BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

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

2009 DEPRECIATION AND DISMANTLEMENT STUDY BY FLORIDA POWER & LIGHT COMPANY. — DOCKET NO. 090130-EI
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Pages 581 through 716

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PROCEEDINGS: HEARING

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

DATE: Wednesday, August 26, 2009

TIME: Commenced at 9:36 a.m.

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

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

I N D E X

WITNESSES

EXHIBITS

NUMBER:		ID.	ADMTD.
394	J.D. Power Study - 2009	587	
395	EIA Retail Price Data - 2009	600	
396	FPL TYSP Excerpt - Energy and Customers	605	
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P R O C E E D I N G S

(Transcript continues in sequence from Volume 5.)

CHAIRMAN CARTER: Good morning to one and all. I'd like to call the hearing to order. Staff has a preliminary matter.

Staff, you're recognized.

MS. BENNETT: Yes, Mr. Chairman, Commissioners. I would like to make an appearance also on this docket for Keino Young and Kathryn Cowdery, both of staff.

CHAIRMAN CARTER: Okay.

Commissioner Skop, you're recognized.

COMMISSIONER SKOP: Thank you, Mr. Chairman. Just to our technical staff. I guess the Commission in terms of making our proceedings open goes to great lengths to put our Agenda Conferences on video archives on our website, and I would just merely ask our, our staff to try and look to see if there was a way to do the same for this proceeding. Again, we have not had a major rate case in 23 years apparently, and it would be nice for those that could not watch live, if those were, those archives or streaming video was available to be viewed by people that may want to do so.

CHAIRMAN CARTER: Okay. All right. We'll get with our staff on that and follow up.

Before we go further, are there any other preliminary matters from any of the parties?

Mr. Wright, we'll be getting with you in a minute.

Any other preliminary matters from any of the parties?

Okay. Mr. Wright -- wait a minute. I guess you can't start yet, can you?

Where's our witness?

THE WITNESS: I'm right here.

CHAIRMAN CARTER: Oh. We're going to take like -- Chris. Just everybody kind of hold in place. We've got one camera that doesn't want to get your good side. It should take Chris about five minutes to reset it. I want to get everybody's good side.

(Pause.)

We are back on the record. And we've got our technology up and running. And the last time we left, we were, Mr. Wright was on cross-examination.

Good morning, Mr. Wright. You may proceed.

MR. WRIGHT: Good morning, Mr. Chairman. Thank you.

CONTINUED CROSS EXAMINATION

BY MR. WRIGHT:

Q. Good morning, Mr. Olivera.

A. Good morning, Mr. Wright.

Q. I just have a couple of follow-on questions regarding storm costs and paying for storm costs.

I appreciate your clarifying for me yesterday that you, that FPL already has the money from the securitization. Isn't it true that customers have since 19, since 2007 or whenever it was that the storm, the current storm restoration charge was implemented, been paying toward establishing or been repaying the bonds that funded that $200 million storm reserve?

A. That is correct. The $200 million and whatever the incremental storm costs were from the '04 and '05 hurricane season.

Q. Thank you. I'm going to move on to a different line. In a couple of places in your, your testimony you testify about FPL providing world-class utility service and high quality customer service. Is that true?

A. Is there a specific page and line number that you're referring to?

Q. Well, I thought you'd be familiar with that, but Page 12, you refer to world-class utility service at Line 21. And at Page 49, Line 16, you are referring there to Witness Santos' testimony, but you say that she describes the high quality customer service provided by FPL.

A. Page 29, what line?

Q. I'm sorry. Page 49.

A. Sorry.

Q. Line 16. And it actually laps on to Line 17.

A. I have it.

Q. Thank you.

MR. WRIGHT: Mr. Chairman, I'm, I've asked Mr. Moyle if he would, and he has kindly agreed to, pass out an exhibit that --

CHAIRMAN CARTER: Okay. Number 394.

MR. WRIGHT: Thank you, sir. 394?

CHAIRMAN CARTER: Title?

MR. WRIGHT: J.D. Power Residential Customer Satisfaction Study.

CHAIRMAN CARTER: How about J.D. Power Study?

MR. WRIGHT: 2009.

CHAIRMAN CARTER: 2009. Great.

MR. WRIGHT: Deal. Thank you.

(Exhibit 394 marked for identification.)

BY MR. WRIGHT:

Q. Mr. Olivera, you are familiar with J.D. Power, the company that ranks, as a company that ranks customer satisfaction?

A. I am familiar with the kind of work that they do, yes.

Q. Okay. Have you ever had occasion to review the, J.D. Power's rankings of FPL's residential customer satisfaction?

A. I do.

Q. Okay. The exhibit that I -- have you had a chance to look at this exhibit?

A. I have not read the exhibit. I've just kind of scanned it.

Q. Okay. Well, if you'll turn, I want to say, about seven pages into it, there are two pages on which J.D. Power reports its results for its residential customer satisfaction study for the South region. The first page is the large segment, which does include FPL, and the second page is the midsize segment, which includes a number of other Florida utilities.

Will you agree that J.D. Power's 2009 residential customer satisfaction study for the South large segment shows FPL slightly below average?

A. That is correct. But I think you have to put the report in some context. And by that I mean when J.D. Power conducts their surveys, they go, they look at a whole bunch of dimensions. And I'm sure Ms. Santos can give you more detail than I can, but a lot of it are perceptions about how the company does not just on transactions and not just on the price that the company provides and not just on reliability.

In fact, if you refer to the first page when they talk about the press release, they talk about, you know, improving impact on the environment, improving new energy conservation programs, donations or sponsorships, all of which, by the way, I think our company measures very well on. But they look across a whole bunch of dimensions.

I think you also have to look at customer expectations. And the South, the southern region gets considerably higher ratings than the national average. Furthermore, about two-thirds of our customers are in southeast Florida. And the demographics, most of our customers come from the Northeast, and they, they have expectations of customers generally in that part of the country.

And if I may refer you to the East region large segment, if you look at the East region large segment, the average is 593 and FPL is at 632. We're above the Southeast region large segment.

So when you look at these reports, you have to put them in some context, and they don't measure just one dimension. You've got to look and see what else is being measured and what your customer expectations are. And I think even J.D. Power would tell you that they're different expectations depending on what region of the country you're in. Customers in the Northeast tend to be pretty demanding customers.

Q. So is it a fair characterization of the report and your testimony just now regarding it that, taking all things into consideration, J. D. Power's customer satisfaction study shows what it shows and FPL comes out slightly below average for the South large segment?

A. What I'm telling you is that you have to put it in context. But, yes, this is what it shows. It shows the rankings here, but it's not a measure of strictly reliability or, and/or price.

Q. Yes, sir. I think we agree it's an all-in comprehensive customer satisfaction ranking; do we agree on that?

A. No. I don't agree that it's just customer satisfaction. I think you have to put it in the context, and I think you have to look at it relative to the expectations. And I'm happy to go back through again and show you that it's really representing of a number of other dimensions -- donations to sponsorships in local communities. It's in your report, if you look at the first page. Impact on the environment.

Q. My question really was is it or is it not a measure of customer satisfaction, considering all those factors?

A. Not in absolute terms. My definition of customer satisfaction is different from the one that you're describing.

Q. Okay. You testify -- you have testified orally and also I believe at, in several places, including Page 14, Lines 8 and 9, that FPL provides service at a price that is below the national average. Is that an accurate characterization so far?

A. Yes. Yes, it is.

Q. Thank you. When you are making that statement, are you referring to the bill for the thousand-kilowatt-hour residential customer?

A. Yes. Based on the average residential bill of a thousand kilowatt hours.

Q. Now isn't it true that FPL's average residential customer uses more than that?

A. The average residential customer uses about 1,100 kilowatt hours, but the median customer is less than that. So more than 50 percent of FPL customers use less than a thousand kilowatt hours.

Q. Isn't it also true that they use different amounts in different months?

A. That is correct.

Q. So that in the, what we might call the shoulder months, the milder weather months, spring and fall, a typical customer probably uses less than a thousand, and in the summer and peak winter months they probably use more than that?

A. It depends on the customer.

Q. Okay. But on average you'd agree that's true?

A. I have not looked at that information recently, but there's a seasonal pattern of usage.

Q. You'd agree, and I can show you your tariff if you don't believe me, you'd agree that FPL's fuel charge is 1 cent per kilowatt hour higher for all usage above 1,000 kilowatt hours on each monthly bill, would you not?

A. I believe that's correct.

Q. And you'd also agree that FPL's nonfuel energy charge for its residential customers is actually a little bit more than a penny higher for all kilowatt hours above 1,000?

A. I can't answer that off the top of my head. And I'm not the service charge -- I mean, I'm not the, the rate witness, and I have not prepared today to discuss the rates by the different customer categories.

MR. WRIGHT: All I want the witness to do is acknowledge that FPL's base energy charge, the nonfuel energy charge, is roughly 1.1 cents per kilowatt hour higher for all usage on each monthly bill that's higher, that's above 1,000 kilowatt hours. I'd like to hand him a copy of FPL's tariff sheet number 8.201 and ask for him to confirm that. I'm not going any further in terms of asking him to discuss his rates.

MS. CLARK: Mr. Chairman, I think that would be all right. But any further, I think he should ask the rate witness.

BY MR. WRIGHT:

Q. Mr. Olivera, you see what I'm talking about; right?

A. Yes. It talks about, in a tariff sheet dated December 31st, 2008, it shows the first 1,000 kilowatt hours at 3.398 cents per kilowatt hour, and then each additional kilowatt hour at 4.429 cents per kilowatt hour.

Q. Thank you. And you'd agree that that applies on each monthly bill. So if a customer uses 800 in one month, it's billed at 3.398. And if they use 1,200 in another month, the first thousand is at 3.398 and the rest is at the higher rate?

A. That is correct.

Q. Thank you. What do you know, if anything, about how FPL's total average price per kilowatt hour is?

A. I have -- again, I don't have that information in front of me. But I, but I would point out that when we compare ourselves to Florida utilities, every utility in Florida essentially has the same seasonal demand pattern. So, you know, we all, customers in Florida tend to use more electricity in the summertime due to air conditioning load and less in, when we have cooler weather. So I tend to focus on that because I think that that's a better measure of what the impact is on customers.

MS. CLARK: Mr. Chairman, I just would add I think Mr. Wright said he was not going to get into detail on this. If he is getting into detail, I would suggest it be asked of Ms. Deaton.

MR. WRIGHT: Well, I have, I have a few more questions about Mr. Olivera's testimony that FPL provides service at a price that is below the national average.

CHAIRMAN CARTER: Let's see how far it goes.

MR. WRIGHT: Thank you.

BY MR. WRIGHT:

Q. I was curious as to how FPL's total retail revenue stacks up, and so I have looked at two documents to try to get an estimate of FPL's average price per kilowatt hour. They are FPL documents. The first one is FPL's MFR Schedule C-1, which shows for 2009 revenue from sales of 11,000,512,704 -- sorry, $11,512,704,000.

A. I'm not a sponsor of MFR C-1. I don't have the information in front of me, and I'm really not the appropriate witness to walk through MFR C-1.

MR. WRIGHT: I was not intend -- here's my proffer, Mr. Chairman. The witness has testified that FPL provides service at a price below the national average. I've got FPL documents, part of their case, that when you take the revenue from sales number from their MFR C-1 and take their 2009 sales number from Ms. Morley's exhibit, we'll show that, that FPL's average retail revenue per kilowatt hour is about 11.3899 cents a kilowatt hour.

And then I've got some other information from a nationally recognized source that will show what the national average cents per kilowatt hour is for all sectors. I want to get to the point of comparing those numbers.

If Ms. -- Dr. Morley were the only witness providing that, addressing this subject matter, then I would ask her these questions and that would be fine. What I've got here, however, is the President of the company testifying that FPL provides service at a price that is below the national average, blanket statement, and I think it's fair for me to pursue it with him. And, you know --

MS. CLARK: Mr. Chairman, I think it gets back to the point, we're on day three now, and it seems to me that Mr. Wright is trying to try his whole case right now, when Ms. Morley -- it would be more efficient, the person who's going to know more details about that is Ms. Deaton, and she will be on the stand and he will have the opportunity to ask her.

MR. WRIGHT: Mr. Chairman, I'm not trying to try my whole case through Mr. Olivera's testimony. I'm trying to address his testimony. I don't think it's fair to our side or to you to let this kind of blanket testimony, FPL provides top tier service at a price that is below the national average, without, by this witness, without being able to explore how that stacks up.

MR. MENDIOLA: Mr. Chairman, may I --

MR. WRIGHT: And I don't think that the idea that it's, you know, that we're on day three should matter.

CHAIRMAN CARTER: Okay. Ms. Helton, good morning.

MS. HELTON: Good morning, Mr. Chairman. It sounds to me that the cross-examination that Mr. Wright is conducting is within the scope of the prefiled direct testimony and is therefore appropriate.

CHAIRMAN CARTER: You may proceed.

MR. WRIGHT: Thank you, Mr. Chairman.

BY MR. WRIGHT:

Q. Maybe I could speed this up, Mr. Olivera. Will you agree, subject to check, that if one divided FPL's retail revenue, revenue from sales for 2009 as shown on the company's MFR C-1, by FPL's estimated sales for 2009, as shown in Witness Morley's exhibit, and also that happens to match to your Ten-Year Site Plan, that you get a number that's about 11.4 cents per kilowatt hour?

A. Yes. Subject to verification, I would say that. But as I listen to the discussion, I think we're -- it's coming to really an inappropriate conclusion. Because if you look at our consumption patterns, and Ms. Deaton can go into more detail, you'll find that the higher you go, the more you pay. And so we have, it's a small number of customers, but they pay disproportionately high, they pay higher rates than customers who use less than a thousand kilowatt hours.

So when you run through the math, you're not doing kind of a weighted average. If you lump it all together and you spread all those dollars, it's going to push all the numbers back up. What you have to look at is you have to look at how many customers are in that rate category, a thousand kilowatt hours or less, which is the majority of our customers. So it's a misrepresentation to say, when you factor it in to factor in the high usage, high consumption customers into your comparison. And we didn't do the comparison that way because we don't think it's appropriate.

Q. Are you saying it's not appropriate to compare FPL's average rate for all sectors to the national average rate for all sectors?

A. What I'm saying is when you -- you have to look at -- I'm saying, no, not the way that you are describing it. Because you have to look at consumption patterns. And when you are -- you have to look at rate classes, and you have to look at what the majority of customers in that jurisdiction are paying.

And, furthermore, if you really want to do sort of an apples and apples comparison, you have to look at how much electricity customers use in a particular region of the country. People in Florida tend to use more electricity than people elsewhere.

So to have this simplistic analysis where you're just adding, dividing gross numbers that has I don't know how many categories of customers, total revenues by I don't know how many categories of customers, doesn't make any sense. It's not an apples to apples comparison.

You have to look at if you're the average customer in Florida Power & Light, what are you paying? And that's the analysis that we tried to do.

Q. Well, I understand your answer. I'm sure you know what the United States Energy Information Administration is, do you not?

A. Yes.

Q. And you'd agree that that's the federal government source, at least one of a few federal government sources for nationally recognized energy consumption, price, et cetera, information?

A. They're one of several.

CHAIRMAN CARTER: Do you need a number, Mr. Wright?

MR. WRIGHT: I'm sorry?

CHAIRMAN CARTER: Do you need a number or are you just --

MR. WRIGHT: I do need a number, Mr. Chairman. I think it would be 395.

CHAIRMAN CARTER: 395, Commissioners. For your records, 395.

MR. WRIGHT: And a short title, I would suggest EIA Retail Price Data 2009.

CHAIRMAN CARTER: EIA Retail Price Data 2009. Thank you.

(Exhibit 395 marked for identification.)

While we're getting ready, if you're not, if you're not Mr. Wright or myself or the witness, your microphone should be off. I'm getting some feedback in here. So please make sure your red light is on if you're not myself, Mr. Wright or the witness. Okay? Thank you.

You may proceed, Mr. Wright.

MR. WRIGHT: Thank you, Mr. Chairman.

BY MR. WRIGHT:

Q. Mr. Olivera, I understand your, your objection to the point I'm trying to make. You probably understand the point I'm trying to make. And we will argue this appropriately in our briefs.

You have explained why you think it's not an appropriate comparison. So I'm going to ask you if you would agree, looking at what is the third page in the packet, which is page, in the lower left-hand corner it's Page 2 of 2, but it shows about one-third of the way down the page a U.S. total, and the next to the last column on the right --

A. I'm sorry. I haven't, I haven't caught up with you.

Q. I'm sorry.

A. You're on what page?

Q. It's the third page of the packet counting the cover sheet as the first page.

A. Okay.

Q. Okay? It has tabular information about a third of the way down and some footnotes and then some references to other tables. Are you with me?

A. I think so.

Q. Okay. You have to look back at the previous page to see the column headings. But if you do that, you would see, I believe, that the right-hand two columns are for all sectors. And then referring to the U.S. total for all sectors for May 2009, which is the next to the last column as you go left to right on the table, the average price for the U.S. all sectors is shown by the EIA report as 9.87 cents per kilowatt hour.

A. I see that. Yes.

Q. Thank you. I have just a few questions about your conservation efforts which you discuss at Page 8 of your testimony. Actually I have a very specific question, but if you wanted to take a minute to look at your, your testimony beginning at the bottom of Page 7 and continuing on to Page 8, I'd be happy to give you a moment to do that.

A. Page 7, what line?

Q. Well, what I really want to ask you about is the 12 power plants that you talked about at Line 2 and 3 on Page 8, but I wanted to give you a moment to put it in context, if you want it.

A. Yes.

Q. Okay. What size of power plants are you talking about there?

A. I don't remember exactly. I believe that these are power plants in the 4-to-600-megawatt range, but I'll give you that number subject to verification.

Q. Okay. I was thinking that you probably intended to convey the impression that they were 12 500-megawatt class combined cycle plants. Is that --

A. As I said, I don't, I can't remember the exact number, but it's in that range.

Q. Okay. So in the range of 5,000 to 7,000 megawatts? That would be 400 to 600 times 12 is --

A. Yeah. If you pick 500, it would be, what, 6,000.

Q. 6,000. Okay. You don't mean to assert that you've eliminated the need for the energy that would be generated by 12 power plants, do you?

A. When we talk about the impact, we're, a significant contribution of that comes from the load control programs, which have been very, very successful on our system. And so by really shaving off the peak, you eliminate the need to have those incremental megawatts at the top of the stack of the dispatch stack.

Q. So it really does -- this testimony refers to peak shaving capacity reductions; correct?

A. Yes. Part of it refers to that. But those are, you know, real, real savings and real impact on the environment when you don't have a plant that's running and producing emissions. And it obviously, I think we have shown in prior DSM hearings that these plant, that these programs have had significant benefits for our customers.

Q. Do you know how much energy FPL's programs save on an annual basis?

A. I can't give you that number off the top of my head. I'm sure that Marlene Santos can give you the specifics.

Q. Do you have another witness who testifies about conservation efforts besides yourself?

A. Well, we're going through the DSM hearings right now, and so we just put on a number of witnesses on that.

I think if you have specific information that you want on energy efficiency, I'm sure we can ask Ms. Santos to provide you that information.

MR. WRIGHT: Mr. Chairman, I'm happy to ask Mr. Santos this question. I just want to get clear, my question is, is -- here's the proffer. The Commission's own report, Activities Pursuant to the Florida Energy Efficiency and Conservation Act, states that total savings for all of Florida's FEECA utilities are about, estimated to be about 7,200 GWh in 2008. I would like to simply ask Ms. Santos how much of that she thinks is FPL's.

BY MR. WRIGHT:

Q. Would that be an appropriate question to ask Ms. Santos?

A. I believe Ms. Santos can be prepared to answer that question.

Q. Thank you. And I'll furnish a copy of this report to your counsel.

A. Okay.

Q. And with that, I will move on to the next line.

MR. WRIGHT: Mr. Chairman --

CHAIRMAN CARTER: Yes, sir.

MR. WRIGHT: -- I have once again uttered the magic word, and Mr. Moyle has once again kindly agreed to --

CHAIRMAN CARTER: Mr. Moyle. 396.

MR. WRIGHT: -- to distribute what I'm asking be marked as 396. And we could call that FPL TYSP Excerpt.

CHAIRMAN CARTER: Okay. When I think of 396, I think of the SS-396 back in '72, not that I was speeding or anything like that, but -- I was not speeding.

(Exhibit 396 marked for identification.)

MR. WRIGHT: For clarity, it might, at the risk of making the title too long, it might, it might help to add Energy and Customers after Excerpt.

CHAIRMAN CARTER: Okay. Energy and Customers?

MR. WRIGHT: Yes, sir.

CHAIRMAN CARTER: So it would be FPL TYSP Excerpt - Energy and Customers.

MR. WRIGHT: Yes, sir.

CHAIRMAN CARTER: Okay.

BY MR. WRIGHT:

Q. Mr. Olivera, I assume that you at least see your Ten-Year Site Plan a couple of times a year; is that fair?

A. I do read it.

Q. Good for you. You recognize the table here, and it shows what it shows regarding the company's number of customers and, and energy consumption actual from '99 to 2008 and projected from 2009 to 2018; correct?

A. Correct.

Q. All right. Thank you. And just looking at it casually, you would agree that your total, total sales customer -- now I'm getting tongue-tied.

Total sales to ultimate customers has increased substantially from '99 to 2008 by about 16 percent or so, maybe 17 percent.

A. I can't do the math in my head, but it has clearly increased.

Q. 85,000 to 130,000.

MS. CLARK: Mr. Wright, can you, for my benefit, can you tell me where you are in this chart?

MR. WRIGHT: Certainly. On Page 43, which is the last page of this brief exhibit, Column 16 is titled Total Sales to Ultimate Customers.

MS. CLARK: Thank you.

MR. WRIGHT: That's all I had on that line.

BY MR. WRIGHT:

Q. The next line of questioning I want to pursue with you, Mr. Olivera, has to do with FPL's claimed need for the rate increase. I think we've established that cumulatively FPL is asking for something between 1.3 and $1.4 billion a year of total cumulative base rate increases in this case. Can you say yes as opposed to nodding, please?

A. Yes.

Q. Thank you. Okay. If the Public Service Commission were to hold in favor of the consumer Intervenors on the issues in this case, will you agree that the vast majority of the difference between our positions and FPL's positions are in the areas of return and depreciation?

A. To return, yes, partially. It's return, depreciation, capital structure. And you have the capital structure as sort of number one on your exhibit.

Q. This is actually the handout that, that the Public Counsel used in his opening statement. I just offered it to the witness to show what, what we're talking about. The --

MS. CLARK: Mr. Wright, did the Public Counsel hand it to all the parties?

MR. WRIGHT: I do believe that the Public Counsel distributed these to all parties at the time he made his opening statement.

MS. CLARK: Okay. Thank you.

CHAIRMAN CARTER: You may proceed.

MS. CLARK: Ms. Clark is welcome. Thank you, Mr. Chairman. I really just wanted to hand that to Mr. Olivera to refresh his understanding, as it were, that, that -- the most of what our side is asking for, a billion plus, is, is return capital structure and depreciation, and he's agreed to that. So I think I can move on within this line.

BY MR. WRIGHT:

Q. Correspondingly, you'd agree that the amounts of O&M expenses that our side is advocating be disallowed are fairly small relative to the total magnitude of your increase, would you not?

A. No, I wouldn't. These, these are not insignificant amounts. When you are trying to balance the budget, these are pretty significant numbers.

Q. Well, 148.7 million of the rest of the decrease is -- well, let me ask you to look at the third page of the Public Counsel's opening statement demonstrative exhibit. The total amount of the other changes beside return capital structure and depreciation is 235 million; correct?

A. I haven't done the math, but I assume that that's right.

Q. It's shown at the bottom of the page.

A. As I said, I haven't done the math, but I assume it's correct.

Q. Fair enough. And the storm damage is, is -- his number there is 148.7 million, but that's real close to 150 million we've been talking about.

A. Correct.

Q. Okay. We've talked about that. I'm not going to pursue that anymore.

And so the other two items are a total of about 86 million out of some, something north of a billion dollars; right? Okay. And of that, is it your understanding that the $42 million decrease in compensation is basically for two things? First -- this is a compound question, but I think you can answer it yes or no. First, disallowing part of the incentive, part or all of the incentive compensation, that's the position taken by our side, and the other is disallowing recovery for what we represent is a normal amount of unfilled positions. Is that your understanding?

A. I have not studied their positions, the calculations on the compensation issues.

Q. Okay. Well, I think I can, I think I can move on within this line. You will agree that after we take out the, after we account for the cap structure return, depreciation, storm damage, we're down to something in the range of 8 percent of your total requested increase?

A. And you do that math by doing what again? Can you just walk me through how you get to 8 percent?

Q. Well, by taking our fundamental agreement that, that your total year increases are somewhere, they're a billion dollars for 2010.

A. Correct.

Q. Roughly. Public Counsel's and the consumers' position is that the capital structure and return adjustments are worth 509 million, our depreciation related adjustments are worth 554 million, and the storm damage adjustment is worth 150 million.

A. Yes. I see the numbers.

Q. Okay. What's left is about 86 million out of something in the range of a billion, and that's how I get the 8 percent. Does that sound about right?

A. If 80, 80 is -- about 80 is 8 percent of a billion.

Q. Okay. Do you know what FPL's total projected O&M costs in this case are?

A. It's around a billion three. I can confirm that, but it's about a billion three.

Q. Okay.

A. It depends whether you count the energy conservation stuff or not in the numbers.

Q. Okay. So 86 million out of that would be probably closer to 6.5 or 7 percent?

A. Something along those lines.

Q. Thank you. Although your side, Florida Power & Light Company, and our side, the consumer Intervenors, disagree as to what the depreciation rates are, is it your understanding that our position on depreciation is that FPL should be entitled to recover fair depreciation expense?

A. Yes. But we have a different definition of what's a fair depreciation expense.

Q. I understand that. That's why I stated the preface in my question the way I did.

Here's, here's -- you have stated in several responses to other attorneys that if you don't get your increase, you might not make investments or might not make decisions that you would otherwise make. Is that a pretty fair characterization of what you said?

A. Not, not completely. What I have said is that for us to continue to make the kind of investments that we're making, we have to have a healthy company, we need to continue on the path that we've been on, which means, you know, adequate rates of return, it means maintaining a healthy balance sheet, it means maintaining the credit ratings that the company has. That's, when we talk about it, that's really, it's in that context that I made those comments.

Q. Do you mean to imply by your prior testimony and that testimony that FPL would reduce its spending to improve the energy efficiency of its generating fleet if it does not get its requested increase?

A. No. I think we have testified and Mr. Keith Hardy will testify that we have a very efficient fleet, and we continue to make investments in that fleet. If you're implying that we would stop making capital investments, it's highly speculative. I don't know. I don't know what -- it all depends on what the outcome of all of this is; right?

Q. Mr. Olivera and Mr. Chairman, I was not implying that. I was trying to understand whether your testimony was intended to imply that.

A. My testimony is intended to say that we need to maintain a financially healthy utility. We need to continue on the same track that we've been on. And by that, the financial track, and by that I mean maintain the current equity ratio, allow us to earn the ROE that we're requesting, and really have a, continue to maintain the credit ratings that we have. And it's that combination of factors that will allow us to continue to make the investments.

So if any of those things begin to change, the company gets downgraded and it becomes more expensive for us to have access to capital, obviously that's going to have an impact on our, on the costs of the new generation that we build and it will have an impact on, on customers.

Q. Well, I understood you to just say that -- well, let me ask you this. I mean, are you saying that you need the whole increase to continue on the same track to make the investments that you're planning to make?

A. I'm saying that we have gone through and we've analyzed all of the components and we have brought them forward to you as really our proposal of what it takes to maintain the track that this company has been on and what we believe it takes to continue to make the investments that we've been making and that we propose to make.

Q. And now I have a series of some specific questions for you.

West County 1, as to what might or might not change if you don't get the increase, isn't it true that West County Unit 1 and West County Unit 2 are either online or about to come online this year?

A. They will both come online this year.

Q. Thank you. If you want to go on, that's fine, but that's all I was looking for. If you got zero rate increase in this case, would you complete West County Energy Center Unit 3?

A. It's a, it's a, it's a hypothetical question. We have -- the plant is under construction today. Would it affect those plants in the near-term? Hopefully not. We would try -- we would do everything in our power to complete that plant. But it certainly would have an impact on subsequent capital investments that the company is making. We'd have to go back and look and see, you know, what are the credit implications associated with that. You know, we certainly will have a pretty clear response from the investment community if we're not granted rate relief, and we would have to go back and make an assessment on that.

But I don't want to get too speculative on this without having gone through kind of that exercise. But it would be frankly looking at the financial community and what impact it has and what impact it has on our balance sheet.

Q. Would the company --

CHAIRMAN CARTER: Excuse me, Mr. Wright.

MR. WRIGHT: Yes, sir.

COMMISSIONER EDGAR: I'm sorry, Mr. Wright.

Could I jump in for just a second? And could you tell me again the question that you just asked Mr. Olivera?

MR. WRIGHT: The specific question I asked him was: Would you complete West County Energy Center Unit 3 if you got zero rate increase in this case?

COMMISSIONER EDGAR: Okay. Thank you.

And, Mr. Olivera, as part of your response to that, are you, are you saying that your company has, has not done an other options analysis as to what position the company and therefore the ratepayers would be in if a rate increase is not approved?

THE WITNESS: Yeah. I think we have, and I think both Mr. Pimentel and Mr. Avera can talk you to about kind of what the relative change of all this is.

He was asking me about one specific item of a large capital budget. And so you would have to look and say, when I -- I have to go back and look at all the projects that we have, capital expenditure projects, and look at what state of construction they are, whether some things can be deferred or not.

Remember, West County 3 is one piece of a very large CAPX program. So you've got pipeline development costs, you've got the nuclear uprates involved, excuse me, the modernizations of Canaveral and Riviera. Excuse me. So all of those things you'd have to go back and look at.

So to say that, to pick one over the other, you know, I'd huddle with my team and we'd look at where all these projects stand and what can get deferred and what we can still continue and try to complete. Which is why I said we'd do everything in our power to complete West County 3 because it's pretty far along and most of the equipment is already bought. But it certainly would have an impact on some of the other projects we're working on that are much earlier in the development stage.

COMMISSIONER EDGAR: And I, I do understand what you're saying about individual projects being in a large project plan and being at different stages and a number of economic factors and other factors that of course would go into each individual decision and any larger, more far-reaching decision. At least I think that's kind of what you're telling me.

THE WITNESS: Right.

COMMISSIONER EDGAR: And so I guess just to follow up on that a little bit, and I apologize, Mr. Wright, but you've triggered it here, has the company -- and I do realize other witnesses are coming that will go into it to more detail.

But I guess on a more larger general global sense, has the company done an options analysis should a rate increase not be approved at this point in time?

THE WITNESS: Yes. Generally in terms of how much capital investment can a company that has, that will almost certainly have credit downgrades. I mean, if you followed this particular pattern or framework that counsel has been discussing, first of all we're going to leverage the company up. So we're going to take on more debt. We almost certainly would get, I don't know, at least a two, maybe three-notch downgrade in our credit rating.

You will almost, certainly you're going to have a far lower ROE. So we will be deemed to be a riskier investment, which also affects our credit rating.

So, you know, we can give ranges. It's hard to give you absolute certainty because we can't always predict what credit rating agencies will do. But certainly our access to capital will be limited, and it will be at a much higher cost than it is today.

So it would almost be certainly reflected in a subsequent rate case that we would have to follow and come in. And I think that probably would be the time that we would say to you, look, this is all we can do, given the kind of response and reaction that we have gotten as a result of getting zero rate base increase.

COMMISSIONER EDGAR: All right. Thank you. And I'm looking forward and expecting the other witnesses that will follow will maybe elaborate on some of the points that you've just raised and I know have been raised day one, day two, at some point up to this point.

THE WITNESS: Surely. Day three, Commissioner.

COMMISSIONER EDGAR: Well, I meant leading up to this moment right now.

Let's see. I think I had one other question, so let me think just for a moment. I didn't mean to point at you. Sorry about that.

All right. I'm going to leave it at that right now. I appreciate the response, and, again, I look forward to further elaboration.

CHAIRMAN CARTER: Mr. Wright.

MR. WRIGHT: Thank you, Mr. Chairman.

COMMISSIONER EDGAR: I thought of it. I apologize. I need, I need some coffee.

Remind me, if you would, and I know it's in here and I know I have it in my notes somewhere, but what is the ROE presently?

THE WITNESS: I believe as of -- the June surveillance report has an ROE of 10.6.

COMMISSIONER EDGAR: Okay. Thank you.

CHAIRMAN CARTER: Mr. Wright.

MR. WRIGHT: Thank you, Mr. Chairman.

BY MR. WRIGHT:

Q. Before I go on, Mr. Olivera, you've at least reviewed to some degree the testimony of the consumers' witnesses in this case?

A. I'm sorry. I lost the very beginning.

Q. I apologize. Am I correct that you have at least reviewed to some degree the testimony of the consumer witnesses in this case?

A. I have.

Q. Thanks. And you will agree, not agreeing with them, but you will agree that there is testimony presented on our side that, that FPL would still maintain financial integrity.

A. Yes. That's the allegation.

Q. Correct. Can -- are you telling us with certainty that FPL would have its credit downgraded if you got a zero rate increase in this case?

A. I think I give you with a pretty high sense of probability that a zero increase would result in a downgrade. The question is how many, how many notches of downgrade would this company get? And it would also signal a huge change in, you know, sort of the regulatory philosophy of the State of Florida, which would have far, far-reaching implications beyond just this rate case. And it would have a chilling impact, frankly, on all the utilities that are regulated by this Commission. It would not be just Florida Power & Light.

So I'd say that there's a -- I learned long ago never to say absolutely, but I would tell you that it's a, it's a very high probability that this company would get downgraded. And I firmly believe that it would be an incredibly strong signal that there's a shift in direction in policy of this Commission, and that this Commission has followed for many, many years in a very progressive way, to use the discussion we had earlier, the constructive regulation, which I think has delivered great results for customers in the State of Florida.

Q. So, again, in the probabilistic context in which you gave your answer, you'd agree that there might be no impact on the credit downgrade, but it's your position that the probability is low?

A. I did not say that. I never said that there's no impact. I said almost certainly. And I prefaced it because I'm old enough that, to have learned that I never -- never to say never.

Q. Okay.

A. But it is incredibly unlikely that this company would not have a downgrade. And I will tell you that it is for certain that the investment community would look at an action like that by this Commission to be a complete reversal, a complete change in regulatory policy. And I can also tell you with certainty that it would apply not just to FPL, but it would apply to every company under the jurisdiction of this Commission.

Q. Would it be your understanding in its evaluation of whatever comes out of this case that the investment community would continue to look at the financial metrics that it normally looks at?

A. I think they look at -- financial metrics is an important component of it. But I think as you'll hear from Pimentel, they also look at the regulatory climate that you operate in. And that becomes sort of a qualifier to the rating, and it can push your rating a little down or a little up, depending on what they see your prospects.

Q. I do have a few more specific questions that I want to pursue along the lines I was asking you about West County 1, 2 and 3. If you got zero rate increase in this case, would it be your expectation that the company would complete its nuclear uprates at St. Lucie

1 and 2 and Turkey Point 3 and 4?

A. I give you, give you a similar answer to West County. We would try to complete as much of the construction project, but we'd have to look at everything else that we're doing. And so I can tell you with certainty that we probably would be unable to complete all of the projects that we're working on because I think the cost would get very, very high and our access to capital will be very, very limited. And so we'd have to look at all of the projects that we're working on.

And I just want to add one more point to this, which is that, you know, this is a business where we make decisions today that are five, ten years out. Very seldom in this job, and if you are the senior management of a company, you know, I don't make very many decisions that affect today. Most of the decisions that we make really affect, you know, where, what kind of service customers are going to get four, five years from now. And while it's easy to take sort of a short-term view and say, okay, well, you know, you guys can get by for a year, well, you shut down an awful lot of stuff that can't get restarted back again at the end of that year. These projects have very, very long planning cycles.

And just look back and look back at the things that have been done and look back at the track record. I mean, we have consistently delivered on the projects that we have brought before you. I mean, a great example is Turkey Point 5. All the efficiency and frankly added reliability that that plant added to our system and the customer benefits that have been accrued by it, but that plant took four or five years to develop.

The same way that we've been working on the West County projects now for, I don't know, virtually since I got this job, so since 2003 we started working on West County. So very long cycles. And you can't just start and stop them. It's not like a spigot. Very, very difficult to do.

Q. Let me try to ask a wrap-up question along this line and see where that gets us.

I think we've established that you're constructing West County 1, 2 and 3 and that you're working on St. Lucie 1 and 2 nuclear uprates and Turkey Point 3 and 4 nuclear uprate. That's true?

A. Yes. Among other projects.

Q. It's also true that the company has need determinations in hand, final, approved by this Commission for the Cape Canaveral Next Generation Clean Energy Center, the Riviera Beach Next Generation Clean

Energy Center, and Turkey Point 6 and 7 nuclear units. Is that true?

A. That is correct, yes.

Q. Are you telling the Commission or us today that if you don't get a rate increase, you won't build any of these facilities?

A. No. I'm telling the Commission that we'll have to look at what the response from the financial community is, what impact it has on our credit ratings, our ability to have access to capital, and we'd have to figure out, we'd have to kind of prioritize. I don't think we -- I can almost tell you with certainty we cannot do them all and we have to kind of reprioritize and reevaluate. And it would almost certainly result in another rate case. We would come back and, if nothing else, to tell you what we can and can't do within the, within whatever parameters this Commission sets. And I think that, if nothing else, we would have another dialogue about what, what this Commission would have as the future for Florida and what your expectations are in terms of what investments the company should or shouldn't be making within the constraints that you feel should be placed on the company.

COMMISSIONER ARGENZIANO: Mr. Chairman?

CHAIRMAN CARTER: Commissioner Argenziano.

COMMISSIONER ARGENZIANO: If I may. I hate to interrupt Mr. Wright, but questions, a couple of questions come to mind, and a few questions that were asked and a few of the answers by Mr. Olivera.

If -- I think what you're saying is that -- of course everybody knows that a company has to be in good financial standing, and I think you guys are. But I think what I heard you say is that if you don't, if you don't get the increases or you're not treated as you always have been by the Commission, and what if the Commission, and I'm not saying it is or isn't, but what if they were wrong in the past, if you're not treated the same way and maybe if you don't get everything you ask for, that the financial community would downgrade you?

THE WITNESS: I was responding specifically to a question about a zero increase. So Counsel Wright was talking about out of the billion-dollar request, that if we got zero, what would be the implications of that. And I do believe that a zero increase would result in a credit downgrade. And because part of the increase is predicated on lowering the ROE and asking the company to take on more debt, leverage the company more, and those two things in and of themselves will trigger a credit downgrade.

The question would be, you know, how many notches of a downgrade and would the company, for example, still be able to maintain a credit rating that people would be willing to invest money on? And that I can't answer with certainty. I don't know how many notches down. But I was referring to we would almost certainly get a credit downgrade.

COMMISSIONER ARGENZIANO: And that is, and I think you said it's because you weren't, wouldn't be, and I can't remember the exact words you used, but wouldn't be, there would be a departure from what the Commission has always done. And is that -- and my question is is it because they've always granted you an increase?

THE WITNESS: No, not necessarily. Sorry, Commissioner. I was referring --

COMMISSIONER ARGENZIANO: One other thing -- I'm sorry. One other thing that you might incorporate into an answer is that aren't those same people who are investors who are looking in the financial community, who are looking at the health and regulatory climate of the company also looking at the recent guaranteed recoveries that are statutory? I mean, that's got to be a component of financial stability.

THE WITNESS: Yes. The -- let me answer first the last part of your question and then I'll go back.

Yes. They look at what portion of our total revenues are represented by clauses and what portion of that already has some returns that have either been approved by the Legislature and/or by, by this Commission. But that is already reflected in the current ratings that the company has.

And when I was -- and then back to the first part of your question. It isn't -- I mean, yes, they look at what the Commission is saying. But when I was answering the question from Mr. Wright, I was really more anchored on what that would do to the credit metrics, the financial credit metrics. And credit rating agencies in the financial community will look at what, what are your metrics? They, I mean, they will listen to what this Commission says, but they ultimately at the end of the day are going to look at what is the financial expression of those decisions.

And the financial expression of those decisions is a company that has, has on more debt, it's more leveraged, it's a company that has a lower return on equity, and it's a company that at least in the current track is forecasted to spend a lot more cash than is generated internally.

So, you know, if, if this was, if this was --

and I think this is also an important point to make. If FPL generated enough cash of its own to fund all these programs, then it can take a lot more, frankly a lot more variability in the metrics and do it for, you know, a certain period of time. But we are highly dependent -- we are continuing to put in more money in the business, more cash than what the business generates. And Mr. Pimentel can walk you through some of the specifics on that.

But it, but it's, that is the reason why we're so dependent on the financial community, we're so dependent on ensuring that we have the right credit, credit metrics, because without that we don't have the credit ratings, we don't have the standing to really have access to financial markets. And --

COMMISSIONER ARGENZIANO: And I understand that and I appreciate that, those, those issues. But I also have to put into that the fact, and it has to be looked at by the financial community that you have guaranteed recoveries. And I understand if they are or you were to drop it, it sends a different signal. But otherwise, I mean, if you look at it a certain way, if then the financial community only looks at your ROE or your requests have always been granted, it would mean that you constantly have to have an upward trend, even,

even in economic hardship, in times of economic hardships as we have now.

In other words, what I think you're saying, I understand the particulars and how they plug in into the financial community, and as long as you add those guaranteed recoveries in there too because I think that's very important. If I was an investor or I was looking into investing into a company, that would mean a great deal to me, rather than going to a company that doesn't have those guarantees. That has to be a certain stability factor built in.

But I think I can also argue that if then you're not always on an upward trend as ROE or requesting a higher increase in rates, that the company, according to what you're saying, that the financial investment community would then perhaps turn around and say, well, if they're not going to get the higher ROEs every time they ask for higher increases, that they will be downgraded all the time. And I just don't know that that's, that you'd want to say that either.

THE WITNESS: No. If, if I implied that the company has to keep earning ever-increasing rates of ROE, I misspoke. It's really what is the appropriate level of ROE that a company has to earn, has to earn to be competitive in attracting the right sources of capital? So not necessarily an ever-increasing trend.

But it's also a good time to make another point, which is why I, I think I understand where you're heading. We can't keep asking customers to, to pay for ever high and increasing, ever higher bills, electric bills, which is why when we make, when we look at the investments that have to be made, we look at investments that provide customer savings, provide savings in fuel, because we are mindful of what the total bill looks like.

And so we look at -- you know, the investments we're making in improving the efficiency of the plants are really aimed at doing a couple of things. Improving the fuel efficiency so that we keep fuel prices down, and if nothing else, if they go, if the fuel component of the bill, if nothing else, if the fuel prices go up, they won't go up as much because we've made those investments, which we think is an important part. And then we also look at, you know, what can we do to keep cleaning up the emissions that these plants produce? And thirdly is how do we keep making our infrastructure really sturdier and more reliant? And it's not just hurricanes, but it's also things like disruption in fuel.

So, you know, it's always kind of a complex picture that we're looking at. But we think that these are necessary investments for, for our customers for the long-term.

COMMISSIONER ARGENZIANO: Thank you.

Mr. Chair, I didn't mean to interrupt the train of thought of Mr. Wright. It's just while those were in my head, I thought I would ask them. And thank you for the answers.

CHAIRMAN CARTER: Thank you, Commissioner.

Commissioner Edgar, you're recognized.

COMMISSIONER EDGAR: Thank you.

Mr. Olivera, you mentioned I think briefly ago about some other witnesses coming that could, could answer some of these questions in more detail. And so to come back to, and I don't remember if it was my question or Mr. Wright's, but regardless, if I may, the question about kind of options analysis, my term, and if, if a rate increase were not to be approved or all of the request, I mean, there again, just looking at the range of options, then who is the best witness to ask some questions about how the company would go about looking at, I think you said, I don't mean to put words in your mouth, but, you know, looking at each project and each case, where it is and doing that analysis, who would be the best --

THE WITNESS: Yeah. I think the -- well, I think we can answer a part of that question in terms of saying, you know, how much capital expenditures can this company support at lower levels of revenue?

COMMISSIONER EDGAR: Than has been requested.

THE WITNESS: Than has been requested. And I think that question can be handled by Armando Pimentel. I don't think that we are, any of us are prepared here today to say definitively, kind of give you a menu option and say, you know, at this level we can do this, at this level we can do that. In some ways it's kind of a constantly changing lineup.

Like as we -- a number of these projects are all in different stages of development, so you almost have to take a snapshot and say, okay, today when I look at all these projects, what are they? And, and a number of these projects have also significant termination exposure, meaning that to stop them has a price. That, you know, we sign contracts with people for equipment, for services. And when you stop it in the middle of the development effort, a company is generally, has a responsibility to pay that party.

So you'd have to take a snapshot in time and say for each of these projects --

COMMISSIONER EDGAR: Mr. Olivera, I'm sorry --

THE WITNESS: Sure. That's all right.

COMMISSIONER EDGAR: -- but I need to -- I really don't mean to interrupt, although I am.

THE WITNESS: No. That's all right.

COMMISSIONER EDGAR: But on that, that point, are you saying that contracts have been signed that are dependent upon a rate increase being approved prior to it coming before us?

THE WITNESS: The contracts have been signed with an expectation that the company will maintain the same financial profile that it has today. I think that's absolutely, that part of it is true.

I think to go the next step I don't think would be appropriate. But we have, we've made, we've made commitments based on an expectation that, you know, we'd be allow to earn returns that would maintain the same credit ratings and that we'd maintain access to capital markets that we have today.

COMMISSIONER EDGAR: Coming back to a comment that you made just a moment ago, I, I certainly understand a snapshot in time and that things are ever changing, everything in life is ever changing, but I certainly understand that for a, a large capital intensive company. But yet I do feel like for -- let me start it this way.

Do you believe that the current economic situation that this state and consumers and everybody else is in is a factor in the analysis of this rate case?

THE WITNESS: I think this Commission has to take into consideration a broad range of factors, and I would hope that one of them would be the fact that for '09, I'm sorry, for '10, the bills will go down, even if the full requested increase is granted. So I think it'd be presumptuous of me to talk too much more about what this Commission's position is.

But I go back to really the long-term view. I'm not sure that there will ever be a good time to come in for a rate increase. I'm not sure that there would ever be any time that anybody will say, great, increase your rates. So it's kind of the world that we live in. And, you know, we view our responsibility as continuing to do the right things for the long-term.

And to your earlier question, it's not just -- I answered it from the credit metrics. But I should have also answered it in the context of it's sort of our expectation that this Commission would continue on the same constructive regulatory path that has delivered the kind of results that we show and that we're pretty confident we can continue to deliver going forward.

COMMISSIONER EDGAR: And I, one of the things I'm trying to think through as I'm listening to the questions and the answers and, as you said, for the last two days and the next days to come is what are the options before us and what are the ramifications to the best of our ability to ascertain on any of those range of options that, that may be before us? And I would expect that the company would, would have done some of that before making the decision to come -- let me finish -- before making the decision to come forward.

So I believe you testified earlier this week that the cost of a rate case of this magnitude and this complexity is somewhere in the 4 to 5 million, and I, I accept, I accept that that would be the case, recognizing all of, all of the work that goes into it. I'm also wondering about, you know, kind of a risk analysis, and for a company to make the decision at the point in time the decision was made to move forward on a rate case at this point in time, if that risk analysis was, was done as to the position that the company is put in with or without or with some variation. And so I'm trying to think through options because I, and ramifications because I do think that is part of our responsibility under the statute.

THE WITNESS: Sure. Absolutely. I think part of the answer is when you look at what the, what the projected ROE of the company is without rate relief, and I believe that it shows that it's about 4.7 percent without rate relief. And we did spend a lot of time looking at that. And we spent a lot of time looking at, you know, what would it take to have an ROE that we could live with without rate relief. And we concluded that it required a huge seismic change to the company that we didn't think it was in the best long-term interest of our customers.

COMMISSIONER EDGAR: Thank you, Mr. Olivera. Thank you.

CHAIRMAN CARTER: Commissioner Skop.

COMMISSIONER SKOP: Thank you, Mr. Chairman.

Just, Mr. Olivera, I just wanted to follow up briefly on some of the questions that had been asked with respect to contracts.

Is it customary and reasonable for FPL to enter contracts as a result of need determinations previously approved by this Commission?

THE WITNESS: We -- yes. We generally wait for a need determination -- there's some development costs that you have to go through even before you come in here. So before we come here for, for a need determination, we've got to have a project. All right.

We have to be able to tell you, you know, where the project is going to be, give you a pretty good sense for how much that project is going to cost. And so we generally try to do -- not generally. We do an engineering estimate of what it's going to cost. So that requires commitment of dollars.

You've got to have a site, so we have to buy a site. In the case of West County we had the site locked up. You have to have some sense how you're going to get the fuel there, because you can't ignore that. That's a big piece of this. So we'll talk to, in the case of West County, gas companies, and make some decisions on that. That takes money. We'll talk to vendors about what's the right equipment. That will take money.

So going up to the need, we will have spent some money. What we won't do typically is sign a contract for the actual equipment or the actual gas delivery infrastructure. And there the time line is not always precise. But, as you know, there's another step in the approval, which is the site certification process at the state level.

But we generally will start making commitments after this Commission approves the need, and we generally will start making commitments on equipment, which is one of the, has long lead times. It's one of the most costly components. And we will have termination (phonetic) exposure before, significant in some cases before the state cabinet votes as, on the power plant siting board, for example.

COMMISSIONER SKOP: Okay. Assuming that a need determination was granted by this Commission and subsequently approved by the siting board or the cabinet acting as the siting board, FPL therefore moves forward with these commitments and proceeds to build the projects. And I'll use the two recent conversion plants, Riviera and Cape Canaveral, which, again, part of the reason for approving those was to convert those to more fuel-efficient units, which ultimately provides a fuel benefit. But both of those projects combined total approximately 200 -- $2.5 billion in capital investment, subject to check.

And if I thought I understood your testimony correctly, the company can only absorb so much capital investment on its own within the context of its existing rate structure before such time as it would need to seek an increase to recover the costs absent GBRA treatment of making such additional capital investments; is that correct?

THE WITNESS: That's correct.

COMMISSIONER SKOP: Okay. And then just briefly with respect to the point raised by Mr. Wright on the nuclear uprates. Would it not be the case that nuclear construction is adequately protected by virtue of the nuclear cost recovery statute?

THE WITNESS: Well, yes, in general. But I'm also mindful of the fact that the nuclear cost recovery process is also being, being litigated. And so, you know, we, we look at that as well. So I think, I believe that that was the clear intent of the Legislature. But the Office of Public Counsel, for example, is challenging -- in our most recent filing there's several challenges having to do, one of them has to do with, you know, not having signed an engineering and procurement contract, even though Progress is getting asked, you know, why did they sign an engineering and procurement contract?

So there is, you know, some, some dispute around several of these items, and the proposal is to get some disallowances. So it's not a risk-free proposition, and particularly given the kind of dollars we're talking about. That's the first point.

Secondly, you know, we are, when we're spending the money is well ahead of when we actually start to get revenue recovery. And this will be the case even in new nuclear. It's certainly the case in the modernizations. So while the first modernization for the Canaveral plant is not scheduled to come in service until 2013, we're already, we've been spending money on those plants, and we will -- and the, and the cash spent on that is going to go up almost at a pretty steep line as we make commitments on equipment and so forth.

We won't see a return on that and, you know, we may or may not have GBRA, depending on what this Commission decides, until the plant goes in service, assuming that it all goes well and sort of according to plan.

So you're spending, you're going through a lot of cash as you're going through this process, and with an expectation that you're going to get a return on that capital when the facility goes in service.

COMMISSIONER SKOP: Okay. So I guess in a nutshell then, notwithstanding the statute, you still feel that there is exposure and some aspect of regulatory uncertainty associated with making those significant capital outlays for nuclear construction?

THE WITNESS: Absolutely.

COMMISSIONER SKOP: Thank you.

MS. CLARK: Mr. Chairman, could I inquire how much longer Mr. Wright has?

CHAIRMAN CARTER: Sure, you can inquire.

MR. WRIGHT: Mr. Chairman, of course Ms. Clark may inquire, and I will give you the best answer that I can. And unfortunately it's a, it's an answer that's going to have a pretty wide, wide confidence interval bounding it because of, you know, the way the witness answers the question affects it and how many questions come from others during the course of it on that subject.

I am perfectly delighted for the Commissioners to interpose their questions at any time, and no one needs to apologize for that at all, ever.

You know, at the rate we're going, I'm going to guess, you know, I'm going to guess 30 to 45 minutes. It could be less if, if there were shorter answers and, and no other questions. It could be longer.

COMMISSIONER ARGENZIANO: Mr. Chair?

CHAIRMAN CARTER: Commissioner Argenziano.

COMMISSIONER ARGENZIANO: I think you've been, been really good with not pushing anybody, and I want to just bolster that. And I don't -- you know, this is the first rate case we've had before us in, what is it, 20 something years before the Commission and for this company. And I think we should take all the time that we need, you know, within of course the time frame that we have, but I don't want to rush anybody. And I think you've been doing a good job with that. And I just want to let everybody know, Mr. Wright, Ms. Clark, anybody, that I don't think we should rush anything. And I don't want to give the impression that that's what we're trying to do.

CHAIRMAN CARTER: Thank you, Commissioner.

MS. CLARK: Mr. Chairman, my purpose was just gauging a break. That's all.

CHAIRMAN CARTER: Okay. Mr. Wright, you may proceed.

THE WITNESS: Mr. Chairman, I could use a quick five-minute break.

CHAIRMAN CARTER: Okay. All right then. I was going to torture you guys. Let's do this. We'll come back, Commissioners, we'll come back at 15 after.

(Recess taken.)

We are back on the record. And when we left, Mr. Wright.

MR. WRIGHT: Thank you, Mr. Chairman.

BY MR. WRIGHT:

Q. Good morning one more time.

A. Good morning.

Q. The questioning by the Commissioners has prompted a couple of questions that I would like to ask, and I figure in the flow I will ask them now.

First question. This has to do with what the Commission can consider in making its decisions. Can the Commission consider the current state of the economy in making its decisions in this case?

A. Yes. And as I believe I said earlier, I think you have to look at it, and I would suggest that this Commission look at it also in the long-term view. And I won't -- I'll spare the group going through the whole discussion again, but it's not a matter of turning it on and off. That decisions we make today have implications four or five years down the road.

Q. Thank you.

MS. CLARK: Mr. Chairman, I just -- by the use of the term "can the Commission," I just want to make sure he's not asking for a legal judgment on that.

CHAIRMAN CARTER: We didn't take it that way, but --

MR. WRIGHT: And I did not intend it that way.

CHAIRMAN CARTER: Okay.

MR. WRIGHT: I certainly intended it as a matter of policy, asking the President of the company the question.

CHAIRMAN CARTER: You may proceed.

MR. WRIGHT: Thank you, Mr. Chairman.

BY MR. WRIGHT:

Q. If the Commission in this docket were to grant FPL a zero rate increase, wouldn't it also send a signal to Wall Street that, all things considered, the PSC is making or would be making what it believes is the best decision for all parties in light of the current state of the economy?

A. Respectfully, Mr. Wright, Wall Street doesn't think like that. Wall Street looks at, you know, what -- it's a competitive market for capital, and Wall Street looks at, you know, where, where are the best returns on a risk adjusted basis. And their, you know, markets are very efficient capital markets, and Wall Street will make the decision based on their view of the relative risk and their view of the kind of earnings that this company can deliver. They will not look at, you know, really the basis of the Commission's decision. They will look at the results.

Q. As per your attorney's query a moment ago, by the next question I'm not asking you for a legal opinion. But as a, as a matter of policy, you'd agree that it's the Public Service Commission's statutory -- I should leave that word out -- it's the Public Service Commission's job to make the best decisions it can in the public interest, would you not?

A. Yes. And I believe that the Commission really has a dual responsibility to balance the needs of the customers and the needs of the company. So I would add to that equation I think they have a responsibility to make sure that companies are healthy and financially viable, because they can't do the right thing for the customer, customers without that.

Q. And I'll bet you heard me say something very much like that in my opening statement, didn't you?

A. I heard a lot of things in your opening statement.

Q. I think I said "fair to the customers, fair to the company." Do you recall me saying that?

A. I would certainly agree with that.

Q. Okay. If the Commission were to grant no rate increase in this case, wouldn't it send a signal to the people of Florida that, all things considered, the Public Service Commission is making the decision it believes best for all parties in light of the current state of the economy?

A. I would certainly agree that it sends a signal, but I think it would send different signals than what you are saying. I think it would send a signal to consumers, but it would also send a strong signal to the company, and it would certainly send, as I talked about earlier, a strong signal to the financial community.

Q. In responding to questions I believe by, posed to you by Commissioner Argenziano, you were saying something to the effect of there's never a good time for a rate case, and that whatever you asked for you felt would be opposed. Was that about what you said?

A. I don't think I said it quite the same way. But I, but I think I was, I believe I was responding to a question from Commissioner Edgar that there's never a good time for a rate increase. If we asked, in good times or bad times, if you ask people do you want to pay more at Publix, do you want to pay more at Tenet Healthcare, for example, nobody will say that they're willing, that they want to pay more.

Q. By your response earlier, did you mean to imply that the consumers just blanket take the position opposing rate increases, whatever the request is?

A. I think that most people don't want to pay more for a service that they're getting. And it, it takes a fairly sophisticated customer to say, you know, there are times that maybe I -- in whatever products, whatever I pay, there is these businesses, particularly a regulated business like this, that there has to be a component that's really an investment for, to maintain what we're doing now.

I think -- I'll give you an analogy. You know, most people think nothing when they -- they recognize, if you're a homeowner, that every now and then you're going to have to replace an appliance or you're going to have to replace, you know, a refrigerator, a washer or whatever. Most of the time, in fact all the time you're generally going to end up paying a higher cost than what you paid before, when you first bought that appliance if you bought it ten years ago. People expect, they recognize that nothing lasts forever, and that when they replace it they have to pay more.

It's the same thing in a utility at a simplest level. You know, when -- nothing in our system lasts forever. We've got to keep putting capital in the business to replace everything from poles, transformers, on up. And when we replace it, we, we pay more than that equipment went in in the first place.

So a status quo and not putting capital in a business, in our business is unrealistic, any more than to expect that a homeowner, that their appliances will last forever. And maybe that's not a point that we have been able to make clearly enough in some of the discussions that we've been having.

Q. Thank you for that answer. The question I was trying to ask you, and I'll make it a little more specific with this predicate question. You're familiar with the consumer Intervenors in this case.

A. Yes.

Q. Public Counsel, FIPUG, Retail Federation, South Daytona, the Federal Agencies; right?

A. Yes.

Q. Did you mean to imply by your earlier response that the consumer Intervenors in this case would under any circumstances oppose any rate increase by FPL?

A. To the best of my recollection, I don't ever recall an intervenor recommending an increase in a rate proceeding. I may be wrong, but I don't, I don't have any recollection of an intervenor saying, yes, this company should be granted an increase.

Q. Surely you followed the Tampa Electric case recently concluded by this Commission, did you not?

A. I did.

Q. You're not aware that the consumers in that, in that case --

A. I did not -- sorry.

Q. Thank you. Will you agree that the -- and we can cite to the prehearing orders, if we need to. Will you agree that in that case the consumer intervenors recommended rate increases for Tampa Electric between roughly $26 million and $39 million per year?

A. I did not read the testimony of all the intervenors. I just looked at the summaries.

Q. Thank you. In response to a question by, by Commissioner Edgar, I believe you said, something you said I think on Monday, and that is that rate case expense was roughly $4 million to $5 million. The number I recall seeing in the MFRs is something like $3.6 million. Does that sound accurate?

A. 3.6 rounds up to four, so.

Q. Is Mr. Pimentel the appropriate witness to nail that down?

A. I think, I think why don't we ask Mr. Barrett. I'm sure he can look up what, the actual forecasted cost. I think it's important to also note that it's not just the actual rate case cost. It's really the time of the senior team and all the people that support the senior team that's not included as a rate case expense that is frankly what I, has me the most concerned for a rate case, during rate cases.

Q. Thank you for that answer.

I believe that it was Commissioner Argenziano who asked you some questions about the cost recovery clauses. But regardless, at least one Commissioner asked you some questions about cost recovery clauses this morning, and I did have a couple of follow-up questions on that.

I think it's in your testimony. On Monday you suggested that there's, that there's some risk of disallowance under the cost recovery clauses; correct?

A. Correct.

Q. If you know, how much of FPL's requests for recovery of costs through clause revenues was disallowed in 2008?

A. I'm not sure I can give you an exact number off the top, top of my head. I think there's probably around $6 million or so disallowance in the fuel bill. But the point is -- I made a couple of points. The best that we can do is to recover all of the costs that are incurred. And for the overwhelming majority of the dollars that are recovered through clauses, there is no profit. So the most you can do is you can recover your costs, but you have downside. You have no upside because unless -- unlike base rates, you don't have an opportunity to, to make a profit on that.

Q. You would agree, using the phraseology you just used, that FPL recovers the overwhelming majority of its requested costs in its cost recovery clauses, would you not?

MS. CLARK: I'm going to object to the characterization of "overwhelmingly."

CHAIRMAN CARTER: Rephrase. Just rephrase.

MR. WRIGHT: It was the phrase he used in his previous answer, Mr. Chairman. He said, he said the overwhelming -- what he said was the overwhelming majority of our costs don't contain a capital component. And even regardless, I think it's a fair, fair question in any event.

CHAIRMAN CARTER: Ms. Helton.

MR. WRIGHT: The further proffer is he's talked about --

CHAIRMAN CARTER: Hang on. Hang on. Hold on. Just hold on.

MR. WRIGHT: Yes, sir.

CHAIRMAN CARTER: Ms. Helton.

MS. HELTON: I honestly don't know whether he used that term or not. I do think that we have heard today that the majority of the costs are recovered through some type of clause proceeding, but I'm not sure that it really matters that much at this point. Maybe if we could just go through and let him finish the question and let Mr. Olivera answer.

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

MR. WRIGHT: Thanks.

BY MR. WRIGHT:

Q. Mr. Olivera, the number you remembered from last year's consolidated clause proceedings is the same number that I remember for last year. And so last year, to the best of your recollection and my recollection, FPL did not recover about 6 million. I think it was actually about $6.2 million of its requested cost recovery out of a total cost recovery bill in the range of $7 billion. Is that accurate?

A. I don't remember what the total number is. But we recovered the majority of the costs because we're able to show that they were prudently incurred costs. But at every step of the way there is a challenge on the prudency of all the expenses. And we talked briefly earlier today about the nuclear cost recovery.

And, again, I was making two points, that the best you can do is recover what you have incurred. And, secondly, that for, and I will say it again, the overwhelming majority of the dollars we don't make a profit on.

Q. You referred to a challenge to the, as I understood it, to the company to demonstrate prudence of its requested recovery under the cost recovery clause; correct?

A. In what context? What is -- your question is in regards to a challenge to what?

Q. I believe in your answer to my previous question you said the company faces a challenge, which I understood you to mean to demonstrate the prudence of costs for which you're requesting a recovery under the cost recovery clauses. Was that your intent?

A. I was referring to a specific comment that I had made earlier about the nuclear cost recovery and the challenges that are currently being made with regards to the filings we've made.

Q. Thank you for that clarification. That's not how I took your prior answer.

Let me ask you one quick question, I hope. Would you agree that it's appropriate for the Commission and any participating Intervenor parties to question the reasonableness and prudence of FPL's costs that it requests be recovered through cost recovery clauses?

A. Yes. But at every step of the way you have to, internally you have to make sure that every decision that you make is properly documented, properly noted. And there's always some risk that for whatever reason, and we live in an imperfect world, Counselor, that for whatever reason something is not properly documented, there's some screw-up somewhere along the way. And that, that would be deemed, because we can't provide the documentation, we can't provide an analysis that a manager didn't think of doing ahead of time, that those dollars will get disallowance. We live with that risk every day. I accept it, it's part of the regulatory environment that we live in. But I want to make the point, we don't make a profit on that. The best we can do is to recover the dollars that were incurred.

Q. Now you've mentioned a couple of times in the last three or four minutes the nuclear cost recovery clause. You would agree -- well, let me ask it this way. Would you agree that the majority of costs that FPL expects to recover under the nuclear cost recovery clause, through the capacity cost recovery charge from now until the time Turkey Point 6 comes online will be for essentially construction return or return on construction investment during the construction process?

A. I'm not sure that I understand your question. Can you clarify? When you say --

Q. Sure.

A. -- the dollars that we're going to recover?

Q. Between now and 2018, say.

A. Uh-huh.

Q. They're going to be, there's going to be some, there's going to be some preconstruction costs; correct?

A. Correct.

Q. And the rest of it, as I understand the way the statute works, the rest of it will be the return on the investment during construction.

A. Correct.

Q. And isn't it also true that even if the company abandons the project at any point in time, the statute provides that you would continue to earn a return on, on the investment up to the point of abandonment until it was fully amortized?

A. That is my understanding.

Q. Thank you.

A. But the point that I wanted to make on that is it is a huge investment, huge amount of dollars, and there is a risk for disallowance at every step of the way. And we're not talking about a 5 or $6 million item, we're talking about a 14 to $18 billion item. So I think we have reason to, to monitor really what's going on pretty closely.

Q. And I'm glad you mentioned that, because that brings me to another question I had made a note to ask. Both yesterday and today you've referred to your, what I understand to be your Turkey Point 6 and 7 nuclear expansion project as estimated to cost between 14 and $18 billion; is that accurate?

A. That is correct.

Q. Okay. I thought that, I believed -- not past tense. I believe that I have seen estimates from the company quoted in press articles between 12 and $24 billion. Do you recall seeing estimates like that?

A. I think since we've announced it, we've kind of narrowed down that range. But I would also say that it's a very preliminary range. We haven't signed an engineering and procurement contract. And in fact we haven't been able to come to terms that we're comfortable with in that. So it's a very, very preliminary estimate. It's a wide range and the estimate is subject to a lot of change.

Q. And you're not in a position today, are you, to promise your customers that, that the plant is going to cost no more than $18 billion, are you?

A. No, I'm not.

Q. Okay. You've mentioned, I think, a few times in your testimony that, that FPL expects to make something like $16 billion of investment over the next five years.

A. That's correct.

Q. How much of that do you expect would be in nuclear?

A. I can't give you the number off the top of my head.

Q. Ballpark percentage?

A. I mean, I can start noodling (phonetic) numbers, but I think you're best off to ask Mr. Barrett, who can, who's got the numbers, he's got the MFR. He can give it to you.

Q. Thank you. I shall pose the question to Mr. Barrett.

You've said several times and FPL's exhibits show a projected decline in the residential bill next year based on your projected reduction in fuel costs; correct?

A. Correct.

Q. Okay. If fuel costs don't go down as projected, rates will be higher than they otherwise would under any scenario; correct?

A. If fuel bills go higher than the current forecast, the bills will be higher than the $100 or so that we have forecasted.

Q. Okay. I think that I have it right. I think this is on about Page 5 of your testimony. Sorry. It is on Page 7 of your testimony. That as of today, as of this year, I should say, FPL's generation is roughly half gas. 48 percent is the value I see there at the top.

A. Yes.

Q. And that's projected to increase to 61 percent next year and 63 percent the year after?

A. Yes. That's in my testimony.

Q. Thank you.

CHAIRMAN CARTER: Number, Mr. Wright?

MR. WRIGHT: Yes, Mr. Chairman. I've got 397.

CHAIRMAN CARTER: 397. Excellent.

MR. WRIGHT: And my proposed short title is EIA Natural Gas Prices, 2002-2009.

CHAIRMAN CARTER: Okay. Since I didn't get that, I want you to give me that short title again.

MR. WRIGHT: Certainly, Mr. Chairman. EIA Natural Gas Prices, 2002-2009.

CHAIRMAN CARTER: Okay. Hang on a second. Let everybody get a copy before you proceed.

(Exhibit 397 marked for identification.)

You may proceed.

MR. WRIGHT: Thank you, Mr. Chairman.

BY MR. WRIGHT:

Q. Mr. Olivera, you have testified and I'm sure that we agree that the prices of natural gas are volatile. Yes?

A. Yes.

Q. If I could ask you to look at the meaningful page of this, of this exhibit, it purports to show monthly U.S. natural gas prices for the electric power sector over the time period indicated, 2002 to almost the present time; correct?

A. Correct.

Q. You'd agree that we, I know we would all agree painfully that we had a pretty big price spike last summer on natural gas; correct?

A. I'm sorry. Yes. We've seen huge volatility in the price of gas, very painful last summer.

Q. And we had another one in the latter part of 2005; also correct?

A. Correct.

Q. Okay. I'll give you subject to check on the number, but isn't it true that when the price of gas ran up in the first half of last year, FPL came to this Commission asking for Commission approval to recover roughly $746 million of fuel cost underrecoveries, as we would denominate them, over the last half of 2008?

A. Subject to verification, we have come in from time to time when there's been a runup in a fuel bill.

Q. Subject to verification of the actual number, you'd agree that, you would agree that you came in and asked for a bunch of money last summer; right?

A. I can't remember the exact time frame when we came in, but certainly we have, there's plenty of instances where we've come in when the price of fuel has gone up.

Q. Last year the price of gas ran up roughly four to $5 a million Btu between the first of the year and June; is that about right?

A. I can't give you that information off the top of my head.

Q. Well, you could look at the graph, and I think it'll show you that the price in January of 2009 was just a hair over $8 and the price in June -- actually you can look at the numbers on the table. The price in June was $12.50 a million and the price in July was $12.05 a million.

A. That's what it says. But I don't know exactly the source of the information, so I'm not going to testify that these are absolutely the right numbers.

Q. I think we've already agreed that the EIA is a recognized source of energy data, have we not?

A. The question is what's the context? You know, we, sometimes we report it on a daily prompt. This is a monthly data. It depends what point in time you pick that will give you a different answer. If you pick today's prompt, it's different than it was a week ago. So I'm not going to testify that I understand the numbers that you've given me.

Q. Well, I will ask you to answer this question then. In the context of your personal knowledge, is it your, in the context of your personal knowledge, is it your understanding that market prices of natural gas increased roughly $4 a million Btu the first half of last year?

A. I can't testify to the exact number. There's been a huge amount of volatility in gas prices, and we've seen movements of $6 or $8 in, in a calendar year.

Q. Just so I'm clear, the answer to my question in the context of your personal knowledge is, I don't know?

A. I don't know the exact movement of gas prices in the specific time frame that you are giving me. I don't have that information off the top of my head.

Q. Okay. Well, the real point is this. If we had another $4 price runup in natural gas, that would, that would pretty much wipe out your projected fuel cost decline, wouldn't it?

A. I can't work the math off the top of my head. But I will say to you that it's precisely for those reasons why we think it's so important to continue to invest in making the system more efficient, because it's one of the few things that we can do to really lower, help lower that fuel price. The things we're doing actually have more value when there's a big runup in gas prices than when gas prices are low, because on a proportional basis it saves the customers more money than it would otherwise be.

COMMISSIONER EDGAR: Mr. Chairman, if I may.

CHAIRMAN CARTER: Commissioner Edgar.

COMMISSIONER EDGAR: Thank you, Mr. Wright. Just a follow-up on that.

The term 1.3 billion has been used. It's moved a little bit, so whatever that, that number is. Can you tell me, and it doesn't have to be to the penny of course, but generally, of that, the request, the total request amount, how much of that, if granted, will be used to increase efficiency, which I think is the term, I think is the term that you just used in response to Mr. Wright?

THE WITNESS: Yeah. It's, when I was talking about efficiency here, I was talking about power plant efficiency; right? So it's the capital recovery associated with that.

COMMISSIONER EDGAR: With generation, yes.

THE WITNESS: I don't have a -- and so that's one component of the efficiency. Of course we're making other investments to make the system more efficient in transmission and distribution. So in the context of fuel I was picking a very, kind of a fairly narrow definition.

COMMISSIONER EDGAR: You may, you may broaden, just so I understand what you're referring to.

THE WITNESS: Yeah. I think in, in the first, in the first pass it's probably several hundred million dollars. We know for sure that it also has in it $200 million for West County. So in total numbers it's probably four or $500 million that's directly attributed to the plants now.

The piece that's not shown in these numbers of course is, you know, how the rate increase supports the credit metrics that allow us to continue to build facilities, but that for which we're not yet asking for a base rate increase. So back to our earlier conversation.

COMMISSIONER EDGAR: Thank you.

Thank you, Mr. Wright.

CHAIRMAN CARTER: Mr. Wright.

MR. WRIGHT: Thank you, Mr. Chairman.

BY MR. WRIGHT:

Q. Following on my questions about fuel, you're not guaranteeing fuel cost, fuel charge reductions effective in January, are you?

A. No, I'm not guaranteeing. But I think there is a very high probability that gas prices will, will remain low. I think that at least there's a consensus around the experts that there is a supply demand balance, there's a lot more supply than there is demand right now in part because of the economy, and that that will tend to depress gas prices for the foreseeable future. So we think it's a very low probability.

MR. WRIGHT: Believe it or not, Mr. Chairman, I think that we have, have rounded the home turn and that I am nearly done.

BY MR. WRIGHT:

Q. I think that I only have a couple more questions, Mr. Olivera. And these go, again, to the big picture of the company's request that we discussed at the outset of our colloquy today.

I'm looking at, at the company's MFR C-1, which shows that absent rate relief and taking the company's projected expense information as given, the company would have roughly 725, $726 million of net operating income. And that number is the same as shown on Line 8 of Schedule A1, Page 1 of 1. Is that familiar to you?

A. I'm not the sponsor of that MFR, but that sounds about right.

Q. Okay. That number takes as given the company's projected expense numbers and rate base numbers, does it not?

A. Yes. It takes into account O&M and capital expenditures.

Q. And depreciation; correct?

A. And depreciation.

Q. Okay. If the Commission were to accept the recommendations of the Public Counsel's depreciation witness, that would have the effect of reducing the company's depreciation expense by some $554 million. That's the number on their exhibit. We can -- do you agree that that's, that's the representation of the consumers' witnesses?

A. I have 230. The total that you're showing is 554.

Q. The total, I believe, is 554, which includes both the adjustment to 230 million as amortization of what we assert is the excess depreciation reserve, which shows as a credit against depreciation expense, and a modification of $324 million based on Mr. Pous's adjustments to depreciation rates.

A. Correct.

Q. Okay. So if the Commission adopted that and you plugged the adjusted number into either schedule, i.e., into the calculation of NOI, your NOI would go up by that $550 million, wouldn't it?

A. I haven't worked through all the math. But it will have, it will have an impact on our net income.

Q. Well, I --

A. On the reported net income.

Q. Correct. And we've had a conversation about depreciation being --

A. Uh-huh.

Q. -- accounting entries.

A. Uh-huh.

Q. Okay. So if, if the accounting entries made for depreciation and amortization were reduced by $554 million, reported NOI would increase by that same amount. So it would go from roughly $726 million to roughly $1.26 billion; correct?

A. Look, I have not -- I don't know what -- we need to compare what we have in our forecast and I need to understand your exact definition of each of these line items. And so I'm not going to give you a number that I really don't understand, kind of a side-by-side comparison. I don't know if there's some overlap in some of the numbers you have or there isn't. So I'm not prepared to sit here on the stand and say it's $500 million more of net income. And as I said, I'm not the sponsor of C-1.

Q. Well, perhaps I shall pursue that with Ms. Ousdahl, but I will ask my, my question of you.

If true that the depreciation works in the simple arithmetic way that it seems to me that it works anyway so that there's a dollar-for-dollar increase in NOI in response to a dollar-for-dollar decrease in depreciation expense, if that's how this works --

A. Yes.

Q. -- then you'd be up around $1.25 billion of NOI.

A. If somehow there's a, there's some magical or theoretical number that creates that much depreciation. But I think the question you have to ask yourself, you know, how do you get to that number and is it an artificially low number, which is one of the items that we have a difference of opinion on. And we've talked about surplus depreciation, and obviously we have several witnesses that will address that, the technical aspects of that.

But if you accelerate, you know, accelerate those credits and not, and take them out of line with the remaining life, we do, we are looking for a big increase in three or four years' time. We've talked about that. I think there are other witnesses that can be more eloquent on that point.

You also have a second impact that we have not talked about, but I'm sure Armando Pimentel can also address, which is you begin to get into a quality of earnings issue, meaning that, as we've said, these are not, this is not cash. This is not $500 million of cash that's sitting out there and it doesn't represent additional cash that will come in the door.

So investors are pretty sophisticated. They would look at, you know, how much of your net income is really being generated by, by real cash, what portion of it is real cash. And I'm not the right guy to give you any kind of ratio, but I think you have to take that into consideration. It's not -- you can't -- if you report, just to make the point, if all of your net income that's reported is all effectively book earnings, that is, there's no real cash coming in the door, that has significantly different credit profile implications than if you can show that substantially or all of that is, is kind of a cash, cash return.

Q. Again understanding that we have a difference of opinion, you would agree that the consumers' witnesses, specifically Daniel Lawton on behalf of the Citizens of Florida, have testified, have provided or will be providing testimony regarding the impact of the depreciation adjustments recommended by Public Counsel's other witness on FPL's financial integrity?

A. Yes. And I hope that you will also agree that we have a different point of view and that we have two financial witnesses that will be testifying on that and three, three different witnesses that will be testifying on depreciation.

Q. Mr. Olivera, I think we agree on a lot of things, including the fact that we have different points of view.

A. Agreed to that.

Q. You mentioned that there would be a big increase, in response to my previous question, that there, in your characterization there would be a big increase in rate base if we amortize the depreciation surplus more rapidly; correct?

A. Correct.

Q. Okay. Wouldn't it be possible that we would get to a point, say, in three, four, five years that the depreciation surplus would be zero?

A. I think, without getting into the technical analysis, and I think both Mr. Mike Davis -- Mr. Mike Davis is probably the best guy to tell you, because we've done some of that analysis to show, you know, what, what will this do, kind of the what-if scenarios if you accelerate that depreciation to be faster than what we're proposing and what's the likely impact. And, frankly, I am not, of all the things I deal with, depreciation is one of the most complicated ones, and I'm not the right guy to go through those mechanics with you.

Q. Well, we agree on that too, that it's one of the most complex things that we have to deal with. But you testified that there would be a big increase in rate base.

A. Yes.

Q. It seems --

A. I'm sorry.

Q. It seems like a fair characterization of that testimony is that rate base would, other things equal, be bigger than it would otherwise be if the Commission adopted a more rapid amortization of the depreciation surplus than that advocated by the company. Is that fair?

A. I'm sorry. I couldn't follow it all, but let me just make a point of clarification. When I said that, that if the surplus depreciation is amortized at a faster rate than we're proposing and that there would be an increase at the back end, it's really based on the analysis that Mr. Mike Davis has provided and based on the conclusions that he has shown me.

Q. I too am trying for a clarification. You said there would be a big increase in rate base.

MS. CLARK: Mr. Chairman, you know, I think this has been asked and answered and the witness has made it clear that a better witness to answer it is Mike Davis. This just goes to the issue of trying to move the hearing along.

CHAIRMAN CARTER: Mr. Wright.

MR. WRIGHT: Mr. Chairman --

CHAIRMAN CARTER: Yes, sir.

MR. WRIGHT: -- I'm trying to elicit a clarification of the witness's prior answer in which he stated that there would be a big increase in rate base. The question I'm trying to ask him is does he mean that it would be bigger than it would otherwise be. And he can say yes, no or I don't know. I think he's explained a lot already, but he can explain too.

CHAIRMAN CARTER: Okay. Ms. Helton. I'm going to give you some easy ones today.

MS. HELTON: Well, you know, I'm not an accountant, but it seems to me that this has been asked and answered.

MR. WRIGHT: My problem, Mr. Chairman, is that I did not hear yes, no or I don't know. What I heard was this is a complex issue and you should better ask

Mr. Davis. If he will preface his answer by saying I don't know, I cannot answer that question, ask Mr. Davis, I will move on.

CHAIRMAN CARTER: Okay. Well, ask him again.

THE WITNESS: Would you repeat the question?

BY MR. WRIGHT:

Q. Of course. I was, I was asking, I was attempting to ask you to clarify a previous statement that you made in response to one of my questions in which you said there would be a big increase in rate base. And my question was, did you mean that rate base will be bigger than it otherwise would be if the Commission were to adopt something like the consumers' accelerated amortization as opposed to the companies? Was that your intent? That's my question.

A. Yes. And as I stated earlier, my answer is based on the analysis that was conducted by Mr. Davis, which showed that, as proposed by opposing counsel, that rate base would grow higher than it otherwise would have grown. And that's why I deferred you to Mr. Davis, because I can't walk you through all the elements of the analysis.

Q. And, again, without getting into the accounting weeds, would you agree that a possible outcome is that we would get to a point where there were no, there would be no depreciation surplus or deficit sometime down the road?

A. No. Because the data, the analysis that I have seen suggests otherwise.

Q. What, what result does it suggest? Does it suggest that you would be in a depreciation deficit position?

MS. CLARK: Mr. Chairman, I would just renew the objection on this line of questioning, that they more appropriately go to Witness Davis.

CHAIRMAN CARTER: I'll allow.

THE WITNESS: Would you repeat the question?

BY MR. WRIGHT:

Q. The prior question was, would you agree that it's possible that we would get to a point three, four, five years down the road where there would be no depreciation surplus and no depreciation deficit? You said, no, because the analyses I have seen suggests something different.

My follow-up question was, do you mean to imply that there would be a depreciation deficit position at any future time?

A. The answer is we don't know.

Q. Okay.

A. Because in four years' time there would be a new depreciation study conducted. We've been doing them every four years per the direction of this Commission. And at the end of four years there will be an update to the analysis that has been done so far, the analysis that's been presented concurrent with this case, and we don't know whether, what, what it will show. But there are certain trends that I think Mr. Davis can point to because we have a significant amount of investments that are being made in assets that have a defined life. And so I'm going to defer to him to kind of walk you through at least directionally where he thinks this is going to end up. But there will be another depreciation study conducted in four years.

Q. Taking into account all the decisions that the Commission is faced with, however they make them, for y'all on some, for our side on some, if we wound up where the number at the bottom right-hand corner of C-1, which is now $725,883,000, with something like $1.25 billion, would that be enough for FPL?

A. It -- certainly not the 700 and some million dollar number. I think we've made the case that that is a pretty low ROE for the company. And we would be, frankly, you know, hard-pressed to continue doing what we're doing at that level of ROE.

Q. I appreciate the answer that you gave, but let me pursue that and then I'm going to ask my question again.

You said that would produce a low ROE. That assumes, that calculation that produces what I think the company represents is about a 4.7 percent ROE; correct?

A. That's correct.

Q. That assumes the company's position on every expense item in this case; correct?

A. Correct.

Q. Thank you. The question I asked you before that was simply if, based on the decisions the Commission makes in this case with regard to O&M, depreciation, and everything else, the number shown incorporating the Commission's adjustments into the calculation was $1.25 billion of NOI for FPL, would that be enough?

A. I think I'd go, and I'm sorry, I don't mean to be argumentative, but I go back to the quality of earnings. If you said -- because you're giving me a hypothetical case. If you said to me virtually all of that, you know, we're going to ask you to, to flow back a billion dollars, a billion two of surplus depreciation in 2010 and that's the only, that's the only thing that you get coming out of this case, that's actually a pretty bad outcome for us. And so I'm having trouble asking -- answering the question in such a hypothetical manner.

MR. WRIGHT: Thank you, Mr. Olivera. And thank you, Mr. Chairman. I am done.

CHAIRMAN CARTER: Thank you, Mr. Wright. Mr. --

MR. McGLOTHLIN: Chairman Carter, before you go down farther, I have one small item to bring up. I think it'd be appropriate now.

CHAIRMAN CARTER: I'm all in favor of small items, Mr. McGlothlin.

MR. McGLOTHLIN: I did not want to interrupt either Commissioner Skop or the witness or Mr. Wright, but there was a point during a response to Commissioner Skop at which Mr. Olivera went beyond simply saying the company is at risk for possible disallowance and referred to a specific issue pending in the nuclear cost recovery case, and appeared to defend himself against OPC's position in that case.

So that we keep rate case issues in the rate case and nuclear issues in the cost recovery docket, I move to strike that portion of the response that referred to the EPC contractual issue pending in that other case.

MS. CLARK: Well, I would object to having that stricken, because, as we've all painfully listened to, a lot of the testimony and questions here was on cost recovery clauses. And I think Mr. Olivera's point was there is no guarantee of recovery under those clauses.

CHAIRMAN CARTER: Ms. Helton.

MR. McGLOTHLIN: Had that been the point, he could have stopped there. He went further and identified a position of OPC against which he was defending and described what he perceived the disparity of treatment, and that goes beyond making the point that there is potential disallowance.

MS. CLARK: It is a fact which supports his point.

CHAIRMAN CARTER: Commissioner Skop, then Ms. Helton.

COMMISSIONER SKOP: Thank you, Mr. Chair. Just with respect to the reason I asked my question, which I don't usually do, but it was in response to a question that Mr. Wright had presented to the witness with respect to the need for a rate increase as it pertained to the uprates, and that was the, just the basis for fleshing out, you know, because I do look at them as separate and distinct issues.

MR. McGLOTHLIN: And to be clear, I don't object to the witness making the point that they're not guaranteed recovery under cost recovery mechanisms and that there is what he called exposure to the possibility of a, of an issue that could relate to, lead to a disallowance if the Commission first makes a finding of imprudence and then of unreasonable costs. That's all basic ratemaking.

But to then complain in effect about a particular position being advocated by the OPC in this docket when that's being played out somewhere else is the point to which I take exception.

CHAIRMAN CARTER: Okay. Commissioner Skop.

COMMISSIONER SKOP: Let me just make this easy. I'll just move to strike, move to strike my entire question as to that line of questioning and that will resolve this issue, I believe.

CHAIRMAN CARTER: Ms. Helton? I was going to say -- of course I was going to wait on Ms. Helton. I was going to say we could give it whatever weight it, you know, requires from the bench. But, Ms. Helton, I'll give you an opportunity before I rule on it. I was just thinking aloud.

MS. HELTON: Well, it seems to me that Commissioner Skop has given me another easy way out, and if Commissioner Skop --

CHAIRMAN CARTER: I suggest you take it.

MS. HELTON: If Commissioner Skop is willing to strike his question, then I believe we should strike the response as well.

CHAIRMAN CARTER: Strike the question and the answer. Okay. All right.

Mr. Armstrong, good afternoon, or is it still morning? No, it's afternoon.

MR. ARMSTRONG: Thank you, Mr. Chair, Commissioners.

CROSS EXAMINATION

BY MR. ARMSTRONG:

Q. Mr. Olivera, good afternoon.

A. Good afternoon.

Q. That's where we are now.

In response to Commissioner Argenziano's questions a short time ago, you confirmed that the rating agencies and the investment community look at the proportion of FPL revenue recovered in rate adjustment clauses as one of the factors to establish utility ratings. Do you recall that?

A. Yes.

Q. Can you explain why FPL did not provide the Commission with a proportion of revenues recovered in rate adjustment clauses by the other 18 utilities in

FPL's proposed utility proxy group?

A. I don't know what you're referring to.

Q. You're familiar with the 18, the proxy group consisting of 18 other utilities which FPL's witnesses have suggested will provide appropriate --

A. I'm generally familiar with it. I did not sponsor the document. I don't have any intimate detailed information of the document.

Q. Okay. So you can't explain why FPL did not respond with the comparable proportion of revenues from those other utilities that they recover through rate adjustment clauses; is that right?

A. I don't, I don't know what document you're referring to.

MS. CLARK: I have an objection to that. He hasn't laid the foundation that we didn't agree to provide it.

CHAIRMAN CARTER: Sustained. Move on, Mr. Armstrong.

MR. ARMSTRONG: It's in staff's proposed composite Exhibit 35, and it's two interrogatory responses, Interrogatory 207 and Interrogatory for OPC 59.

CHAIRMAN CARTER: I'm sure staff is waiting with bated breath to make their cross-examination, Mr. Armstrong. Move on.

BY MR. ARMSTRONG:

Q. Okay. Mr. Olivera, in proposing a utility proxy group for purposes of establishing a proposed ROE in this docket, you agree that the proxy group, one of the decisions and determinations that this Commission needs to make is whether or not the risks and uncertainties of those utilities are comparable to the risk and uncertainties faced by FPL, would you not?

MS. CLARK: Mr. Chairman, I'm going to object to this question. I think it goes beyond the scope of this witness's testimony and it's more appropriately directed to Mr. Avera.

CHAIRMAN CARTER: Well, let me do this. Let's see if -- I'm going to give a little leeway. Let's see if Mr. Olivera can answer it. If he can't, then we'll just move on.

THE WITNESS: I'm sorry, Mr. Chairman. I did not --

CHAIRMAN CARTER: It was, yeah, I know. We're going to have to ask him -- it was a long question, but we'll ask Mr. Armstrong if you'll restate the question, please, sir.

BY MR. ARMSTRONG:

Q. Well, Mr. Olivera, in your past positions with

Florida Power & Light were you previously Chief Financial Officer or Chief Operating Officer for the company?

A. We don't have such. We don't -- we have a Chief Financial Officer title. We don't have a Chief Operating Officer. But I did have responsibility for a significant portion of the operations of the company before I became President.

Q. Okay. And you've testified in support of this 12.5 percent return on equity requested by Florida Power & Light in this docket; correct?

A. Yes, I have.

Q. And you are aware, are you not, that in establishing that 12.5 percent requested return on equity, your return on equity witnesses looked at a utility proxy group, are you not?

A. Yes. I'm aware at really a fairly high level the process that they went through. I am not sufficiently familiar with the details of how that analysis was conducted, nor am I familiar with each of the components that make up the peer group, or frankly even all of the companies that were chosen to be part of that peer group. I relied exclusively on the experts, Mr. Bill Avera and our Chief Financial Officer, Mr. Pimentel, for that information.

Q. Well, given that answer, Mr. Olivera, if I were to ask you your personal opinion about the comparability of risks and uncertainties for FPL versus 18 other utilities, wouldn't you agree that it would be necessary to know what proportion of the revenue requirements those other utilities recover through their rate adjustment clauses to determine whether or not that proportion --

CHAIRMAN CARTER: Mr. Armstrong, give him one question at a time. I mean, I'm having trouble following you.

MR. ARMSTRONG: Okay. I'll stop with the word "clauses."

CHAIRMAN CARTER: One at a time. Okay?

MR. ARMSTRONG: Okay. I'll stop at that word "clauses." I know he understands the question.

CHAIRMAN CARTER: Well, you know, we do have a court reporter and she's trying to follow you too.

MR. ARMSTRONG: Sure.

CHAIRMAN CARTER: So we're going to give you ample time to ask your questions, Mr. Armstrong.

MS. CLARK: Mr. Chairman, I would like to renew my objection. We're really getting into the weeds on this, and I think that the -- as Mr. Olivera has said, the appropriate people to ask are Mr. Pimentel and

Mr. Avera. And it's outside the scope of his testimony.

CHAIRMAN CARTER: Ms. Helton. Well, let me see.

Mr. Armstrong, I'll go to you first.

MR. ARMSTRONG: Mr. Chair, if I could respond?

CHAIRMAN CARTER: Yes, sir.

MR. ARMSTRONG: Mr. Chair, we've heard it consistently, it's in this gentleman's prefiled testimony, he's testified today a 12.5 percent return on equity is necessary. Without a 12.5 percent return on equity there are adverse consequences for this utility, his utility that he runs, as well as other utilities, as well as other customers of FPL, as well as customers of other utilities in the state. I'm simply asking his opinion. He is the CEO and President of this utility. He's been involved in discussions with rating agencies, discussions with institutional investors on a quarterly basis.

MS. CLARK: Mr. Chairman, I think this is going way beyond answering the objection.

CHAIRMAN CARTER: It sounds like you're trying to rehabilitate the witness. Hang on, Mr. Armstrong.

MR. ARMSTRONG: No. I want his opinion, Mr. Chair. I want his opinion.

CHAIRMAN CARTER: Hang on a second. Hang on.

Hang on.

Ms. Helton.

MS. HELTON: Well, you've heard me say I'm not an accountant and I'm definitely not a return on equity expert, but it seems to me, Mr. Chairman, that we have gone -- we are getting into some specific details that would be better answered by a witness who actually worked with the proxy groups.

CHAIRMAN CARTER: Objection sustained. Move on, Mr. Armstrong.

BY MR. ARMSTRONG:

Q. Mr. Olivera, Mr. Wright and you just discussed your testimony about the risk of disallowance of recovery and cost recovery clauses. Are you aware that FPL's, FPL's witnesses have testified in this proceeding that FPL does not project any underrecovery of cost recovery, of costs recovered through those recovery mechanisms?

A. Yes. It's what I would expect. I would expect that every dollar we spend is a prudently incurred cost and that we can show this Commission and this Commission staff that every dollar we spend is prudent. So I would be very disappointed if my staff projected that somehow we were going to mess up and not recover every dollar.

Q. Thank you. You're aware that FPL intends to place tens of millions of dollars' worth of new meters in the residences and businesses of its customers in the Miami-Dade area, are you not?

A. I am aware that, more than aware, we have a proposal for what we call automated, Automated Meter Initiative that would ultimately result in replacement of all residential meters and the majority of all other meters.

Q. But in this docket FPL seeks to recover those tens of millions of dollars for meters specifically to be installed in the Miami-Dade area; isn't that correct?

A. The specific witness on the AMI project is Marlene Santos. But to the best of my recollection, in 2010 and 2011 there's a total of about $400 million for the AMI project. The AMI project begins initially in the Miami-Dade/Broward area, and then in subsequent years rolls out to the rest of the state, the state, the area we serve. I think that --

Q. So do you have any knowledge, do you know whether or not those AMI meters will be invested in the City of South Daytona in the 2010 and 2011 test years?

A. I believe that they would not. I believe that, and subject to verification by Ms. Santos, I believe that those meters would ultimately be installed at a later date. But South Daytona would be part of the overall program, and so those would be subsequent capital dollars that would be spent outside the two-year period we've been talking about.

Q. FPL's witnesses also testify as to the vast sums which FPL spent to repair and replace facilities damaged by the storms and the hurricanes of 2004 and 2005.

CHAIRMAN CARTER: Mr. Armstrong, do me a favor. Pull your mike, I mean, really pull it a little closer to you. There you go.

MR. ARMSTRONG: Should I slow down too?

CHAIRMAN CARTER: That's okay. Well, if you're comfortable with that speed, I'm comfortable with it too, but I do want to be able to hear you.

MR. ARMSTRONG: Okay. How about the reporter? Would you want me to slow down?

CHAIRMAN CARTER: Hang on a second. Chris, can you give me some volume on his microphone? Just give me a voice check, Mr. Armstrong, just a voice check.

MR. ARMSTRONG: Testing, one, two, three. Like that?

CHAIRMAN CARTER: A little bit more, Chris. Just a little more.

One more, Mr. Armstrong.

MR. ARMSTRONG: Testing.

CHAIRMAN CARTER: That's perfect.

MR. ARMSTRONG: So it was the microphone's fault, not mine.

CHAIRMAN CARTER: Absolutely. Spoken like a true lawyer.

BY MR. ARMSTRONG:

Q. Hi again, Mr. Olivera.

FPL's witnesses also testify as to the vast sums which FPL spent to repair and replace its facilities damaged by the storms and hurricanes of 2004 and 2005; correct?

A. Yes. Correct.

Q. And FPL justifiably recovers these costs, whether in rate base or in the storm recovery mechanisms available to it; correct?

A. Yes.

Q. And under the current rate mechanisms available, FPL recovers the hurricanes and storm-related costs from all of its customers; correct?

A. FPL recovers all the costs from all of its customers. But I will make the same point that we have made on other clauses. FPL has an opportunity to recover up to all of the costs that are incurred.

And during hurricanes it's a very challenging time. We were talking earlier about the documentation and the requirements to achieve, to show the prudency, and it's very challenging under hurricane conditions to show that every dollar you spent is prudent. We have thousands of people, thousands of our own employees working in jobs they don't normally do, and many thousand more people coming in from outside the state. And it is very challenging. And it's one of the things that I worry about, making sure that we get, we do all the right things and we can show this Commission that everything that was done was done in a prudent manner.

Q. Thank you. Do you know how much FPL spent to repair and replace its facilities within South Daytona's boundaries in 2004 and 2005?

A. I do not.

CHAIRMAN CARTER: Do you need a number, Mr. Armstrong, or are you using it just for cross-examination?

MR. ARMSTRONG: Mr. Chair, I'd request the next number, which I believe is 398.

CHAIRMAN CARTER: 398.

MR. ARMSTRONG: And the short title is FPL's Supplemental Responses to South Daytona Interrogatories.

CHAIRMAN CARTER: FPL -- go a little slower with this. I'm going to have to write. FPL's --

MR. ARMSTRONG: Supplemental Responses to South Daytona Interrogatories.

CHAIRMAN CARTER: Okay. Just hang on a second until everyone gets a copy.

(Exhibit 398 marked for identification.)

MS. CLARK: Mr. Chairman, just for my edification, can Mr. Armstrong tell me what issue these lines of questions go to? And I want to, depending on that, impose an objection on the grounds of relevancy. I'm not sure that this has been identified as an issue in this case.

CHAIRMAN CARTER: Mr. Armstrong?

MR. ARMSTRONG: Mr. Chair, FPL is requesting a $1.3 billion revenue increase based upon its allegations of rate base and investments and assets located throughout its service territories. The City of South Daytona wants to know how much the value of the assets serving it are located within its boundaries. We want --

MS. CLARK: Mr. Chairman --

CHAIRMAN CARTER: Hang on a sec. Somebody has got their -- let's make sure if you don't, if you're not speaking, that you turn your microphone off because we're getting feedback.

Go ahead, Mr. Armstrong.

MR. ARMSTRONG: In this docket my city has gone to great expense, being the only local government that has gone through the great expense of following this docket, reviewing the MFRs, reviewing the information provided. My city and the residents of my city want to know how much they're being asked to pay in an increase based upon how much is actually spent by FPL to provide the service to them.

One of the critical ingredients of that is what is the value of the assets in rate base that is being used by FPL to provide that service. They have a right to know, and it's always a question in utility ratemaking about whether or not there are subsidies flowing one way or another between a customer group or within a customer group. My city wants this information, and I believe it's certainly appropriate information that this Commission should be considering when it considers this rate increase request.

CHAIRMAN CARTER: Ms. Helton.

MS. HELTON: I thought you'd be coming my way.

CHAIRMAN CARTER: Absolutely. This is a fun one.

MS. HELTON: I agree with Mr. Armstrong that, you know, the Commission is required by the statute to consider subsidies between rate classes. However, to my knowledge the Commission has never broken out a specific city and looked at it and compared it to the, how it may be -- its members within its boundaries may be subsidizing other cities. It's more of a rate class question.

I still haven't heard Mr. Armstrong tell us what issue in this case, where there are other Intervenors whose time we are taking, this is directed to.

CHAIRMAN CARTER: Mr. Armstrong, let me hear from you again on this. You heard what Ms. Helton said, so we'll listen to you again on this.

MR. ARMSTRONG: The City of South Daytona is a customer of Florida Power & Light. It is an Intervenor on behalf of itself as well as the residents of the City of South Daytona. Nowhere has Florida Power & Light provided specific information that shows what investment it's made in a facility serving my client and the residents in my client's service area boundaries.

MS. CLARK: Mr. Chairman --

MR. ARMSTRONG: The fact that this, the fact that no other city or county has intervened --

CHAIRMAN CARTER: We heard that part. Let's speak to --

MR. ARMSTRONG: No. To ask for this kind of information is totally irrelevant to the fact that my client believes that it is being asked to increase, to pay increased rates of 30 percent, when in fact if you look at the test years in this docket and all, look at the storm recovery costs, look at the AMI meters --

CHAIRMAN CARTER: Okay. Bring it in for a landing. You are --

MR. ARMSTRONG: -- billions spent outside of our area --

CHAIRMAN CARTER: Bring it in for a landing. You're speaking to an objection, you're speaking to an objection, so bring it in for a landing.

MR. ARMSTRONG: Well, I didn't realize I had a timing constraint while I'm addressing objections.

CHAIRMAN CARTER: Well, you had -- first of all, Mr. Armstrong, let's get one thing clear. You had an opportunity to speak to the objection. I went to Ms. Helton. I could have ruled then. But out of an amount of courtesy that I extended to you that I thought that all members, and particularly the lawyers that practice before us on a regular basis, always extend to each other as well as to the bench, out of an amount of courtesy, I extended to you an opportunity to be heard again. So I think that's about it.

Ms. Helton.

MS. HELTON: Mr. Chairman, I still haven't heard an issue to which this is directed, and my recommendation to you is that, unless the attorney for South Daytona can show us to which issue, that we move on.

CHAIRMAN CARTER: If you can't show us the issue, Mr. Armstrong, I'll have to sustain. I'll have to sustain the objection.

MR. ARMSTRONG: Certainly. And the standard and the issue in this case and the standard in this case is whether or not the rates requested are --

CHAIRMAN CARTER: Point to the issue in the case.

MR. ARMSTRONG: -- just, reasonable and fair to all customers, including my client. Just, reasonable and fair. And I'm delving into that, whether or not the rates requested by FP&L are just, reasonable and fair to my client.

CHAIRMAN CARTER: The objection is sustained. Move on.

MR. ARMSTRONG: And I'd note for the record our expectation that our, or our belief that our due process rights have been violated, and I'll just leave that for appeal.

CHAIRMAN CARTER: Then you can take it to the Supreme Court.

MR. ARMSTRONG: Thank you.

CHAIRMAN CARTER: That's fine. I mean, you know, we have a separation of power. You can take it to the courts.

MR. ARMSTRONG: Sure. I appreciate that, Mr. Chair.

CHAIRMAN CARTER: The objection is sustained. Move on.

BY MR. ARMSTRONG:

Q. Hello again, Mr. Olivera.

A. Hello again, Mr. Armstrong.

Q. Moments ago you confirmed that the past, you confirmed the past constructive regulation of FPL and the rates which they permit you to charge; is that correct?

A. I'm sorry. Can you repeat your question?

Q. Yeah. I mean, moments ago you referred to the constructive regulation that this Public Service Commission has exercised in the past of FPL and its rates.

A. Yes. I believe on a couple of occasions we've talked about in the, using the words "constructive regulatory environment."

Q. One of the basic positions of FPL in this proceeding is that if the Commission does not authorize FPL to earn all of its requested 12.5 percent, there may be adverse implications on the investment community and bond ratings and other adverse implications; is that correct?

A. Yes. Generally what we've talked about is that to the extent that it affects credit metrics and it affects the financial indicators of the company, it could have an adverse effect to the company.

Q. And if there is that adverse effect, you also have stated that you believe it will ultimately result in a higher capital cost for the utility and then higher rates for its customers; is that correct?

A. Yes. What I said was that over the long-term, that if we did not have appropriate returns and we had down, downgrades in credit ratings, that ultimately that translates into a higher cost for consumers.

Q. And in fact you testified that if the Commission were to deny your rate increase, it is likely in your opinion that the credit rating would be reduced by two levels, I believe you said.

A. No, I didn't say two levels. I said that it would almost certainly result in downgrades, but I couldn't tell you with precision how many notches that represented.

Q. I misheard you. You didn't say that if they denied it outright, it would likely be a two-level downgrade?

A. I never said a two-grade downgrade. I said that it would have credit rating implications, that it would have a downgrade, but I didn't know how many notches, how many levels of downgrade, and how much -- where the company would land relative to investment grade.

Q. Well, in your opinion, if the Commission were to authorize, say, a 12.25 percent return on equity, would you, would FPL experience those adverse effects?

A. I think if FPL is granted less, it's really a question of where, where it stands. And as I mentioned, have said on several occasions, it would also be kind of a function of, you know, which specific items and the overall quality of earnings of the company.

Q. Well, just focusing on the return on equity for a second, because that was a lot of your interplay in discussion with Commissioner Argenziano and Commissioner Skop earlier, it focused a lot on the return on equity. And my question to you would be at what level, how low would the return on equity have to go in your opinion before we'd see this adverse impact of higher capital costs and higher rates for customers?

A. Mr. Armstrong and Commissioners, as we, we have discussed at length over the last three days, you can't look at just one component of the increase. You know, you could say, you know, you can make a 15 percent return but do it in an equity ratio, and I'm making these up just to make the point, at 10 percent and take on 90 percent debt. And that has a whole different outcome than if you do it at 54, 55.8.

So you have to look at the interplay of really the issues that are being litigated here. You have to look at return on equity, you have to look at equity ratio, you have to look at depreciation expense, and then you have to pull up and look at the overall quality of the earnings. So I can't answer you on, on the hypothetical of kind of a single item.

Q. Well, let me take a shot at this. Assume that the Commission grants your equity, your capital structure and grants your request for depreciation recovery and accelerated basis as you've requested. Let's assume for the purposes of this question that all those are granted by the Commission. Do you have an opinion as to what level of return on equity, the lowest level that you think could be authorized without having that adverse impact on your bond ratings?

A. Bond rating or credit rating?

Q. Credit rating. I'm sorry.

A. I can't give you a precise number. And I would defer, because then we get into, you know, what's the quantification of each of these components. And I'd like to defer that to Mr. Pimentel and Mr. Avera.

Q. After -- you testified previously that you had followed the TECO rate case.

A. Generally I followed the TECO rate case.

Q. Okay. After the Commission authorized a 11.25 percent equity return for Tampa Electric, has the investment community responded negatively in your opinion?

A. I don't think I, it's appropriate for me to comment on how investors view another company. I think that's up to them to describe. And they may have their own analysis and I'm sure a more thorough and detailed point of view than I can give you.

Q. And actually let me clarify. Has the investment community responded negatively as to Florida Power & Light as a result of the 11.25 percent return?

A. I think that the investment community is well aware that we have a rate case. I think the investment community is well aware that Florida Power & Light has a different risk profile than Tampa Electric and has a different risk profile because we have greater dependency on natural gas, which we've talked about the volatility of that; that we, two-thirds of our customers really reside in what I consider hurricane alley; and that we are a nuclear operator.

So they recognize that there are some distinct risk profile differences between the two companies, and they also recognize that we are before this Commission for a rate increase request.

Q. Yesterday it was published in the *South Florida Business Journal* that in the past 12 months Florida Power's stock price has gone from a low of 33.81 on October 10th, 2008, to a high of 61.90 on August 22nd, 2008 (sic), and that FPL's stock price remained near that high at $58.17 yesterday. You agree that the 11.25 percent return on equity awarded to TECO by the Commission has not appeared to have negatively affected the FPL stock as of today; isn't that true?

A. You're -- there's a whole series of events that I think most of you are well aware of that has driven the stock market. I mean, last summer we had a huge drop in the stock market for reasons that are completely unrelated to this Commission. They just happen to do primarily with kind of a major financial crisis in this country, and virtually all equity went down significantly.

So you are picking kind of a low point that had nothing to do with regulatory or regulatory actions taken in Florida and comparing that to essentially what's been a recovery in the financial markets. So I reject your premise that this is all driven by the outcome of this Commission and their decisions on the TECO case.

Q. Well, and that actually wasn't my premise, Mr. Olivera. But what I'm reacting to and wanted to explore with you is the position FPL and you have taken today, that if this Commission doesn't give you your authorized return on equity of 12.5 percent, it doesn't give you the 100 percent of your authorized revenue requirements, that -- I mean of your requested revenue requirements, that somehow that might have an adverse impact, not only on FPL and its customers, but also other Florida utilities and their customers. Is that not your testimony today?

A. Yes. The testimony is that the decisions that this Commission makes has ramifications for all the utilities, and that investors are sufficiently sophisticated that they're able to make differentiations between the companies that are regulated by this Commission.

Q. Given your answer just now, Mr. Olivera, I don't see how I can square the fact that you, that you're now indicating that the Commission, the decision it makes does impact other utilities. But yet when I was asking you solely in your opinion if you knew whether or not the 11.25 percent return authorized for TECO has impacted FP&L, you say that's not a fair comparison.

A. Well, I didn't say that it wasn't a fair comparison. What I said was you can't isolate the fact that we are before this Commission, that we're asking for a rate case. We're at a different stage of the proceeding. And what I would say to you is that there is an expectation, based on my limited discussions with investors, there's an expectation that this Commission would recognize that this company has a different risk profile than, say, Tampa Electric, and that when this Commission makes their decision, they will recognize those differences in the risk profile in the final determination of the ROE.

So when I say the investors are sophisticated, what I mean by that is they are making, they recognize that there are differences in risk and they also recognize that it's probable that this Commission, it's probably presumptuous of me to say that, that this

Commission will consider all the risk profiles. I believe they will.

So that's really the way, that's where the context of the answer that I was giving you. And I'm sure that both Mr. Avera and Mr. Pimentel can get into kind of the technical analysis of, you know, what makes up each of those risk profiles. So I'm giving you a 50,000-foot answer.

Q. And in light of that answer, let's assume Florida Power & Light, current today, A rating, you receive your 12.5 percent return on equity. Florida Power & Light other, triple B rating, and your return on equity is 11.25 percent. In that second scenario, wouldn't you agree that it would cost FP&L more in terms of your interest rate payable to a prospective lender to encourage that lender to actually make a loan to FP&L?

A. I'm sorry. I'm confused between FPL and FPL other, so --

Q. Okay. FPL, as we have in testimony today, A rated, requesting 12.5 percent return on equity, and actually having gotten that authorized by this Commission. And then let's assume another FPL, triple B rating, with a return on equity of only 11.25.

A. A triple B will have a higher cost of borrowing.

Q. All right. So isn't it logical then that Tampa Electric's cost of borrowing funds will be higher if the Commission were to authorize FP&L a 12.5 percent return in this docket?

A. Look, I don't want to talk about Tampa Electric's cost of borrowing. I think it's completely inappropriate for me to sit here and comment on the finances of another company and the outcome of the rate case or how their investors view them. I don't think it's appropriate.

MR. ARMSTRONG: Mr. Chair, I'm going to ask that the witness be instructed to answer the question. I believe, you know, over and over again he's opened that door by suggesting to this Commission that if you do not give them their 12.5 percent return on equity, that it's going to have an impact not only on this company and its customers, but also the other utilities in the state and their customers.

And I'm simply asking, if he's making that allegation, we just want this Commission to hear from this witness who's made that allegation whether or not there is an adverse impact on other utilities if you were to grant the 12.5 percent return on equity to Florida Power & Light.

That's, that's simply what we'd like this witness to discuss with you. I know he didn't testify about this. That's why I'm asking about it.

CHAIRMAN CARTER: Okay. Ms. Clark?

MS. CLARK: Yes. Mr. Chairman, I think the context of what Mr. Olivera was, was saying was that the Tampa -- the -- Wall Street does take into account the actions of this Commission relative to all the investor-owned utilities. But the comparison they're asking him to draw can't be made because we are in a different stage of the process in terms of a rate case, and there are other factors happening in the financial market that have an effect.

I believe his only point in talking about this Commission and constructive regulation was it does have an impact on Wall Street.

CHAIRMAN CARTER: Ms. Helton? Just a moment. Ms. Helton needs a moment.

MS. HELTON: This is one I think I need to confer on, if you could just give me a second.

CHAIRMAN CARTER: Okay. Let's take a break in place. Nobody leaves.

MR. MOYLE: This is also one at some point that we may have a little further conversation on it.

CHAIRMAN CARTER: On this issue?

MR. MOYLE: Yes.

(Pause.)

CHAIRMAN CARTER: Ms. Helton.

MS. HELTON: It sounds to me that the question that's been asked is speculative. Maybe if we can bring it back down to what's happened here in Florida, and if we could talk about what happened to TECO after TECO's rate case. And if Mr. Olivera is aware of that, that's kind of where we're looking at it from.

CHAIRMAN CARTER: Let's kind of bring it in, Mr. Armstrong.

MR. ARMSTRONG: Thank you, Mr. Chair.

The, what I have established through my prior questions is two scenarios. FPL, A rated with a 12.5 percent return, and FPL hypothetical, triple B rated with 11.25 percent. Now the witness testified that certainly if it was triple B with 11.25, it would cost them more.

CHAIRMAN CARTER: Are you talking to me or are you talking to the witness?

MR. ARMSTRONG: I'm doing my -- I'm setting the premise for my question, and I'm refreshing, I'm refreshing the record since it's been a while since I spoke last.

CHAIRMAN CARTER: Okay.

MR. ARMSTRONG: What the Commission -- what the witness has testified was that, yes, it would cost higher interest rates. They would have to give a higher interest rate to potential lenders under the triple B 11.25 percent return scenario.

BY MR. ARMSTRONG:

Q. So relating that back to the testimony in this record about the Florida Public Service Commission having authorized a return on equity of 11.25 percent for TECO and the fact that TECO is a triple B rated company, my question was doesn't that mean that if this Commission authorizes a 12.5 percent return for FPL, it is very likely, let's just say it's likely that that will result in TECO having a higher interest cost when it goes to issue bonds?

A. I'm having trouble following.

MS. CLARK: Yeah. I don't think he's established the foundation for that question.

MR. ARMSTRONG: I just, Mr. Chair -- that's your thinking. I don't know how I didn't establish the foundation when he's admitted that you're looking at FPL scenario one and scenario two, it's going to raise the interest cost. And I'm simply saying, ipso facto, doesn't that mean that if we're looking at TECO at triple B with 11.25 percent and we're looking at FPL with 12.25 percent and a solid rating A, that that is going to force TECO to pay higher interest rates in order to entice lenders to lend money to it instead of putting that money in FPL bonds or FPL stock where it alternatively could put that money?

The record is replete with information about --

CHAIRMAN CARTER: I though you -- don't lose your train of thought, but let me ask you.

MR. ARMSTRONG: Okay.

CHAIRMAN CARTER: I thought you were asking him based upon FPL and then a similarly situated FPL with a lower rating. That's what, that's where I thought you were going.

MR. ARMSTRONG: That's where I started, and he agreed to all that. He agreed that FPL's cost of borrowing would be higher if they were a triple B utility with an 11.25 percent return on equity. He agreed to that.

CHAIRMAN CARTER: Right. Another FPL.

MR. ARMSTRONG: Now -- that's right, Mr. Chair. And then I had said he's aware, he followed the TECO rate case. And in TECO we have a triple B rated company, which is barely investment grade, which this Commission authorized to earn 11.25 percent return on equity. And I'm saying doesn't that make all the sense in the world that that is very likely to cause TECO to have to pay higher interest on its bonds when it goes to issue them because those people who are thinking about making that loan to TECO have an alternative? They can buy bonds from FPL.

MS. CLARK: Mr. Chairman, first of all, I think he's testifying. But what I would say is he has not established that the metrics for TECO would be exactly the same as his FPL B. There are lots of things that go into establishing a bond rating and ability to borrow, and he's not made, laid the foundation for showing what he characterizes as a hypothetical FPL B would be exactly the same as TECO.

CHAIRMAN CARTER: Ms. Helton?

MR. ARMSTRONG: Mr. Chair, if I could respond to that briefly. Because based upon what I just heard, the City moves to strike all testimony of FPL and its witnesses that in any way, shape or form suggests that if this Commission does not provide a 12.5 percent return to Florida Power & Light, it will have adverse impacts on other utilities and other utility customers in this state. I think that's a fair trade-off.

MS. CLARK: And I think --

CHAIRMAN CARTER: I think that's interesting, but we're not there yet.

MR. MOYLE: And that was somewhat the point that FIPUG wanted to be heard on. A lot of the discussion about what will happen, you know, in the future with respect to Wall Street is speculative largely. There are a lot of independent variables. You know, we don't know and we're spending a lot of time on it. There's nobody here from Moody's or Standard & Poor's to say, hi, I'm here, let me tell you what our organization thinks. It's, you know, it's hearsay and speculative.

So, you know, we're not raising the objection at this point, but just wanted to make that comment, and at some point, you know, it may be interposed as an objection.

CHAIRMAN CARTER: Hi.

MS. HELTON: Hi. When I made my earlier comment, I think that Mr. Armstrong took that and answered, or asked a different question. When I said we could go back and look at what TECO had done, what I meant was based on your decision in the, in the TECO rate case that we, you heard this year, did the bond rating agencies increase or decrease the rating for TECO and does Mr. Olivera know the answer to that question?

It seems to me, you know, based on my very limited knowledge about this subject area, that we're going way beyond what I think is an appropriate line of cross-examination for this witness.

MR. ARMSTRONG: Mr. Chair, may I be heard?

CHAIRMAN CARTER: Briefly, ever so briefly.

MR. ARMSTRONG: Very briefly. This witness and other FPL witnesses put it into the record that if this Commission doesn't give it a 12.5 percent return on equity, it will have ramifications, adverse ones, on other utilities and other utilities' customers in the State of Florida. They did that, not me. They should not be allowed to be able to make that kind of assertion and delve into that, and then I on behalf of the City of South Daytona cannot delve into that. They have not established what TECO's parameters are. They haven't established what TECO's revenue requirements are or their risk. They haven't established that in this record. So -- but they're allowed to testify, but I can't delve into that myself on the basis that I haven't established those parameters myself on behalf of the City of South Daytona? If you're going to do it to one, Mr. Chair, you should allow it on both.

CHAIRMAN CARTER: Let me ask -- hang on a second. First of all, they didn't raise TECO, they were -- not by name. I've been here all three days. It seems like three days. Is it? Yeah. Three days.

Secondly is that I thought where you were going with your hypothetical, because you had two similarly situated companies, I thought that was fair. But he did answer that he was not familiar with TECO, then he said one time that he didn't know about TECO, and then another time he said he was uncomfortable discussing their rating. So I heard three different answers to the same question on that issue.

So I think that I'm going to have to sustain the objection, but I think you can get where you need to get to without asking that question.

MR. ARMSTRONG: Okay, Mr. Chair, and I accept that. And I do want to proffer that there is testimony from other FPL witnesses regarding TECO and Tampa Electric. I'm just making that proffer.

CHAIRMAN CARTER: When you get to the witness that has the --

MR. ARMSTRONG: I can ask it of them; right?

CHAIRMAN CARTER: Yeah. The witness that has the, the sample of the companies, 18 companies that you mentioned.

Which witness is that, by the way, Mr. Butler?

MS. BENNETT: That's Mr. Avera and also Mr. Pimentel.

CHAIRMAN CARTER: Okay. So there are two witnesses for that you can ask. Okay.

MR. ARMSTRONG: Thank you, Mr. Chair.

BY MR. ARMSTRONG:

Q. Mr. Olivera, a short time ago you mentioned that it was your belief that the Commission could consider the state of the economy when making its decision, but you suggested it should not only look at the state of the economy today but over the longer term; correct?

A. Correct.

Q. Are you aware that when the Commission is reviewing rate increase requests from water utilities in this state one of the issues that has arisen is the affordability of the rate being requested? Are you aware of that?

A. I am not aware of water cases and it's not something I follow.

Q. Okay. Well --

MS. CLARK: But Mr. Armstrong is aware of the water cases.

CHAIRMAN CARTER: Hang on a second. Just so everybody -- you guys get kind of nutso close to lunchtime. Hang on a second. Just hold on.

(Pause.)

By the way, nutso is a legal term.

Your objection, Ms. Clark?

MS. CLARK: I'm sorry. I was making an observation. I apologize.

CHAIRMAN CARTER: Okay. Mr. Armstrong, you've got three minutes.

MR. ARMSTRONG: Okay. Well, Mr. Chair, I don't -- was there an objection there? I don't --

MS. CLARK: No, sir.

MR. ARMSTRONG: Oh, okay.

BY MR. ARMSTRONG:

Q. Mr. Olivera, do you believe that the Commission considering your electric rate increase request should consider the affordability of the rates being requested?

A. I think it's one dimension that this Commission needs to consider, the affordability. And as I've said earlier, our bills will go down in 2010 based on the current fuel price forecast.

CHAIRMAN CARTER: Mr. Armstrong, when I said three minutes, I just meant that we're going for lunch at 1:00. I didn't mean that you only had three minutes.

MR. ARMSTRONG: You know, Mr. Chair, you know, based upon these answers, I think it's going to take me a bit of time to continue.

CHAIRMAN CARTER: Okay. Okay. Well, let's just do it now.

MR. ARMSTRONG: So if you want to break now, that's fine.

CHAIRMAN CARTER: Let's just do it now. We'll come back at 2:15.

(Recess taken.)

STATE OF FLORIDA)
: CERTIFICATE OF REPORTER
COUNTY OF LEON)

I, LINDA BOLES, RPR, CRR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 31st day of August, 2009.

Linda Boles

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