.

25 **Q.** Have you, have you answered yes or no to that

1 question?

2 **A.** I said no, I don't agree that in this case,
3 given the facts that we presented, I don't believe that
4 the subsequent year data is any less reliable than the
5 2010 data.

6 **Q.** Okay. And you've been in this industry for
7 many years. You've been with Florida Power & Light for
8 how many years?

9 **A.** I think it's, I'm on my, almost my 38th year.

10 **Q.** Okay. And as a, as a general rule, rate cases
11 previously, they would, they would use historical data.
12 This comment was made, I think, by Public Counsel in
13 their opening, that rate cases used historical data.
14 Are you familiar with that as, as a true fact, yes or
15 no?

16 **MS. CLARK:** Mr. Chairman, I'd like to object
17 to the characterization "as a general rule." I don't --
18 I think that's too vague for an answer.

19 **MR. MOYLE:** I can rephrase.

20 **CHAIRMAN CARTER:** Mr. Moyle, rephrase.

21 **BY MR. MOYLE:**

22 **Q.** Are you aware of any rate case in the State of
23 Florida that has used historical data for, as the data
24 for the basis of a rate increase?

25 **A.** Not specifically.

1 Q. Generally?

2 A. I'm not sure that I could even answer
3 generally.

4 Q. Okay. Are you aware of any rate case in
5 Florida that has used a portion of historical data
6 combined with a portion of future projections?

7 A. I don't know the answer to that.

8 Q. Okay. And in this case you're asking this
9 Commission to make its judgment on base rates premised
10 upon forecasts for data in -- completely forecast data,
11 no historical data, for the year 2010; correct?

12 A. Correct.

13 Q. Okay. And 2011.

14 A. Using -- if I may just add, correct, but based
15 on 2008 actuals and more than halfway through the year
16 in 2009.

17 Q. Yes, sir. And you're also asking them to make
18 some decisions based on 2011 projections; correct?

19 A. Correct.

20 Q. Okay. And you would agree that the Commission
21 has jurisdiction and discretion as to whether to base
22 rates on 2011 information. It's not required that they
23 consider 2011 an act. They have the discretion to say,
24 you know, okay, we're satisfied with the data, or they
25 can say, you know, this is a little too far out in time,

1 a lot of things are changing, moving parts, we decided
2 not to act on the 2011 request. They have that
3 discretion; correct?

4 **A.** Yes. I believe this Commission can decide to
5 allow the subsequent year increase or not allow it.

6 **Q.** Is this the largest rate increase that's ever
7 been filed in the history of the State of Florida for an
8 investor-owned utility?

9 **A.** I don't believe that it's the largest increase
10 on a percentage basis.

11 **Q.** Yes, sir. I'm sorry. Rate increase. I'm not
12 talking about gas increases or anything, percentage,
13 just overall numbers.

14 **A.** Yes. I believe it's not.

15 **Q.** So you believe that there has been another
16 rate case that asked for over a billion dollars in
17 rates?

18 **A.** I said I was referencing it in terms of a
19 percentage increase. And you have to look at it
20 relative to the size of the company. FPL serves half
21 the population of the State of Florida. So by any
22 measure, anything, any of the numbers that we talk about
23 are always very large numbers.

24 **Q.** Okay. So I guess the question -- fair point.
25 You were looking at it from a percentage basis. I'm

1 looking at it from an actual dollar basis. Is this the
2 largest rate case in the history of the State of Florida
3 from an actual dollar perspective?

4 **MS. CLARK:** Mr. Chairman, I --

5 **CHAIRMAN CARTER:** Ms., Ms. Clark.

6 **MS. CLARK:** I think that question has been
7 asked and answered.

8 **CHAIRMAN CARTER:** Mr. Moyle?

9 **MR. MOYLE:** I don't think I got an answer as
10 to is it the largest rate case in the history of the
11 State of Florida as it relates to dollars.

12 **CHAIRMAN CARTER:** Ms. Helton.

13 **MS. HELTON:** I heard the witness answer with
14 respect to the percentage. I don't think he did answer
15 with respect to dollars.

16 **CHAIRMAN CARTER:** Okay. Well, let's see. If
17 you can answer, would you -- let's have your answer, if
18 you can answer.

19 **THE WITNESS:** Yes, Mr. Chairman. In terms of
20 the total dollar increase, I believe it would be the
21 largest. But, again, I would preface it by saying that
22 you have to look at it relative to the size of the
23 company and look at it relative to the increase.

24 **BY MR. MOYLE:**

25 **Q.** I want to shift gears a little bit and spend a

1 minute talking about the G-B-R-A, or what I call the
2 GBRA. You're familiar with that term and the concept;
3 correct?

4 **A.** I am.

5 **Q.** Okay. And that provision was the result of a
6 settlement with other intervenors a number of years ago;
7 correct?

8 **A.** That is correct. It was one of the items that
9 was agreed to in the settlement.

10 **Q.** All right. And there was give and take in
11 that settlement. It wasn't -- this item didn't come
12 about as a result of a Commission rulemaking proceeding;
13 correct?

14 **A.** That is correct.

15 **Q.** Okay. And you're not suggesting that this
16 GBRA mechanism, if it is good public policy, should only
17 apply to Florida Power & Light Company, are you?

18 **A.** I cannot speak for any other company. I can
19 only speak for Florida Power & Light. So we are
20 suggesting that it apply to Florida Power & Light.

21 **Q.** Okay. But do you -- if some other utility was
22 similarly situated, if it was good policy, shouldn't
23 logically it also apply to them?

24 **A.** I'm not going to comment on what another
25 utility would or would not do.

1 **Q.** Okay. Are you familiar that the Commission
2 typically when it establishes a matter of policy that's
3 generally applicable to all utilities, they do that
4 through a rulemaking process?

5 **A.** I am familiar that from time to time this
6 Commission chooses to go through a rulemaking process.

7 **Q.** Okay. And there's already been some
8 conversation about this. I don't want to spend a lot of
9 time on it. But just to have a quick conversation, you
10 would agree that if the GBRA mechanism were allowed to
11 continue, that it would make it less likely that Florida
12 Power & Light would come in for a rate case in the near
13 future; correct? And that's one of the reasons why
14 you're saying to adopt it, because you avoid the rate
15 case.

16 **A.** Yeah. I think in general terms it certainly
17 would reduce the probability that we would come in for a
18 rate case.

19 **Q.** Okay.

20 **A.** Certainly if we don't get it, to be able to
21 get a new plant in service would require a rate case.
22 So I --

23 **Q.** And as a general rule of thumb, historically
24 thinking, you were asked a lot of questions about
25 clauses. But the amount of money recovered through

1 clauses over the years has increased, increased,
2 increased; correct?

3 **A.** The total amount of dollars in clauses has
4 increased. But I think it's important to make a couple
5 of points regarding the clauses. While there's been a
6 lot of discussion here on the clauses, all the clauses
7 do is they give us an opportunity to earn up to that
8 amount that has been spent. We always have a risk of
9 disallowance with those clauses. And generally we don't
10 make any money on the clauses, unlike when you have base
11 rates where you have an opportunity, you have
12 probability of not necessarily being able to make money
13 on it, but you do have an opportunity to make a profit.

14 So as these clauses have gotten larger, the
15 chance of a disallowance is actually increased just
16 proportionately because any one event can cost you, can
17 cost you more money. So it's not a proper
18 characterization to say that just because the clauses
19 have gone up, we necessarily have been able -- are a
20 less risky proposition. In fact, you can argue that we
21 are actually a little more risky.

22 And the financial community again looks at
23 those -- virtually every company, for example, most of
24 our increase is all related to fuel. And most of the
25 companies in this country have some sort of a fuel cost

1 recovery. And that's factored into the relative risk
2 profile of the company, and I'm sure that both
3 Mr. Pimentel and Mr. Avera can go into a lot more detail
4 on kind of the relative risks.

5 Q. Did I hear you say that you thought that, that
6 there was more risk associated with the clauses?

7 A. I think there can be -- from a company's
8 perspective there is risk. All we have -- we have an
9 opportunity to recover the costs up to the costs that we
10 have incurred in those clauses, but we generally don't
11 make any money on those clauses. So it is not always
12 kind of a balanced equation. We have an opportunity to
13 get disallowances, but we don't have an opportunity to
14 make more than what we actually spent. There's no
15 profit in most of these clauses.

16 Q. And the issues at play in the, in the clauses
17 usually are more confined than the issues in a base rate
18 case like today; correct?

19 A. They tend to be single issues. Correct.

20 Q. Okay. And usually you don't have Public
21 Counsel in asking for a \$350 million decrease in rates
22 in those clause cases, do you?

23 A. We always have active participation for
24 intervenors. And a good example is what's happening
25 right now with the nuclear cost recovery where a number

1 of those costs are being challenged.

2 Q. Yeah. Don't you make money -- you talked
3 about not making money off things in clauses. Don't you
4 make money off items that flow through the Environmental
5 Cost Recovery Clause?

6 A. We make some money on some of those items.
7 But by far the largest clause item is fuel, for which we
8 don't make any money.

9 Q. Okay. Finally, you would agree with me as a
10 general proposition that a need determination proceeding
11 is materially different from a rate case; correct?

12 A. Yes, I would agree with that.

13 Q. All right. Let's, let's -- just a couple more
14 subject areas. I appreciate your patience. Hopefully
15 we'll be wrapping up.

16 I want to shift now our attention to the
17 return on equity issue, and that issue has a lot of
18 discussion already. You're the first witness, and I
19 think it's probably been referred to a number of times.

20 What, what value is associated with each
21 100 basis points of return on equity?

22 A. For Florida Power & Light it's about 120,
23 \$130 million of base revenue for every 100 basis point.

24 Q. Okay. So in my opening yesterday when I said
25 that the spread between a 9.5 ROE and a 12.5 ROE was

1 roughly \$400 million, you would, you would generally
2 agree with that?

3 **A.** I think the math is like 360, but you're in
4 the right ballpark.

5 **Q.** Okay. We've talked about the GBRA being a
6 provision that was reached as a settlement. Isn't it
7 true that you also agreed that your ROE would -- you
8 wouldn't come in for any kind of rate relief unless the
9 ROE went below 10 percent as a result of that previous
10 settlement agreement?

11 **A.** I mentioned that that was one of the
12 provisions of the rate, rate agreement.

13 **Q.** Okay. So at that point in time then the ROE
14 of, you know, 10.5 was acceptable; correct?

15 **A.** No. That's not right.

16 **Q.** At that point in time when you entered into
17 that settlement agreement?

18 **A.** No. No. Not at all.

19 **Q.** Okay. You don't -- I mean --

20 **MS. CLARK:** Mr. Chairman --

21 **MR. MOYLE:** -- Mr. Chairman, he doesn't need
22 to explain for my benefit, you know.

23 **CHAIRMAN CARTER:** Mr. Moyle, let him, let him
24 answer the question. He said no, and, you know, he's
25 entitled to explain his answer. You may proceed.

1 **THE WITNESS:** No. When we entered into the
2 rate agreement, it was with the expect -- first of all,
3 the rate agreement did not have an ROE calculation
4 associated with it. So it was strictly based on
5 revenue. We looked at a number of components to that
6 rate agreement, as I mentioned earlier, which included
7 nuclear decommissioning costs. It included the GBRA, as
8 you've, as you've mentioned. It included the
9 depreciation credit. And we got comfortable with it by
10 looking ahead and looking at what we would, we believed
11 would be our customer growth and our revenue growth over
12 the years.

13 The 10 percent was strictly a safety valve.
14 If things, bad things happened, you can pick any number
15 of scenarios, we wanted an opportunity to come back in
16 and not be locked into really subpar returns. But it
17 was never with an expectation that we would be making
18 around 10 or whatever the characterization is returns.

19 **BY MR. MOYLE:**

20 **Q.** You're suggesting that a 12.5 percent ROE is
21 good for consumers because it results in lower borrowing
22 costs for FP&L; correct?

23 **A.** Right. I think both the ROE witnesses,
24 Mr. Pimentel and Mr. Avera, can go into a lot more
25 detail than I am prepared to do today. But I think one

1 of the points that I'd like to make is that you can't
2 look at the ROE in isolation of the other components and
3 you can't look at ROE without looking at the total rate
4 of return. And I think we have shown that even with a
5 12.5 percent ROE that's been characterized as, at the
6 high end by some of the Intervenor, you know, we're
7 talking about an overall rate of return of 7.85 percent,
8 which I believe would be the lowest of the
9 investor-owned utilities. There is a relationship
10 between the return on equity and your cost of debt.

11 Q. Okay. Are you aware that the Florida
12 Association of Counties has written a letter to the
13 Chairman specifically suggesting that a 12.5 percent ROE
14 is excessive?

15 A. I have not seen the letter.

16 Q. Are you aware that such a letter was written?

17 A. No, I'm not.

18 Q. Okay. Is it your understanding that the --
19 let's strike that.

20 Has your company performed any cost benefit
21 analysis, what some people call a bang for your buck,
22 that compares the projected savings of lower debt to the
23 additional revenue associated with a high, higher ROE
24 that customers would have to pay?

25 A. I'm going to defer discussion on kind of the

1 comparisons and the models and what they show to
2 Mr. Pimentel and Mr. Avera. I'm just not prepared to
3 walk through all the model assumptions, and I think
4 those are the witnesses that are best prepared to do so.

5 Q. And I'm not going to, I'm not going to ask you
6 to do that. I wouldn't do that. I'm just asking you,
7 because if I understand your argument, it's consumers
8 ought to pay 12.5 percent ROE, another 400 million on an
9 annual basis, because it assures the company's ability
10 to access capital at good rates.

11 If the company was accessing capital at a
12 little higher rate, I'm wondering whether you guys have
13 done an analysis to say, uh, it's a better deal for
14 consumers to go ahead and pay this 12.5 percent ROE.
15 Have you done that kind of analysis?

16 MS. CLARK: Mr. Chairman?

17 MR. MOYLE: And I think it's a yes or no
18 answer, Mr. Chairman.

19 CHAIRMAN CARTER: Ms. Clark.

20 MS. CLARK: Two things, Mr. Chairman.
21 Mr. Olivera has indicated that Mr. Pimentel is the
22 person to answer on that question. And also Mr. Moyle
23 is providing testimony here. He's not calling just for
24 the witness's answers on these things.

25 CHAIRMAN CARTER: Okay, Mr. Moyle. Let's move

1 on.

2 **MR. MOYLE:** I'm just trying to understand
3 whether they've prepared that kind of analysis. I mean,
4 they're stating that proposition.

5 **CHAIRMAN CARTER:** He said that -- he gave you
6 the name of witnesses that have done that analysis. He
7 hasn't done that. So let's move on.

8 **MR. MOYLE:** So just -- maybe I'm not clear.
9 Is it your understanding that it has been prepared or it
10 has not?

11 **CHAIRMAN CARTER:** No. I'm saying that the
12 nature of the question that you asked, the two witnesses
13 that have done the analysis relating to the ROE are
14 those two witnesses you probably need to ask.

15 **MR. MOYLE:** Okay.

16 **CHAIRMAN CARTER:** He said he's not competent
17 or capable of doing that at this point in time. I did
18 hear that part.

19 **MR. MOYLE:** Yeah. And all I was trying to do
20 was find out not what it said, but just whether they
21 even did the analysis at all, so.

22 **CHAIRMAN CARTER:** He probably doesn't even
23 know because that's why he said look at the other two
24 witnesses.

25 I'm not saying that you don't know anything,

1 Mr. Olivera. Don't do that.

2 Ms. Helton?

3 **MS. HELTON:** I agree with you, Mr. Chairman.

4 **CHAIRMAN CARTER:** Okay.

5 **MR. MOYLE:** So do I, Mr. Chairman. I'll move
6 on.

7 **CHAIRMAN CARTER:** Thank you very kindly.

8 **BY MR. MOYLE:**

9 **Q.** What current, what rating does FP&L currently
10 have from the rating agencies?

11 **A.** We have A ratings. Mr. Pimentel can walk you
12 through each of the three rating agencies and what the
13 relative rating is. But I think it's fair to say we
14 have A ratings for, for, from each of those three rating
15 agencies.

16 **Q.** Okay. And your ratings are higher than the
17 ratings for Tampa Electric Company; correct?

18 **A.** I believe that's the case.

19 **Q.** There's a little bit of conversation about an
20 ROE and quality of service. Are you asking this
21 Commission to increase your, your ROE because of good
22 quality service?

23 **A.** I think that both Mr. Avera and Mr. Pimentel
24 will talk about the benefits that we have provided and
25 recognition of that, of the low prices, the good service

1 and how that should be factored into the ROE. And while
2 they're not specifically asking, they're not asking for
3 a specific ROE adder, they are suggesting that, based on
4 the performance, the company should be at the upper end.
5 I think they're better prepared to walk you through all
6 of the details of that, those arguments.

7 Q. Okay. So the answer is, yes, you are asking
8 for an adjustment to be made related to good quality;
9 correct?

10 A. We're asking for consideration. We're not
11 asking for specific quantifiable numbers.

12 Q. Okay. There's not a Florida rule that the
13 Commission has or a statute that authorizes an increase
14 in return on equity based on good quality service, is
15 there? Yes or no.

16 A. No. But I think it's a consideration that
17 should be made at the Commission, by this Commission.

18 If you have two companies and you have one
19 performing company, good performing company and you have
20 one that's not performing well, it seems to me that it
21 would be inappropriate to have that company make the
22 same return. There should be some incentives from this
23 Commission that if you're a good operator, that if you
24 provide high levels of reliability, if you have
25 reasonable prices, in our case we're the lowest in the

1 state, that somehow that should be factored into the
2 returns that you allow the company. Otherwise, this is
3 like the peanut butter approach and it doesn't matter
4 whether you do a good job or a mediocre job, you're
5 going to get rewarded the same way.

6 **Q.** Isn't it true that the company is already
7 asking this Commission to award monies related to good
8 quality service in terms of bonus pay that employees
9 receive, incentive compensation, a stock option? Those
10 are all incentives for people to do a good job and
11 provide good quality service, aren't they?

12 **A.** Those are all part of the compensation of an
13 employee, and that is variable pay. It is consistent
14 with our concept of how we pay people. And so a
15 significant portion of our employees' pay is what we
16 call at-risk, meaning that there's no guarantee that
17 it's going to pay out. And it's based on the
18 performance of that individual oftentimes. As you go
19 higher, it's really based on the performance of the
20 business unit or the performance of the company.

21 **Q.** The converse of what you're suggesting would
22 also hold true, would it not: If a company was
23 providing less than good quality service, that a
24 decrease in ROE should be warranted? Would you agree
25 with that?

1 **A.** Yeah. And I think there's some history that
2 this Commission has penalized companies that have
3 problems with their quality of service.

4 **Q.** And you would maintain that despite the tough
5 economic times, I think you've recognized we're in tough
6 economic times, that, despite that, additional monies
7 should be obtained from ratepayers for, for the, for the
8 good service. Is that your position?

9 **A.** Yes. I think there should be a recognition
10 for the quality of service that's been delivered.

11 **Q.** Are you familiar with FPL's pension fund?

12 **A.** In general terms I am.

13 **Q.** Are you a member of it?

14 **A.** A member of what?

15 **Q.** Of the pension fund? I mean, do you have a
16 pension?

17 **A.** I have -- I'm a participant in the pension
18 like every other FPL employee.

19 **Q.** Okay. Do you know, does the FPL pension fund
20 invest in FP&L stock or is that, is it precluded from
21 doing so?

22 **A.** I don't believe we have any FPL investments in
23 the FPL pension -- in the pension fund.

24 **Q.** And is that because there's a regulation or
25 rule that prevents it? It's not because you don't think

1 FPL is a good investment, is it?

2 **MS. CLARK:** Mr., Mr. Chairman.

3 **THE WITNESS:** No. It's not because -- well --

4 **CHAIRMAN CARTER:** Hang on a second.

5 **MS. CLARK:** I just think I need to object to
6 these questions. This is way outside the scope of Mr.
7 Olivera's testimony.

8 **CHAIRMAN CARTER:** I do think that last one was
9 across the, over the pale, Mr. Moyle.

10 **MR. MOYLE:** I'm sorry. I just was --

11 **CHAIRMAN CARTER:** You know how in law school
12 they say there's always that urge to go to that one last
13 question. I think that was the one. Let's --

14 **BY MR. MOYLE:**

15 **Q.** I'll strike that last question and do, ask
16 you, do you know, do you have any information as to
17 whether there are provisions that preclude the company
18 from investing in FP&L stock?

19 **A.** No, I'm not aware.

20 **CHAIRMAN CARTER:** That's a much better
21 question.

22 **BY MR. MOYLE:**

23 **Q.** Do you know that the targeted rate of return
24 for the pension fund is less than 8 percent?

25 **A.** I think you're, you're really talking about

1 two things. It's -- and I don't want to get too far
2 into the pension because I'm really not an expert on
3 pension funds and it probably would be best to defer
4 this to Armando Pimentel. But I will say that we invest
5 in our fund. It's an adequately funded pension program.
6 So it's not a fund that requires that we take undue
7 risk. And so it tends to invest in more conservative
8 investments, including, you know, more bonds. And that
9 reflects kind of a reasonable return.

10 Q. Are you aware that consumers testified at the
11 public hearings that they thought a 12.5 percent return
12 for a company that is regulated and has a lot of
13 revenues flowing through clauses was too high?

14 A. Yes. I know that there are people who
15 testified who believe that the 12.5 percent was too
16 high.

17 Q. All right. Let's shift, shift gears. And I
18 want to ask you about a comment you make on Page 21,
19 Line 12 of your testimony. If you would just read that
20 first sentence into the record.

21 A. Page 21, Line 12, "We always look to how we
22 can cut costs first before we seek a rate adjustment."

23 Q. Okay. And did you do that in this, in this
24 case? Did you look to cut costs before, before filing
25 your, your rate data and information?

1 **A.** We cut costs every day. Every year we look
2 for opportunities to cut costs. How can we get more
3 efficient? And we wouldn't have been able to stay away
4 from a base rate case for all these years if we didn't
5 have a strong focus and a strong emphasis on being
6 efficient and keeping our costs under control.

7 Witness Reed can, will give you some of the
8 benchmarking analysis that will show that FPL has been
9 for the last ten years number one, number two or number
10 three in terms of being a low cost provider. And so I
11 think our record speaks for itself.

12 **Q.** Are you aware that businesses and governments
13 around the State of Florida have been going through
14 pretty rigorous cost cutting exercises in recent, recent
15 months?

16 **A.** I am.

17 **Q.** The -- I want to use an exhibit with you, if I
18 could. If I could --

19 **CHAIRMAN CARTER:** Does it need to be marked?

20 **MR. MOYLE:** Yes, sir.

21 **CHAIRMAN CARTER:** Okay. I think,
22 Commissioners, we're up to Number 386. Title? Short
23 title, Mr. Moyle?

24 **MR. MOYLE:** The title is Proposed Versus
25 Approved 2010 and 2011 Capital Expenditure Budget.

1 **CHAIRMAN CARTER:** I've given up on the short
2 titles, guys. You may -- let's make sure everyone gets
3 one first before we go further.

4 You may proceed.

5 **MS. CLARK:** I'm sorry, Mr. Chairman.

6 **CHAIRMAN CARTER:** Wait one second. Hang on a
7 second.

8 **MS. CLARK:** The number? I just --

9 **CHAIRMAN CARTER:** It's 386, and the title is
10 Proposed Versus Approved Capital Expenditures Budget.

11 (Exhibit 386 marked for identification.)

12 **BY MR. MOYLE:**

13 **Q.** Mr. Olivera, you serve on a budget review
14 committee, don't you?

15 **A.** I am part of the review process.

16 **Q.** Okay. And would you just describe the budget
17 review process for us, please, briefly?

18 **A.** We -- the business units will prepare a budget
19 request. We actually go through a couple of iterations.
20 We go through a first pass where we talk about major
21 projects, major initiatives, followed by a more detailed
22 kind of line-by-line review, and then we go through kind
23 of a roll-up of, of the budgets. That's a very
24 50,000-foot level answer. But Mr. Barrett, who is
25 responsible for the budget review, can give you all the

1 details, exactly how the process is conducted from his
2 perspective.

3 Q. Okay. And I'm going to ask you some questions
4 based on something I'm familiar with and ask you if
5 FPL's process is similar.

6 I have some familiarity with the state
7 budgeting process where all of the state agencies are
8 asked to submit proposed budgets to the Governor's
9 Office, the Office of Planning and Budgeting. That
10 information is then taken, it's reviewed, and then the
11 Governor recommends a budget. Typically in that
12 process, you know, decisions are made about priorities.

13 Is that -- would that be a fair way to
14 describe what the FPL budget review process entails?

15 A. I would -- I'm not familiar with the state
16 budgeting process and I'm really not in a position to
17 tell you how similar it is.

18 I will tell you that there's a lot of give and
19 take in our budgeting process. The business heads will
20 come in and they have pretty strong feelings about the
21 projects that they sponsor. And we have to go through,
22 we go through a lot of questioning about the need and
23 how appropriate it is, and we do make a number of
24 trade-offs about what adds value and what may not add as
25 much value.

1 **Q.** Okay. Assuming my representation of the state
2 budgeting process was accurate, would that be similar to
3 the FPL process?

4 **A.** As I said, I don't know.

5 **Q.** The, this exhibit I've handed out reflects, if
6 you have, if you have knowledge, that the proposed
7 reductions for the capital expenditure -- for 2010, the
8 going in budget was nearly \$4 billion; is that right?

9 **A.** Yeah. I, just for the record, I did not
10 prepare this exhibit. This was prepared by Mr. Bob
11 Barrett and is being sponsored by Bob Barrett. I don't
12 know the time lines, certainly not off the top of my
13 head. Because we go through several iterations, it all
14 depends on what point in time you're picking up the
15 proposed budget, the proposed budget number. And I
16 can't answer that.

17 **MS. CLARK:** Mr. Chairman, I think Mr. Olivera
18 is reminding me to tell you that this is a, an exhibit
19 that is from Mr. Barrett's deposition, so the questions
20 are more appropriately asked of Mr. Barrett.

21 **CHAIRMAN CARTER:** Mr. Moyle, on the objection.

22 **MR. MOYLE:** I will -- I'm not going to dig
23 into specific numbers. I'm just trying to get a
24 general, general overview from this witness, if I, if I
25 can, about the budgeting review process. He testified

1 he's on that, on that budget committee.

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

3 **MS. HELTON:** It sounds to me, Mr. Chairman,
4 that this is not the appropriate witness to ask
5 questions about the exhibit, but he is still the
6 appropriate witness -- or a appropriate witness to
7 discuss the budget process in general.

8 **CHAIRMAN CARTER:** Well, then why don't you do
9 this. Instead of using this for him, just ask him, and
10 we can use it --

11 **MR. MOYLE:** That's fine. I --

12 **CHAIRMAN CARTER:** We'll use this when
13 Mr. Barrett comes up. So we'll just hold it.

14 **BY MR. MOYLE:**

15 **Q.** That's fine. Without reference to any exhibit
16 or anything, do you have recollection that in 2010, the
17 budget review process, that the number provided by all
18 the business units after a budget review process, that
19 the belt tightening or reduction was approximately
20 2.5 percent in 2010?

21 **A.** I don't remember the exact number. I do know
22 that we went through several iterations trying to
23 determine what projects. And, remember, there's both a
24 formal process and an informal process. So there's a
25 formal process where we kind of bring all the players

1 together. But concurrently, you know, I'm having
2 discussions with each of the business unit heads about
3 the budgets that they have submitted, probably in the
4 way that most companies will, will do this.

5 And so I can't tell you off the top of my head
6 what the starting number was and what the final number
7 approved is. But it was handled the same way that we
8 handled every budget process, where we go through
9 several iterations of forecasted expenditures and we
10 have a robust discussion about, you know, what projects,
11 particularly in incremental stuff, what are we going to
12 do going forward.

13 We also during that process look at
14 benchmarking data. And, frankly, it's one of the tools
15 that I use to try to get each business unit to come in
16 and really aim to be a top cost leader in their
17 particular area. And it's, frankly, one of the reasons
18 why I think our company has been so successful year
19 after year in being a low cost leader is because we have
20 placed a lot of emphasis on benchmarking, as Mr. Reed
21 will show you, that produces low cost results.

22 As far as, again, the specific number, I can't
23 answer whether it's 2.5 percent or more or less.

24 Q. Okay. Isn't it true that for the budget
25 process for 2011 that your final conclusion coming out

1 of the budget review process was a number that was
2 higher than the going in number? Do you know that one
3 way or the other?

4 **A.** I don't remember that.

5 **Q.** Okay.

6 **MS. CLARK:** Mr. Chairman, if I can just
7 interject just for a minute. Just, it seems to me that
8 all of us want this hearing to proceed rapidly, and to
9 the extent, you know --

10 **COMMISSIONER ARGENZIANO:** I can't hear you.
11 Could you please speak up?

12 **MS. CLARK:** -- questions are being asked of
13 Mr. Olivera that are more appropriately or efficiently
14 asked of other witnesses, I think that's the best course
15 of action to follow.

16 **MR. MOYLE:** I just have a couple more on this
17 line.

18 **CHAIRMAN CARTER:** Okay. Let's proceed.

19 **BY MR. MOYLE:**

20 **Q.** So FPL didn't -- you as the -- are you chair
21 the budget review committee?

22 **A.** I chair the budget review for Florida Power &
23 Light.

24 **Q.** Okay. So you didn't set forth and say,
25 listen, these are tough times, I want everybody to come

1 up with a certain amount of reductions, 3 percent,
2 5 percent, 10 percent? That exercise was not done
3 within Florida Power & Light, was it?

4 **A.** Mr. Moyle, every year is a tough time, and
5 every year the expectations are very high that our
6 business units deliver kind of the lowest cost possible
7 and keep our increases to a minimum. Again, as I said
8 earlier, it's no accident that it's been 23 years since
9 we've been here for a base rate increase.

10 **MR. MOYLE:** Mr. Chairman, could I have a yes
11 or no answer to that, to that question, please?

12 **CHAIRMAN CARTER:** Can you answer it yes or no?

13 **THE WITNESS:** Yes. We always say, we always
14 ask our business units to deliver the lowest, excuse me,
15 the lowest cost possible. So, but I also went on to
16 say, but when we were putting the '10 and '11 budget, it
17 was really no different than any other year because we
18 always ask them to come in with kind of the minimum
19 costs. And then we talk about anything, anything else
20 that we think has benefits out in, out in time and we'll
21 discuss those.

22 **BY MR. MOYLE:**

23 **Q.** And that wasn't the question. I mean, I think
24 the Governor of the State of Florida with his agency
25 said, please put together a number that shows a

1 5 percent, 10 percent reduction. My question was,
2 without referencing the Governor, but to say did FP&L go
3 through a budget process where they asked their agencies
4 to go and look to make cuts of a certain percent?

5 **CHAIRMAN CARTER:** I remember that question
6 earlier, but he said that he didn't know what the
7 percentages were. I remember the answer to the
8 question. You asked that before.

9 **BY MR. MOYLE:**

10 **Q.** So I guess the answer is no; is that right?
11 You didn't go through that process where you put a
12 certain percentage on the desired reductions?

13 **MS. CLARK:** Mr. Chairman.

14 **CHAIRMAN CARTER:** Ms. Clark.

15 **MS. CLARK:** I think that question has been
16 asked and answered.

17 **CHAIRMAN CARTER:** Yeah. I think what he said
18 is that, that he doesn't make that decision. That's
19 done by the budget people, but they look at the total
20 budget. I, I think you asked it already, Mr. Moyle.

21 Let's get with Mr. Barrett. He can probably
22 bring it down to a, you know, a pedestrian level so we
23 can follow up on that.

24 **MR. MOYLE:** Can I just have a moment?

25 **CHAIRMAN CARTER:** Yes. Take a minute.

1 (Pause.)

2 **BY MR. MOYLE:**

3 Q. I want to ask you a couple of questions about
4 a confidential exhibit that it's been represented that I
5 guess you and one other witness have some information
6 about it. Would you mind getting a copy? Your counsel
7 has --

8 **CHAIRMAN CARTER:** Okay. Now let's do this
9 before we go forward. Staff, on the procedure for
10 handling, just so that everyone is on the same page, the
11 procedure for handling confidential information.

12 **MS. BENNETT:** The Prehearing Order states that
13 the procedure to handle confidential information is that
14 as the questions are asked, the record is public. So we
15 must be very careful in mentioning any information and
16 keeping that that is redacted from being disclosed on
17 the record. So you have to design your questions
18 generically.

19 **CHAIRMAN CARTER:** Let's, Mr. Moyle, you want
20 to take a minute before we go further? We can do that,
21 if you need to. If staff was unclear on that, we can
22 take a moment, and -- because I think that we did talk
23 about how you can get the answers to the questions that
24 you want without violating the confidentiality. Let's
25 do this. Nobody leaves. Let's kind of take a break in

1 place.

2 Ms. Bennett, would you get with Mr. Moyle
3 and -- you can continue to pass it out, Mr. Butler.
4 Because I think we said there are some ways to do that
5 without breaching confidentiality. So we'll just kind
6 of take a break in place.

7 **THE WITNESS:** Mr. Chairman, could I take a
8 quick two-minute break?

9 **CHAIRMAN CARTER:** Who's taking -- oh. Oh.
10 Oh.

11 **THE WITNESS:** While you're doing that.

12 **CHAIRMAN CARTER:** Yes. Yes.

13 **THE WITNESS:** I would very grateful if you'll
14 give me -- I'll be right back.

15 **CHAIRMAN CARTER:** Yes. You can go to the
16 necessary room. And we're, Commissioners, we're
17 breaking in place, but we're not going to -- we're going
18 to break in place for about seven minutes. And we'll --
19 we're off the record.

20 (Recess taken.)

21 We are back on the record. And before we
22 begin again, thanks to Mr. Wright I got my notes
23 together here in terms of the order of cross. And I
24 appreciate that, Mr. Wright. Thank you. Always very
25 helpful.

1 Mr. Moyle, you may proceed.

2 **MR. MOYLE:** Thank you.

3 **BY MR. MOYLE:**

4 Q. Mr. Olivera, I've provided you a document that
5 for the record is the company's response to staff's
6 Interrogatory Number 32 and 97 with future detail. I
7 think it was just filed either today or, or yesterday.
8 But do you have that document in front of you?

9 A. Yes, I do.

10 Q. Okay.

11 **CHAIRMAN CARTER:** Turn your microphone on.

12 **THE WITNESS:** Am I on?

13 **CHAIRMAN CARTER:** You're on now.

14 **BY MR. MOYLE:**

15 Q. And there's probably -- you and another
16 witness are the two people that have information about
17 this document; is that right?

18 A. Yes. Kathleen Slattery and I, I think, are
19 the only two people that have access to all of this
20 information.

21 Q. Okay. I'm going to try to preserve the
22 confidentiality claim that your company has made. I
23 think there's a dispute as to that. But for the
24 purposes of this, I'm going to try to work by
25 identifying things on lines and in general terms.

1 Your counsel also told me that, previously
2 yesterday that the chart headings he did not consider
3 confidential but only the job title. So, so with that,
4 with that understanding, the document has salary
5 information for 2008; correct?

6 **A.** Correct.

7 **Q.** And it also has it for 2009 and 2010; correct?

8 **A.** Correct.

9 **Q.** Okay. And we've talked about belt tightening.

10 You're aware that a lot of companies in the State of
11 Florida have gone through furloughs of employees or
12 layoffs of employees?

13 **A.** I'm aware of that.

14 **Q.** Okay. And are you aware that a lot of
15 companies have, have decided to freeze salary levels
16 during these tough economic times?

17 **A.** I am.

18 **Q.** Okay. FPL, the salary information here does
19 not indicate, at least to my reading of it, that there's
20 any freezing of salaries; is that correct?

21 **A.** Yes. Most employees were granted an increase.

22 **Q.** Okay. And the increase projections continue
23 on. I mean, every year there's a, there's an increase
24 in this document, is there not?

25 **A.** Correct. And FPL will, will base our

1 compensation really on, and Ms. Slattery can give you a
2 lot more detail on this, but a market reference point.
3 So we benchmark on what those jobs pay on -- in our
4 industry oftentimes the benchmark is outside our
5 industry, so it's not just necessarily in the electric
6 utility industry. And we look at how much salaries have
7 to be adjusted every year to ensure that we pay
8 competitive wages.

9 Q. Is there a rule of thumb, do you know, kind of
10 in the electric industry as to what amount you should
11 try to limit your overtime to?

12 A. I don't believe that there is a kind of a rule
13 of thumb for the industry. There are -- I think we look
14 at it more in terms of the type of job that's involved.
15 Some jobs it's easier to have a lot of overtime, and in
16 some jobs, for a whole variety of reasons, it's not
17 prudent or warranted to have a lot of overtime.

18 Q. Okay. And in Column K, nonequity incentive
19 compensation, what does that represent?

20 A. It can be, it can be several things, but it's
21 generally a cash, cash incentive that's paid out at the
22 end of the year. It could have kind of a retainer
23 component. And I just, I'd just like to briefly
24 mention -- I mean, one, one of the challenges that we
25 have -- and about half the names on this list are

1 nuclear employees. And the reason that we have so many
2 nuclear employees in here is because it is the one area
3 where the salaries have continued to go up at a pretty
4 high rate. And that's because we haven't been building
5 new power plants, new nuclear plants in this country for
6 a long time. There aren't a lot of programs in
7 universities for nuclear engineers. And so it's a very
8 small population of people that have the skill and the
9 expertise to work in a nuclear plant. They are a rare
10 commodity, and there tends to be a bidding of price for
11 these kinds of people.

12 As a result, we've put in place a number of
13 retainers so that we can hold on to these people, and
14 they get paid a certain amount of time (sic.) if they
15 stay with the company a certain number of years. They
16 tend to be kind of custom made, but they typically go
17 out for one, two or three years, and they're compensated
18 on that basis.

19 I realize that for the average person, when
20 you look at some of these salaries, they are not small
21 salaries, but it's what the benchmark is, and it's
22 certainly what the benchmark is for nuclear people.

23 And I would just remind you that customers get
24 a huge benefit as a result of the operation of these
25 nuclear plants. And as I mentioned earlier, nuclear

1 fuel costs is like a hundred and -- '08 was like \$110,
2 \$110 million compared to a total fuel bill of
3 \$6 billion, for which they generated 20 percent of the
4 energy requirements for our customers. So customers get
5 great benefit from the nuclear, but we do have to pay
6 high salaries to be able to hold on to these people.

7 Q. Okay. And I guess I was trying to focus,
8 focus you on Column K, nonequity incentive compensation.
9 And am I correct in that, in that in order to earn this
10 money, that, that an employee has to meet certain goals
11 and targets?

12 A. Yes. As I think I indicated to you, this
13 column is really a combination of both cash, cash
14 incentive, an annual cash incentive, and in some cases,
15 particularly for nuclear engineers, it represents a
16 retainer component that's paid out over a certain period
17 of time.

18 Q. Okay. And this is above and beyond bonuses
19 that may be provided or stock awards; correct?

20 A. No.

21 Q. Okay.

22 A. There is -- no. There is, when we talk about
23 nonequity incentive compensation, it's a cash bonus and
24 it's considered as part of the overall compensation for
25 that employee.

1 **Q.** Okay. Well, then can you explain to me why
2 there are separate lines, like on the first one under
3 number, number two, Line 2, can you explain to me why
4 there's another number entered in the column under stock
5 awards?

6 **A.** Well, because those are employees who will
7 also get, in addition to a cash bonus, they will also
8 get a certain number of FPL shares, FPL Group shares as
9 part of their compensation.

10 So let me pull up and see if I can describe.
11 There's generally three components to the compensation
12 of our employees, the nonunion employees, although there
13 are some union employees in this, and we certainly can
14 talk about those as well.

15 But there's base salary, there's a cash
16 incentive, and there's what we call an equity, meaning
17 stock award. Those are the three basic components. And
18 we look at the total compensation based on the sum of
19 all three of those components.

20 **Q.** Okay. What I was trying to understand, I, you
21 said the nonequity incentive compensation has a retainer
22 component and a cash component. Presumably the stock
23 option component is not there because it's shown on
24 Column I.

25 **A.** Right. It could have a retainer component,

1 and it may or may not. It depends on the individual.

2 Q. Okay. All right. And really the point I'm
3 trying to understand is with respect to the things that
4 somebody has to achieve to be eligible for incentive
5 compensation, I presume there are targets. You know,
6 you have to show progress toward goals. I mean, how --
7 isn't that correct? Is that assumption correct?

8 A. There, there are a number of targets and they
9 vary widely depending on the job and the business unit.

10 Q. All right. And you said about half of these
11 were nuclear. Just, I haven't tallied it up, but
12 wouldn't you agree that there's a large percentage,
13 probably greater than, you know, 70, 80 percent of the
14 employees who are receiving the incentive compensation?

15 A. I haven't added it up, but it's a significant
16 percentage. And, again, the cash incentive is part of
17 the total compensation. And when we do the market
18 reference point analysis that I referred to that's sort
19 of the benchmark for what that job should be paid, it
20 includes the cash incentive. It is, it is sort of --
21 and really most industries, they get -- a part of the
22 compensation includes a cash incentive. So that's
23 factored into the market reference point.

24 Q. Okay. You're aware that Public Counsel has
25 contested salaries as an issue in this case; correct?

1 **A.** I am aware of that.

2 **Q.** Okay. I appreciate you answering those
3 questions. I had one specific, I actually have told
4 your counsel about this specific question, so let me
5 just see if you have any information related to it. If
6 you would refer to Line 49. Can you describe what, what
7 function is being performed in Line 49?

8 **A.** I have to be careful with my words to stay
9 within the confidentiality. This is a union position
10 that performs field work.

11 **Q.** Can you give a little more detail on field
12 work?

13 **A.** This would be an employee that has limited use
14 of tools. It would be an employee that could work,
15 would probably work in the transmission and distribution
16 area, most likely the distribution area.

17 **Q.** Okay. And in the category under all other,
18 what does that, what does that include? I mean, what is
19 that designed to capture?

20 **A.** That is designed to capture sort of all, all
21 the other miscellaneous stuff. And given, given the
22 amount involved, and recognize I'm not, I don't know all
23 the details behind this, it could be a combination of
24 things, either some sort of back pay for some particular
25 reason. It is something out of the ordinary that would

1 warrant a payment like that.

2 Q. And it continues to flow through the
3 additional years; correct?

4 A. Correct.

5 Q. Okay. All right. I'll save the remainder of
6 my questions for the other witness.

7 Just a final point of inquiry. You would
8 agree, would you not, that large consumers of
9 electricity are important customers to Florida Power &
10 Light; correct?

11 A. All of our customers are important.

12 Q. Okay. Including large consumers?

13 A. Yes.

14 Q. Okay. Wouldn't you also agree that proposing
15 to increase large consumers, certain large consumers'
16 rates by more than 50 percent in these difficult
17 economic times will make it more difficult for them to
18 recover as compared to the rates proposed by Office of
19 Public Counsel? You can answer that yes or no.

20 MS. CLARK: Let me just disagree with the
21 characterization of that question. He asked more than
22 50 percent, but he didn't indicate whether base billed
23 (phonetic) fuel -- there's no basis to understand that
24 percentage.

25 CHAIRMAN CARTER: Rephrase, Mr. Moyle.

1 **BY MR. MOYLE:**

2 **Q.** Do you know what Florida Power & Light has
3 proposed under its GSLD-1 tariff in terms of a
4 percentage increase?

5 **A.** Yeah. I know generally, but I would defer any
6 questions having to do with allocation of cost of
7 service, I'd defer that to Renae Deaton. I'm just
8 frankly not an expert on cost of service issues.

9 **Q.** Okay. Assume for the purposes of my question
10 that you made a proposal that would have the impact of
11 increasing costs more than 50 percent. You would agree,
12 would you not, that with, assuming that to be the case,
13 that it would be more difficult for large consumers who
14 take electricity under that rate to recover from these
15 tough economic times with respect to your proposal as
16 compared to the proposal for rates by Office of Public
17 Counsel?

18 **A.** Not necessarily. Because, because the fact
19 that we haven't been in for base rates for 23 years,
20 when you look at the relative parity of how the rates
21 are being allocated, the residential customers have been
22 paying a proportionately higher share of the costs. So
23 the way the rate case was filed was filed along the
24 lines of bringing all that parity back up, and so
25 that -- trying to allocate the costs where, properly

1 where the costs are being incurred. And that's the
2 reason why you have some of the differences in the
3 impact of the bills is because of the parity issue.

4 **Q.** The Commission is proper to consider impacts
5 on businesses in their deliberations; correct?

6 **A.** I'm sure they will.

7 **MR. MOYLE:** Okay. Thank you. That's all I
8 have.

9 **CHAIRMAN CARTER:** Thank you.

10 Commissioner Skop.

11 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.
12 Just a quick request to Mr. Butler, and then I do have
13 some questions for the witness.

14 But, Mr. Butler, making requests are very
15 helpful, so hopefully great things can be accomplished.
16 But in looking at the confidential document, it's my
17 understanding from discussions to staff that that's been
18 provided in PDF format and we have no ability to sort
19 the data. It would be very helpful if we could get it
20 in a sortable format, such as an Excel spreadsheet, to
21 the extent that such data could be readily sorted in
22 order of total compensation or whatever. It's kind of
23 difficult to work with there.

24 **MR. BUTLER:** I will check into that. I don't
25 have myself a sort of Excel or other manipulable form of

1 it, but I'll check to see if it can be made available.

2 **COMMISSIONER SKOP:** Thank you. It would be
3 very helpful.

4 **COMMISSIONER ARGENZIANO:** Commissioner Skop or
5 Commissioner -- Chairman?

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

7 **COMMISSIONER ARGENZIANO:** To that point, it's
8 very hard, it's not even numbered. So if someone says
9 number whatever, you have to physically count it to get
10 down to it and the conversation is over by the time you
11 get there.

12 **CHAIRMAN CARTER:** I feel you, Commissioner.
13 I'm trying to use a magnifying glass to see these
14 numbers.

15 **COMMISSIONER SKOP:** As am I.

16 **COMMISSIONER ARGENZIANO:** Well, since it's,
17 it's, you know, a big part of the issue, if we can
18 resolve it somehow before we continue with the
19 discussion of salaries, it would be beneficial. Because
20 I just can't -- it just can't work this way.

21 **CHAIRMAN CARTER:** I think Mr. Barrett is going
22 to be the salary witness. Is that right?

23 **MR. BUTLER:** It's actually Ms. Slattery.

24 **CHAIRMAN CARTER:** Ms. Slattery?

25 **MR. BUTLER:** Yes.

1 **CHAIRMAN CARTER:** Okay. Ms. Slattery.

2 **MR. BUTLER:** Let me just comment, if I may,
3 briefly, on the --

4 **CHAIRMAN CARTER:** Mr. Butler.

5 **MR. BUTLER:** -- concern that Commissioner
6 Argenziano had raised. What you have, that is actually
7 the new and improved version of this spreadsheet, has
8 line numbers down the far left side. I am suspecting
9 that Commissioner Argenziano has the earlier version,
10 what we filed yesterday, that we noted did not have line
11 numbers. We actually came up when we were discussing
12 this with Mr. Moyle, how to handle his questions on it.
13 And whatever we can do to make arrangements to get
14 Commissioner Argenziano the version with the line
15 numbers, we'll certainly, you know, take those actions
16 quickly.

17 **COMMISSIONER ARGENZIANO:** Thank you. That
18 would be very much appreciated.

19 **CHAIRMAN CARTER:** We'll have, Commissioner,
20 we'll have them to get with Larry and get you, and get
21 it to you.

22 **COMMISSIONER ARGENZIANO:** Okay. Thank you.

23 **CHAIRMAN CARTER:** Okay. Commissioner Skop.

24 **COMMISSIONER SKOP:** Thank you, Mr. Chair.
25 Good afternoon, Mr. Olivera.

1 **THE WITNESS:** Good afternoon. It's good
2 afternoon.

3 **COMMISSIONER SKOP:** I just have a few
4 questions. Hopefully this will get us to the lunch
5 hour, but maybe a little bit quicker. I just wanted to
6 start with the question, do you believe that a full rate
7 case essentially functions as the ultimate true-up for
8 all regulatory accounts?

9 **THE WITNESS:** Yes. I think so.

10 **COMMISSIONER SKOP:** Okay. And Public Counsel
11 and the other Intervenors have alleged that FPL has a
12 substantial depreciation reserve surplus in this case.
13 And if the record evidence demonstrates that such a
14 surplus exists, then why would FPL not want to amortize
15 the excess reserve and depreciate -- or, excuse me. If
16 such -- I'm getting tongue-tied again.

17 If the record evidence demonstrates that such
18 a surplus exists, then why would FPL not want to
19 amortize the excess reserve and decrease depreciation
20 rates to further reduce near-term rates for its
21 customers?

22 **THE WITNESS:** Commissioner, I'm not the expert
23 on depreciation. We have three different people that
24 will discuss the surplus depreciation. But in concept,
25 we want to make sure that we flow back any surplus

1 depreciation consistent with kind of the remaining life
2 of that asset. And I think this Commission certainly is
3 in a position to determine, you know, what is the
4 appropriate flow back. And I'm sure that the
5 depreciation witnesses can expound on that a lot more
6 eloquently than I can.

7 **COMMISSIONER SKOP:** Okay. Thank you.

8 Moving to my next question. Public Counsel
9 and the other Intervenors have questioned the FPL
10 assertion that the proposed increase to the base rate
11 will be offset by lower projected fuel prices for 2009
12 and 2010. The recent FPL fuel and capacity clause
13 filing projects an overrecovery of approximately,
14 subject to check, \$294 million, reflecting the 2008
15 true-up and the 2009 actuals. If this happens to be the
16 case, why would FPL not want to immediately reduce the
17 fuel capacity charges for its customers during the last
18 three months of 2009, consistent with the previous FPL
19 request that the Commission approved in Order
20 PSC-01-1945-PCO-EI that was issued September 26th, 2001?

21 **THE WITNESS:** Let me try to answer the
22 question in kind of a general, general way, because I
23 don't have command of all, of all the numbers.

24 When we look at the clauses -- when we look at
25 the fuel and the total fuel bill, we're talking about --

1 we have established the thresholds of 10 percent,
2 10 percent above the filing and 10 percent below based
3 on the projections. And while \$300 million may sound
4 like an awful lot of money, it doesn't take a huge
5 movement in fuel to be able to go over or above that
6 \$300 million number.

7 So I think the 10 percent threshold has been a
8 reasonable number that has served us well. On any --
9 we've seen a lot of volatility in these numbers up and
10 down over the years. And it's a question of, you know,
11 how, how many times do you want to come in. And it
12 would have to be, frankly, kind of a symmetrical
13 proposition when it's up \$300 million overrecovered. I
14 mean, we're open to doing that as long as it would be
15 symmetrical and said when we're down \$300 million, that
16 we'd be able to come in.

17 If it's the wish of this Commission for us to
18 file this monthly and adjust this monthly, we certainly
19 would be willing to do that. But I would just urge you
20 that it should be a symmetrical proposition.

21 **COMMISSIONER SKOP:** Thank you. I just wanted
22 to generally explore the strengths and weaknesses of the
23 general base rate adjustment, GBRA, that's been
24 discussed extensively so far. And I think if I
25 understand it correctly with respect to the strengths,

1 that GBRA functions as, essentially as a step increase
2 to recognize the addition of generating assets placed in
3 service for the public benefit; is that correct?

4 **THE WITNESS:** Correct.

5 **COMMISSIONER SKOP:** And it also eliminates
6 regulatory lag?

7 **THE WITNESS:** Correct.

8 **COMMISSIONER SKOP:** And it also eliminates the
9 costs associated with a limited proceeding or a rate
10 case necessary to put new assets into the rate base.

11 **THE WITNESS:** That's correct.

12 **COMMISSIONER SKOP:** Okay. Just briefly
13 exploring the weaknesses, would you concur with the
14 assertion that one of the weaknesses of GBRA is the
15 ability to determine the prudence of construction costs?
16 And what I mean by that is the estimated cost versus
17 actual cost.

18 **THE WITNESS:** Well, if -- I believe that as
19 part of the GBRA we, we make an adjustment in the
20 subsequent filing based on the actual cost of the
21 facility. And when I say that, I'm relying on what
22 happened with Turkey Point 5. We came in, GBRA was a
23 certain amount, and we started to recover at that
24 amount. And then in a subsequent filing -- and we
25 actually constructed Turkey Point 5 for a lower cost

1 than what was in the GBRA. Then in a subsequent filing
2 we came back and flowed the difference back to the
3 customer through, through the clause. So there is a
4 mechanism to sort of get that cost back to what we
5 actually spent on the project.

6 **COMMISSIONER SKOP:** Okay. With respect to the
7 estimated costs, those are provided in a rate case. I
8 mean, excuse me, in the need determination. Let me
9 reframe the question.

10 In a need determination, FPL typically
11 provides the estimated cost of the given project unless
12 the Bid Rule -- I mean, excuse me. I'm getting ahead of
13 myself this morning.

14 In a need determination, typically FPL
15 provides the estimated cost of the project; is that
16 correct?

17 **THE WITNESS:** That's correct.

18 **COMMISSIONER SKOP:** Okay. And unless the Bid
19 Rules waive, that is the benchmark estimated cost for
20 evaluating any potential cost overruns; is that correct?

21 **THE WITNESS:** That is correct.

22 **COMMISSIONER SKOP:** Okay. Now if, under GBRA,
23 if actual costs are automatically converted into
24 first-year system revenue requirements which roll
25 directly into rates via GBRA, how does the Commission

1 have the opportunity to review the prudence of what was
2 the actual cost in terms of what's expressed in revenue
3 requirement versus the estimated cost which was
4 expressed in, in the dollars of the, the underlying
5 capital project?

6 **THE WITNESS:** Well, if I understand your
7 question correctly, it's if, if the project comes in at
8 a lower cost, there will be a subsequent adjustment that
9 will flow that lower, that lower capital cost back to
10 the customers.

11 **COMMISSIONER SKOP:** Okay. Thank you. With
12 respect to I guess what has been marked for
13 identification as Exhibit 185, which was the 10K
14 statement, on Page --

15 **CHAIRMAN CARTER:** 385, Exhibit 385.

16 **COMMISSIONER SKOP:** 385. On Page 9 of the 10K
17 statement it describes the FPL solar projects that the
18 Commission has previously approved and that will come
19 into service by the end of 2010; is that correct?

20 **THE WITNESS:** That's correct.

21 **COMMISSIONER SKOP:** Okay. And also on Page 4
22 of that 10K, if I could call your attention to the
23 second full paragraph. In that paragraph it describes
24 the economic stimulus provided under the American
25 Recovery and Reinvestment Act of 2009 and generally

1 articulates the provisions as they were known at the
2 time to the company; is that correct?

3 **THE WITNESS:** Correct.

4 **COMMISSIONER SKOP:** Okay. With respect to the
5 dollar amount that's going to be sought for recovery on
6 Page 9, which I believe, subject to check, was
7 \$728 million, does that include the effects of the
8 investment tax credits?

9 **THE WITNESS:** I don't believe that the effects
10 of the investment tax credit are included in the total
11 capital cost of the solar projects. But they are
12 included in other MFRs, and I wish -- I can't tell you
13 the exact number. But Witness Kim Ousdahl can walk you
14 through. It's one of the adjustments that we have made
15 in the case that's caused so much confusion is the
16 impact of the economic stimulus bill that we did not
17 know obviously at the time that we filed the case in
18 February or March.

19 **COMMISSIONER SKOP:** All right. Thank you.
20 But it would stand to reason, would it not, that FPL
21 would elect to make the convert -- excuse me. It stands
22 to reason that FPL would make the election to take the
23 convertible investment tax credit over a traditional
24 investment tax credit for the solar projects described
25 on Page 9 of the 10K to the extent that it would reduce

1 the capital cost of those projects by 30 percent,
2 thereby immediately reducing the amount sought for
3 recovery through the Environmental Cost Recovery Clause
4 by approximately \$218 million, subject to check.

5 **THE WITNESS:** I'm not -- two caveats. I'm not
6 familiar with all the percentages and I can't give you
7 those off the top of my head. I'm also not sure whether
8 we're flowing it through the clause or whether we've put
9 it in base rates. And I'm going to defer that to Kim
10 Ousdahl.

11 Regardless, I just want to assure you that
12 those benefits would flow back to the customer. And I
13 believe that they're reflected in the adjustments that
14 we made to the filing recently.

15 **COMMISSIONER SKOP:** Okay. And I'll reserve
16 the question for that. I appreciate it. I guess the
17 point I was trying to make that you can understand, that
18 if you can take an immediate 30 percent rebate from the
19 Treasury for the cost of the project, then it doesn't
20 seem inherently fair to put 100 percent of the project
21 either in base rates or through clause recovery, that
22 the consumers should benefit from that 30 percent
23 immediate cash back, if you will.

24 **THE WITNESS:** And I apologize. I'm not sure
25 where it's reflected. I don't feel confident enough to

1 tell you one way or the other. But I know it's
2 reflected.

3 **COMMISSIONER SKOP:** Okay. Okay. And then
4 just one final question. With respect to Page 97 of the
5 10K, it identifies the FPL Group segment information.
6 And I'm specifically looking at the FPL business
7 operating unit during the 2006, 2007 and 2008 years.
8 And essentially would it be correct that operating
9 revenue was flat or declining over that three-year
10 period?

11 **THE WITNESS:** That's correct.

12 **COMMISSIONER SKOP:** Okay. And that's due to
13 the economy and --

14 **THE WITNESS:** Correct.

15 **COMMISSIONER SKOP:** Okay. And net income
16 expressed as a percentage of operating revenue during
17 that period, subject to check, held relatively constant
18 at approximately 7 percent of operating revenue?

19 **THE WITNESS:** I have not done the math,
20 Commissioner. But I would just point out to you that
21 during that time we also -- that's one dimension. We
22 also have to keep looking at how much capital we kept
23 putting into the business during this three-year period,
24 which is a significant amount of capital for essentially
25 the same net income.

1 **COMMISSIONER SKOP:** Okay. Thank you.

2 **CHAIRMAN CARTER:** Okay. Anything further from
3 the bench? Otherwise, I'm going to go to Ms. Bradley.

4 Ms. Bradley, I think you're next up.

5 Mr. Wright?

6 **MR. WRIGHT:** Just before we go on, Mr.
7 Chairman.

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

9 **MR. WRIGHT:** I'm unclear whether the exhibit
10 proffered by Mr. Moyle was actually marked as 386 or
11 whether the next exhibit up would be 386.

12 **CHAIRMAN CARTER:** It was marked as 386, but
13 what we'll probably do, we'll kind of put it on hold
14 until when Mr. Barrett comes. We'll deal with it on
15 that level.

16 **MR. WRIGHT:** And we'll give it a new number
17 then, so --

18 **CHAIRMAN CARTER:** No. We'll keep it at that
19 number.

20 **MR. WRIGHT:** We'll keep it at 386?

21 **CHAIRMAN CARTER:** Yeah.

22 **MR. WRIGHT:** Okay. That's all I needed to
23 know.

24 **CHAIRMAN CARTER:** For sym -- I hear the word
25 symmetry a lot this morning. So for symmetry and

1 simplicity we'll do it like that.

2 And I've made a note on my exhibit list,
3 Commissioners.

4 **MR. MOYLE:** And also, I neglected but should
5 have marked 387 as well, which was the confidential
6 exhibit.

7 **CHAIRMAN CARTER:** Let's not do that.

8 **MS. BENNETT:** Mr. Chairman --

9 **CHAIRMAN CARTER:** Yes, ma'am.

10 **MS. BENNETT:** -- it might be helpful.

11 **CHAIRMAN CARTER:** Okay.

12 **MS. BENNETT:** Staff has a composite exhibit
13 that is all confidential. If you'll give me some time
14 before the -- after, after lunch to deal with it.

15 **CHAIRMAN CARTER:** Okay. Why don't we do it
16 that way, and that way we'll kind of accommodate. I get
17 kind of nervous about the confidential documents. So
18 before we give it a number, let's get with staff during
19 the break and we can kind of come up with -- so we'll
20 all know what we're talking about when we're talking
21 about the confidential document.

22 **MR. MOYLE:** Okay. We'll talk about it with
23 staff. Thank you, Your Honor.

24 **CHAIRMAN CARTER:** Okay. That way it'll be
25 easier, so we'll all know what we're talking about at

1 that point in time. And just, that may seem kind of out
2 of the way, but since we've got this 386 here, when
3 Mr. Barrett comes in, we'll go back, staff. So just
4 kind of make a note. We'll come back to Exhibit
5 Number -- that's been marked for identification Number
6 386, because that's the budget information.

7 Anything -- before we go, anything further
8 before we go next on to -- I'm ready for you,
9 Ms. Bradley, but I just wanted to make sure we get all
10 of the housekeeping matters out of the way.

11 Staff, are you clear on --

12 **MS. BENNETT:** Just let me confirm. We're
13 going to deal with 386 and enter it when Mr. Barrett
14 comes up. And I made a note.

15 **CHAIRMAN CARTER:** That's correct.

16 **MS. BENNETT:** And we will deal with the
17 confidential exhibit that Mr. Moyle discussed when we
18 come back from lunch. And I have the --

19 **CHAIRMAN CARTER:** And, yes, and get with all
20 of the parties and kind of let them -- and do that. And
21 we, if you think we need -- if the parties, do you think
22 we need to add a little -- I think we're going to go for
23 an hour and 15 minutes for the lunch. Would that be an
24 appropriate time for you guys to get lunch as well as
25 get with the parties on that?

1 **MS. BENNETT:** Yes.

2 **CHAIRMAN CARTER:** Okay. Let me see, does
3 anyone have any problem with that time frame?
4 Mr. Moyle?

5 **MR. MOYLE:** We'll get, we'll get with staff.
6 I have another obligation. I may not be here for the
7 conversation, but --

8 **CHAIRMAN CARTER:** Okay. All right. Okay.
9 Well, what we'll do, we'll just make sure by the end of
10 the day we get with all the parties on that, staff.
11 Okay?

12 Okay. Ms. Bradley.

13 **MS. BRADLEY:** Thank you, Mr. Chairman.

14 **CHAIRMAN CARTER:** You're standing between us
15 and lunch, so let's just -- no pressure here.

16 **MS. BRADLEY:** Thank you, sir. I really
17 appreciate that. Man.

18 (Laughter.)

19 Mr. Olivera, I guess we're going to have to be
20 quick here.

21 **CHAIRMAN CARTER:** No. No. You have -- you
22 can -- we'll come back and give you an appropriate time.
23 You know I'm always pulling your leg and stuff like
24 that.

25 **MS. BRADLEY:** That's okay.

1 **CHAIRMAN CARTER:** Thank you.

2 **CROSS EXAMINATION**

3 **BY MS. BRADLEY:**

4 **Q.** Mr. Olivera, as CEO I understand you're
5 responsible for the overall operations of Florida Power
6 & Light; correct?

7 **A.** I am, yes.

8 **Q.** And you mentioned earlier that you and your
9 staff have spent a lot of time and effort preparing for
10 this rate case. How long has that been going on before
11 you filed it?

12 **A.** I'm trying to go back by memory. Easily six
13 months before the actual filing date we started working.
14 I may be off a month or two. But it's measured in
15 months, not weeks or days.

16 **Q.** Okay. And did you have any planning prior to
17 that, or is that the beginning of your planning for
18 this?

19 **A.** When you say planning, you're talking about
20 planning for the rate case or planning for the
21 expenditures forecast?

22 **Q.** Well, either one.

23 **A.** We -- let me address first the rate case, and
24 then I'll talk about the expenditures.

25 **Q.** That's fine. Thank you.

1 **A.** We knew that we were coming to the end of the
2 four-year agreement, which expires at the end of this
3 year. So we knew for some time that there was a
4 reasonable likelihood that we would have to file for new
5 rates coming into the year, particularly as we saw the
6 downturn in terms of what was happening in the economy
7 and we kept looking at the amount of capital that was
8 going into the business.

9 As far as the process, I'll defer to
10 Mr. Barrett on the specifics, but we may have
11 accelerated our budgeting process just a little bit to
12 make sure that we had sufficient time to go through the
13 normal budgeting and O&M and capital forecasting process
14 before we developed the rate filing or the, in the
15 jargon here, the MFRs.

16 **Q.** So you started some period of time before you
17 started working on the rate case looking at the budget
18 and going through that process?

19 **A.** Yes. That's correct.

20 **Q.** Do you have a guesstimate of about how much
21 before that?

22 **A.** I don't have a clear time line in my mind. We
23 normally will start the process sometime in the summer.
24 So if you want a specific date, I'll defer to
25 Mr. Barrett. If I can get you comfortable that it was

1 sometime in the summer of last year, which is kind of
2 our normal budgeting process, so it may have shifted by
3 a few weeks. But generally we go through it in the
4 summer. And because of hurricane season, we tend to
5 want to make sure we build in a little bit of a cushion
6 as we develop the budget. So we tend to do the budgets
7 a little earlier so that if we have weather
8 disturbances, we're able to still accommodate it. And
9 we have kind of a finish line, which is by December we
10 want to make sure we have a full budget.

11 **Q.** So you started the overall process about a
12 year before you actually filed the rate case?

13 **A.** We started the process sometime last summer.
14 That's correct. But that's pretty consistent with how
15 we've done it every year.

16 **Q.** Okay, sir.

17 **A.** Give or take a few weeks.

18 **Q.** Now I assume that as CEO there's a lot of time
19 demands on you?

20 **A.** Most of the time, yes.

21 **Q.** And being CEO, you can't attend to everything,
22 so you have to allocate your time to handle what's most
23 important to you and the company?

24 **A.** That's the only way you can run a big company,
25 is you have to rely on your team and really the rest of

1 the employees to do their job.

2 Q. Now in the past year while you were doing all
3 this rate case proceedings, did you attend shareholder
4 meetings?

5 A. I did attend our shareholder meeting.

6 Q. And about how many during that period of time
7 would you have had?

8 A. I'm sorry?

9 Q. About how many of those meetings would you
10 have had during that period of time?

11 A. We've only, we only have one shareholder
12 meeting a year, and I believe that was held in May of
13 last year.

14 Q. Okay.

15 A. I'm sorry. May of this year as well.

16 Q. All right. Is Florida Power & Light a member
17 of Affiliated Industries?

18 A. I'm sorry?

19 Q. I'm sorry.

20 A. Yeah. Please, talk a little -- you have a
21 soft voice.

22 Q. I'll talk a little bit louder. Is Florida
23 Power & Light a member of Affiliated Industries?

24 A. Affiliated -- I'm not familiar with Affiliated
25 Industries.

1 **Q.** I'm sorry. Associated Industries. I'll get
2 it right eventually.

3 **A.** We are a member of Associated Industries of
4 Florida.

5 **Q.** Okay. And do you serve on the executive
6 committee or do any of your executives or senior staff
7 serve on the executive committee?

8 **A.** I do not serve, and I'm not a member
9 personally of Associated Industries of Florida. There
10 is a company senior executive that's part of AIF.

11 **Q.** And does that person serve on the executive
12 committee?

13 **A.** I believe he does, but I'm not 100 percent
14 sure.

15 **Q.** All right. Now when this -- who from your
16 company asked affiliated -- I'm sorry, I keep saying
17 affiliated -- Associated Industries --

18 **CHAIRMAN CARTER:** That's because you're
19 hungry.

20 **MS. BRADLEY:** That's it.

21 **CHAIRMAN CARTER:** You're not alone.

22 **MS. BRADLEY:** Okay, sir.

23 **BY MS. BRADLEY:**

24 **Q.** Who from your company requested that
25 Associated Industries intervene in this case?

1 **A.** I don't know that a formal request was ever
2 made, although I'm sure that there's been discussion, as
3 has been in a number of forums around the state, about a
4 rate case and why the company has made the rate request.

5 **MS. CLARK:** Mr., Mr. Chairman, I would pose
6 two objections to this further line of questions.

7 **CHAIRMAN CARTER:** Okay. Let's hear them.

8 **MS. CLARK:** First of all, it's outside the
9 scope of Mr. Olivera's testimony, and it's not relevant
10 to any of the merits in this case.

11 **CHAIRMAN CARTER:** Ms. Bradley, to the
12 objection.

13 **MS. BRADLEY:** There have earlier been
14 statements that the membership voted to oppose this -- I
15 mean, to support this rate increase, and I figure he's
16 the best person for the company to ask questions
17 regarding that.

18 **CHAIRMAN CARTER:** Ms. Helton.

19 **MS. HELTON:** When you say the membership,
20 Ms. Bradley, which membership are you referring to?

21 **MS. BRADLEY:** The Associated Industries. And
22 he's testified that Florida Power & Light -- I mean,
23 yes, Florida Power & Light is a member.

24 **MS. HELTON:** I'm sorry. I don't remember the
25 discussion that the president of the company said that

1 the membership voted to participate.

2 **MS. BRADLEY:** That was in opening statements.

3 **MS. HELTON:** Oh, I'm sorry.

4 **MS. BRADLEY:** But I'm saying as head of the
5 company and a person responsible for overall operations
6 of the company, he would be in the best position to
7 respond to this.

8 **MS. PERDUE:** Mr. Chair?

9 **CHAIRMAN CARTER:** Yes, ma'am.

10 **MS. PERDUE:** There was no such statement that
11 a membership voted during opening statements. That's a
12 mischaracterization of the opening statements that
13 Associated Industries of Florida made.

14 **MS. BRADLEY:** I believe the statement was
15 membership supported it.

16 **CHAIRMAN CARTER:** I tell you what let's do.
17 Let's go to lunch.

18 **MR. BUTLER:** Mr. Chairman? Mr. Chairman?
19 Before we all leave the tables, are there any other
20 questions intended with respect to the exhibit, the
21 confidential exhibit?

22 **CHAIRMAN CARTER:** You can take the envelope.

23 **MR. BUTLER:** Okay. If I may, I'm just going
24 to take all the envelopes back. If we need them after
25 lunch, we can get them back. Thank you.

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CHAIRMAN CARTER: Okay.

(Recess taken.)

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STATE OF FLORIDA)
 :
COUNTY OF LEON)

CERTIFICATE OF REPORTER

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

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

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

DATED THIS 28th day of August, 2009.

Linda Boles
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