

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

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

2009 DEPRECIATION AND DISMANTLEMENT DOCKET NO. 090130-EI
STUDY BY FLORIDA POWER & LIGHT
COMPANY.

VOLUME 4

Pages 418 through 528

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PROCEEDINGS: HEARING

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

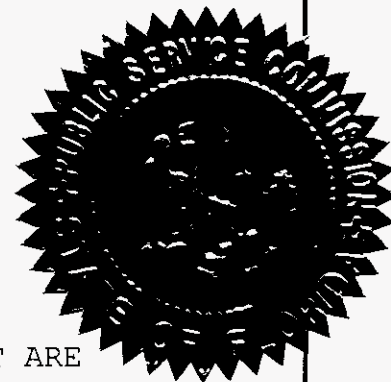
DATE: Tuesday, August 25, 2009

TIME: Commenced at 9:30 a.m.
Concluded at 5:30 p.m.

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

REPORTED BY: JANE FAUROT, RPR
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PARTICIPATING: (As heretofore noted.)



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I N D E X

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P R O C E E D I N G S

(Transcript follows in sequence from
Volume 3.)

CHAIRMAN CARTER: We are back on the record. And just before we get going again, for planning purposes, we are going to probably go until about 7:00 tonight. We have another court reporter coming in around 5:30, and we will need about 15 minutes or so, because she is not in-house, it will be contract. So we will need to make some arrangements to make the transition on that.

But I think that we should -- I want to see, you know, where we are progressing at 7:00 tonight. And remember, guys, we have got approval from DMS to keep the air conditioning on, but the electronic locks on the doors, I think they are still at either 5:30 or 6:00. I will have to get with Chris in a moment to find out on that, but just once it gets shy of 5:30 or 5:00 -- it's 6:00, the electronic locks? Okay. So, if it gets beyond 6:00, then you have got to just remember the buddy system. I mean that in a positive way.

Okay. Staff, are there any other preliminary matters before we begin?

MS. BENNETT: No.

CHAIRMAN CARTER: Okay. Ms. Bradley, you're

1 recognized.

2 **MS. BRADLEY:** Thank you, sir.

3 CROSS EXAMINATION

4 **BY MS. BRADLEY:**

5 Q. Mr. Olivera, I don't remember exactly where we
6 were when we stopped. But is your understanding of the
7 participation with Associated Industries consistent with
8 what counsel said that the membership did not vote on
9 this?

10 **MS. CLARK:** Mr. Chairman, I would like to
11 object to this line of questioning. It is irrelevant to
12 this docket. It is outside the scope of Mr. Olivera's
13 testimony, and it doesn't go to the merits. There is no
14 issue on this particular line of questions, so I object
15 to any further questioning on it.

16 **CHAIRMAN CARTER:** Ms. Bradley, to the
17 objection.

18 **MS. BRADLEY:** Well, they are here. They made
19 representations in opening, and Mr. Olivera is the CEO
20 overseeing the operations of Florida Power and Light,
21 and is the person most able to respond to these
22 questions.

23 **CHAIRMAN CARTER:** Ms. Helton.

24 **MS. HELTON:** Mr. Chairman, I do think it is
25 appropriate to ask a couple of questions along this

1 line. I would hate for us to spend much time on it,
2 because we have, I think, other things to do in this
3 case.

4 **CHAIRMAN CARTER:** Okay. You have got a couple
5 of questions.

6 **MS. BRADLEY:** Okay. I will make the most of
7 them.

8 **CHAIRMAN CARTER:** I appreciate it.

9 **MS. BRADLEY:** Thank you.

10 **BY MS. BRADLEY:**

11 **Q.** Do you need me to repeat that, Mr. Olivera?

12 **A.** No, I think I heard it.

13 **CHAIRMAN CARTER:** Turn your microphone on.

14 **THE WITNESS:** Am I on?

15 **CHAIRMAN CARTER:** You are on now.

16 **THE WITNESS:** Okay. I believe your question
17 was the Associated Industries of Florida, did they take
18 a vote. As I told you, I was not there. I'm not a
19 member. I can only take counsel at her word.

20 **BY MS. BRADLEY:**

21 **Q.** Do you have any information or what was your
22 understanding about that, how that transpired?

23 **A.** I don't have any other information.

24 **Q.** Okay. And let me ask you one more question on
25 that. Who is Florida Power and Light's representative

1 to Associated Industries?

2 **A.** He is senior vice-president in charge of
3 governmental affairs.

4 **Q.** And his name is?

5 **A.** Ed Tancer.

6 **Q.** Okay. And he is also your general counsel?

7 **A.** He is not our general counsel.

8 **Q.** You said you had a briefing on the public
9 service hearings. Can you tell me what that consisted
10 of, how many people, how that was conducted?

11 **A.** Can you clarify, you are asking about my
12 briefing, or --

13 **Q.** Yes, sir, I'm sorry. You indicated earlier
14 that you did not attend any of the public service
15 hearings, but that you were briefed on it. I thought
16 that is what you said.

17 **A.** I had really two opportunities, maybe three.
18 One is I received kind of a daily summary of the
19 hearings. Secondly, I had an opportunity to talk to the
20 FPL officer who had responsibility for kind of
21 conducting our side of those hearings, and that is
22 Ms. Marlene Santos. And, thirdly, I received a summary
23 when they were all done of those hearings.

24 **Q.** Okay, sir. Did you understand -- well, I'll
25 strike that and ask it a different way. We had a number

1 of people that testified about the charitable donations
2 that Florida Power and Light had made. And one or two
3 of them indicated that they were there at the request of
4 Florida Power and Light. Were you aware of that?

5 **A.** I'm not aware of specific instances. I am
6 aware that as part of the process we are required to
7 invite all of our customers to participate in the
8 quality of service hearings. I'm sure that people that
9 we have on the ground in the local communities notified
10 personally some of the constituents that we have to
11 attend the quality of service hearings. The same way
12 that I'm sure all the intervenors notified some other
13 parties to, at minimum, to participate in the hearings.

14 **Q.** How much did Florida Power and Light spend on
15 organizing all of that?

16 **MS. CLARK:** Mr. Chairman, I object to that
17 question.

18 **CHAIRMAN CARTER:** Ms. Bradley.

19 **MS. BRADLEY:** I don't understand the grounds
20 for such an objection.

21 **MS. CLARK:** It is an inaccurate
22 characterization, and there are no facts to support --
23 she has laid no foundation for that question.

24 **CHAIRMAN CARTER:** Ms. Bradley.

25 **MS. BRADLEY:** Mr. Olivera has just stated

1 that -- well, actually, starting at the public hearings,
2 a couple of people said that they had been asked by
3 Florida Power and Light to come and talk about the
4 charitable events, donations they had made. Mr. Olivera
5 just stated he was not aware of specific instances. In
6 other words, he was not at the hearing, but was aware
7 that they asked all of their customers and that the
8 local people had specifically asked some people. And I
9 was just inquiring regarding what he just said.

10 **MS. CLARK:** Mr. Chairman, I would suggest to
11 you that Ms. Bradley is drawing inferences that are not
12 there from Mr. Olivera's answers to her question.

13 **CHAIRMAN CARTER:** Ms. Bradley.

14 **COMMISSIONER ARGENZIANO:** Mr. Chair.

15 **CHAIRMAN CARTER:** Excuse me. Excuse me. Hang
16 on a second. I will come to you in a minute, Ms.
17 Helton.

18 Commissioner Argenziano.

19 **COMMISSIONER ARGENZIANO:** I am not sure what
20 the objection is since I do recall those comments being
21 made at the hearings. I had concerns over that issue,
22 and, quite frankly, somewhere down the line I plan to
23 asked the question if FPL spent any money. I mean, it
24 is only a legitimate question to ask after it was stated
25 at the hearings, and it is something I would look at. I

1 want to know how the company is spending their money.
2 And I think it is a legitimate question, and unless the
3 attorney can tell me the specifics of the objection,
4 maybe I would change my mind.

5 **MS. CLARK:** I'll be happy to.

6 **CHAIRMAN CARTER:** Ms. Clark.

7 **MS. CLARK:** There is no foundation laid for
8 the suggestion that any money was spent asking these
9 people to come to the service hearings.

10 **COMMISSIONER ARGENZIANO:** But there was
11 suggestions or there were -- we were told that they were
12 asked, so then the next question would be, well, have
13 you spent money. And they may not have. FPL may not
14 have spent any money. It may have been as simply as Mr.
15 Olivera said that, you know, sometimes you ask as
16 anybody else does. But I think as a Commissioner, I
17 would have the right to ask that question, which I will
18 at some point. I just don't know why it would be
19 objected to now. And I guess what you are saying is you
20 feel that there was no -- there is nothing to support
21 that they have spent any money.

22 **MS. CLARK:** Commissioner, let me be clear.
23 The question was not did you, it was how much, and that
24 is what I object to.

25 **COMMISSIONER ARGENZIANO:** Okay.

1 **CHAIRMAN CARTER:** Ms. Helton.

2 **MS. BRADLEY:** Well, I will happy to rephrase
3 it and ask Ms. Clark's question first.

4 **CHAIRMAN CARTER:** I will come right back to
5 you.

6 Ms. Helton.

7 **MS. HELTON:** I was just thinking that maybe
8 Ms. Bradley could rephrase it, too. And maybe we could
9 ask the witness whether he's aware if any money was
10 spent.

11 **CHAIRMAN CARTER:** You all have got that Vulcan
12 mind meld going on. Let's try again.

13 You're recognized.

14 **MS. BRADLEY:** I like Ms. Helton's even better.

15 **BY MS. BRADLEY:**

16 **Q.** Are you aware of your company sending any
17 money to organize people to come and speak on behalf of
18 Florida Power and Light?

19 **A.** We did not spend any money asking anybody in
20 terms of people who spoke. I'm sure we spent dollars on
21 transportation to get people there, but that would be
22 the full extent of the expenditures.

23 **Q.** Do you know how much was spent getting people
24 there?

25 **A.** No, I don't, but I'm sure it would be a pretty

1 minimal cost.

2 Q. Do you know if any of the people that are
3 going to be testifying this week would have knowledge of
4 the exact amount?

5 A. I doubt that we segregated those costs
6 specifically for that single activity of attending a
7 quality of service hearing. For many of our people it
8 was just going down the street from where they normally
9 work.

10 Q. Okay. You mentioned a minute ago something
11 about transportation to get people to the hearings.
12 That's what I'm asking you about.

13 A. Going down the street is transportation, I
14 think.

15 Q. Is there someone that would know for sure?
16 Are you saying definitely you did not separate out those
17 costs?

18 A. I don't know with complete certainty, but I
19 would be surprised, not the way that we normally account
20 for costs, that we had a separate account specifically
21 designated for transportation for people to get from
22 their normal work location to the quality of service
23 hearings.

24 Q. Where would that money have come from? What
25 account would it have come out of?

1 **A.** You are talking about --

2 **Q.** Transportation costs.

3 **A.** -- the specific transportation costs? It
4 would come out of part of an operating and maintenance
5 expense.

6 **Q.** And who pays for that?

7 **A.** What do you mean who pays for that?

8 **Q.** Who pays for it? Do customers pay for it? Do
9 stockholders pay for it? Who pays for it?

10 **A.** Well, I doubt that we have a forecast for more
11 quality of service hearings next year. So to the extent
12 that we don't have that, it wouldn't be in rates. If
13 there is some other incremental cost that would be
14 directly attributed to the rate case, to this
15 proceeding, those costs would be part of the forecast.
16 And those, we would ask that they would be part of an
17 MFR, and we would ask that those costs be amortized over
18 a set period of time. I believe in this case it is
19 three years.

20 **Q.** In other words, customers will pay for it?

21 **A.** If this Commission approves the request, and
22 if they approve the amortization schedule, yes,
23 customers would be asked to pay a portion of that, yes.

24 **Q.** Okay, sir. Now, some of the people that said
25 that they were asked to come testify on your behalf

1 testified that they were having -- they were very
2 complimentary about the service they were getting and
3 hadn't had any problems and that type thing. And then
4 at some of the later hearings, we had a number of people
5 that came in and testified that they had had a number of
6 service interruptions following storms, and there were a
7 couple of people that testified they were very concerned
8 because they were sitting in their house in the dark,
9 and their neighbors across the street that were served
10 by a different utility had electricity for several days
11 following the storms. And do you have any understanding
12 of why there was such a difference between the service
13 provided in some areas and those provided in other
14 areas?

15 **A.** I can't talk -- address that without having
16 all of the facts, but each customer that complained
17 about his or her service, that was fully noted, there
18 was a full investigation in each one. I believe that we
19 submitted the information to this Commission at the
20 conclusion of the quality of service hearings, kind of
21 outlining the customer, what the complaint was, how the
22 company handled it, and what the final resolution of
23 that complaint is. And I'm sure if you haven't had
24 access to that, I'm sure that that information is
25 readily available.

1 Q. Actually, I was referring more to the before
2 rather than the after. In other words, some people came
3 in and said they were not having service interruptions
4 and were being provided good service. And then we had
5 other neighborhoods that said this was an ongoing
6 situation with them. Do you have any understanding or
7 explanation for why there is such a difference between
8 some neighborhoods and others as to the service
9 provided?

10 A. We try really hard to provide top-notch
11 service to all of our customers, and I think the record
12 speaks for itself. But even with all of our efforts
13 from time to time things kind of fall through, even
14 though I would tell you we have pretty robust processes
15 that highlight customers that have multiple
16 interruptions, for example. And I actually look at that
17 data once a month to see, you know, what is the number
18 of customers that have had four or more interruptions,
19 for example. But from time to time, we will have a
20 problem, and somehow it takes us a little while to get
21 to it. So I am assuming that in this case we had a few
22 of those customers, and I am pretty confident that those
23 complaints have been addressed subsequent to the
24 hearings.

25 Q. Some of those customers testified that even

1 though they had lost appliances on more than one
2 occasion, they had requested that your company pay for
3 it and been provided little, if any, compensation for
4 loss of appliances caused by the service interruptions
5 and power surges. Is that your policy?

6 **A.** Our policy normally is if it is an act of God,
7 and by that I mean we have a number of premises that --
8 you know, we live in the lightning capital of the world.
9 It actually used to be. We are number two now. Rwanda
10 is now number one in terms of lightning. But we are
11 number one in lightning in the United States, and so
12 there are a number of these events where lightning will
13 cause damage, and in those cases we decline to cover it.

14 If it is something that is clearly caused by
15 something that we have done, that we were negligent in
16 some way, we will pay for that. And so, I mean, if you
17 want to go down each specific case, Marlene Santos, I'm
18 sure has all the information of all the customers. And
19 if you have specific instances, I'm sure she could tell
20 you what the specific resolution was for a given
21 customer and how the customer -- and how the company
22 policy was applied. I don't have that information, and
23 I'm not prepared to do so today.

24 **Q.** Who makes the determination as to whether it
25 was an act of God?

1 **A.** It is generally done through a review of the
2 case and an analysis of personnel who are trained and
3 dedicated to handle these kinds of claims.

4 **Q.** What was your compensation package for 2009?

5 **A.** Well, for 2009, at this point I only have only
6 the base portion of my salary has sort of been
7 determined. And so my base salary this year, I believe
8 is 609,000.

9 **Q.** Are you entitled to further compensation
10 through stock, and bonuses, and that type of thing?

11 **A.** Yes, the same way that the employees that we
12 talked about earlier that make more than \$165,000, my
13 compensation is a component of a base salary, a cash
14 incentive, and equity awards, which is stock.

15 **Q.** And what is that total package?

16 **A.** In 2008 it was 3.2 million.

17 **Q.** Is there any projection for 2009?

18 **A.** I'm sure that we have a projection. I don't
19 have that information in front of me. Ms. Slattery can
20 give you the specific projection.

21 **Q.** Do you know whether it is higher than for
22 2008?

23 **A.** I know that my base salary went up
24 approximately 2-1/2 percent from '08 to '09.

25 **Q.** Do you know what the projection is or the

1 request is for 2010?

2 A. Not off the top of my head.

3 Q. Is there an increase?

4 A. I would hope that there is an increase, but I
5 don't know for a fact.

6 Q. In light of the fact -- well, maybe I should
7 ask you first. In your briefings, did they tell you
8 that there were a number of people that came and said
9 that they are retired, they are living on small amounts
10 of money, Social Security has been frozen for the next
11 couple of years, and they are unable to pay any more
12 than they are already paying. In fact, they are having
13 trouble paying their current costs.

14 A. I am aware that there are a number of
15 customers that discussed going through economic
16 hardships. I also heard you speak yesterday when you
17 talked about that customers are having problems not just
18 paying their electric bills, but they are having
19 problems paying their medical bills, they are having
20 problems paying their food bill. And so, you know, we
21 are clearly sensitive to that.

22 The question really is whether, you know, when
23 you already have the lowest rates in Florida and whether
24 this company should be denied a rate request on the
25 basis of that when you have the lowest rates, you are

1 forecasting that your bills next year for the average
2 residential customer will be \$9 lower. I think the way
3 that we address the needs of those people, and I
4 absolutely think that we have to address their needs,
5 because these are people that for whatever reason they
6 fall outside kind of the social net. But the way to
7 address it is through the institutions that we have, is
8 through whatever government aid can be provided, and
9 through churches and other social groups.

10 The company is sensitive to that. We support
11 a number of community efforts along these lines,
12 including contributions to homeless shelters. We have
13 consistently donated a million dollars a year for Care
14 to Share to help customers who have difficulty paying
15 their electric bill. And probably the most rewarding is
16 we joined a group of companies and worked with state
17 government in increasing the LIHEAP funds, so Florida
18 went from -- I believe it was like 25 or \$26 million to
19 \$100 million of available funds for low income
20 customers, low income people in the state of Florida.
21 And that was federal -- federal funds.

22 So, you know, we are mindful of the needs of
23 people who are going through a tough time, and it is
24 unfortunate, but we don't believe that the way to
25 address that is to cut our rates even further than the

1 low level that they are today.

2 Q. Actually, sir, that was your question not
3 mine. Are you aware that government has -- that the
4 governments you were talking about providing these
5 services have had to cut millions from the budget this
6 year?

7 A. I am aware of that.

8 Q. Would you and your other executives be willing
9 to forego a salary increase so that some of your
10 customers might have a little bit more affordable rates?

11 A. I think, if you look at our compensation --

12 Q. If you would answer yes or no for me there,
13 and then you can explain your question.

14 A. Okay. No, because I think that is a
15 short-sighted view. And as I talked earlier when we
16 were talking about the salaries of people, many of our
17 highly compensated people, about half of them, are
18 nuclear people where there is tremendous pressure to
19 keep raising the salaries and where there is tremendous
20 pressure to be competitive. And I can say the same
21 thing about any number of other areas in the company
22 where you need highly specialized, highly technical
23 people that have lots of opportunities to go to other
24 places where they can make more money.

25 So, in order to be able to deliver the kind of

1 results that I think this company has been able to
2 deliver year in and year out, we need good people. We
3 need very good people. And those people have to be
4 compensated using really the market reference points.
5 Whatever the market is for those jobs, that is what we
6 have to pay those people. And if we are not able to do
7 that for a period of time, those people are going to go
8 to other places. It is just the way the world is.

9 Q. Sir, are you aware that -- I don't know how
10 detailed I can get, but some of your lower paying or
11 lower qualified people are making more than the cabinet
12 members are?

13 A. I think -- are you referring to some of the
14 union people and what they are making?

15 Q. No, sir, I'm not.

16 A. Then please be more specific.

17 MS. BRADLEY: I would be happy to, but I don't
18 want to violate any of these confidentiality rules.

19 CHAIRMAN CARTER: Let's take a second here.

20 Ms. Bennett, would you get with Ms. Bradley,
21 and we will just kind of take a break in place.

22 MS. CLARK: You know, she has the confidential
23 exhibit in front of her. If she wanted to ask about
24 that confidential exhibit in the same way that Mr. Moyle
25 did, and we would have to repass it out.

1 **CHAIRMAN CARTER:** Well, I just don't -- you
2 can never -- what is that about the toothpaste in the
3 tube?

4 **MS. CLARK:** You can't put it back in.

5 **CHAIRMAN CARTER:** Yes, that's right. So let's
6 don't take it out if we don't have to.

7 What do you think?

8 **MS. BRADLEY:** I don't know that I should
9 respond to what I think of that. If I can't ask
10 anything that would identify in any way these people
11 even by their category.

12 **THE WITNESS:** Mr. Chairman, I need a copy of
13 the exhibit if I am going to be answering questions on
14 it.

15 **CHAIRMAN CARTER:** Let's just take a minute
16 here. We are kind of getting -- we want to maintain
17 decorum at all points. So, Commissioners, let's just
18 take a minute here, and we will come back on the hour.

19 (Recess.)

20 **CHAIRMAN CARTER:** All right. We are back on
21 the record. And we were in cross-examination, but
22 before we proceed, Ms. Clark, you're recognized.

23 **MS. CLARK:** Yes, Mr. Chairman, I believe
24 Mr. Olivera wanted to clarify an answer to a question
25 Ms. Bradley asked regarding transportation.

1 **CHAIRMAN CARTER:** Transportation. Okay.

2 Mr. Olivera, you're recognized. Turn your
3 microphone on.

4 **THE WITNESS:** I'm sorry. I should know by
5 now. When we were talking about the quality of service
6 hearings, and I discussed that the only cost that I
7 could think of that FPL would pay were transportation
8 costs, I was referring to the transportation costs of
9 FPL employees that traveled to the hearings, not anybody
10 else's transportation costs. It is not our policy nor
11 do we pay for anybody else's transportation costs except
12 our own employees. Which probably explains why I said
13 it was really a pretty minimal cost and why we don't
14 keep track of it, because it is part of the employees'
15 transportation costs and part of our course of doing
16 business.

17 **CHAIRMAN CARTER:** Okay. Ms. Bradley.

18 **MS. BRADLEY:** Thank you.

19 **BY MS. BRADLEY:**

20 **Q.** Mr. Olivera, when did you come to that
21 realization?

22 **A.** During the break when it was pointed out to me
23 that I may -- that you and I may have a different
24 interpretation.

25 **Q.** And who pointed that out to you?

1 **A.** My attorney representing me.

2 **MS. BRADLEY:** Okay. I want to know what --

3 **MS. CLARK:** Yes, I confess, I did that. I
4 just thought it would be better having it clarified
5 right now in case she had more questions rather than
6 doing it on redirect. So, yes, I suggested he clarify
7 that.

8 **CHAIRMAN CARTER:** Okay.

9 **MS. BRADLEY:** Mr. Chairman.

10 **BY MS. BRADLEY:**

11 **Q.** Mr. Olivera, I gave you some numbers, and I
12 don't know whether you have had a chance to look at any
13 of those.

14 **A.** I'm quick. I'm not that quick.

15 **Q.** Okay, sir.

16 **A.** I think they are like 25 or so numbers,
17 different numbers in here.

18 **MS. BRADLEY:** Can we give him a moment to
19 check those numbers and see what I'm talking about.

20 **CHAIRMAN CARTER:** Sure, absolutely.

21 **MS. BRADLEY:** Well, let me -- I will tell you
22 what, Mr. Chairman, maybe I should ask my questions so I
23 he can check the numbers and check what I'm asking.

24 **CHAIRMAN CARTER:** Okay.

25 **BY MS. BRADLEY:**

1 Q. Subject to check, Mr. Olivera, do you
2 understand that the salaries of the cabinet officers are
3 all less than 133,000?

4 A. I'm not familiar with the specific salaries of
5 cabinet officers.

6 Q. Subject to check, will you accept that?

7 A. Yes.

8 Q. All right. Would you look at the numbers that
9 I have given you, and see if any of those are less than
10 133,000?

11 A. It is going to take me a little while.

12 **CHAIRMAN CARTER:** Okay. Take your time, take
13 your time.

14 (Pause.)

15 **MS. BRADLEY:** Mr. Chairman, if I can clarify,
16 I was just looking at the first eight pages. I notice
17 that there seems to be repetition throughout.

18 **THE WITNESS:** Unfortunately, I am still on
19 2008. It is going to take me a few more minutes.

20 **MS. BRADLEY:** Okay, sir.

21 **THE WITNESS:** Okay. I think I have marked all
22 the line items represented by the numbers you gave me.

23 **BY MS. BRADLEY:**

24 Q. Okay, sir. There was about 21, I think, I
25 counted.

1 **A.** I didn't count it, but I will take you at your
2 word.

3 **Q.** Okay. If my counting is any good today.
4 Those are all non-union employees, are they
5 not?

6 **A.** I believe that is correct.

7 **Q.** And those all make -- that particular group of
8 employees all make more than 133,000?

9 **A.** Yes, that is correct. I would like to point
10 out, though, that in this list, as I think this
11 Commission knows, and I think the intervenors know, we
12 have a combination -- not all of these salaries are --
13 in fact, very few of them are 100 percent allocated to
14 FPL. So a number of them, and particularly in the
15 category that counsel has chosen, many of them there is
16 an allocation outside FPL.

17 **MS. BRADLEY:** Just for the record,
18 Mr. Chairman, I guess I should put the numbers that I
19 gave him in there, so if anybody wants to look at that
20 at some point, staff or, Commissioners, or anything.
21 But I gave him 31 --

22 **CHAIRMAN CARTER:** Okay. Hang on a second.

23 **MS. BENNETT:** That is fine to give the line
24 numbers.

25 **CHAIRMAN CARTER:** Okay, good. All right.

1 **MS. BRADLEY:** I gave him 31, 33, 89, 164, 290,
2 291, 313, 320, 322, 327, 354, 356, 366, 375, 379, 388,
3 394, 396, 404, 405, and 416.

4 **CHAIRMAN CARTER:** Okay.

5 **BY MS. BRADLEY:**

6 **Q.** And, Mr. Olivera, those were not the only
7 positions on that list that we have here in this exhibit
8 that were making more than 133,000, were they?

9 **A.** That is correct. The list composes of
10 employees making \$165,000 or higher.

11 **MS. BRADLEY:** Okay, sir. No further
12 questions.

13 **CHAIRMAN CARTER:** Thank you.

14 I think that next will be Mr. Stewart, then
15 Mr. Wright. Is that right? Is that the right order?

16 **MR. WRIGHT:** Yes, sir, Mr. Chairman.

17 **CHAIRMAN CARTER:** Mr. Stewart, good afternoon.

18 **MR. STEWART:** Good afternoon, Commissioner.
19 Chairman, I'm sorry.

20 CROSS EXAMINATION

21 **BY MR. STEWART:**

22 **Q.** Good afternoon, Mr. Olivera. My name is
23 Stephen Stewart, and I am representing Richard Unger,
24 who I like to refer to as a normal customer of FPL.

25 I have a number of questions that I would like

1 to ask you. Could you refer to Exhibit 385, the 10K
2 report. There has been a little discussion about the --

3 **A.** Please bear with me for a second, I need to
4 find it.

5 **Q.** Sure.

6 **A.** Okay. What page did you say?

7 **Q.** Turn to Page 18. There has been some
8 discussion with the intervenors on how --

9 **MS. CLARK:** Mr. Chairman, could he hold up
10 until we get there to ask his questions?

11 **CHAIRMAN CARTER:** Okay. That was Exhibit 385,
12 is that right, Mr. Stewart?

13 **MR. STEWART:** Yes.

14 **CHAIRMAN CARTER:** And Page?

15 **MR. STEWART:** 18.

16 **CHAIRMAN CARTER:** Page 18. Okay. You may
17 proceed.

18 **BY MR. STEWART:**

19 **Q.** Mr. Olivera, the good news is I'm not a
20 lawyer, I am an engineer. The bad news is I didn't
21 finish the book on cross-examining witnesses for
22 dummies, so bear with me if you can, okay?

23 **CHAIRMAN CARTER:** They've got a book on that?

24 **MR. STEWART:** I won't tell you who gave it to
25 me.

1 **BY MR. STEWART:**

2 Q. There has been some talk among the
3 intervenors -- between you and the other intervenors on
4 the burden that is placed on the company for the rate
5 case. You had said that your senior team has been
6 spending a lot of time on that over the last six to nine
7 months, up to a year. Is this representative -- on this
8 page, is it representative of your senior team, these
9 employees that are listed there?

10 A. No. This is really a composite of executive
11 officers that have responsibility. I am one of the
12 few -- in fact, I may be the only one -- yes, I may
13 be -- I think I am the only one that is 100 percent
14 Florida Power and Light. I think everybody else shares
15 responsibilities for both companies or for the other
16 companies.

17 So when I talked about my team, I'm really
18 talking primarily about the people that are represented
19 here in this case. I'm talking about Marlene Santos,
20 Mike Spoor, Pamela Sonnelitter, Bob Barrett, it is
21 essentially the list of FPL witnesses with a couple of
22 minor exceptions.

23 Q. But on this page, there are a number of FPL
24 witnesses on this page, is that correct?

25 A. On this page, Christopher Bennett is a

1 witness, Michael Davis is a witness, Armando Pimentel is
2 a witness, and Art Stall. So, in total, excluding me,
3 there are four names on the list that are witnesses.

4 Q. So those who are witnesses in this case that
5 you would point out, have they spent quite a bit of time
6 over the last year, would they part of that team that
7 you were talking about?

8 A. I believe they have. I suggest you ask them
9 directly whether they agree with my assessment or not.

10 Q. Okay, thank you. Referring to the exhibit
11 behind you on the easel there, would you agree, subject
12 to check, that the increase in the base rate from
13 December 2009 to January 2011 is approximately
14 28 percent?

15 A. I'm sorry, bear with me for a second. I
16 need -- I am not quite as fast as you are. Okay. Would
17 you ask your question again?

18 Q. Yes. Would you agree that the change in the
19 base rate from December 2009 to January 2011 is
20 approximately 28 percent?

21 A. I haven't done the math recently, and I don't
22 have it written down, but I think that is right.

23 Q. Okay. So if you looked at, and we've
24 talked -- you have talked about the base rate since
25 1985, how it has been on sort of a downward slope. So

1 if we looked at from '85, if we were tracking base rates
2 say after 2011, it is going to be sort of on a slight
3 downward slope, and then with 2010 and 2011, it is going
4 to be a pretty sharp upward slope, correct?

5 **A.** Correct.

6 **Q.** Okay. What type of baseload generation
7 provides the cheapest energy for the customers of FPL?

8 **A.** It actually really depends on the relative
9 relationship between oil and gas and coal. So if you
10 measure it by the conventional generation, actually,
11 right now natural gas is so cheap that we generally will
12 dispatch on natural gas. Of course, relative to
13 nuclear, if you just look at the variable costs, nuclear
14 will be cheaper. And, again, if you just look at the
15 variable costs, ultimately the solar facilities we are
16 building essentially have a zero variable cost as long
17 as the sun is out.

18 **Q.** How does the nuclear power, the generating
19 units that you have play into the argument that you make
20 that you are the lowest cost provider in the state?

21 **A.** They play into the discussion about the low
22 cost, because we have continued to make investments to
23 make our fleet more efficient, and it is those
24 improvements that have improved what in our business we
25 call the system heat rate, the measure of the overall

1 efficiency of the system. And so that what used to
2 take, you know, a dollar, now takes 90 cents to generate
3 the same amount of electricity.

4 Q. Does would you agree that the utility industry
5 benefits from economies of scale?

6 A. Yes, I would agree that we benefit from
7 economies of scale, and you see that across a number of
8 the functions in our company.

9 Q. Okay. I would like to refer to this chart
10 that we had up on an easel yesterday. Are you familiar
11 with that?

12 A. I don't have it in front of me, and I can't
13 see that far away. If you could --

14 MS. CLARK: And, Mr. Chairman, I would like to
15 know -- well, I can sort of see it. But, does it have a
16 title?

17 CHAIRMAN CARTER: We are all telling our ages
18 now.

19 MR. STEWART: Exhibit RBD-10. It's titled
20 FPL's Bill Lowest in Florida.

21 MS. CLARK: Mr. Olivera, you don't have that
22 in front of you, do you?

23 THE WITNESS: I don't have it in front of me.

24 CHAIRMAN CARTER: Let's just take a moment and
25 get it to him.

1 Thank you, Mr. Wright.

2 **MR. WRIGHT:** Yes, sir.

3 **BY MR. STEWART:**

4 **Q.** Let me ask you, Mr. Olivera, how many
5 residential customers does Florida Power and Light have?

6 **A.** We have approximately 4 million residential
7 customers.

8 **Q.** Okay. And the next biggest utility in Florida
9 has how many, if you know?

10 **A.** I don't know the exact number of residential
11 customers. It would be Progress Energy.

12 **Q.** Subject to check, would you agree about
13 1.7 million?

14 **A.** That sounds about right.

15 **Q.** Okay. So, FPL is a little more than twice as
16 big as the next biggest in Florida?

17 **A.** In terms of total customers, we are a little
18 bigger than that.

19 **Q.** Okay. Now, looking at this chart, this is a
20 comparison of 54 Florida electric companies, and it is
21 more of a -- it is entitled FPL's Bill is the Lowest in
22 Florida. This is more of a geographical comparison than
23 it is a comparison of utilities that may have the same
24 metrics, is that correct?

25 **A.** I don't think that is correct, no. There is

1 nothing in geography associated with this. It is really
2 when you look at what makes up the group, you have
3 companies that are geographically adjacent to us that
4 have far higher rates than Florida Power and Light. So
5 I would not agree that it is a component of geography.

6 Q. With all due respect, I mean, this has
7 something to do with geography because it has Florida in
8 the title, so I mean, it would --

9 A. Yes. I think the premise we did say that
10 these were in Florida, but I understood your question to
11 mean that because they happened to be in a certain
12 region of the state that they are lower, just inherently
13 lower by their location in the state.

14 Q. No, I'm sorry. That is not what I meant. I
15 meant that what this is is you are not comparing against
16 like metrics. For example, size of company or companies
17 that have nuclear power. You are comparing companies
18 that are geographically located in Florida?

19 A. Correct. We are trying to show -- since this
20 is a Florida proceeding, and since we are talking about
21 the impact on customers in Florida, we showed the
22 metrics in Florida.

23 Q. Right.

24 A. I think if you looked at kind of the relative
25 standing, and Mr. Reed has a number of exhibits that

1 show how our company compares to others, you will see
2 that we have a pretty high standing as well in national
3 benchmarks.

4 Q. Okay. Now, if you took away all the companies
5 here that don't have nuclear power, you would be left
6 with two, you would agree with that?

7 A. I don't know that.

8 Q. Are there others?

9 A. You mean what their costs would be?

10 Q. No, I am asking if you took away all the
11 companies that did not have nuclear power as a
12 generating source.

13 A. But that's not the determinant of a bill.
14 Your premise was --

15 MR. STEWART: Excuse me. Commissioner, or Mr.
16 Chairman, I asked if we took those away we would have
17 two. Could I get an answer to that and then an
18 explanation?

19 CHAIRMAN CARTER: Okay. Let's --

20 MS. CLARK: Mr. Chairman, I would ask that he
21 not --

22 CHAIRMAN CARTER: Hold it. Hold it. I see
23 Mr. Mendiola gave you his coffee today. So let's just
24 take a moment. Let's just take a moment. And I'm going
25 to have to check that book out, by the way, to

1 cross-examination. But let's just do this. Let's hang
2 on for a second. I think that -- you know, take your
3 time, ask your questions. You know, it will be fine,
4 just take your time and ask your questions, and we will
5 give the witness an opportunity to respond. Do you want
6 to restate your question?

7 **BY MR. STEWART:**

8 Q. The question was, if you remove all the
9 companies that do not have nuclear generating capability
10 from this chart, how many companies would you have left
11 in this?

12 A. If you took all the companies out that don't
13 have nuclear capability, you only have two. But that is
14 a meaningless comparison because there are so many other
15 things that go into what makes up rates. It is not just
16 nuclear, it is everything else. And you have to look at
17 the total -- at the total picture, all the things that
18 this rate case is about. How much investment you have
19 in transmission, distribution, customer service,
20 systems. That is only -- nuclear is only one piece of a
21 very large equation.

22 Q. Okay. Now, you had already said that the
23 utility industry does have economies of scale, so if you
24 removed all of the companies that are within -- that are
25 not within 20 percent plus or minus of your residential

1 customers, how many utilities would you have left to
2 compare?

3 **A.** Can you repeat the question?

4 **Q.** If you removed all the utilities that had --
5 that did not have -- was not within a range of
6 20 percent of your residential customers, between 3.6
7 million and 4.6 million -- or 3.2 million and
8 4.8 million, how many companies would be left there for
9 that comparison?

10 **A.** If you took a band of plus or minus 20 percent
11 of our -- based on the total number of residential
12 customers that we have, I believe we would be the only
13 one on the list.

14 **Q.** Okay. Thank you. Referring to Page 26 of
15 your testimony. Is it one of the main reasons for FPL's
16 request for a rate increase in this case the projected
17 slower growth in the sales of electricity in the form of
18 kilowatt hours?

19 **A.** Excuse me. One of the -- and you will see
20 this in Mr. Barrett's testimony, there is a component
21 associated with lower sales. So that in the past we
22 have been able to recover costs as they lined up with
23 growth, with sales growth, and that is one of the
24 components in here.

25 **Q.** But would you agree that in 2005 when FPL

1 filed for a rate increase before this Commission, that
2 one of the major factors that was the basis for that
3 request was the high growth of sales in kilowatt hours?

4 **A.** I don't think that I would typify that as that
5 being the driver of that rate case. There were a number
6 of other factors, the same way that there are a number
7 of other factors in this particular filing.

8 **Q.** So would you say it is one of the top two or
9 three factors in each case, the 2005 case and the 2009
10 case?

11 **A.** No, I'm not sure I would say that, either.

12 **MR. STEWART:** Chairman, I have an exhibit I
13 would like to pass out.

14 **CHAIRMAN CARTER:** Okay. Are you going to use
15 it for cross-examination or do you need a number on it?

16 **MR. STEWART:** I will need a number on it.

17 **CHAIRMAN CARTER:** You will or you won't?

18 **MR. STEWART:** Yes, I want it part of the
19 record.

20 **CHAIRMAN CARTER:** Okay. Commissioners, that
21 will be Exhibit Number 387. Title, a short title?

22 **MR. STEWART:** 2005 Testimony by AO.

23 **CHAIRMAN CARTER:** Okay. Hang on one second
24 until all the parties get a copy and then you may
25 proceed.

1 (Exhibit Number 387 marked for
2 identification.)

3 **CHAIRMAN CARTER:** Did you give one to the
4 court reporter, Mr. Wright?

5 **MR. WRIGHT:** I gave her one.

6 **CHAIRMAN CARTER:** You gave her one, okay.
7 Thank you.

8 You may proceed, Mr. Stewart.

9 **MR. STEWART:** Thank you, Mr. Chairman.

10 **BY MR. STEWART:**

11 **Q.** Mr. Olivera, do you see beginning at the
12 bottom of Page 4.

13 **A.** Line 22?

14 **Q.** Yes. You start talking there about the
15 accomplishments that you have just described, and then
16 you say however on Line 23. Could you read -- I guess
17 could you start with however and read through Line -- I
18 guess Line 3 of the next page.

19 **A.** Yes. Give me a second.

20 "However, as Dr. Green describes, the needs of
21 FPL customers for electricity have dramatically expanded
22 since 1985, the last time FPL sought an increase in its
23 base rates. Since 1985, FPL has added 1.6 million new
24 customers." Would you like for me to continue?

25 **Q.** That's fine. Now, the question on Page 4 is,

1 please summarize the company's position in this case.
2 And is there -- can you look through that and tell me if
3 there is another reason that justifies that rate
4 increase that is before you attribute the increase to
5 customer usage?

6 **A.** Now, I think during that time we discussed all
7 the investments that we have made. And, in fact, I
8 carry the same theme in my testimony when I talk about
9 all the things that have changed since 1985, how many
10 more customers we have added, how much more capital we
11 have put in the business. And the argument is we need
12 to get recovery of all the investments that we have
13 made.

14 In this particular case in 2005, we were
15 making investments at a considerably faster rate than
16 the revenue was growing. It was a big -- if you recall,
17 we were growing at 100, 115,000 new customers a year.
18 So there was a huge amount of investment just to meet
19 the needs of those customers. Now, we have continued to
20 make more investments to make the system more efficient
21 and to also try to really make an impact on fuel
22 diversity and to make the system cleaner.

23 **Q.** Mr. Olivera, would you agree that in the 2005
24 rate case one of the major factors was increase in
25 sales?

1 **MS. CLARK:** Mr. Chairman, I would like to
2 object. That was the 2005 rate increase. We are on a
3 different rate case, and I'm not sure where he is going
4 with this question, and it's getting late in the day.

5 **CHAIRMAN CARTER:** Mr. Stewart, speak to the
6 objection.

7 **MR. STEWART:** Well, late in the day I don't
8 think is a good reason not to --

9 **MS. CLARK:** I'm objecting on the grounds of
10 relevance to be clear.

11 **MR. STEWART:** The relevancy is that I'm trying
12 to show that the witness requested a rate increase
13 because of the increase in sales in 2005, and now he is
14 asking for an increase in rates due to a decrease in
15 sales. I think it goes at the reliability of the
16 testimony.

17 **CHAIRMAN CARTER:** Ms. Helton.

18 **MS. HELTON:** Mr. Chairman, I do think that the
19 prior testimony of Mr. Olivera can be used for his
20 credibility in this proceeding as far as what he said in
21 the prior case and what he said here. But it does seem
22 like we are spending a lot of time on this, and I, too,
23 am having a hard time understanding the point.

24 **COMMISSIONER ARGENZIANO:** Mr. Chair, if it is
25 allowed, then time should not be a consideration. I

1 don't really know what he is trying get at, but the
2 point is we just heard that that is not -- that it's not
3 the -- it wasn't an unacceptable thing for Mr. Stewart
4 to ask, and Mr. Olivera's previous statements should
5 allowed. So I don't think that -- you have been very
6 fair with time, but I don't think that we should be
7 saying because of time sake we shouldn't have him ask
8 the question. I think that's wrong.

9 **CHAIRMAN CARTER:** Mr. Stewart.

10 **MR. STEWART:** I am just trying to get a yes or
11 no answer. If sales -- the sales increase, the amount
12 of kilowatt hours sold in 2005 was one of the top two or
13 three reasons for the rate case. He can say yes or no.

14 **CHAIRMAN CARTER:** Okay. Ask your question.

15 **BY MR. STEWART:**

16 **Q.** Mr. Olivera, based on your testimony in 2005,
17 is the -- was the increase in sales of kilowatt hours
18 one of the basis for you filing that testimony asking
19 for a rate increase?

20 **A.** No, that is really not the right way to look
21 at it. There is a continuity of themes between both
22 cases, and it really goes to the core of what drives
23 rate cases. What drives -- ultimately what drives rate
24 cases is investments that you make and the size of your
25 plant in service, and that is what goes into the

1 calculation of your revenue requirement.

2 So, both in '05 and now we have made
3 substantial investments in the business, and we are here
4 today because we are asking for recovery, essentially.
5 And I am not talking at a 50,000-foot level. We are
6 asking for recovery of those costs. That is what drives
7 the rate case.

8 Now, you know, how much those rates will
9 change is a function of kind of how many customers and
10 how much sales you expect to have. That is a different
11 issue, all right. That gets to the allocation of how
12 those costs are then allocated to the various customer
13 classes and to the total customers that you have. But
14 to portray this as strictly, you know, you had a lot of
15 sales, you are asking for this; you don't have the
16 sales, you are asking for this is a gross misstatement
17 of what the whole ratemaking process is all about.

18 Q. Thank you. I will move on.

19 Referring to Page 6 of your testimony. At
20 Page 6, Line 6, do you see where you say, "We recognize
21 there is no good time for a rate increase, especially
22 given the current state of the economy," do you see
23 that?

24 A. Yes, Page 6, Line 6 and Line 7.

25 Q. Correct. A couple of other times in your

1 testimony you allude to the burden on the customers.
2 You say on Page 55, "We are very aware of the challenges
3 customers are facing in this economy." And on Page 56
4 you say, "We know our customers feel a cost --"

5 **A.** I'm sorry. Would you slow down, so I can
6 first go to Page 55? I'm behind you.

7 **Q.** Do you see that statement on Page 55?

8 **A.** I'm sorry, what line are you on?

9 **Q.** Line 15.

10 **A.** I have it.

11 **Q.** And then on Page 56, Line 10.

12 **A.** I have it.

13 **Q.** The indication is obviously that you feel the
14 empathy of your customers, and I was wondering with that
15 being the case, why then ask for a performance bonus in
16 the form of a higher ROE?

17 **A.** Well, we are not asking for a specific amount
18 for the ROE. I think what we have said is in making
19 your decision on the level of ROE that you should
20 recognize the performance of the company. And I will go
21 back to the earlier conversation, the earlier comments
22 that I made that if this Commission gives the same level
23 of ROE to a company -- if you have a mediocre company
24 with high costs and middle-of-the-road service, and you
25 give the same ROE to a company that has performed well,

1 that has high levels of reliability, that has low
2 prices, you are not sending -- there are no incentives
3 for being a top performer. And I think this Commission
4 has a long history of encouraging differentiation and
5 rewarding companies that do well.

6 So, both Mr. Avera and Mr. Pimentel will be
7 able to go into more detail regarding that, but the
8 general concept is to recognize when you make a decision
9 on the ROE to award an ROE in the upper end of the range
10 to reflect the higher level of performance.

11 Q. Mr. Olivera, on Page 45, Line 21, you say, "In
12 addition, a return of 12.5 percent would reflect --"

13 A. I'm sorry. I'm sorry. I can't -- I'm a
14 little slower at this time of the day. So what page was
15 that?

16 Q. 45, Line 21.

17 A. Okay.

18 Q. It says, "In addition, a return of
19 12.5 percent would reflect appropriate recognition of
20 FPL's overall high performance." Do you see that?

21 A. I do.

22 Q. Okay. So you have not put a number on that?

23 A. We have not put a number on that.

24 Q. And why is that?

25 A. I think we think that there is -- I think,

1 first of all, I want to defer the specific sort of
2 modeling and quantification to both Mr. Bill Avera and
3 to Armando Pimentel, but we have opted not to put a
4 specific number, but just to say for a company at this
5 level of risk, and by that I mean with the concentration
6 of natural gas, with nuclear, with being hurricane
7 prone, there is a certain level of ROE that is
8 warranted. And beyond that, you should consider an
9 adder to recognize the superior performance. But we did
10 not put a number on that and merely said, you know,
11 recognize it at kind of the upper range of that.

12 Q. Do you remember in your 2005 testimony that
13 you asked for a 50 basis point performance reward?

14 A. I believe that is correct, that we asked for a
15 specific adder.

16 Q. What is -- in this rate case what is 50 basis
17 points worth in your return on equity?

18 A. I don't understand your -- what is 50 basis
19 points in terms of return on equity?

20 Q. Yes, in terms of an increase in 50 basis
21 points would translate to how much in an annual number
22 of revenue requirement?

23 A. Fifty basis points translates into roughly 60,
24 \$65 million of base revenues.

25 Q. Okay. Let me ask you, Mr. Olivera, without

1 the performance bonus, if this Commission was to make an
2 adjustment against that, would there be a major impact
3 on the basic electric service for the average FPL
4 customer?

5 **A.** You are saying if there is no recognition of
6 superior performance and so that this company gets the
7 same level as a mediocre company, we certainly would try
8 our best to provide good service, but frankly, it
9 doesn't send the right incentives to the company.

10 You know, we can -- you know, year in and year
11 out we look for opportunities to lower costs. We look
12 for opportunities to improve the services that we
13 provide, and we believe that by doing that the customers
14 will do well, and the shareholders will do well. So,
15 there is -- that is really our kind of fundamental view
16 of the business and how we approach the business
17 philosophically.

18 So, for us not to get some recognition that
19 there is some value for the shareholders, I go back to
20 kind of the symmetry. This has to be kind of a -- if
21 the customers do really well there has got to be
22 something for the shareholders, as well. And I think
23 Witness Reed will talk to you, will discuss at length,
24 you know, how that small incremental ROE -- you know, he
25 goes through and he translates that in the value

1 received by the customers. And I think he comes up with
2 a range that the customer receives value somewhere
3 between 700 and over a billion dollars of benefit by
4 virtue of us being a low cost provider by our relative
5 standing position as having been a low cost provider and
6 having low, low O&M for a long period of time.

7 **Q.** Mr. Olivera, and I understand your argument
8 for an incentive, the question was, yes or no, is if
9 this Commission does not allow a performance bonus,
10 would there be a major impact, a major impact on basic
11 electric service for the average FP&L customer?

12 **MS. CLARK:** Mr. Chairman, I want to object to
13 the question. Major is not a defined term. It's vague
14 as to the magnitude of what he's getting at.

15 **CHAIRMAN CARTER:** Just rephrase. Rephrase.

16 **BY MR. STEWART:**

17 **Q.** Let me ask you, Mr. Olivera, without the
18 performance bonus, would there be a measurable impact on
19 basic electric service for the average FP&L customer?

20 **A.** We would certainly do our best to deliver the
21 best service that we can provide, but it would send a
22 strong signal to the company that there are no
23 incentives, no rewards, if you would, for being a
24 top-notch performer.

25 **Q.** Okay. I'm ready to move on, Mr. Olivera.

1 Thank you.

2 With regard to smart meters and referring to
3 where you address them in Page 8 of your testimony. Are
4 you there?

5 **A.** What line are you on?

6 **Q.** Line 8, 5 to 8. Is there a -- have you
7 actually seen a cost/benefit analysis that indicates it
8 is a benefit to FPL customers to move forward with smart
9 meters?

10 **A.** Yes. Witness Marlene Santos is the company's
11 sponsor of the AMI project, and we spent a fair amount
12 of time looking at the business case for AMI. There is
13 a business case for AMI. More than that, we really
14 believe that AMI has great benefits to customers. And
15 one of the things that we hear over and over again is
16 that customers want information, they want to have --
17 they want to have options, they want to know what their
18 consumption is, and we have customers who want to know
19 it pretty much in realtime. And AMI at its basic level
20 provides that information.

21 We also believe that AMI is kind of a
22 foundational investment that will allow us to do a lot
23 of other things, including making the grid smarter, and
24 doing a lot of improvements in how we deliver service,
25 our ability to get information when customers are out,

1 our ability to restore power.

2 I will defer to Marlene for kind of a more
3 detailed discussion on AMI, but we think that it has
4 really both a business case and a lot of qualitative and
5 less tangible benefits that we think are fundamentally
6 in the right direction for us to move.

7 Q. Once again, I appreciate the information on
8 smart meters and the AMI program, but is there a
9 cost/benefit analysis in this filing that shows for a
10 dollar in we are going to get \$1.50 out?

11 A. As I said to you, I don't have that in my
12 testimony, because I am not the sponsor of the AMI
13 project. Witness Marlene Santos is the executive who is
14 sponsoring the project, and I believe I said that there
15 is a business case. Am I sponsoring the business case,
16 no.

17 Q. Mr. Olivera, I didn't ask if it was in your
18 testimony. I asked if it was part of this company
19 filing. Is there a cost/benefit analysis in this
20 company filing?

21 MS. CLARK: Mr. Chairman, I think as
22 Mr. Olivera has indicated, this is really outside the
23 scope of his testimony, and Mr. Stewart has the
24 opportunity to ask Ms. Santos of this. And I think it
25 would be a more efficient way to do that.

1 **CHAIRMAN CARTER:** Mr. Stewart.

2 **MR. STEWART:** Mr. Chairman, I am just
3 getting -- trying to get the president of the company to
4 answer yes or no to there being a cost/benefit analysis
5 filed in this rate case for justifying the AMI program.
6 I'm not asking him about the specifics of the
7 cost/benefit analysis.

8 **MS. CLARK:** And I think he's answered they
9 have -- the business case is there.

10 **MR. STEWART:** We are arguing semantics. He's
11 saying business case. I'm asking for a cost/benefit
12 analysis. I'm not asking to provide it. I'm asking if
13 there is a cost/benefit analysis in this filing with
14 regards to this program.

15 **CHAIRMAN CARTER:** Ms. Helton.

16 **MS. HELTON:** It sounds like to me that we are
17 kind of talking past each other. Maybe if the witness
18 could answer one more time yes or no, and then we could
19 move on.

20 **CHAIRMAN CARTER:** Okay. Let's try it.

21 **BY MR. STEWART:**

22 **Q.** Mr. Olivera, I'm not interested in a business
23 case. I am interested in a cost/benefit analysis that
24 shows a dollar in, a \$1.50 out for the AMI program. Is
25 it in this filing?

1 **A.** Yes, there is a cost/benefit analysis, but
2 when I talk about a business case, we look at -- we
3 don't look at just the numbers, because the numbers are
4 based on a lot of assumptions, on a wide range of
5 assumptions. So, yes, we look at the cost. Yes, we
6 quantify the economic benefits. But we also look at
7 ranges. We look at possible outcomes. And we also make
8 decisions based on -- you know, there are economic
9 cost/benefit analysis that are, frankly, kind of
10 marginal. But sometimes you look at it, and you say,
11 you know, there is a demand for this, it is
12 foundational, it is strategic, and so I refuse to get --
13 to say that we make decisions on investments like this
14 strictly on a cost/benefit analysis.

15 It is a very important dimension of making the
16 decision, but we do look at other issues, and we also
17 look at kind of the ranges of possible outcomes. We
18 move around. We can make numbers look, you know,
19 depending on the assumptions, you can have any number of
20 outcomes when you are doing an economic analysis.

21 **Q.** Mr. Olivera, based on that analysis you just
22 said about numbers, should we look at this rate case a
23 little differently?

24 **MS. CLARK:** Mr. Chairman, I object. I,
25 frankly don't know what the question is.

1 **CHAIRMAN CARTER:** Restate the question.

2 Restate the question.

3 **BY MR. STEWART:**

4 **Q.** Well, I had just asked you about cost --

5 **CHAIRMAN CARTER:** Reframe it. How about just
6 reframe it.

7 **BY MR. STEWART:**

8 **Q.** I just asked you about cost/benefit analysis,
9 and you said that you can make numbers pretty much say
10 whatever you want to say. And I was asking you should
11 we consider that in evaluating the rate case that you
12 gave filed?

13 **MS. CLARK:** I object, Mr. Chairman. I think
14 that is a mischaracterization of what Mr. Olivera said.

15 **CHAIRMAN CARTER:** Speak to the objection,
16 Mr. Stewart.

17 **MR. STEWART:** I will move on.

18 **CHAIRMAN CARTER:** Okay.

19 **BY MR. STEWART:**

20 **Q.** Let me ask you, Mr. Olivera, if you put off
21 the smart meters for two years, would there be a
22 measurable impact on the basic electric service for the
23 average FP&L customer?

24 **A.** No, not in the short-term, but I would also
25 like to add that the smart meters, we used that as part

1 of the foundation to apply for economic stimulus
2 dollars. And so we have applied for a grant of \$200
3 million, which will allow us to really expand kind of
4 the smart grid concept. But if we -- but this is the
5 foundation of the program. And so if this Commission
6 decides that they don't want us to do the smart meter,
7 we are also going to forego the \$200 million of economic
8 stimulus grants that we have applied for.

9 Q. Mr. Olivera, has the current policy in place
10 to address storm costs serve the FPL customer well to
11 date?

12 A. When you say the current policy, can you
13 elaborate?

14 Q. Yes. As you had mentioned in your testimony,
15 or under cross-examination you had talked about the
16 securitization legislation that was passed I believe in
17 2005, and that is the approach that is in place to
18 address storm costs for FPL. Since that time, has it
19 served the FPL customers well?

20 A. I think that, and I think I referred to this
21 earlier, I think the storm bonds and the securitization
22 of storm costs serve customers well. They certainly
23 serve us well when you have a catastrophic storm, when
24 you have a very large storm that has a significant
25 amount of damage. We do think that for -- there is such

1 a thing for the more average storms, that there is kind
2 of an ongoing cost, and that that cost should be
3 reflected in kind of the ongoing base rates. And it
4 goes back to the concept of you kind of pay as you go.

5 And I think I also said earlier that, you
6 know, if we were able to get insurance for storm costs,
7 that would be a cost of doing business. And there would
8 be no question that that was kind of a bona fide cost.
9 I wish we had insurance.

10 So, in my mind to be able to sort of be
11 setting aside a little bit of money every year for storm
12 costs, I think is prudent. I also would like to remind
13 you that we don't make any money on whatever we collect
14 for storm costs. So if the Commission decides that we
15 are allowed to collect \$150 million, that will go into a
16 storm fund, and if we are fortunate enough not to have a
17 hurricane for a long time, and that storm funds goes to
18 600 -- I think we have a targeted level of \$650 million,
19 that would be nice.

20 Our concern is that if we don't do that,
21 Florida has, I would say, a far greater exposure to the
22 economic impact of a storm today than it did three or
23 four years ago. In part because the state has taken on
24 a greater burden of the risk, and in part because the
25 average homeowner has taken on a far bigger risk that

1 they had even four years ago.

2 For those of us who live in South Florida, the
3 deductibles are much higher, the coverage is much more
4 limited. So if we have a storm, our customers will feel
5 a lot of economic pain, and that will be -- at the same
6 time that they are feeling that economic pain we would
7 be out trying to get a storm cost surcharge or to float
8 a bond. It would be certainly a difficult environment
9 for all.

10 So, we think it is more prudent to take kind
11 of a pay as you go approach. We certainly have
12 witnesses that are prepared to discuss that in greater
13 depth than I am. Witness Harris and Witness Pimentel
14 certainly can go into a lot more detail on the storm
15 costs. But from my perspective, that is the reason we
16 asked for it. It would have been -- frankly, it lowers
17 the number to say it is \$150 million less, and it
18 doesn't -- as I said, we don't make a profit on it, but
19 we think it is the prudent thing to do.

20 Q. Let me ask you, Mr. Olivera, if you dropped
21 the other request for the \$150 million storm accrual and
22 just relied on the current policy in place, would there
23 be a measurable impact on basic electric service for the
24 average FP&L customer?

25 MS. CLARK: Mr. Chairman, I would like for Mr.

1 Stewart to articulate if -- he may have done it one more
2 time what he thinks the current policy is. I heard him
3 referring to the securitization, which was a one time
4 activity, and I am just not clear what he is referring
5 to.

6 **CHAIRMAN CARTER:** Mr. Stewart, to the
7 objection.

8 **MR. STEWART:** Do I have to respond to that? I
9 mean, I'm not a witness.

10 **CHAIRMAN CARTER:** You have to respond to the
11 objection.

12 **MR. STEWART:** Was there an objection?

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

14 **MR. STEWART:** What was the objection?

15 **MS. CLARK:** The question is vague, and I don't
16 understand what you mean by current, and I'm asking you
17 to clarify the question for the witness.

18 **MR. STEWART:** I will do that.

19 **CHAIRMAN CARTER:** The objection, you have to
20 speak to the objection.

21 **MR. STEWART:** I said I will try to -- she said
22 the question was not clear, so I was going to try to
23 clarify the question. Could I do that, Mr. Chairman?

24 **CHAIRMAN CARTER:** Let's do this, boys and
25 girls, let's take five. Let's take five. That means

1 five minutes.

2 (Off the record.)

3 **CHAIRMAN CARTER:** We are back on the record.

4 And when we last left, Mr. Stewart, you were in
5 cross-examination. You're recognized, sir.

6 **BY MR. STEWART:**

7 **Q.** Mr. Olivera, I would like to try to get a
8 layman's explanation of FP&L's request for a
9 12.5 percent return on equity. Is it harder for a
10 poorly run company than a well run company to attract
11 equity?

12 **A.** Will you repeat the question?

13 **MS. CLARK:** Mr. Chairman, I hate to object
14 again, but there have been a number of questions on the
15 12.5 equity. Mr. Olivera has indicated that
16 Mr. Pimentel and Mr. Barrett would be good witnesses to
17 ask that question -- Avera, excuse me.

18 My only point here is Mr. Olivera is not the
19 only witness in this case, and it seems the intervenors
20 are trying to try their whole case through Mr. Olivera.
21 And I think in the interest of efficiency in getting the
22 right answer and moving the hearings along, we should
23 move on. And I would point out that there have been a
24 number of questions on the 12.5 equity, so I would add I
25 believe these questions have been asked and answered.

1 **CHAIRMAN CARTER:** Okay. Speak to the
2 objection.

3 **MR. STEWART:** I don't think I have heard this
4 question be asked.

5 **CHAIRMAN CARTER:** The objection was the
6 question has been asked and answered.

7 **MR. STEWART:** I don't think that it has been.

8 **CHAIRMAN CARTER:** Okay. Is that your
9 response?

10 Ms. Helton, come on down. I get goofy in the
11 afternoon. Me and Mr. Mendiola went over to Starbucks
12 at the break.

13 **MS. HELTON:** Mr. Chairman, I do think it is
14 appropriate for the witnesses to -- I'm sorry, the
15 representatives of the intervenors to ask some broad
16 general questions of the president of the company, who
17 is the first sponsored witness. However, I hope that
18 Mr. Stewart will take heed that we have been over this
19 ground before.

20 **MR. STEWART:** So this specific question has
21 been asked?

22 **MS. HELTON:** Maybe if you could ask your
23 question again, Mr. Olivera can answer it, and we can go
24 from there.

25 **MR. STEWART:** Thank you, Mr. Chairman.

1 **BY MR. STEWART:**

2 Q. Is it harder for a poorly run company than a
3 well run company to attract equity?

4 A. It is hard to say. It is really -- the
5 premise of the question is flawed. A company could be
6 badly run and get lucky and be going through a temporary
7 spurt where they are making a lot of money. And,
8 conversely, you can have a very well run company that
9 could have something happen and have their balance sheet
10 and have the return on equity be affected.

11 That single dimension is, frankly,
12 nonsensical. Just to say bad or good as -- again, I
13 have to defer if you want to look at the full picture of
14 what goes into an ROE calculation, you have to look at
15 the models, and you have to look at the analysis. And
16 both Witness Armando Pimentel and Bill Avera are in a
17 position to do so, and I'm not. But I will say that the
18 basic premise of the question is, frankly, absolutely
19 nonsensical.

20 Q. Thank you, Mr. Olivera. I won't take that
21 personally.

22 I would like to ask you a couple of
23 hypothetical questions to get an idea of how you, as
24 president of FPL, view an adversarial process like the
25 one here at the PSC. Do you think it is appropriate for

1 utilities to educate Public Service Commissioners on
2 issues that are important to the utility outside the
3 structure of a hearing through avenues like conferences
4 and site visits?

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

6 **CHAIRMAN CARTER:** We are way beyond -- we are
7 way beyond the case now, Mr. Stewart. So we would ask
8 you to stay within the --

9 **MR. STEWART:** Could I hear an objection, so I
10 could possibly respond to that?

11 **MS. CLARK:** Yes. Well, I beg your pardon,
12 Mr. Chairman. Would you like me to --

13 **CHAIRMAN CARTER:** Yes, Ms. Clark. I was
14 trying to expedite the process and be efficient, Mr.
15 Stewart, but we will drag it out. Go ahead, Ms. Clark.

16 **MS. CLARK:** We object to this question on
17 several grounds, Mr. Chairman. It is outside the scope
18 of the prefiled testimony of Mr. Olivera and it seeks
19 facts not relevant to this proceeding. No party,
20 including Mr. Stewart on behalf of Mr. Unger, has put at
21 issue any of these -- any information regarding
22 educating Commissioners and activities not related to
23 this hearing.

24 As stated in the order establishing procedure,
25 if Mr. Stewart wanted to raise this issue, he had to do

1 it on or before the prehearing. And as I look through
2 the prehearing order there is not an issue that this
3 line of questioning would touch on.

4 **CHAIRMAN CARTER:** Mr. Stewart, to the
5 objection.

6 **MR. STEWART:** I will see if I can get at it
7 another way. Thank you, Mr. Chairman.

8 **CHAIRMAN CARTER:** The objection is sustained,
9 by the way.

10 **MR. STEWART:** Thank you.

11 **BY MR. STEWART:**

12 **Q.** Mr. Olivera, referring to your testimony on
13 Page 13.

14 **MR. STEWART:** Give me a second, Mr. Chairman.

15 **CHAIRMAN CARTER:** Okay.

16 **BY MR. STEWART:**

17 **Q.** Mr. Olivera, Page 13, Lines 21 through 23, you
18 state there are very few services in our economy that
19 are subject to the type of consistent and comprehensive
20 price scrutiny as electric prices. Do you see that?

21 **A.** I do.

22 **Q.** Would you agree that this comprehensive price
23 scrutiny is warranted because FP&L is a monopoly?

24 **A.** I would say that it is part of the regulatory
25 process and we have a group of regulators that look at

1 all price requests.

2 Q. Thank you. Would you agree the issues
3 associated with utility regulation in rate cases like
4 this one are highly technical and require professional
5 staff to sort through all the evidence from all sides?

6 A. Yes, I would agree that it is a pretty complex
7 and complicated process.

8 Q. Would you also agree that the Commissioners
9 are the ultimate deciders on these issues?

10 A. No, I think there may be times when -- I think
11 they are generally the final deciders on an issue, but
12 there may be times that we disagree, and there may be an
13 avenue through a court of law, and I certainly would not
14 sit here and say that we would never exercise that
15 right. But, generally, we accept the decisions of this
16 Commission to be the final decisions, but not always.

17 Q. Right, and I understand that. My point was
18 regardless of how many MFRs, or how much testimony, or
19 how much data the staff collects and is filed, the
20 ultimate deciders on the issues within the Public
21 Service Commission are the votes of the Commissioners?

22 A. That is correct.

23 Q. Thank you. Referring to Page 15 of your
24 testimony. On Line 11 you talk there about supportive
25 and constructive regulation by this Commission. Do you

1 see that?

2 **A.** I do.

3 **Q.** You mention that term a number of times
4 throughout your testimony, constructive regulation.
5 Could you give me a definition of constructive
6 regulation?

7 **A.** I can. The inference from constructive
8 regulation is the success that this company has and the
9 results that it has been able to deliver to customers
10 are certainly not unilateral. We couldn't have done
11 that without a regulatory environment that promoted --
12 that promoted us doing the right things.

13 Furthermore, with a group of regulators that
14 had a long-term view, and I think this Commission has a
15 long history of having a long-term view. It is very
16 easy for a group of regulators to take very short-term
17 views and say, you know, let's just cut everything we
18 can right now. But in doing so, you really jeopardize
19 the future, and these are businesses that require very,
20 very long lead times, very long cycles.

21 We are reaping the benefits today of decisions
22 that were made six, eight, ten years ago in the same way
23 that we come before you today asking for really approval
24 or your consent to continue to make investments and
25 continue to do things that we believe will have great

1 value to our customers. But many of the things we are
2 talking about aren't going to have value next year or
3 the year after that, and so it takes a very -- it takes
4 a Commission that has a long-term view. We have been
5 fortunate to have that in Florida, and I think the
6 results speak for themselves, both in terms of the value
7 that the citizens of Florida get in terms of price. The
8 price in Florida. Forget FPL, the price in Florida is
9 below the national average, and the Florida utilities
10 consistently have above average levels of reliability.
11 So, when we say constructive, that is what I mean.

12 Q. So it is not one decision or two decisions, it
13 is sort of -- it is an approach that has been taken by
14 this Commission over the last 10 or 15 years?

15 A. That is correct. It is multiple decisions and
16 it is really having a long-term view.

17 Q. Okay. Mr. Olivera, let me ask you this, how
18 many former Public Service Commissioners are currently
19 employed by FPL?

20 MS. CLARK: Mr. Chairman, I object to this
21 question. I think he has tried to -- in my last
22 objection I think these questions are moving along the
23 same line. And to allow him to pursue this type of
24 question or questions is improper and unfair, because I
25 believe they are designed to annoy and harass and not to

1 elicit relevant facts in this case. And, therefore, I
2 believe they are prejudicial to the administration of
3 justice in this case.

4 And as a qualified representative, Mr. Stewart
5 has agreed to abide by those rules applicable to a
6 qualified representative, and that is 28-106.107(3)(b),
7 which states that such a representative shall not engage
8 in conduct that is prejudicial to the administration of
9 justice. And to the extent he has been implying an
10 improper influence on this Commission, they are not only
11 prejudicial, I think they are offensive and
12 inflammatory. And I think they are designed to
13 intimidate this Commission and this staff through
14 insinuating through this question of an improper
15 influence being the basis of any decision that might be
16 viewed as favorable to FPL. And I want to again
17 reiterate I think this has nothing to do with the merits
18 of this case. And to imply that FPL and anyone else
19 would want this case decided on other than the merits is
20 flat wrong.

21 I would just remind us of what are the facts
22 in this case. In addition to having the lowest electric
23 bills in Florida, FPL has consistently produced superior
24 performance that has delivered tangible results to the
25 customer in terms of cost savings and reliability, and

1 these results have been included in many proceedings
2 before this Commission when FPL has established a
3 reputation for high quality substantive presentations.

4 **MR. MOYLE:** Mr. Chairman, I appreciate the
5 objection, and I think we have gone beyond the objection
6 to testimony.

7 **CHAIRMAN CARTER:** We are beyond the whole
8 scope of the case, Mr. Moyle.

9 **MS. CLARK:** And that is my point, Mr.
10 Chairman.

11 **CHAIRMAN CARTER:** We are going to need to --
12 we are going to need to wind it. Speak to the
13 objection, Mr. Stewart.

14 **MR. STEWART:** Mr. Chairman, I don't say this
15 disrespectful, but could I have the objection restated.
16 It was very long, and if I could have it restated so I
17 could respond, I would appreciate that. I mean, the
18 specific objection, you would have to agree it was
19 pretty long.

20 **MS. CLARK:** Absolutely. I will be a little
21 bit more succinct.

22 **CHAIRMAN CARTER:** Okay.

23 **MS. CLARK:** It is beyond the scope of Mr.
24 Olivera's testimony, it is irrelevant to this case, it
25 is prejudicial, it is offensive, and it is inflammatory.

1 **MR. STEWART:** I think that Mr. Olivera being
2 the president of FPL, the largest utility in the state
3 of Florida, in a process that is open up to the citizens
4 of this state, that the citizens have a right to know
5 what FPL's resources are and what they may be doing to
6 move forward with this billion dollar rate increase that
7 they are asking for. So I think this question is not
8 prejudicial. I am not harassing Mr. Olivera. It is a
9 simple answer that has been begging to be asked for
10 years, and I am here to ask it on behalf of a regular
11 citizen whose voice that concerned me, and I think it
12 should be answered.

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

14 **MS. HELTON:** This is a tough one,
15 Mr. Chairman.

16 **CHAIRMAN CARTER:** While you are thinking,
17 Commissioner Skop.

18 **COMMISSIONER SKOP:** Thank you, Ms. Helton -- I
19 mean, thank you, Mr. Chairman. It has been a long day.

20 **CHAIRMAN CARTER:** It has been a long day
21 already.

22 **COMMISSIONER SKOP:** I'm tongue-tied here, so I
23 am going to go real slow and, hopefully, listen to the
24 discussion. Again, I will defer to the chair for the
25 ruling. I think if I heard Ms. Clark correctly that the

1 objection as succinctly stated was outside the scope and
2 inflammatory, to which Mr. Stewart rebutted, and I think
3 that is the issue.

4 Now, I do have a side issue to that to the
5 extent that on the noted objection, but would a basis
6 for admissibility would be that if FPL is seeking to
7 recover the cost of those people within the rate case,
8 then that might be another way of getting a response to
9 the question, because it would be a direct rate case
10 expense.

11 **COMMISSIONER ARGENZIANO:** Mr. Chair.

12 **CHAIRMAN CARTER:** Commissioner Argenziano.

13 **COMMISSIONER ARGENZIANO:** I guess to me the
14 only question that may be a legitimate one is is it
15 beyond the scope, and I'm not sure that is what I think
16 Ms. Helton should address or whoever needs to address
17 that. As far as it being offensive or anything else, I
18 mean, I think what you are doing is making it offensive
19 if you say it is. But it is not necessarily offensive,
20 and I am not sure that is the way he asked it.

21 If it is not illegal or anything else, why
22 would you assume to take offense to it? So I think that
23 is kind of a mistake on the attorney's part, but -- and
24 I didn't take it as offensive or that way. I think it
25 was a question. I think the only legitimate question

1 here is is it beyond the scope or is it within the
2 scope, and that is what I am waiting to hear.

3 **MS. CLARK:** Mr. Chairman, I would add I also
4 suggested it was irrelevant. I mean, I would ask
5 Mr. Stewart to point to the issue in the prehearing
6 order that he is asking the question on.

7 **MR. STEWART:** Can I respond to that?

8 **CHAIRMAN CARTER:** Sure, you can respond. I'm
9 thinking out loud, but you can go ahead and respond.

10 **MR. STEWART:** I think I am responding to all
11 issues. The point being -- and I think that -- it is
12 not illegal to hire former Public Service Commissioners.
13 If I were in Mr. Olivera's position, I would hire as
14 many as I could. The point is is that I don't think
15 that the Commissioners know how many Public Service
16 Commissioners work for FPL. If they did, maybe they
17 would look at each issue a little differently, that,
18 hey, maybe I have -- maybe this does have a bearing on
19 the credibility or the reliability of the testimony that
20 we are hearing from FPL. So I think it addresses all
21 the issues, which ultimately addresses this process.

22 **CHAIRMAN CARTER:** I tell you, Ms. Helton, I am
23 going to need you to think this through, because also
24 the prehearing order is the prehearing order, and
25 everyone that was a party to this process are subject to

1 that. Are you are going to need some time on that?

2 **MS. HELTON:** Actually, I think Commissioner
3 Skop has helped me out immensely, Mr. Chairman.

4 **CHAIRMAN CARTER:** Okay.

5 **MS. HELTON:** I think that it is appropriate to
6 ask the president of the company what former
7 Commissioners the company is seeking to recover their
8 salaries, for lack of a better word, through the rate
9 case.

10 **CHAIRMAN CARTER:** Commissioner Skop.

11 **COMMISSIONER SKOP:** Thank you, Mr. Chair. And
12 that was my point. I agree that the questioning could
13 be construed as objected to as potentially inflammatory
14 and outside the scope. But I do feel it is relevant to
15 the subject matter of the pending rate case before us to
16 the extent that if any of those former employees are
17 being billed as legitimate rate case expenses, I think
18 that is the door that opens it up, as Ms. Helton stated.

19 **COMMISSIONER ARGENZIANO:** Mr. Chair.

20 **CHAIRMAN CARTER:** Hang on a second,
21 Commissioner.

22 **COMMISSIONER ARGENZIANO:** Okay.

23 **MS. CLARK:** The question is relevant --

24 **CHAIRMAN CARTER:** Turn your -- is her mike on?

25 **UNIDENTIFIED SPEAKER:** It looks on.

1 **CHAIRMAN CARTER:** Okay. Ms. Clark.

2 **MS. CLARK:** I understand your point that to
3 the extent it is a cost recovery in the rate case. We
4 would not object to that question, but that was not the
5 one Mr. Stewart was asking.

6 **CHAIRMAN CARTER:** Commissioner Argenziano.

7 **COMMISSIONER ARGENZIANO:** Well, then let's see
8 what the difference is, if Ms. Clark wants to identify
9 the difference in the questions.

10 **MS. CLARK:** Yes. As Commissioner Skop said,
11 to the extent he is asking what former Commissioners'
12 work on this rate case they intend to recover through
13 rate case expense, I think that is a question
14 Mr. Olivera can answer.

15 **COMMISSIONER ARGENZIANO:** Well, wouldn't
16 anybody working for FPL, if you are looking for salary
17 compensation, wouldn't they all be included then?

18 **MS. CLARK:** No, Madam Chairman, not in this
19 case. I think who FPL hires and for what purpose sheds
20 no light on what is being discussed here. And it hasn't
21 been put at issue in any of the issues listed in the
22 prehearing order. And to the extent Mr. Stewart wanted
23 them as an issue, he had an obligation to do that as
24 part of his prehearing statement or at the prehearing
25 conference. He did not do that, and to that extent it

1 is a denial of our due process for him to bring it up
2 now.

3 **COMMISSIONER ARGENZIANO:** And if I can ask
4 Commissioner Skop a question.

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

6 **COMMISSIONER ARGENZIANO:** Mr. Skop, if I
7 understand it correctly you are saying if it is within
8 that salary -- within those salaries that they are
9 collecting from the ratepayer, is that where you were
10 going, then it is a legitimate question to ask?

11 **COMMISSIONER SKOP:** What I was trying to
12 articulate was that I think that Ms. Clark had raised a
13 proper objection to the extent that she may have
14 considered Mr. Stewart's question to be inflammatory and
15 outside the scope of Mr. Olivera's direct testimony.

16 **COMMISSIONER ARGENZIANO:** However.

17 **COMMISSIONER SKOP:** However, as a hypothetical
18 example, if Ms. Clark as a -- and don't take offense,
19 but as a former Commissioner, is now providing legal
20 services directly related to this rate case, and those
21 fees would be recovered within the rate case expense,
22 then I do feel, although the question would have to be
23 reframed, that it would be relevant to that inquiry.

24 Now, they may have other past Commissioners or
25 employees working, but not directly billing to this rate

1 case in which case I think that would be outside the
2 scope. So I see --

3 **COMMISSIONER ARGENZIANO:** I got you now.

4 **COMMISSIONER SKOP:** I see both arguments, I
5 think it is a matter of the manner in which the question
6 is asked to the witness. But I do respect Ms. Clark's
7 line of thinking, I just think there is a relevant way
8 to get around that.

9 **MS. CLARK:** To be clear, we do not object to
10 what Commissioner Skop has framed as the appropriate
11 question to ask.

12 **CHAIRMAN CARTER:** Mr. Stewart, are you
13 comfortable with the question based upon Commissioner
14 Skop's statement?

15 **MR. STEWART:** I think I will have to be at
16 this point.

17 **CHAIRMAN CARTER:** Okay. We want -- I mean, we
18 want to be fair to all the parties, and there is due
19 process considerations. So, Commissioner Skop has
20 offered an opportunity for you to get the answer to the
21 question that you seek based upon that.

22 **MR. STEWART:** The one problem I would have is
23 it is okay to ask about former employment of
24 Commissioners now, but five minutes ago it was
25 inflammatory and harassing.

1 **CHAIRMAN CARTER:** Well, Mr. Stewart, now you
2 had an objection that was sustained against you. What
3 we did from the bench based upon information that
4 Commissioner Skop gave to Ms. Helton, and what
5 Ms. Helton was trying to do, was give you an opportunity
6 to ask a question that could elicit the information that
7 is necessary pursuant to the case, and so I think that
8 that should warrant some modicum, sir.

9 **MR. STEWART:** I wasn't referring to the
10 Commissioners. I don't think --

11 **CHAIRMAN CARTER:** Okay. So we are waiting
12 for --

13 **MR. STEWART:** Thank you. I appreciate it. I
14 will rephrase the question and we will move on.

15 **CHAIRMAN CARTER:** Okay. Let's do it.

16 **BY MR. STEWART:**

17 **Q.** Mr. Olivera, how many former Florida Public
18 Service Commissioners are being paid for this rate case?

19 **A.** To the best of my knowledge, and I think I
20 have a pretty good knowledge, there are two former FPL
21 Commissioners that are helping us in this rate case.
22 One is my counsel, Susan Clark, and the other is Terry
23 Deason, who is scheduled to be a witness later. And
24 their costs are being charged to the rate case for which
25 we are seeking recovery as part of a normal rate case

1 expense.

2 Q. Thank you, Mr. Olivera. In regards to
3 associations, I would assume that you are familiar with
4 the EEI and EPRI industry organizations?

5 A. I am.

6 Q. And --

7 MS. CLARK: I'm sorry, I was distracted.
8 Could Mr. Stewart start again? I beg your pardon.

9 CHAIRMAN CARTER: Okay. Mr. Stewart.

10 MR. STEWART: Mr. Chairman.

11 BY MR. STEWART:

12 Q. I would assume you are familiar with the EEI
13 and EPRI industry organizations?

14 A. I am.

15 Q. Would you agree, subject to check, that FP&L
16 ratepayers fund approximately \$4 million in association
17 fees for these two groups?

18 A. That sounds pretty high to me, but I didn't
19 prepare the MFRs associated with that. But on the
20 surface it is a pretty high -- it's a pretty high
21 number. We don't have a general membership with EPRI,
22 and part of the reason that I can't give you an exact
23 number off the top of my head, our philosophy is that
24 the business units -- rather than having a general
25 corporate membership for EPRI, the business units

1 decide, you know, where they get the most value. And so
2 the one business unit that really has a high level of
3 participation in EPRI, for example, is the nuclear
4 business unit, because there is a lot of kind of applied
5 R&D in the nuclear space that is headed under the
6 umbrella of EPRI. So a lot of research, particularly
7 research having to do with materials, such as the
8 problems with the Alloy 600 materials that Mr. Stall
9 will talk to you more about when he testifies, generally
10 they go through an organization such as EPRI.

11 **MR. STEWART:** Mr. Chairman, I'm not sure how
12 to do this. There is an MFR that cites the numbers.
13 Can I get a copy of the MFR for Mr. Olivera, so he can
14 refer to it to verify the \$4 million number?

15 **CHAIRMAN CARTER:** Do you have evidence that
16 this witness prepared that MFR or did another witness
17 prepare that? I mean, are you -- I mean, if you are
18 going to cross-examine the witness you probably need to
19 have something he is familiar with.

20 **MR. STEWART:** Well, I'm just trying to
21 agree -- I'm just trying to get the amount of money.
22 I'm not going to ask him if -- I can't show him the MFRs
23 and have him agree that that is what they filed?

24 **CHAIRMAN CARTER:** Well, I'm saying with this
25 witness.

1 **MS. CLARK:** I don't believe Mr. Olivera has
2 sponsored any of the MFRs. If Mr. Stewart wants to --

3 **MR. STEWART:** I will move on.

4 **CHAIRMAN CARTER:** Yes. I mean, we have got
5 witnesses here that can answer your questions if you
6 really want an answer to your question. This witness
7 has basically three -- two exhibits here to his
8 testimony.

9 **MR. STEWART:** Yes. But he does refer to EEI
10 in his testimony, sir. I will move on. I don't need to
11 verify the number. That's fine, I'll move on.

12 **CHAIRMAN CARTER:** That will be fine.

13 **MR. STEWART:** Okay.

14 **BY MR. STEWART:**

15 **Q.** What are the purposes of these organizations?

16 **A.** Which one?

17 **Q.** EEI, and if you have to address them
18 separately you can.

19 **MS. CLARK:** Mr. Chairman, I hate to do this,
20 and maybe it is that the hour is getting late. I would
21 like for -- I object on the grounds of relevance. I
22 don't know what issue in this case this line of
23 questioning goes to. It has not been -- these dues have
24 not been put in issue by any party, including Mr.
25 Stewart. They are irrelevant to what we are here today

1 and throughout this two-weeks to hear about. We are
2 wasting a lot of time here.

3 **CHAIRMAN CARTER:** Relevancy, Mr. Stewart, is
4 the objection.

5 **MR. STEWART:** Mr. Chairman, I'm trying to ask
6 some basic questions. There is an MFR that shows that
7 as president of FPL they are a member of a number of
8 industry associations. And so I am trying to get the
9 president of FP&L to tell me what are the purpose of
10 these organizations. Okay. I don't think that is an
11 unreasonable question, given the fact that he cited EEI
12 in his testimony. Now, I understand counsel's objection
13 that we need to be moving on.

14 **CHAIRMAN CARTER:** No, no, relevancy, that's
15 the objection.

16 **MR. STEWART:** Relevancy. Well, these are two
17 organizations that the ratepayers pay, and he has
18 already said he is familiar with them, and he has been
19 in the electric utility industry for 30 years. I think
20 he could answer the question of what is the purpose of
21 these organizations.

22 **CHAIRMAN CARTER:** You said in your argument --
23 you said these are two organizations with which the
24 ratepayers pay. I think you meant that the company
25 pays, right?

1 **MR. STEWART:** Through ratepayers' rates.

2 **CHAIRMAN CARTER:** Okay. We are --

3 **MS. CLARK:** Mr. Chairman, I don't -- if you
4 would just -- if he would just say what issue it relates
5 to, I could be satisfied. And I would point out that as
6 a qualified representative he has to abide by the orders
7 you have issued in this case, including the order on
8 establishing procedure. Things have to be identified as
9 an issue for you to ask a question on them and for them
10 to be relevant. That is my point.

11 **CHAIRMAN CARTER:** Ms. Helton.

12 **MS. HELTON:** Mr. Chairman, it is my
13 understanding that the company is seeking cost-recovery
14 for their membership in these organizations. However,
15 it is still not clear to me where the company or the
16 parties have put this at issue. And if it has not been
17 raised as an issue up to this point, I do think it seems
18 to be irrelevant to what we are doing here today.

19 **COMMISSIONER ARGENZIANO:** Mr. Chair.

20 **CHAIRMAN CARTER:** Commissioner.

21 **COMMISSIONER ARGENZIANO:** Now I am confused,
22 because if the ratepayers are paying it, then it is
23 relevant and we don't have rate cases come but every
24 20-something years it seems, and I think that if the
25 ratepayers are paying it, it has relevancy to the case,

1 to the issue, I'm sorry.

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

3 **MS. HELTON:** Perhaps I said that inartfully.
4 It has not been made an issue in this case to my
5 knowledge unless someone can tell me differently, the
6 appropriateness of the costs of the dues for these
7 organizations. And because of that, I do not believe
8 that it is an appropriate line of questioning here
9 today.

10 If we were to allow every line item on an MFR
11 to be taken into issue in this proceeding when it has
12 not been made a specific issue by the time of the
13 prehearing conference, we would be here all year and
14 next year, too.

15 **CHAIRMAN CARTER:** Commissioner Skop.

16 **COMMISSIONER SKOP:** Thank you, Mr. Chair.
17 Just to Ms. Helton's point, I think that to distinguish
18 the two questions -- and, again, I hope Mr. Stewart
19 appreciated what I was trying to do with the last
20 question, was try to narrow it so that it could be
21 within the scope. But I think the difference here
22 between the prior question is that I am pretty sure, as
23 in most rate cases, that is there is a separate issue
24 that what is the appropriate rate case expense, whereas
25 there is probably not a succinct issue that addresses

1 what are the appropriate association fees. And I could
2 be --

3 **MS. HELTON:** That is my understanding, but I
4 have to confess, I have not sat down and read every
5 single issue here. I do believe, though, that I have
6 been involved in proceedings where membership in these
7 types of organizations have been at issue, and it would
8 have been appropriate in those cases. But unless
9 someone can correct me, I'm not aware of an issue here
10 today where this has been made a specific issue to be
11 addressed by you when you vote in December, or November,
12 I can't remember now when it is.

13 **CHAIRMAN CARTER:** Mr. Stewart.

14 **MR. STEWART:** Mr. Chairman, thank you. I
15 think general O&M expense -- this is filed in an MFR,
16 okay, for our review, so I would assume that it can be
17 questioned. And it would fall in the category of
18 general O&M expense. I would assume that during a
19 hearing if something came out about one of the MFRS, if
20 it was an appropriate expense, that it would be
21 addressed in the general O&M expense.

22 Again, ratepayers are footing the bill for
23 this, and I'm don't -- again, asking the purpose of
24 these organization is -- I wouldn't think would be too
25 far out of the realm.

1 **CHAIRMAN CARTER:** Mr. Stewart, anytime we have
2 a non-attorney, I give them great leeway, and I think
3 everyone concerned here today know I have given you
4 tremendous latitude. I think what we probably should do
5 is adhere to the -- you have to be under the same rules
6 as the lawyers on the pretrial order.

7 Let's do this. I'll give you an opportunity
8 to get your thoughts together so we can kind of move on.
9 Let's do this, Commissioners. We are going to have to
10 take a break, because I think we are getting way far
11 afield here. I am going to withhold the ruling on the
12 objection, and let's take -- we'll take about 10
13 minutes. Okay, ten minutes.

14 (Off the record.)

15 **CHAIRMAN CARTER:** We are back on the record.
16 And before we left, there was an objection pending. I
17 will sustain. The objection is sustained.

18 Commissioner Skop, you had a question.

19 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.
20 Since this is a good interim time, I had a brief
21 procedural matter that I would like to address with
22 staff counsel. And as Ms. Bradley noted earlier this
23 morning, it is difficult at best to conduct
24 cross-examination related to compensation issues when
25 you can't make direct reference to most of the data,

1 including job titles. And accordingly, I would like to
2 know what the appropriate procedural posture for
3 rendering the necessary confidentiality determination
4 with respect to the complete compensation data set that
5 the Commission now has as a result of the FPL response
6 to the motion to compel.

7 And I recognize that this was -- this was the
8 point I was trying to make last week as we made a
9 confidentiality ruling based upon the incomplete data
10 set. We now have the full data set, and in order to get
11 the ball rolling -- I know this won't be resolved during
12 the pendency of this rate case, but at some point I
13 think there needs to be an affirmative ruling on the
14 confidentiality of the remaining data that the
15 Commission now has in its possession. That may or may
16 not be the individual prehearing officer, it may be the
17 full Commission, or however, but at least to me it gets
18 the ball rolling to the extent that -- you know, me
19 personally, as I have articulated in my concurring
20 opinion, I don't believe that the employees have the
21 reasonable expectation of privacy with respect to job
22 titles or position. So I think that I would like to
23 hear from staff at some appropriate time as to how we
24 are going to address that, because, again, the issue
25 before is that 4A was the motion to compel, and 4 was

1 the confidentiality. But at the time we made the
2 confidentiality ruling we didn't have all the data
3 before us. So we still have one confidentiality ruling
4 to make on each of the respective rate cases, I believe,
5 and so I am looking to staff counsel to advise
6 appropriately.

7 **COMMISSIONER ARGENZIANO:** Mr. Chair.

8 **CHAIRMAN CARTER:** Commissioner Argenziano.

9 **COMMISSIONER ARGENZIANO:** I had a hard time
10 getting back on after the break, and you guys obviously
11 started up before I got back on. What happened to the
12 issue that was pending?

13 **CHAIRMAN CARTER:** The objection, I sustained
14 it.

15 **COMMISSIONER ARGENZIANO:** Sustained it?

16 **CHAIRMAN CARTER:** Yes.

17 **COMMISSIONER ARGENZIANO:** When Commissioner
18 Skop is done, because I don't know what he was talking
19 -- what issue he was -- I got the confidentiality, but
20 wasn't sure to what specifically he was talking about.
21 I would like to bring up a point to that issue that we
22 left on, only because now it brings something to my mind
23 that I think we need to look at. So at the proper time.
24 I didn't want to cut off Commissioner Skop.

25 **CHAIRMAN CARTER:** Okay. Commissioner Skop.

1 **COMMISSIONER SKOP:** Thank you Mr. Chair. And
2 just for Commissioner Argenziano's benefit, I will
3 quickly repeat what I had previously stated. I do have
4 a brief procedural matter that I wanted staff legal
5 counsel to address. Ms. Bradley previously expressed
6 that it was difficult at best to conduct
7 cross-examination related to compensation issues when
8 you can't make direct reference to most of the data,
9 including the job titles.

10 And, accordingly, I wanted to seek the advice
11 of staff counsel as to the appropriate procedural
12 posture for rendering a confidentiality determination
13 with respect to the complete data set compensation --
14 the complete compensation data set that the Commission
15 now has before it as a result of the FPL response to the
16 motion to compel.

17 Last Tuesday, this was the point I was
18 attempting to make to the extent that the
19 confidentiality ruling was based on the data that the
20 Commission had in its possession at that time. It did
21 not include the additional data that was provided. And,
22 accordingly, on each respective rate case, the
23 Commission, either the individual prehearing officers or
24 the Commission as a whole needs to render the
25 appropriate confidentiality determination based upon the

1 additional data that was received. And that ruling I
2 think would be the precursor to the respective utilities
3 filing a notice of appeal with respect to the job titles
4 and whatever else they may appeal.

5 But, at least from my own perspective, as I
6 mention in my concurring opinion, that at least -- that
7 I don't believe that the employees have a reasonable
8 expectation of privacy with respect to their individual
9 job titles or position. So, again, I was looking to
10 legal counsel to figure out how we might be in the
11 procedural posture to render that ruling as quickly as
12 possible to the extent that it gives the respective
13 utilities leave to go take the issue up on appeal.

14 **MS. HELTON:** I suspect -- are you meaning me
15 or Ms. Bennett?

16 **COMMISSIONER SKOP:** Either or. And I just
17 want to caveat that by saying I know that this won't be
18 resolved during the pendency of this case. So we are
19 going to have to talk --

20 **CHAIRMAN CARTER:** Since it is procedural,
21 Ms. Helton, I would rather you answer it than Ms.
22 Bennett.

23 **MS. HELTON:** Okay. It is my understanding,
24 and if I make a misstatement, if someone would please
25 correct me. The Commission voted on Tuesday, or last

1 Tuesday with respect to certain information that had
2 already been filed or the Commission wanted to be filed
3 here. With respect to the information that had already
4 been filed, it is my understanding that the
5 Commissioners ruled that the line item compensation
6 information that was the subject of the discovery
7 request, as well as the titles, the job titles for those
8 employees of the companies were ruled to be public, not
9 confidential as the company had requested.

10 An order has been entered, I believe it was
11 last Thursday, denying Florida Power and Light's request
12 for confidential treatment and granting the staff's
13 motion to compel with respect to that confidential
14 information. So those orders have been issued.

15 It is my understanding that since then Florida
16 Power and Light has entered or filed revised information
17 complying with the motion to compel. It is my
18 understanding that the company has filed a notice of
19 intent, so it is not yet ripe for the Commissioner, any
20 Commissioner, whether it is the prehearing officer, the
21 presiding officer, or the full Commission to rule on
22 that information that is subject to the notice of
23 intent, because there is not anything to rule on.

24 A notice of intent is like a place card holder
25 until the company has time to file a request. And at

1 that time the precedent has been set by the Commission
2 how -- what should happen to that information and an
3 appropriate ruling could be made.

4 **COMMISSIONER SKOP:** Okay. And in response to
5 that, again, the relevant part, or the majority of the
6 data, again, that we had last Tuesday that we have ruled
7 upon affirmatively, I'm not really concerned about that.
8 I am concerned about, again, this last part that has the
9 majority that we had to compel to produce, which has
10 been produced, but there is the notice of intent. But
11 then there needs to be some sort of additional filing,
12 and what is the time frame for the utility providing
13 that additional filing so that we can get in an
14 evidentiary ruling posture?

15 **MS. HELTON:** Rule 25-22.006 gives any entity
16 that files a request for confidential treatment -- or
17 that files a notice of intent 21 days to file a request
18 for confidential treatment. So the rule provides 21
19 days for the company to file its actual request, which
20 is the pleading that the Commission could rule on. I
21 don't know if the company could agree to file any type
22 of request earlier than that.

23 **COMMISSIONER SKOP:** And this --

24 **COMMISSIONER ARGENZIANO:** Mr. Chair, a
25 question for staff.

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

2 **COMMISSIONER ARGENZIANO:** I am going to have
3 to take a step backwards, because now after hearing what
4 I'm hearing, I am even more confused than when we
5 started. We have determined -- the Commission voted
6 that that information that was going to remain
7 confidential while we had this rate case on, while they
8 filed an appeal, whenever they do, would still be
9 available to Commissioners and the intervenors, but
10 confidentially, right?

11 **MS. HELTON:** Yes, ma'am.

12 **COMMISSIONER ARGENZIANO:** All right. So then
13 what is it that we are talking about at this point, not
14 having it in the proper forum?

15 **MS. HELTON:** I think Commissioner Skop needs
16 to answer that question.

17 **COMMISSIONER SKOP:** No, Commissioner
18 Argenziano. The information that we did not have, which
19 the Commission ordered, or in the motion to compel
20 ordered FPL and Progress to produce, they have now
21 produced that information. But that information is
22 still confidential subject to their notice of intent,
23 subject to the request for confidentiality, subject to
24 then an affirmative ruling by the Commission or the
25 respective prehearing officer. So we still have to go

1 through this exercise one more time before it can be
2 taken up on appeal. That is my understanding.

3 **COMMISSIONER ARGENZIANO:** That is what I don't
4 understand.

5 **COMMISSIONER SKOP:** And that is what I was
6 trying to point out last week with my reservation about
7 ruling on 4 before we had all the information required
8 by 4A. But it was the right thing to do. I mean, it
9 could be handled either way. It is just that we have to
10 repeat the exercise one more time. And I will look
11 briefly to Mr. Butler from FPL to confirm that.

12 **MR. BUTLER:** You are correct, Commissioner
13 Skop.

14 **COMMISSIONER ARGENZIANO:** Wait, Mr. Chair,
15 before you do that for staff. Because now I just may
16 not be getting it. We voted -- I understand what you
17 are saying about the additional information, but we
18 asked for that additional information that day. We
19 wanted that information, and I thought we voted on that
20 knowing that that was the information we were to be
21 getting to be still kept confidential because it is
22 going through an appeal process. Are you telling me
23 that the additional information that they hadn't given
24 us, even though we voted to compel for all of that
25 information, that we would have to now vote again

1 somehow to remain confidential?

2 **COMMISSIONER SKOP:** Yes.

3 **COMMISSIONER ARGENZIANO:** Why?

4 **COMMISSIONER SKOP:** Because it is the
5 incremental part of the information that we did not
6 have. And, again, anytime you file something, you can
7 request intent followed by a request for
8 confidentiality. So we have to go through that exercise
9 ultimately one more time.

10 I think staff will either determine whether
11 that will be the individual prehearing officers on the
12 respective cases or the Commission as a whole. But,
13 again, there has been the filing in compliance with the
14 motion to compel. So we have the complete data set now,
15 but there has also been --

16 **COMMISSIONER ARGENZIANO:** Even though --
17 excuse me. But even though we have voted on -- we were
18 voting on wasn't part information. We were saying we
19 wanted all the information, and what we voted for that
20 day was getting -- compelling all that information and
21 knowing it would remain confidential. So now you are
22 telling me that even though we voted on all the
23 information, we still need to vote on it again, and I'm
24 trying to figure out what makes you have to do that.

25 **COMMISSIONER SKOP:** What I'm saying, and I

1 will defer to our staff counsel. Essentially, we voted
2 on the confidentiality with respect to the information
3 that the Commission had at the time it made its ruling.
4 The issue in 4A was the motion to compel to have the
5 utility file the information that we did not have. That
6 information was filed with the Commission with the
7 notice of intent to request confidentiality, which has
8 not yet been filed. And when it is done so, the
9 information will be held confidential until such time as
10 the Commission or the respective prehearing officers
11 renders a determination similar to what we did last
12 Tuesday as to the confidentiality of the information
13 provided.

14 **CHAIRMAN CARTER:** Ms. Helton.

15 **MS. HELTON:** I look at it this way. The
16 Commissioners, you all made a finding this past Tuesday
17 with respect to certain types of information and whether
18 that is confidential or not. As I understand the
19 company's position, even though you have made that
20 ruling, they disagree with the ruling. So for them to
21 be able to preserve their right to disagree with your
22 ruling, when they filed the additional information that
23 was subject to staff's motion to compel, they are under
24 an obligation to seek confidential treatment for that,
25 as well. If they were to file that publicly, that

1 pretty much let's the cat out of the bag and nothing
2 would be confidential.

3 So this is just a process to go through so
4 that the company can preserve what it believes to be
5 confidentiality with respect to this specific
6 information. I have read in the clips, I have not heard
7 from them, but I have read in the clips that they plan
8 to appeal the Commission's decision. So for them to be
9 able to preserve their right to do that when they file
10 the additional information they also have to seek
11 confidential treatment of that. But I believe that the
12 Commission has already spoken to what it believes to be
13 the status of that information.

14 **CHAIRMAN CARTER:** Commissioner Argenziano.
15 Did we lose her? Commissioner.

16 **COMMISSIONER ARGENZIANO:** Yes. Can you hear
17 me?

18 **CHAIRMAN CARTER:** Yes, ma'am. I can hear you
19 now.

20 **COMMISSIONER ARGENZIANO:** Can you hear me?

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

22 **COMMISSIONER ARGENZIANO:** My phone is about to
23 die. I will call back in a moment. But that is what I
24 was getting to. I thought we did vote on all of that
25 information being confidential, and I can understand the

1 company saying now we want to make sure, but that is
2 what I thought we did. And I will call right back
3 immediately, Mr. Chair.

4 **MS. HELTON:** Unfortunately --

5 **CHAIRMAN CARTER:** She is going to call back
6 in. She is having a problem with her phone. She will
7 call back in. No, she is going to call back in. All
8 right. Let's do this, because I think she had one other
9 question before we went on, is that right? Okay.

10 While we are waiting on Commissioner
11 Argenziano, I think that -- Mr. Stewart, if you can get
12 with the attorneys for the company, they can probably
13 tell you the witnesses that can get you the answers to a
14 lot of those questions that you have, the correct
15 witness.

16 **MR. STEWART:** Thank you, Mr. Chairman.

17 **CHAIRMAN CARTER:** We are not proceeding yet.
18 That's just a heads up for you.

19 Commissioner Argenziano, can you hear us now?

20 **COMMISSIONER ARGENZIANO:** Yes, I'm back.

21 **CHAIRMAN CARTER:** Okay. All right. You had
22 another -- before we proceed, you had another question
23 you said?

24 **COMMISSIONER ARGENZIANO:** Yes, and it is just
25 because the whole conversation brought to mind that --

1 that out of -- the question that I guess Mr. Stewart had
2 asked about the organizations, and the objection that
3 was made. And my question at this point is that surely
4 out of 170 issues one has to go to miscellaneous
5 expenses chargeable to the ratepayer.

6 And I am wondering if that is not the case,
7 then are we just letting maybe tens of millions of
8 dollars go unchecked. And as a Commissioner I can't
9 find out about that information now that it is brought
10 to my attention even more so?

11 **CHAIRMAN CARTER:** No.

12 **COMMISSIONER ARGENZIANO:** I mean, it has to be
13 out of 170 issues somewhere in that. In a miscellaneous
14 expense it has to be somewhere chargeable to the
15 ratepayer.

16 **CHAIRMAN CARTER:** I think, Commissioner, the
17 perspective is that there are other witnesses that have
18 the answer to those MFRs. This witness did not sponsor
19 the MFRs.

20 **COMMISSIONER ARGENZIANO:** Okay. But there
21 will be -- we can get the information. It's not that we
22 can't get to that information somewhere down the line.

23 **CHAIRMAN CARTER:** Ms. Helton.

24 **MS. HELTON:** I did not mean to imply that at
25 all, Commissioner Argenziano.

1 **COMMISSIONER ARGENZIANO:** No, I didn't get
2 that from you, Ms. Helton. I was just -- with the
3 objection there, when I hung up, I am starting to think
4 about, wait a minute, how come we can't get that
5 information? That has to be somewhere in the --

6 **MS. HELTON:** Staff has pointed out to me
7 during our break, Issue 128, which goes to the -- is
8 FPL's requested level of O&M expense appropriate, so
9 that would be the blanket issue.

10 **COMMISSIONER ARGENZIANO:** Okay.

11 **CHAIRMAN CARTER:** Would that be witness --
12 Ms. Clark, you can be heard.

13 **MS. CLARK:** Let me be clear. Mr. Stewart
14 has -- in his positions on the issue, he has said he
15 agreed with Public Counsel. To my knowledge, no one has
16 put at issue the fees for EEI or EPRI, so it is not at
17 issue in this case. And as your prehearing order
18 states, if it is not put at issue, it is waived.

19 And the Commission has been through this
20 before. It is a matter of due process. As Ms. Helton
21 indicated, there are probably hundreds of thousands of
22 things that could be put at issue, and to get due
23 process for the company to be able to respond to that,
24 parties have to say we put this at issue. And that has
25 not been done in this case, so it is irrelevant to the

1 case.

2 **COMMISSIONER ARGENZIANO:** And I --

3 **CHAIRMAN CARTER:** Hang on a second. We are
4 letting -- staff is conferring.

5 Ms. Helton, are you still conferring with
6 staff, or do you need a moment. Do you want to take a
7 moment, Ms. Helton?

8 **MS. HELTON:** No. I'm just trying to figure
9 out what is the best way to approach this, Mr. Chairman.

10 **CHAIRMAN CARTER:** Okay. Well, I mean, just
11 take your time. Take a minute, and I'll --

12 **MS. HELTON:** I agree with Ms. Clark that
13 Mr. Stewart has not raised to my knowledge a specific
14 issue with respect to these associational membership
15 fees for lack of a better way to say it. But on the
16 other hand, the company has filed MFRs, and they have
17 the burden of proof to show that the expenses and other
18 information set out in those MFRs result in a certain
19 amount of revenue requirement for the company. The
20 Commission on its own can always raise what it believes
21 to be an issue with respect to any MFR number during the
22 course of the proceeding.

23 **CHAIRMAN CARTER:** Why don't we do this. Why
24 don't we just find the witness that sponsored that MFR,
25 and when he comes up then Mr. Stewart can ask his

1 questions.

2 Ms. Clark.

3 **MS. CLARK:** We can do that, Mr. Chairman.

4 **CHAIRMAN CARTER:** Well, let's do that then. I
5 think, Mr. Stewart, a lot of the questions that you are
6 asking the company has a witness for that, or maybe one
7 of the intervenors may have a witness, I don't know, but
8 certainly we can have the witnesses to respond to those.

9 **MR. STEWART:** That's fine, Mr. Chairman.

10 **CHAIRMAN CARTER:** You may proceed. One
11 second.

12 Commissioner Skop.

13 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.
14 Just to Commissioner Argenziano. What I was trying to
15 say before on the confidentiality issue, that I agree
16 with Ms. Helton that the Commission firmly established
17 the necessary precedent for the ruling that we made. It
18 is just that there is a few loose ends that ultimately
19 need to be tied up so that the issue is properly
20 packaged to be taken up on appeal. So I think those
21 will work themselves out. I was just looking for the
22 time line and the posture, And I think I got the answers
23 I needed. Thank you.

24 **CHAIRMAN CARTER:** Thank you.

25 Mr. Stewart.

1 **MR. STEWART:** Thank you, Mr. Chairman.

2 **BY MR. STEWART:**

3 **Q.** Mr. Olivera, Page 42 of your testimony, Line
4 13. You see where you say the Commission's decision in
5 this proceeding regarding FP&L's return on equity and
6 capital structure will be absolutely critical. And then
7 on Page 44 in your testimony -- Page 45.

8 **CHAIRMAN CARTER:** Hang on a second. On Page
9 44, what line?

10 **MR. STEWART:** I'm sorry, Page 45.

11 **CHAIRMAN CARTER:** Oh, Page 45? Okay.

12 **BY MR. STEWART:**

13 **Q.** Line 11 through 14, you again state that two
14 of the most basic considerations are fair and reasonable
15 return on equity and support for a strong balance sheet.

16 The importance of these issues, is that
17 because of how the credit agencies will look at FPL?

18 **A.** That is certainly part of the answer. Our
19 credit rating agencies will look at it, but it also goes
20 back to the overall profitability of the company.

21 **MR. STEWART:** Thank you, Mr. Olivera.
22 Mr. Chairman, I have no other questions.

23 **CHAIRMAN CARTER:** Thank you, Mr. Stewart.

24 Mr. Wright, here is your big chance.

25 **MR. WRIGHT:** Thank you, Mr. Chairman.

CROSS EXAMINATION

1
2 **BY MR. WRIGHT:**

3 Q. Good afternoon, once again, Mr. Olivera.

4 A. Good afternoon.

5 Q. I am still trying to understand some testimony
6 that you have given on Page 32 of your prefiled direct
7 testimony relating to exactly what the company is asking
8 for in terms of total rate increases for 2010 and 2011.
9 I feel somewhat apologetic asking these questions,
10 because they have been asked and addressed a few times,
11 but I truly don't have it down.

12 A. I am happy to go through it again. And I will
13 give you the same preface that I gave before, that I
14 would like to defer to Mr. Barrett to walk you through
15 all of the numbers that make up the reconciliation.
16 But, in the same spirit that I talked to Mr. Stewart, I
17 am happy to give you the two points that changed.

18 On Page 32, Line 17, we show an adjustment.
19 We said it is 1.21 billion. And what I testified later
20 is that -- earlier, I'm sorry. It is getting late -- is
21 that that number, the new adjusted number for that is a
22 1.061 billion. And I believe that there was a question
23 about, a couple of lines up, Line 14, of 1.044 billion,
24 and that adjusted number is now 983.

25 Q. Thank you. And I also understood at Line 23

1 that the number originally shown as 247.4 million is
2 now 240 million, is that correct?

3 A. That is correct.

4 Q. Would I be correct for -- can you help me out
5 in understanding what you referred to as base to clause
6 adjustments, or was it clause to base?

7 A. This is the reason why I asked that this be
8 deferred to Witness Bob Barrett, because I don't have
9 with me the reconciliation of all the numbers associated
10 with the base to clause, which is some \$78 million. I
11 just don't have that information with me, and I'm not
12 prepared today -- and I'm saying this probably for the
13 15th time, and I'm not prepared here today to really
14 walk you through all of the numbers, each of the
15 components, what makes up each of those changes.

16 Q. Thank you. I was trying to keep it at a high
17 level. Let me try to ask kind of a concluding question
18 on this line.

19 If the Commission were to approve the
20 company's requests in this case, would it be correct
21 that as of the time West County Energy Center 3 comes
22 on-line in 2011 under the company's proposed generation
23 base rate adjustment mechanism, that the cumulative
24 annual rate increases would be 1.061 billion, plus 240
25 million, plus \$180 million?

1 **A.** I believe the number for West County 3 would
2 be \$182 million.

3 **Q.** 182. Subject to that minor correction with
4 the arithmetic I described, would that give us the total
5 company request?

6 **A.** It would give you the total request which
7 encompassed the request for 2010, the request for 2011,
8 and the revenue requirements associated for West County
9 3, not all of which would be recovered in the year 2011.

10 **Q.** But it would be the annualized revenue
11 increase number, correct?

12 **A.** It would be a total annual revenue number,
13 which would not be all in place until the subsequent
14 year, until 2012.

15 **Q.** Thank you. Just as a preliminary question, do
16 you agree that -- and this is a quote from Mr. Davis'
17 rebuttal testimony -- that the utility has an obligation
18 to serve its customers and to do so at the lowest
19 possible cost?

20 **A.** I would agree that that is one of our
21 obligations.

22 **Q.** A couple of more clearing up questions from
23 previous cross-examination, and I think you have
24 answered these in part, so I apologize to the extent
25 they are redundant, but I think I can do it quickly.

1 Will you agree that some of FPL's recovery through the
2 nuclear cost-recovery clause, which is embedded in the
3 capacity cost-recovery charge, includes capital return?

4 **A.** Some of the costs in the nuclear
5 cost-recovery. At this stage we are recovering the
6 development costs, and subject to verification, I don't
7 think we are getting a capital return. We are
8 recovering kind of dollar-for-dollar what the
9 development cost is.

10 **Q.** Is it your understanding then that there is no
11 AFUDC type accrual on the unamortized amount to be
12 recovered?

13 **A.** My understanding, and, again, subject to
14 verification, is that under the nuclear cost-recovery at
15 this stage when we are still going through the
16 development, that we are recovering the actual costs
17 that are incurred. I deferred that confirmation to
18 Witness Ken Ousdahl, but I believe that is the way it
19 works.

20 **Q.** Thank you. Is it correct that FPL's
21 environmental cost-recovery clause charge includes some
22 return on equity as part of the capital costs embedded
23 in that charge?

24 **A.** The environmental cost-recovery has some
25 capital cost recovery. I believe it is primarily

1 associated with the solar facilities.

2 Q. Are the solar facilities recovered through the
3 environmental cost-recovery charge or the energy
4 conservation charge?

5 A. I'm sorry. I think it is the energy
6 conservation charge.

7 Q. Do you know the answer to my previous
8 question, which addressed the environmental
9 cost-recovery charge?

10 A. There may be some tiny amounts in the
11 environmental clause that may have capital
12 cost-recovery, but I believe that they would be pretty
13 small amounts.

14 Q. I think this is the last question in this
15 part. Are you certain that there are no capital
16 recovery costs included in the fuel cost charge at all?
17 For example, I have been told over the years that there
18 are some capital costs associated with fuel handling
19 equipment embedded in some of the investor-owned
20 utilities' fuel charges, but with that clarification.

21 A. Yes, there may be -- and, again, we are
22 getting down, you know, deep in the weeds in this. But
23 there may be a very small piece in the fuel
24 cost-recovery that is associated with railroad cars that
25 are part of the St. Johns River Power Park and maybe the

1 Scherer plant. It is a very, very, very small piece of
2 the pie of a \$6 billion expenditure, but there may be a
3 small piece there to your point.

4 Q. Thank you. Among other things in your
5 testimony, you make mention of the fact that FPL has
6 given -- at least that FPL has reduced its base rates
7 twice that I am aware of since the last rate case, is
8 that accurate?

9 A. That is correct.

10 Q. And would you agree -- I can pull out the
11 orders, but I hope not to do so. Will you agree that
12 FPL has also given a number of refunds over that time?

13 A. Yes. I covered that in my testimony, that we
14 have given some refunds when it exceeded the threshold
15 levels.

16 Q. And the last time FPL requested a general base
17 rate increase was in the 2005 case, is that accurate?

18 A. That is correct.

19 Q. And isn't it correct that the outcome of that
20 case was a settlement that provided for zero immediate
21 base rate increase?

22 A. As we have talked several times, we had a
23 global settlement that had a number of factors
24 associated with it, including the GBRA, as well as we
25 gave up any storm cost recovery, nuclear decommissioning

1 costs, and we also agreed to credit depreciation --
2 credit on depreciation.

3 Q. Would it be correct that the answer to my
4 question was yes, subject to the GBRA and the other
5 clarifications you articulated?

6 A. The answer is yes, but there were other
7 components besides the one you mentioned.

8 Q. During the period 1996 through 2008, isn't it
9 true that FPL was continuing to earn healthy returns on
10 equity?

11 MS. CLARK: Mr. Chairman.

12 THE WITNESS: I have not looked at all of that
13 data since 1996, so I'm really not prepared to give you
14 a general comment on kind of what the relative terms
15 were between '96 on forward.

16 MR. WRIGHT: Mr. Chairman, Mr. Moyle is going
17 to help me out by distributing --

18 CHAIRMAN CARTER: You need a number?

19 MR. WRIGHT: Yes, sir, I do. I believe it
20 would be 388.

21 CHAIRMAN CARTER: Commissioners, 388. Short
22 title, or a title?

23 MR. WRIGHT: Summary Pages from -- I don't
24 know how short this is. Summary Pages from FPL Earnings
25 Surveillance Reports, 1996 through 2008.

1 **CHAIRMAN CARTER:** I was trying to think of a
2 way that I could shorten it.

3 **MR. WRIGHT:** FPL Earnings Surveillance Reports
4 is okay with me, Mr. Chairman.

5 **CHAIRMAN CARTER:** Okay. I like that.

6 **MR. WRIGHT:** Okay.

7 **CHAIRMAN CARTER:** FPL Earnings Surveillance
8 Reports for 1996 through 2008.

9 (Exhibit Number 388 marked for
10 identification.)

11 **MR. WRIGHT:** Mr. Chairman, I will aver to you
12 that these are copies, and you can even see the
13 Commission date stamp on most of them, of the cover
14 letter and the summary page showing FPL's achieved ROEs
15 pursuant to its reporting obligations under the earnings
16 surveillance processes of the Commission. And would ask
17 that -- I will assert to you that they are probative of
18 the company's performance during this time period, and
19 at the appropriate time I will move their admission.

20 I would offer Mr. Olivera the chance to look
21 at them, and tell me if he sees anything wrong with
22 them, or anything like that, but I think they are what
23 they are, and they show that the company has earned --
24 this is in the nature of a proffer. They show that the
25 company has earned healthy -- it shows the company has

1 earned the rates of return indicated. I will even hold
2 off on the word healthy.

3 **CHAIRMAN CARTER:** Okay. Yes. Hang on a
4 second. Give the witness an opportunity to review it.
5 And thank you for that explanation, by the way. I
6 appreciate it.

7 **MS. CLARK:** Mr. Olivera, can you read the
8 numbers on that?

9 **THE WITNESS:** I can.

10 **MS. CLARK:** Okay.

11 **THE WITNESS:** It's just a lot of information.

12 **CHAIRMAN CARTER:** Hang on a second before you
13 go further, Mr. Wright.

14 Commissioner Skop.

15 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.
16 During this interlude while the witness is looking at
17 the exhibit, I just wanted to thank Mr. Butler for
18 providing the additional discovery information that we
19 had requested. It was very helpful to have that on a
20 CD-ROM where staff can manipulate the data and the Excel
21 spreadsheets. So I do thank you. And its often a
22 pleasure working with you, because things happen when we
23 have our discussions, and I am thankful for that. Thank
24 you.

25 **MR. BUTLER:** My pleasure. Good to be helpful.

1 **CHAIRMAN CARTER:** Mr. Wright, you may proceed.

2 **MR. WRIGHT:** Mr. Chairman, I am still
3 deferring to the witness' opportunity to review the
4 documents.

5 **CHAIRMAN CARTER:** No problem. Oh, hang on a
6 second. Let's go off the record for a moment.

7 (Off the record.)

8 **CHAIRMAN CARTER:** I think this would be an
9 appropriate time since for us to -- since we are at a
10 lull, let's go ahead on and trade out the court
11 reporters, and then we will come back. We will come
12 back at -- I'm going by the clock back there. I think
13 it is the same time as the ones over there. I hope it
14 is. So we will come back at quarter of, Jane? Okay. A
15 quarter of.

16 (Recess.)

17 (Transcript continues in sequence with
18 Volume 5.)

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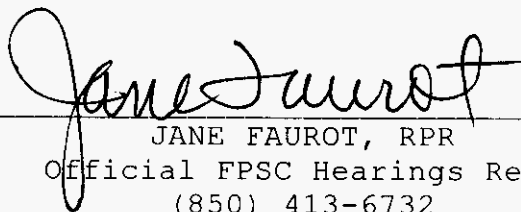
1
2 STATE OF FLORIDA)
3 : CERTIFICATE OF REPORTER
4 COUNTY OF LEON)
5

6 I, JANE FAUROT, RPR, Chief, Hearing Reporter
7 Services Section, FPSC Division of Commission Clerk, do
8 hereby certify that the foregoing proceeding was heard
9 at the time and place herein stated.

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

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

20 DATED THIS 28th day of August, 2009.

21
22
23
24
25


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