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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VOLUME 17

Pages 2044 through 2254

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PROCEEDINGS:	HEARING
COMMISSIONERS PARTICIPATING:	CHAIRMAN MATTHEW M. CARTER, II COMMISSIONER LISA POLAK EDGAR COMMISSIONER KATRINA J. McMURRIAN COMMISSIONER NANCY ARGENZIANO COMMISSIONER NATHAN A. SKOP
DATE:	Monday, August 31, 2009
TIME:	Commenced at 9:30 a.m.
PLACE:	Betty Easley Conference Center Room 148 4075 Esplanade Way Tallahassee, Florida
REPORTED BY:	JANE FAUROT, RPR (850) 413-6732
PARTICIPATING:	(As heretofore noted.)

I N D E X

WITNESSES

EXHIBITS

NUMBER:		ID.	ADMTD.
181 - 190			2063
424			2065
425			2063
37			2069
426	Confidential Errata Sheet, Dismukes	2076	2177
427	Redacted Errata, Dismukes	2077	2177
428	Revised Page 1 of 2 of Exhibit KDH-11	2130	2177
429	Revised KHD-9	2131	2177
430	Sales of Gas Contracts	2151	2177
431	Rule 25-7.072, F.A.C.	2165	2177
432	FPL Response to OPC First of Interrogatories, 100	2165	
191-206			2176

P R O C E E D I N G S

(Transcript follows in sequence from Volume 16.)

COMMISSIONER EDGAR: We are back on the record. And I believe where we left off at lunch staff was posing some questions to the witness.

Ms. Hartman, you're recognized.

MS. HARTMAN: Thank you.

CROSS EXAMINATION

BY MS. HARTMAN:

Q. Mr. Pous, you said earlier that the book reserve was using the calculation of your recommended depreciation rates for FPL, is that correct?

A. Yes. Well, salvage parameters that I recommended.

Q. Okay. If the reserve surplus is amortized as you have recommended, should the corrected reserve position rather than the book reserve be used in the remaining life rate calculation?

A. Are you saying if the Commission approves a reserve amortization, then you should take that into account in the development of the rates, is that your question?

Q. Yes, it is.

A. Okay. It could be done. Again, if I was doing the amortization of the full excess reserve, I would probably say yes. Since I am recommending far less than the amortization of what I believe is a reasonable excess reserve, and I'm not making all the adjustments that I think are appropriate, then I'm not sure it is necessary. Because, again, when we come back in four years and we see how everything has -- as the dust settles at that point in time, we can see where we are at, and then do it at that time. But to be theoretically correct, yes, you would take that into account in the final compliance filing.

Q. Thank you. Would you agree with me that if your recommended correction to the reserve for steam production plants is made, the remaining life rates approved should consider the corrected reserve position rather than the book reserve?

A. It should take into account the revision at least for -- well, since this is going to be a 2009 calculation and the reserve change won't occur until 2010, then realistically then you really should take it into account in the next case because of the timing difference.

Q. If you would look on your Exhibit JP-1, and let me know when you are there.

A. I am there.

Q. Thanks. You have also recommended that the unrecovered net investments associated with FPL's nuclear uprates and retiring meters made obsolete by AMI be offset by your calculated reserve surplus in nuclear production and distribution plant, is that correct?

A. Yes. I took each of the company's special capital recovery aspects, which were steam for the Canaveral and the Riviera plants, the nukes for the nuke uprates, and distribution for the AMI meters, and the summation of those be offset by part of the reserve, so the $78 million special recovery the company had requested would be offset by the reserve amortization.

Q. Do your proposed remaining life rates shown on JP-2 reflect the restatement of the book reserves if your recommendations are made?

A. No.

Q. Okay. Under FPL's proposal, the 1.2 billion reserve surplus it has calculated will be corrected over the remaining life of the assets that I believe you have calculated to be about 22 years, is that right?

A. The composite remaining life for all plant that FPL has proposed I believe was 22.3, or 22.8, somewhere in that range.

Q. So the issue is really about whether to correct the reserve of 22 -- or, I'm sorry, 23 years as

FPL proposes, or the four years that you propose, is that fair to say?

A. If you assumed that the 1.25 billion reserve was the right number, then, yes, that is the answer. It is four years or 22 years. If you assume that something of a further excess reserve approaching the $2.75 billion I am talking about, then it is not a four-year amortization, because we are only amortizing less than half of the excess reserve. So if you wanted to weight it in there, it would be something much greater than four years on the low side.

Q. And if the calculation is made as you propose, the reserve position considered in the remaining life rate calculation should reflect the correction, is that correct?

A. No. Again, since we have a 2009 depreciation test year, and the reserve amortization wouldn't begin until 2010, then really in theory you have a historic time period, the numbers are locked in, you take that into account. It is when you come back in four more years where the reserve has now happened you would take it into account at that point in time.

Some companies have a test year historic for depreciation that corresponds with the test year for the rate case and then you would take that into account in that year, also. But since you have got a historic depreciation test year, which is one year prior to the rate case test year, you wouldn't take it into account because that would be going beyond the end of the test year for depreciation purposes for one component of the rate and not for other components of the rate.

Q. Do your proposed remaining life rates shown on JP-1 take into account your proposed corrected reserve position?

A. No.

MS. HARTMAN: That's all the questions we have.

MR. BUTLER: Madam Chairman.

COMMISSIONER EDGAR: Mr. Butler.

MR. BUTLER: Before we move to the next matter, may I inquire as to what the plans are for going today -- when we plan to break for the day, if you know.

COMMISSIONER EDGAR: I'm sorry, what the plans are --

MR. BUTLER: What our plans are for continuing through the day, when we plan to break for the end of the day.

COMMISSIONER EDGAR: For the end of the day. I actually hadn't really decided, but I will think about it, okay.

MR. BUTLER: Thank you.

COMMISSIONER EDGAR: And let's finish with this witness because we have redirect and -- well, let's finish with this witness. Let me give it a little time to think about it, and then we can talk about that. And I have some questions about the witness list, as well, and I think all of that will fit in together. But let's finish with this witness. He doesn't need to sit there for all of that.

So are there questions from Commissioners for this witness? No. Are there questions on redirect?

MR. McGLOTHLIN: Yes.

COMMISSIONER EDGAR: Okay. Go right ahead.

REDIRECT EXAMINATION

BY MR. McGLOTHLIN:

Q. Mr. Pous, first turn to what was marked as 424, which is the EPA document. And first refer to Page 28, which was the subject of the questions that Mr. Butler posed to you.

A. I'm there.

Q. My first question is do you see anything on Page 28 that is specific to FPL?

A. Oh, no, absolutely not.

Q. Now, if you will turn to Page 8, what is the caption at the top of Page 8?

A. Key uncertainties.

Q. And you will see the list of probably 18 or 20 items there. What does that list of key uncertainties say to you about the reliability of the projections in this document?

A. I think they are listing the level of uncertainties so that the reader of this would recognize that the actual results if this bill were to pass could still vary dramatically from the one single presentation that is presented, I guess, back on Page 28. There are so many variables that if you tried to do adjustments for each one and make your estimates for that, your document would probably be thousands of pages long, and become worthless at that point in time.

So they chose one as an example, but they do want the reader to be very cognizant of the fact there are a tremendous number of uncertainties and variables that will have an impact on the ultimate outcome, even if the bill is passed as reflected in this document.

Q. Now, is HR-2454 currently the law of the land?

A. No.

Q. Are you familiar with an example of a bill that did become law that affected power plants and that was subsequently modified in light of some economic consequences?

A. Yes. Unfortunately, I am old enough to remember the 1978 Fuels Use Act, and in that act Congress actually did pass a bill and said that all gas-fired generating units, all gas-fired generating units should be retired by 1990. It wasn't but a couple of years, I think '81, when the Congress realized that, you know, the bill they had passed back in '78 was not going to work, and they repealed the Fuel Use Act of 1978 in, I believe, '81 or '82 at the latest.

And as you can tell, all coal-fired -- all gas-fired generating facilities which were to be shut down, many of those are still operating today in 2009 and projected to operate for another 10, 20, 30 years. So even though there was a mandate in a federally passed bill by Congress, it did not transpire because when the heat of the moment of the gas situation in the United States in the late '70s was recognized to have passed a little bit, cooler heads prevailed and things changed once again.

Q. Mr. Pous, are you aware of any decisions by other jurisdictions on the subject of service lives that have been made during the pendency of the cap and trade debate?

A. Yes. For example, the company's witness, Mr. Clarke, recently testified for Puget Sound in

Washington State. In that case, Mr. Clarke also took the advice of the company and proposed short lives for coal-fired generating units and combined cycle units. As part of that case, the commission staff recommended a 60-year life for coal units and the commission adopted that, and that was in 2009. And for combined cycle, even Mr. Clarke on behalf of the company in rebuttal testimony extended the life expectancy for combined cycles to 35 years. So that is the witness for FPL in a case that just came out recently, and the decision was made with recognition of the cap and trade possibly becoming law in the United States.

Q. During one series of questions, Mr. Butler asked you about certain capital additions to which you referred as interim additions. Do you recall that series of questions and answers?

A. Yes.

Q. Would you elaborate on what you mean by interim additions.

A. Interim additions represent the capital expenditures necessary to keep a power plant operating for its overall anticipated life. For example, if you had to replace a lot of boiler tubes after 40 years in order to allow the unit to last 60 or 70 years, that is an interim addition. But when developing the rates at this point in time, you would rely on the 60 or 70-year life, but you would not recognize those capital additions that you might expect when the unit reaches 40 years to impact the calculation of depreciation currently.

And that is a decision that you will find the FERC has already ruled on that, NARUC has already put that in their publication, various state commissions have also stated that you recognize the impact of interim additions when and if they occur. And this goes to the heart of the matter of what was put in rebuttal testimony by the company saying they can't get the longer lives unless they put out capital additions in the future.

That is not the issue. The issue is it is a capital intensive item. You expect them to put out necessary capital expenditures in the future to keep it operating for as long as possible to obtain the greatest level of economic worth for that capital addition for that plant.

Q. Mr. Butler also asked you whether utilities, whether in Florida or in other states, would have identical maintenance practices, and you said they would not. Do you remember that question and answer?

A. Yes, I do.

Q. If we were to assume that Florida Power and Light Company has excellent maintenance practices, would that assumption of that fact support Mr. Clarke's service lives or your service lives in this case?

A. It would probably even support longer service lives than I am recommending, but at least what I am recommending, not what Mr. Clarke is recommending.

Q. Now, Mr. Butler asked you whether the amortization of the surplus that you recommend in this case would have the effect of increasing future rate base. Do you remember that question and answer?

A. Yes.

Q. I believe in your opening summary you alluded to the fact that in the four years after the 2005 settlement, Florida Power and Light Company credited depreciation expense by $125 million per year. Do you remember that statement?

A. Yes.

Q. When FPL credited depreciation expense by $125 million per year for four years, what was the impact of that measure on rate base?

A. It is the same impact if you took my recommendation. It would increase rate base in the future, it would decrease depreciation expense currently.

Q. So did the relationship between the credit on the one hand and the increase to the rate base on the other prevent FPL from implementing that measure pursuant to the terms of the settlement?

A. No, it would be -- if you took my recommendation, it would be the continuation of what they have already been doing.

Q. Now, in another -- in response to another question with respect to the impact on future rate base and future rate setting, you indicated that there would not necessarily be a rate increase if unit costs were not the same. Would you explain to the Commissioners what you meant by the term unit costs?

A. Yes. The concept is the unit cost is the rate that customers are charged. In other words, if you have got a million dollars, and you have ten units to bill it over, that is $100,000 per unit. If you have growth on the system, and you have 20 units in the future with the same million dollars, or even a little bit higher, your per unit cost gets cut in half.

So you can have increases in costs, but if the per unit billing determinants increase at a faster pace, you are going to get a lower per unit cost. So you can't just talk about higher costs in the future, because the rate charged to customers could actually be lower on a per unit basis even if the cost overall went up.

Q. If the Commission were to implement your recommendation and order the amortization of $1.25 billion of this surplus over four years, and if during that four-year period FPL experienced growth in the number of customers, and overall consumption, and overall revenues, what would the impact of those increased revenues have on the addition to rate base that would occur as a consequence of the amortization?

A. Basically, without knowing the level of growth of customers and usage in revenues, you wouldn't know if the higher revenue requirement that would come about from accepting my recommendation of amortizing the 1.25 billion, whether that would result in an increase in per unit charges to customers.

Because you will assume that the system is going to grow, you could have a lower per unit charge even though we have a higher depreciation requirement because of my amortization currently. So the company's explanation of, you know, the impact in the future assumes no growth on the system, I don't think that is going to happen.

Q. Staff asked you a series of questions concerning the surplus of $816 million in certain steam production accounts, and the deficiency that is expected due to retirements of the Cape Canaveral and other projects. Do you remember that series of questions and answers?

A. I believe so.

Q. If we assume that one account in the generation function has a surplus, and another account also in the generation function has a deficiency, what remedies are available to deal with the deficiency in that instance?

A. Well, when you -- there is reserve transfers in order to balance out surpluses and deficiency. The question that arises sometimes are the reserve transfers within the same functional category, because that implies that the charges to a customer class stays the same.

If you take dollars out of production and move it into distribution, there could be different allocators that would impact different customer groups differently. But if you leave the transfer within, let's say, the steam production from one account to another, you are not impacting any cross-subsidies between customer classes by doing that. And so if you want to say the purest form of transfer, that is it what it would be.

Q. Is the practice of using a surplus in one such account to eliminate the deficiency in another account unusual or is it a common practice among regulators?

A. I believe it is common practice. I won't say super common, but it does happen. It has happened here. It has happened in other jurisdictions.

Q. Now, in this case, does FPL have a reserve surplus in steam production?

A. Yes.

Q. And does FPL anticipate a deficiency in certain accounts due to the retirement of portions of the repowering projects?

A. Yes, the Canaveral and the Riviera plants.

Q. Did FPL propose to use the existing surplus to offset that anticipated deficiency?

A. No.

Q. What did FPL propose to do with both the surplus and the anticipated deficiency?

A. The deficiency they wanted to recover over a four-year period. The surplus they wanted to spread over the remaining life of the units, which I don't have the precise number, but I would assume in the 20, 25-year range.

MR. McGLOTHLIN: If I could have just a second to look at my notes.

COMMISSIONER EDGAR: Yes, of course.

MR. McGLOTHLIN: That is all the redirect.

COMMISSIONER EDGAR: All right. Thank you.

Let's start with the prefiled exhibits.

MR. McGLOTHLIN: Those are 180 through 189 inclusive. I move them.

COMMISSIONER EDGAR: 181?

MR. McGLOTHLIN: I believe it is 180 through is 189. That is what I have as staff's exhibit list.

MS. HELTON: I am wondering if there is a different list that you all are working from than we are working from, because on my list it is 181 through 190 are the exhibits filed for Mr. Pous.

COMMISSIONER EDGAR: That is what I have, too. I have 180 as the MFRs.

MS. HELTON: Yes.

MR. McGLOTHLIN: I believe there must have been a subsequent list. I apologize.

COMMISSIONER EDGAR: That's okay.

MS. HELTON: That's okay. Maybe we can get that worked out at the next break.

MR. McGLOTHLIN: All right.

COMMISSIONER EDGAR: Okay. All right. Then at this time we will enter Prefiled Exhibits 181 through 190.

MR. McGLOTHLIN: Thank you.

(Exhibit Numbers 181 through 190 admitted into the record.)

COMMISSIONER EDGAR: That brings us, Mr. Butler, I believe to you.

MR. BUTLER: Yes. And I would move the admission of Exhibits 424 and 425.

COMMISSIONER EDGAR: All right. Any objection? Hearing none.

MR. McGLOTHLIN: I object to the EPA document. It appears to me that, first of all, it is hearsay and more importantly I understand that there is a limited use of hearsay in these proceedings, but a document should have some probative value. And this House bill is not the law of the land. The bill on its face recites an entire page of uncertainties and is so replete with assumptions that I don't think any reasonable person would alter one's behavior or alter one's planning in terms of service lives of units based upon this document. So I object to its admission on that basis.

COMMISSIONER EDGAR: Mr. Moyle.

MR. MOYLE: We would just join in the objection.

MR. BUTLER: May I respond, Madam Chairman?

COMMISSIONER EDGAR: Yes, sir.

MR. BUTLER: We are offering it precisely to point out the uncertainty about what future carbon legislation may be -- about what the impacts of future carbon legislation may be on the continued economic viability of units. I did not intend it to be, and I don't think it was understood to be, and I don't think it represents anybody's view of what definitely will happen.

It is a level of uncertainty about the future of older coal and oil and gas-fired plants that we were wanting to point out to Mr. Pous. I believe that both my examination of Mr. Pous and, indeed, Mr. McGlothlin's examination of Mr. Pous established that it is fairly compelling evidence to that uncertainty, and I believe it is appropriately admitted.

COMMISSIONER EDGAR: Mr. McGlothlin, I knew you couldn't leave that one be. Go ahead.

MR. McGLOTHLIN: I am inclined to agree with counsel that it is compelling evidence as to the uncertainty. I will just leave it at that.

COMMISSIONER EDGAR: Ms. Helton.

MS. HELTON: Madam Chairman, my recommendation is that it be admitted into the record and given the weight that it is due.

COMMISSIONER EDGAR: Which is generally my approach in these sorts of things. The objections are noted; however, they are overruled, and the recommendation of counsel, Exhibit 424 is admitted for the Commission to give it the weight that it deems to be deserving of.

(Exhibit Number 424 admitted into the record.)

COMMISSIONER EDGAR: Mr. Butler, that brings us to 425.

MR. BUTLER: And I would move the admission of Exhibit 425, as well.

COMMISSIONER EDGAR: Any objection to 425?

MR. MOYLE: That is the excerpt and report from the Ft. Pierce Utilities Authority?

COMMISSIONER EDGAR: Yes, sir, FPUA 2008 annual report is what we had labeled.

MR. MOYLE: FIPUG would object on a number of grounds. We already stated the hearsay objection. It is materially different from something coming in about FP&L with respect to their annual report, because they are here and they can talk about it. So it is hearsay, and it is also an excerpt, two-page, but primarily on hearsay, particularly to the point that it is being asserted for the truth of the matter. We would object to that coming in.

COMMISSIONER EDGAR: Understood.

Mr. Butler.

MR. BUTLER: I think that this is properly admitted on two or three grounds. First of all, it is an annual report, or an excerpt, and certainly if there was any objection to the excerpt, we could provide the remainder of the annual report. But this is an official document of the Ft. Pierce Utilities Authority. I think that it can qualify as a record of regularly conducted business activity as an exception to the hearsay rule. But beyond that, you know, the only testimony being offered by Mr. Pous is by his testimony here. Very clearly just the rankest of hearsay. It's him making phone calls to some people, unidentified as to who they were, as to anything about specifically what was told.

He didn't review any of the documentation or anything about the claim that there were payments in a certain amount for the -- or, you know, for the opportunity to salvage that property. And this is being offered as evidence in sort of contradiction to for cross-examination purposes of Mr. Pous' hearsay. I think it is very appropriate as such to test the credibility and reliability of Mr. Pous' hearsay testimony.

COMMISSIONER EDGAR: Mr. Moyle, would the entire report instead of the couple of pages excerpt remove your objection?

MR. MOYLE: I mean, it would still be hearsay. I mean, Mr. Butler's point, if I understand it is it reminds me of the two wrongs don't make a right, but I think the fact -- and we are not even objecting on authenticity grounds, which I think would be a valid objection. We are not even objecting on those grounds. We just think it's improper hearsay.

COMMISSIONER EDGAR: I understand. I thought it was worth asking.

Ms. Helton.

MS. HELTON: Madam Chairman, I think this is another one where I am going to recommend to you that it be admitted into the record and given the weight that it deserves.

COMMISSIONER EDGAR: Okay. Per earlier discussion, the objection is noted. On the recommendation of counsel, the Exhibit 425 will be admitted at this time.

(Exhibit Number 425 admitted into the record.)

COMMISSIONER EDGAR: And that brings us, I believe, to staff.

MS. HARTMAN: The items that were stipulated to all show up in Staff's Composite Exhibit Number 37, and --

COMMISSIONER EDGAR: Otherwise known as the blue sheet?

MS. HARTMAN: Mine is beige. Is yours beige?

COMMISSIONER EDGAR: I think mine is blue.

MS. HARTMAN: Okay.

COMMISSIONER EDGAR: Are you going to give us a list?

MS. HARTMAN: I am, and this is because of the way 37 is set up. It's a little easier than 35. We can take them up as a block. Items 10 through 20.

COMMISSIONER EDGAR: Go ahead and go through it, and then we will see if there are any questions.

MS. HARTMAN: Items 37 through 52, Items 86 through 98, and Items 105 through 221. I'm sorry, let me correct that. Items 105 through 121, and that's it.

COMMISSIONER EDGAR: Are there any questions from any of the parties about staff's request to admit these items from Staff's Composite Exhibit 37 into the record at this time?

MR. McGLOTHLIN: May I confer with staff during the break? I want to make sure that I have followed their description. I was a bit slow finding my place here.

COMMISSIONER EDGAR: Well, let me try, but if this doesn't work the answer would, of course, be yes. I've got 10 through 20, 37 through 52, 86 through 98, 105 through 121.

MR. McGLOTHLIN: Let me do it this way. There was only one item in the materials that staff distributed to which I said I would not stipulate, but I would not object if Mr. Pous had a chance to comment, and that was the Lynn Adams' memorandum. Was that among these documents, or did you --

MS. HARTMAN: No, it is not. The depreciation manual by Lynn Adams is not in that list.

MR. McGLOTHLIN: In that event, I have no objection.

COMMISSIONER EDGAR: Okay. So with that representation we can move forward. Seeing no other objections, the list as described by Ms. Hartman is hereby admitted into the record.

(Exhibit Number 37 admitted into the record.)

COMMISSIONER EDGAR: Any other matters for this witness? All right. Hearing none, you are excused. Thank you very much.

THE WITNESS: Thank you.

COMMISSIONER EDGAR: Let's talk about the witness list before we move forward. My understanding flowing from the discussion Friday afternoon was that we were going to -- at this point the next witness would be, and I am probably going to pronounce this wrong, but Dismukes. And, Mr. McGlothlin, I will look to you. That is your witness?

MR. McGLOTHLIN: Yes.

COMMISSIONER EDGAR: And then Brown and then Lawton. However, with that we also had some discussion about possibly stipulating Witness Klepper and also -- thank you. Oh, a new list. And also bringing up Witness Spoor. So let me see what I have been just handed that I assume everybody else is getting, too. Okay. We have completed the first two under Monday. One, two, three.

Yes, ma'am.

MS. CLARK: Yes. Under Monday, the list as you have it is correct. However, I would note we would take up Spoor at 3:00 p.m. That was what was agreed to, if that is your pleasure.

COMMISSIONER EDGAR: Well, then let me just ask if we are -- if Witness Dismukes is not all the way through all of the process. Mr. McGlothlin.

MR. McGLOTHLIN: I didn't hear the entire question, I'm sorry.

COMMISSIONER EDGAR: Okay. If your next witness is still on the stand at 3:00 o'clock, is it your understanding that we will ask her to hold and wait and then bring up Witness Spoor?

MR. McGLOTHLIN: My understanding was that we would set a 3:00 o'clock time certain for Mr. Spoor.

COMMISSIONER EDGAR: Okay. I just want to make sure that we all understand.

MR. McGLOTHLIN: I think that was part of the work out at the time.

COMMISSIONER EDGAR: It is. Okay. So you are fine with that. And to FPL, that is your understanding as well?

MS. CLARK: I'm sorry. Yes, I believe so. We were just checking to see if we might push Spoor to 3:30 so Dismukes could go ahead and be taken up now.

COMMISSIONER EDGAR: All right. We will let you work on that and figure it out. And then do you have any additional information about Witness Klepper as far as the discussion with the attorney from AFFIRM?

MS. CLARK: I do not, but I want you to know I spoke with somebody at her office and relayed the message and asked that she call me. I have not gotten a call yet.

COMMISSIONER EDGAR: Okay. We can just see where we are later.

Yes, Ms. Bradley.

MS. BRADLEY: I sent her an e-mail earlier and she responded back that she would have to confer with her clients.

COMMISSIONER EDGAR: Okay. I just thought while we were discussing witnesses, maybe we could get one more. I appreciate you all working together on that. Okay. Is there anything else before we begin with this witness?

MS. CLARK: I have just confirmed that doing Mr. Spoor starting at 3:30 would work.

COMMISSIONER EDGAR: Okay. We will see how long this witness is on the stand and work with all parties, of course, to try to accommodate all schedules.

And, Mr. Butler, you had asked about the time frame for today. Whether, and all of that, I would like to conclude somewhere between 5:00 and 6:00 for the day is my goal. Commissioners, any heartburn on that?

COMMISSIONER SKOP: Madam Chair, I guess my concern would be the number of witnesses that we have not yet heard from and the time limitations on this hearing. So if it would be possible to go a bit later that might be beneficial.

COMMISSIONER EDGAR: All right. Well, we will let everybody look at their schedules and just kind of -- I'm just not going to give a time certain right now, because I simply do not know. We are just going to have to kind of see how the afternoon goes and continue to try to all work together.

Anything else before we move into the next witness?

COMMISSIONER ARGENZIANO: Yes.

COMMISSIONER EDGAR: Commissioner Argenziano.

COMMISSIONER ARGENZIANO: Yes. I have the same concern since we seem to be running out of time on the case. And for all concerned, if we can stay later, probably we would be better off. If we can.

COMMISSIONER EDGAR: Okay. We will work on that. We do need to maintain a quorum, as well. So let me just put that out there. Okay. Anything else before we move to the next witness?

MS. CLARK: Just one more thing, do we have a firm stipulation on Sonnelitter being stipulated into the record?

COMMISSIONER EDGAR: Let me look to staff.

MS. BRADLEY: Only if the parties have agreed to stipulate staff's exhibits into the record for Sonnelitter.

COMMISSIONER EDGAR: To the parties.

MS. CLARK: Madam Chairman, we can confirm that and get back to you at the next break. How about that?

COMMISSIONER EDGAR: That is fine with me. Is that fine? Okay. Thank you.

Anything else? Then welcome. Mr. Beck, your witness.

MR. BECK: Thank you, Madam Chairman. The Citizens call Kimberly Dismukes. And, Madam Chairman, just as a prelude we have a little bit of logistics because Ms. Dismukes has confidential testimony and redacted versions, as well as an errata sheet in both versions, and another sheet that FPL has agreed to not be confidential. So we are going to be handing out a number of things as we go through.

COMMISSIONER EDGAR: Okay. Talk us through it, Mr. Beck, as we go. Let me ask you this, has this witness been sworn?

MR. BECK: Yes, Ms. Dismukes was sworn this morning.

COMMISSIONER EDGAR: All right.

MR. BECK: And what I am going to do is ask Mr. Poucher to hand out a red packet that contains Ms. Dismukes' confidential testimony and a confidential errata sheet.

KIMBERLY H. DISMUKES

was called as a witness on behalf of the Citizens of the State of Florida, and having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BECK:

Q. Ms. Dismukes, would you please state your name?

A. Kim Dismukes.

Q. And by whom are you employed?

A. Acadian Consulting Group.

Q. Okay. And did you file 52 pages of testimony, one version confidential and one version redacted?

A. I did.

Q. And do you have an errata sheet to go with that?

A. Yes, I do.

MR. BECK: And, Madam Chairman, what I would like to do is the errata sheet is -- the confidential errata sheet is in the red folder being passed out, and I wonder if I could have that marked as an exhibit.

COMMISSIONER EDGAR: Okay.

MR. BECK: And then I'm going to pass a redacted errata sheet, as well, and if that could be separately marked as an exhibit.

COMMISSIONER EDGAR: Okay.

MR. BECK: I think that is the easiest way to do it.

COMMISSIONER EDGAR: I am just going to say this back to you, so that I know I have it correctly. In the red folder is a confidential errata sheet. You would like to mark that as the next exhibit?

MR. BECK: Yes.

COMMISSIONER EDGAR: That would be Exhibit 426.

MR. BECK: And I am going to pass out a redacted --

COMMISSIONER EDGAR: I'm having a hard time hearing you, Mr. Beck. I'm sorry. I don't know if Chris can maybe turn you up a little, or if --

MR. BECK: I will speak -- I will try to speak more loudly.

COMMISSIONER EDGAR: Okay. So 426 for Witness Dismukes Errata Sheet.

MR. BECK: Yes.

(Exhibit Number 426 marked for identification.)

COMMISSIONER EDGAR: OPC as a party. And then 427, Redacted Errata, Witness Dismukes.

MR. BECK: Yes.

COMMISSIONER EDGAR: Okay. Thank you.

(Exhibit Number 427 marked for identification.)

BY MR. BECK:

Q. And, Ms. Dismukes, taking into account the changes reflected in your errata sheets, if I were to ask you the same questions today that are contained in your prefiled testimony, would your answers be the same?

A. Yes, they would.

MR. BECK: Madam Chairman, I would move that Ms. Dismukes' testimony be inserted into the record as though read.

COMMISSIONER EDGAR: The prefiled testimony of the witness will be entered into the record as though read. Do we need to note the errata with the changes as indicated?

MR. BECK: Yes, thank you.

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TESTIMONY

OF
KIMBERLY H. DISMUKES

On Behalf of the
Office of the Public Counsel

Before the
Florida Public Service Commission

Docket No. 080677-EI

Q. **WHAT IS YOUR NAME AND ADDRESS?**

A. Kimberly H. Dismukes, 6455 Overton Street, Baton Rouge, Louisiana 70808.

Q. **BY WHOM AND IN WHAT CAPACITY ARE YOU EMPLOYED?**

A. I am a partner in the firm of Acadian Consulting Group, which specializes in the field of public utility regulation. I have been retained by the Office of the Public Counsel (OPC) on behalf of the Citizens of the State of Florida to analyze the transactions between Florida Power & Light Company's (FPL or the Company) and its affiliates and the impact of these transactions on FPL's application for a rate increase.

Q. **DO YOU HAVE A SUMMARY OF YOUR QUALIFICATIONS IN REGULATION?**

A. Yes. Exhibit KHD-1 was prepared for this purpose.

Q. **DO YOU HAVE EXHIBITS IN SUPPORT OF YOUR TESTIMONY?**

A. Yes. Attached to my testimony are Exhibits KHD-2 through KHD-16 which support my testimony and recommendations.

Q. **HOW IS YOUR TESTIMONY ORGANIZED?**

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A. In the first section of my testimony I discuss the importance of examining transactions between FPL and its affiliates. Second, I discuss FPL Group's organizational structure. In the third section I discuss the different ways FPL charges its affiliates, the concerns I have with the different methodologies, and my recommendations. The fourth section contains a discussion of transactions with certain FPL affiliates, including FiberNet, FPLES and FPL Historical Museum, Inc. In this section I also address the gain on sale of assets to affiliates and power monitoring revenue. Fifth, I discuss FPL-New England Division (FPL-NED). Finally, I present a summary of my recommended adjustments.

I. Affiliate Transactions

Q. WHY IS IT IMPORTANT TO CLOSELY EXAMINE AFFILIATE TRANSACTIONS?

A. In a situation involving the provision of services between affiliated companies, the associated transactions and costs are not arms-length dealings. Cost allocation techniques and methods of charging affiliates should be frequently reviewed and analyzed to ensure that the company's regulated operations are not subsidizing the nonregulated operations. Because of the affiliation between FPL and the affiliates that contribute to expenses included on the books of FPL, the arms-length bargaining of a normal competitive environment is not present in their transactions. Although each of the affiliated companies is supposedly separate, relationships between FPL and these affiliates are still close; they all belong to one corporate family.

In the absence of regulation, there is no assurance that affiliate transactions and allocations will not translate into unnecessarily high charges for FPL's customers. Even when the methodologies for cost allocation and pricing have been explicitly stated, close scrutiny of affiliate relationships is still warranted. Regardless of whether or not FPL explicitly establishes a methodology for the allocation and distribution of affiliate costs, there is an incentive to misallocate or shift costs to regulated companies so that the nonregulated companies can reap the benefits.

Q. DOES THE COMMISSION HAVE ANY GUIDELINES WHICH CONTROL THE PRICING ARRANGEMENTS BETWEEN UTILITIES AND THEIR AFFILIATES?

A. Yes. The Commission's Rules set forth the criteria to be followed by electric utilities when transacting with affiliates. Rule 25-6.1351, Florida Administrative Code (F.A.C.) details the Commission's policy. It excludes affiliate transactions related to the purchase of fuel and related transportation services that are subject to the Commission's review in cost recovery proceedings. The section of the Commission's Rule that details the pricing between affiliates is as follows:

(3) Non-Tariffed Affiliate Transactions

(a) The purpose of subsection (3) is to establish requirements for non-tariffed affiliate transactions impacting regulated activities. This subsection does not apply to the allocation of costs for services between a utility and its parent company or between a utility and its regulated utility affiliates or to services received by a utility from an affiliate that exists solely to provide services to members of the utility's corporate family. All affiliate transactions, however, are subject to regulatory review and approval.

The rules state that purchases from the utility by the affiliate must be at the higher of fully allocated cost or market price.

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> (b) A utility must charge an affiliate the higher of fully allocated costs or market price for all non-tariffed services and products purchased by the affiliate from the utility. Except, a utility may charge an affiliate less than fully allocated costs or market price if the charge is above incremental cost. If a utility charges less than fully allocated costs or market price, the utility must maintain documentation to support and justify how doing so benefits regulated operations. If a utility charges less than market price, the utility must notify the Division of Economic Regulation in writing within 30 days of the utility initiating, or changing any of the terms or conditions, for the provision of a product or service. In the case of products or services currently being provided, a utility must notify the Division within 30 days of the rule's effective date.

The rule further state that purchases from the affiliate must be at the lower of fully allocated cost or market.

> (c) When a utility purchases services and products from an affiliate and applies the cost to regulated operations, the utility shall apportion to regulated operations the lesser of fully allocated costs or market price. Except, a utility may apportion to regulated operations more than fully allocated costs if the charge is less than or equal to the market price. If a utility apportions to regulated operations more than fully allocated costs, the utility must maintain documentation to support and justify how doing so benefits regulated operations and would be based on prevailing price valuation.

Finally, the rules states that assets transferred from the affiliate to the utility must be transferred at the lower of cost or market and assets transferred from the utility to the affiliate must be transferred at the higher of cost or market.

> (d) When an asset used in regulated operations is transferred from a utility to a nonregulated affiliate, the utility must charge the affiliate the greater of market price or net book value. Except, a utility may charge the affiliate either the market price or net book value if the utility maintains documentation to support and justify that such a transaction benefits regulated operations. When an asset to be used in regulated operations is transferred from a nonregulated affiliate to a utility, the utility must record the asset at the lower of market price or net book value. Except, a utility may record the asset at either market price or net book value if the utility maintains documentation to support and justify that such a transaction benefits regulated operations. An independent appraiser

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> must verify the market value of a transferred asset with a net book value greater than $1,000,000. If a utility charges less than market price, the utility must notify the Division of Economic Regulation in writing within 30 days of the transfer. (Rule 25-6.1351 F.A.C.)

Q. HAS THE COMMISSION ADDRESSED AFFILIATE TRANSACTIONS IN RECENT ORDERS?

A. Yes. The Commission has also expressed its opinion on affiliate transactions and the precedent that should be followed when examining affiliate transactions.

> By their very nature, related party transactions require closer scrutiny. Although a transaction between related parties is not per se unreasonable, it is the utility's burden to prove that its costs are reasonable. Florida Power Corp. v. Cresse, 413 So. 2d 1187, 1191 (Fla. 1982). This burden is even greater when the transaction is between related parties. In GTE Florida, Inc. v. Deason, 642 So. 2d 545 (Fla. 1994) (GTE), the Court established that the standard to use in evaluating affiliate transactions is whether those transactions exceed the going market rate or are otherwise inherently unfair. (FPSC, Order No. PSC-01-1374-PAA-WS; June 27, 2001.)

II. FPL Group, Inc. Organizational Structure

Q. WOULD YOU PLEASE DESCRIBE THE FPL GROUP, INC. ORGANIZATION?

A. Yes. FPL Group, Inc. (FPL Group), the parent company of FPL, has more than 500 subsidiaries and affiliates. (Ousdahl Testimony, p. 37.) My Exhibit KHD-2 contains an organizational chart of FPL Group and its affiliates. Its primary subsidiaries include:

1) FPL, the regulated electric company that provides electric service to customers in Florida.

2) FPL Group Capital, Inc., (FPL Group Capital) which owns the capital stock of and provides the funding for FPL Group's non-utility companies.

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3) NextEra Energy Resources, LLC (NextEra, formerly FPL Energy or FPLE) is a holding company of subsidiaries involved in geothermal, cogeneration, waste-to-energy, and wind powered electric generating projects. NextEra is the largest generator of wind and solar power in North America. NextEra has operations in 27 U.S. states and Canadian provinces.

4) FPL FiberNet, LLC (FiberNet) leases wholesale fiber-optic network capacity dark fiber capacity. Its customers include FPL, Internet service providers, as well as telephone, wireless carriers, internet, and other telecommunications companies.

5) FPL Energy Services, Inc. (FPL Energy Services or FPLES) markets the sale of natural gas and offers products and services to residential and commercial customers.

6) FPL Group Resources, LLC identifies, evaluates and transacts natural gas business activities. This includes the pursuit of a Liquefied Natural Gas import project into Florida, creation of a gas merchant business, and pipeline and storage investments.

7) Palms Insurance Company, Limited (Palms) is an insurance company primarily engaged in providing liability insurance coverage for FPL Group and its subsidiaries. (FPL Group 2008 Form 10-K, p. 14 and Response to OPC Interrogatory 2.) (http://www.nexteraenergyresources.com/content/where/portfolio/pdf/portfolio_by_fuel.pdf.; http://www.nexteraenergyresources.com/content/who/facts.shtml.

As shown on Exhibit KHD-2, FPL Group's nonregulated affiliates are numerous.

Q. HOW LARGE ARE FPL GROUP'S NONREGULATED OPERATIONS AND HOW HAVE THEY CHANGED OVER TIME?

A. FPL Group's nonregulated businesses are significant, and they are growing. Although FPL Group has many affiliated nonregulated companies, its most active and largest affiliate is NextEra, which owned hundreds of affiliated companies in 2008. (FPL Annual Diversification Report 2008.) As shown on Exhibit KHD-3, NextEra represented **Begin Confidential** [redacted] **End Confidential** of FPL Group's

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consolidated revenue in 2005, decreasing to Begin Confidential [redacted] End Confidential in 2006, increasing to Begin Confidential [redacted] End Confidential in 2007 and to Begin Confidential [redacted] End Confidential in 2008. Similar representations are depicted for investment. As shown on this exhibit, NextEra's gross investment represents Begin Confidential [redacted] End Confidential of FPL Group's consolidated gross investment in the years 2005, 2006, 2007, and 2008, respectively.

III. Affiliate Charges

Q. WOULD YOU PLEASE EXPLAIN HOW FPL CHARGES ITS AFFILIATES FOR SERVICES AND PRODUCTS IT PROVIDES TO THEM?

A. Yes. FPL uses three methods to charge costs to FPL Group's nonregulated affiliates. These are:

> Direct - Costs of resources used exclusively for the provision of services that are readily identifiable to an activity. An example of Inter-Company direct costs would be the salary of an [FPL] engineer working on a nonregulated Affiliate's power plant. Direct is also used to indicate work done within FPL (regulated) directly benefiting a Business Unit other than the provider. An example of Intra-FPL direct costs (regulated) would be [FPL] Human Resources charging the operating Business Units for specific recruiting activities.
>
> Assigned - Costs of resources used jointly in the provision of both regulated and non-regulated activities that are apportioned using direct measures of cost causation. The square footage cost of office space used by nonregulated activities would be an example of assignable costs.
>
> Unattributable (Management Fee) - Cost of resources shared by both regulated and non-regulated activities for which no causal relationship exists. These costs are accumulated and allocated to both regulated and nonregulated activities through the use of the

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> AMF for Inter-Company transactions. The costs associated with FPL Group's board of directors is an example of unattributable costs allocated using the Affiliate Management Fee. (Exhibit KO-9, Page 2.)

III.A. Direct Charge Methodology

Q. WOULD YOU PLEASE DESCRIBE THE DIRECT CHARGE METHOD THAT FPL USES?

A. Yes. The direct charge method charges activities to affiliates through specific work orders. Activities which are direct charged include: due diligence investigations conducted by FPL employees for the benefit of an affiliate, assistance with construction projects, transition teams, fleet team support below management level, support for capital projects, and services to plants that are not operated by NextEra. (Response to OPC Document Request 75.)

The Power Generation Service fee is also administered through a direct charge process. This fee captures direct support by FPL Power Generation employees to NextEra. (Response to OPC Interrogatory 12.)

Q. HOW ARE COSTS CAPTURED UNDER THE DIRECT CHARGE PROCESS?

A. FPL uses work orders (ER 99) to capture direct charges from the affiliate to FPL. The majority of these work orders are used to record direct charges and record the expense for the support provided by FPL to the affiliate directly to the intercompany "receivable from affiliate" account. Work orders are also used to process charges to the affiliates for the various service fees and the Affiliate Management Fee.

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Creation of a work order begins with a request that can be submitted via a form, an email, or a telephone request. The request is submitted to an employee who has been approved to create or modify work orders. Surprisingly, there is not a requirement that a record be kept of the request for the establishment of a work order or the use of an FPL employee.

Time spent on support between FPL and affiliates is reported by each employee in the SAP payroll program on-line either daily, weekly or biweekly. It is posted from payroll to each work order. Employees may record actual time incurred on behalf of affiliates (variable time reporting) or use an estimate such as a fixed distribution percentage. The use of variable time reporting as FPL refers to this practice is also known as exception time reporting. That is, the employee's time is recorded at his or her company except where they report otherwise.

According to FPL, each direct line supervisor is responsible for reviewing payroll charges reported in each biweekly pay period for his/her direct reports. This supervisor also reviews the fixed distributions of time on a semiannual basis. When the monthly affiliate bill is prepared, reported hours are loaded for overheads and taxes. The bill is recorded as a receivable and delivered to the affiliate for its review and approval for payment.

Q. WHAT WAS THE LEVEL OF DIRECT CHARGES FROM FPL TO ITS AFFILIATES FOR 2007 AND 2008 AND WHAT DID FPL PROJECT FOR 2009, 2010, AND 2011?

A. As shown on Exhibit KHD-4, direct charges from FPL to its affiliates increased from **Begin Confidential** [redacted] ***End Confidential*** million in 2007 to **Begin Confidential** [redacted] **End**

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Confidential million in 2008 or an increase of 59%. Several factors contributed to the increase in direct charges, including NextEra's acquisition of the Point Beach Nuclear Plant in September of 2007, two large development and construction contracts which are supervised and managed by FPLES, increased support and projects billed to NextEra, and increased support to FPL Group Capital. (Response to AG Interrogatory 31.)

Also shown on Exhibit KHD-4 is the level of direct charges FPL projects it will assess its affiliates in 2009, 2010, and 2011, which is $42.1 million, $43.7 million, and $45.0 million, respectively. The Company projects that in 2009 there will be over 41% less in direct charges to affiliates than in 2008. The test year projections follow a similar pattern. Relative to the direct charges in 2008, the 2010 and 2011 direct charges are projected to be 39% and 37% less than in 2008. FPL has not explained why these charges should be reduced so dramatically from the historic period 2008. As the direct charges are FPL costs that are assigned to its affiliates, any reduction in payroll charges in the projected test year remain on the books of FPL and are charged to regulated ratepayers.

Q. ARE THERE ANY PROBLEMS WITH THE DIRECT CHARGE METHODOLOGY?

A. Yes. First, I seriously question the failure of FPL for not keeping a record of the request for the establishment of a work order used to direct charge labor costs. This failure provides no audit trail or documentation that the functions performed or the time spent by the employee has any relationship to the original request.

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Second, the use of exception time reporting is less than ideal when there are costs being shared between regulated and nonregulated affiliates. By its nature, if an employee does not report a change in time reporting, the charges will be associated with the originating company even if time was spent elsewhere. A direct reporting method would overcome the shortcomings of exception time reporting.

Third, there does not appear to be adequate follow-up of some direct payroll charges. This was identified in a recent internal audit of the Company's affiliate transactions. In this August 11, 2008 Audit, the auditors found: **Begin Confidential** [redacted] **End Confidential** This is a little like the fox watching the chicken coop. **Begin Confidential** [redacted] **End Confidential** The auditors recommended that **Begin Confidential** [redacted] **End Confidential**

Q. **WHAT IS YOUR RECOMMENDATION REGARDING THE DIRECT**

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CHARGES FPL PROJECTS FOR 2009, 2010, AND 2011?

A. I recommend that the Commission require that the Company keep adequate documentation concerning the requests from its affiliate for services that are billed under the direct charge methodology. FPL has not provided any reason why keeping adequate documentation (like the e-mail or phone call record) should not be retained. In fact, I would recommend that a system be set up to keep track of the requests for assistance.

Similarly, I recommend that the Commission require those employees that use exception time reporting to use direct time reporting. This will help ensure that the time spent on work for affiliates is properly documented and tracked.

III.B. Shared Cost Methodology

Q. WHAT ARE THE SHARED COSTS THAT ARE ALLOCATED TO FPL GROUP'S AFFILIATES?

A. The following are costs that are shared between FPL and its affiliates: Information Management, Human Resources, Facility Security, Cafeteria Operations, Executives, Corporate Finance and Accounting, Data Security, Aircraft Operations, Corporate Communications, Shareholder Services, Environmental Audits and Consulting, Administration of Corporate Travel, Integrated Supply Chain Administration, and Internal Auditing Management. (Exhibit KO-9, pp. 8-9.) There is a clear benefit to these smaller nonregulated affiliates sharing administrative services rather than hiring an administrative staff.

Q. WOULD YOU DESCRIBE HOW SHARED COSTS ARE ALLOCATED?

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A. Yes. The Company used two approaches. The first assigns costs which can be directly apportioned using direct measures—like square footage. The second approach assigns costs that are unattributable, using five different fees.

Q. WOULD YOU DESCRIBE THE COSTS THAT ARE ASSIGNED USING DIRECT MEASURES OR COST DRIVERS?

A. Yes. The Information Management, Human Resources, certain Finance, and certain Other Corporate Services costs are allocated to affiliates using specific drivers. The Information Management groups use specific drivers relating to workstations, number of transactions, mainframe time, etc. The Human Resources group uses a headcount driver. The Finance group uses specific drivers related to square footage and capacity. Engineering, Construction and Corporate Services use drivers also related to full-time equivalent employees. (Exhibit KO-9, p. 8.)

Q. WOULD YOU DESCRIBE THE MANAGEMENT FEES USED TO ALLOCATE UNATTRIBUTABLE COSTS?

A. Yes. The first fee is the Power Generation Division (PGD) Fee used to charge NextEra for fleet team management and direct plant specific support. Regarding this fee the Company states: "Fully loaded costs are charged to the Affiliate based on budgeted dollars with a year-end true-up based on actual accumulated dollars via specific work orders." (Ibid., p. 1.)

The next fee is the Energy Marketing & Trading Business Unit Fee (EMT Service Fee) which:

> . . . uses the annual budget to estimate the level of service to be provided and will true-up to actual periodically or for year-end no later than January of the following year. There are two parts to this fee: 1. Back-Office, and 2. PMI Facilities Usage. There are two (2)

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> groups within the Back-Office portion of the fee: 1. System Group for computer support, and 2. Risk Management: The Systems Group is allocated by specific drivers (i.e. number of devices), and Risk Management is allocated based on a time-study. The second part of the Fee is the PMI Facility Usage, which is allocated base[d] upon total head count applied to a developed facility rate. (Ibid., p. 9.)

The third fee, Information Management Nuclear Service Fee, is used to allocate the costs for the following shared services to NextEra: Passport support, information management, data services, and infrastructure support. This fee uses the annual budget to estimate the level of service to be provided and is trued up to actual no later than January of the following year. Costs for services to support the Passport system are allocated by the number of systems in place. All other service costs are allocated based on the number of generating units. (Ibid., p. 10.)

The fourth fee, the Nuclear Division Fee, allocates costs to NextEra for the following shared services: nuclear operations support, nuclear fuels support, nuclear management team support, nuclear engineering support, and nuclear assurance support. The fee uses the annual budget to estimate the level of service to be provided and is trued up no later than January of the following year. (Ibid.)

Q. WOULD YOU DISCUSS THE NEXT GROUP OF COSTS THAT MAKE UP AFFILIATE MANAGEMENT FEE?

A. Yes. The unattributable portion of the Affiliate Management Fee (AMF) includes costs of FPL corporate staff that provide services to the affiliates of FPL. These services include budgeting and planning, external financial reporting, corporate communications, mail services, and shareholder services. (Ousdahl Testimony, p. 41.) Costs included in this category are generally allocated using the

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Massachusetts Formula.

The total amount of Affiliate Management Fee that is distributed between FPL and its affiliates is projected to be **Begin Confidential** [redacted] **End Confidential** The Company projects that **Begin Confidential** [redacted] **End Confidential** of the total AMF will be allocated to FPL in 2009, 2010, and 2011 respectively. (Response to OPC Document Request 106.)

Q. **PLEASE DESCRIBE HOW FPL GROUP'S COSTS ARE CHARGED TO THE UTILITY AND ITS AFFILIATES.**

A. All of FPL Group's costs are directly charged to FPL and then allocated to affiliates through the Affiliate Management Fee. (Response to OPC Interrogatory 75 and 71.)

Q. **WOULD YOU DESCRIBE THE MASSACHUSETTS FORMULA USED TO ALLOCATE A PORTION OF THE AFFILIATE MANAGEMENT FEE AND THE CHARGES FROM FPL GROUP?**

A. The Massachusetts Formula is the weighted average of three statistics: payroll, revenues, and average gross property plant and equipment. Each of these three components of the Massachusetts Formula is given equal weight. The companies included in the calculation of the Massachusetts Formula are FPL New England Division, NextEra, FPLE Seabrook Station, FPL Energy Duane Arnold, FPL FiberNet, FPL Energy Services, Palms Insurance Company, FPL Energy Point Beach, and FPL Readi-Power. (Response to OPC Interrogatory 26.)

My Exhibit KHD-5 depicts the Massachusetts Formula used by FPL for

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the projected years 2009, 2010, and 2011. As shown, for costs attributable to all affiliates that are allocated on the basis of the Massachusetts Formula, the majority of the costs—Begin Confidential [redacted] End Confidential—are attributed to FPL.

Q. **DO YOU AGREE WITH THE ALLOCATION METHOD USED TO DISTRIBUTE MANAGEMENT FEES TO FPL AND ITS AFFILIATES DURING THE PROJECTED TEST YEARS?**

A. No, I do not. There are several problems with the allocation factors used by the Company to distribute the management fee to its affiliates.

First, for several specific drivers used to allocate the attributable-shared costs the data utilized is stale. For several categories of costs being allocated the allocation factor for the projected 2010 and 2011 test years did not change from the factor used in 2008.

Second, with respect to the Massachusetts Formula, the Company did not supply data and sufficient support for the methodology used to project its test year allocation factors.

Third, the allocation factors are largely size-based and therefore, regardless of the benefits received from the services provided, the majority of the management fees are allocated to the largest company—FPL.

Q. **WOULD YOU PLEASE ADDRESS YOUR FIRST CONCERN ABOUT THE COMPANY'S SPECIFIC DRIVERS USED IN THE AFFILIATE MANAGEMENT FEE ALLOCATION?**

A. Yes. For several of the Management Fees the allocation factors used during the

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test year are stale. There has been substantial growth in NextEra, a nonregulated affiliate, during the past several years. Yet, in several instances, the Company's proposed allocation factors do not reflect the growth that has taken place during 2008, much less the growth anticipated in 2009, 2010, and 2011. They are based upon old data that is not consistent with the projected 2009, 2010, and 2011 test years. For example, in response to OPC's discovery, the Company stated: "The FPL Group allocation factors used in the test year projections for FAS 87 expenses were based on data from 2008. The FPL Group allocation factors used in the test year projections for FAS 106 expenses were based on data from 2007." (Supplemental Response to OPC Interrogatory 28.)

The information used to allocate **Begin Confidential** [redacted] **End Confidential** is based on 2006 data. (Response to OPC Document Request 106.) The Company used 2007 data to project FPL Group Post Retirement costs.

One allocation factor has not changed since at least 2006: **Begin Confidential** [redacted] **End Confidential** FPL's supporting documentation for this cost allocation factor contains the note: **Begin Confidential** [redacted] **End Confidential**

Q. **WOULD YOU ADDRESS YOUR SECOND CONCERN ABOUT THE**

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AFFILIATE MANAGEMENT FEE ALLOCATION FACTORS?

A. Yes. The Company did not provide adequate support for the projected data that it utilized to develop its allocation factors for the Massachusetts Formula. In addition, an examination of the allocation factors from year to year shows that the Company has projected significantly less growth in its nonregulated operations than in the past. It has also failed to provide adequate workpapers and documentation to support some of the allocation factors that it used and the costs included in the AMF.

An examination of the projected growth in the components of the allocation factors for the affiliates suggests that the projections are understated relative to previous years. For example, the revenue component of the Massachusetts Formula for FPLES has decreased by **Begin Confidential** [redacted] **End Confidential** in 2008 and is projected to increase by **Begin Confidential** [redacted] **End Confidential** in 2009, **Begin Confidential** [redacted] **End Confidential** in 2010, and **Begin Confidential** [redacted] **End Confidential** in 2011. The average annual change in revenues from 2008 to 2010 is **Begin Confidential** [redacted] **End Confidential** Without an explanation from the Company as to the reason for its projection, **Begin Confidential** [redacted] **End Confidential** appears to be a more reasonable growth rate, than the growth rate projected by the affiliate.

Similar problems arise when examining the Property, Plant, and Equipment (PP&E) component of the Massachusetts Formula. In several instances, for 2011 the beginning balances are the same as the 2011 ending balances—indicating that the affiliate will add no plant in service for the projected year 2011. The Company projected no change in PP&E from 2010 to 2011 for the

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following affiliates NextEra, Seabrook (NextEra), Duane Arnold (NextEra), and Point Beach (NextEra).This failure to properly budget 2011, is problematic and further supports the concerns that have been raised about the use of a 2011 test year for the Company's proposed step rate increase.

The average change in ending PP&E for each of these affiliates for the years 2008 to 2010 is Begin Confidential [redacted] End Confidential for NextEra, Begin Confidential [redacted] End Confidential for Seabrook, Begin Confidential [redacted] End Confidential for Duane Arnold, and Begin Confidential [redacted] End Confidential for Point Beach. Clearly, it is an unrealistic assumption that these entities will not experience additions to plant in service during 2011.

The final component of the Massachusetts Formula where problems appear is the labor component. For example, the proposed growth in labor charges for FiberNet for 2008 and projected for 2009, 2010, and 2011 is Begin Confidential [redacted] *End Confidential* respectively. The three-year average from 2008 to 2010 is *Begin Confidential* [redacted] End Confidential—considerably higher than the projection for 2011.

Q. YOU MENTIONED THAT THE COMPANY DID NOT PROVIDE ADEQUATE SUPPORT FOR ITS PROJECTIONS. WOULD YOU PLEASE ADDRESS THIS?

A. Yes. Several interrogatories were issued concerning these projections. The Attorney General propounded the following discovery:

> <u>AG Interrogatory 38</u>. Affiliates. For purposes of this request, please refer to the Company's response to OPC Interrogatory 29.
>
> a. Please provide a detailed explanation of how the projections

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were performed by the Company to project the costs FPL plans to allocate to its affiliates for every fee. To the extent the requested information is available in electronic spreadsheet format, please provide the electronic file with all formulas and links intact.

b. Please provide a detailed explanation of how the projections were performed by the Company to project the allocation factors FPL plans to use to allocate to its affiliates through its fees. To the extent the requested information is available in electronic spreadsheet format, please provide the electronic file with all formulas and links intact.

c. Please provide a detailed explanation of how the projections were performed by the Company to project the costs FPL plans to directly charge to its affiliates. To the extent the requested information is available in electronic spreadsheet format, please provide the electronic file with all formulas and links intact.

<u>Company's Response</u>:

a) The process documentation for projecting the Affiliate Management Fee is being provided in "AMF Process Documentation.doc" (Bates No. FPL 144552-144558). This document is confidential and will be made available by FPL for review and inspection by AG at Rutledge, Ecenia & Purnell, P.A., 119 South Monroe Street, Suite 202, Tallahassee, Florida 32301, during regular business hours, 8 a.m. to 5 p.m., Monday through Friday, upon reasonable notice to FPL's counsel. The detail files for the fee calculations for 2009 and 2010 can be seen in FPL's response to OPC's Second Request for Production of Documents No. 106, and the file for 2011 can be seen in FPL's response to SFHHA's Eleventh Set of Interrogatories No. 296.

b) The allocation factors in the fee consist primarily of drivers related to Information Management and Human Resources allocations as well as the Massachusetts Formula. Files have been provided that explain the calculation of the 2008 IM and HR drivers. These drivers were used for the 2009, 2010, and 2011 AMF forecasts. The projection of the Mass. Formula allocation factors can be seen in the detail AMF calculation files referenced in part a above. (Response to AG Interrogatory 34.)

The document provided by the Company described the projection process in general, but did not contain the workpapers for the detailed projections.

OPC also asked the following discovery request:

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> OPC Document Request 233. MFR Workpapers. For purposes of this request, please refer to the spreadsheets "MFR C-30 2009 backup.xls," "MFR C-30 2010 backup.xls", and "MFR C-30 2011 backup.xls" provided in the Company's response to OPC Document Request 12.
>
> a. Please provide all supporting documents showing the calculation of how the amounts were derived for the Affiliate Management Fee, Power Generation Division Management Fee, Energy Marketing and Trading Management Fee, Nuclear Division Management Fee, and Direct Services for each affiliate for the year 2008 and 2009, 2010, and 2011 projected test years. To the extent the requested information is available in electronic format, please provide the electronic file. To the extent the requested information is in Excel format, please provide the documents with all formulas and links intact and include all linked and source files.
>
> Company's Response: Affiliate Management Fee
>
> With respect to the Affiliate Management Fee for the year 2008 and the projected test years 2009, and 2010, see FPL's response to OPC's Second Request for the Production of Documents No. 106. For the projected test year 2011, see FPL's response to SFHHA's Tenth Request for Interrogatories No. 296.

The documents supplied in response to these discovery requests contain only the amount of the projections, not how the projections were developed. There were no underlying calculations or other support provided concerning the projections.

The Company also provided a five-page document explaining the assumptions behind the projections, but again there were no supporting calculations.

Q. WOULD YOU PLEASE DISCUSS YOUR THIRD CONCERN ABOUT THE SIZED-BASED NATURE OF THE MASSACHUSETTS FORMULA AND THE PROBLEMS THIS PRESENTS?

A. As shown on Exhibit KHD-10, FPL consistently receives over **Begin Confidential** [redacted]

End Confidential of the costs charged through the Massachusetts Formula. While FPL obviously represents a large share of the FPL Group family of affiliates, the benefits received by each affiliate are not necessarily proportional to the size of the company. This size-based allocation factor fails to reflect the benefit that the affiliates of FPL receive from the shared services. In other words, use of the 3-factor formula implicitly assumes that the larger the affiliate, the greater its received benefit from the performance of a particular function within FPL.

For example, the corporate communications department of FPL provides the following services: internal communication, external media, executive presentations, and mail services. The general counsel department provides shareholder services and environmental services. The financial section includes costs associated with executive salaries and expenses, accounts payable, cash management and banking, cost measurement and allocation, accounting research and financial reporting, corporate taxes, trust fund investments, planning and analysis, corporate budgeting, annual report, security administration, and aircraft operations. (Exhibit KO-9, pp. 8-9.)

The size-based allocation factor ignores the possibility that relatively new competitive companies, like NextEra, FiberNet, FPLES, FPL Group Resources, and others, benefit disproportionately from these corporate functions that are provided by FPL. For the projected test years 2009, 2010, and 2011, NextEra's operations were allocated Begin Confidential [redacted] End Confidential FPLES was allocated just Begin Confidential [redacted] End Confidential and FiberNet was allocated just Begin Confidential [redacted] End Confidential

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of these costs.

As an example, for the projected 2010 test year, NextEra was allocated **Begin Confidential** [redacted] **End Confidential** of the cost of corporate communication, general counsel, and finance services. The amount charged to FPLES and FiberNet, amounted to just **Begin Confidential** [redacted] **End Confidential** respectively.

Converting these amounts to a cost per employee helps to examine if the allocations are reasonable. Since FPL has many more employees than its affiliates, economies of scale would suggest that the cost per employee at FPL should be much less than the affiliates. On a per employee basis, the amounts charged to NextEra and FPLES and FiberNet (combined) are: **Begin Confidential** [redacted] **End Confidential** respectively. The cost per employee for these same functions for FPL amounts to **Begin Confidential** [redacted] **End Confidential** — more than the cost per employee charged to the affiliates.

Given that FPL is the largest of the companies and therefore should benefit from its economies of scale, I would have expected its costs per employee to be much lower than those of its much smaller nonregulated affiliates would.

Q. DO YOU HAVE OTHER CONCERNS ABOUT THE MASSACHUSETTS FORMULA FACTORS USED BY FPL?

A. Yes. FPL's nonregulated affiliates derive many benefits from their relationship with the utility and its parent. There are many instances in which executives serve in an executive capacity for both FPL its nonregulated affiliates, yet the vast majority of the costs are borne by FPL. For example, the Director and Chairman

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of the Board of FPL, Mr. Lewis Hay, is also the Director and Chairman of the Board for FPL Energy Maine and FPL Group Foundation. Mr. Hay serves as the Director, President, and Chief Executive Officer of FPL Group Capital, the affiliate that holds the majority of the nonregulated affiliates of FPL Group; the Director, Chairman of the Board, and Chief Executive Officer of FPL Group,; and Chairman of NextEra Energy Maine and NextEra.

While serving in this capacity, for the year 2010 **Begin Confidential** [redacted] **End Confidential** of Mr. Hay's salary, bonuses, and restricted stock awards are charged to NextEra **Begin Confidential,** [redacted] **End Confidential** to FiberNet, and **Begin Confidential** [redacted] to FPLES. These percentages translate to an effective salary of **Begin Confidential** [redacted] **End Confidential** for NextEra, **Begin Confidential** [redacted] **End Confidential** for FiberNet, and **Begin Confidential** [redacted] **End Confidential** for FPLES. This seems like a very small share given the capacity in which he serves these companies.

This situation is not limited to Mr. Hay. As shown on Exhibit KHD-6, there are 24 FPL executive officers and directors that also serve as executive officers and directors of the nonregulated affiliates. Armando Olivera, Director and President and CEO of FPL is also the President of BXR, LLC and Director, President and Treasures of FPL Group Foundation, Inc. Manoochehr Nazar, Senior Vice President and Nuclear Chief Operating Officer is also the Vice President of FPL Energy Duane Arnold (NextEra), FPL Energy Point Beach (NextEra), FPL Seabrook (NextEra) and is the Chief Nuclear Officer of FPL Group, Inc. Mariene Santo, Vice President, Customer Service is the Director and/or the President of three FPLES companies and FPL Enersys, Inc, and Mr.

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Yeager, Vice President, Engineering and Construction, is also an officer — a Vice President of 35 nonregulated affiliates of FPL.

Likewise, the services provided by FPL are a significant benefit to these smaller nonregulated companies that would have a difficult time obtaining these same services with only their own staff.

Q. **CAN YOU GIVE SOME OTHER EXAMPLES OF THE BENEFITS FPL'S NONREGULATED AFFILIATES DERIVE FROM THEIR ASSOCIATION WITH FPL AND FPL GROUP?**

A. Yes. According to an August 2008 internal audit of the Company's affiliate transactions, **Begin Confidential** [redacted] **End Confidential** It would be difficult for FPL's nonregulated affiliates to have access to this many lawyers if they were not associated with FPL and FPL Group. Rather than depending upon the support of this in-house counsel they would more than likely be required to seek outside counsel at a cost which exceeds the payroll, benefits and overhead of the in-house attorneys employed by FPL Group.

Similarly, this same audit noted that **Begin Confidential** [redacted] **End Confidential** If this affiliate were not affiliated with FPL the expertise to resolve these problems may not have been immediately available and would have needed to be obtained elsewhere.

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Q, WHAT HAS BEEN THE GROWTH PATTERN OF THE COMPANY'S AFFILIATES IN RECENT YEARS?

A. Revenues from nonregulated affiliates have increased from $2.3 billion to $4.8 billion from 2005 to 2008—an increase of 105% or 26% per year. This compares to FPL's revenues which have increased from $9.5 billion in 2005 to $11.6 billion in 2008—an increase of 22% or about 6% per year. (FPL Group 2008 Form 10-K, p. 97 and 2007 10-K.)

Recently, NextEra's earnings have represented an even larger share of FPL Group's operations than its share of the revenue or investment. As depicted on Exhibit KHD-7, in 2008 NextEra's earnings per share represented 53% of FPL Group's consolidated earnings per share. Prior to 2008, NextEra's earnings per share only represented between 11% and 45% of FPL Group's earnings per share.

Not only has its earnings per share increased, but its return on equity has also increased significantly. In 2007 NextEra earned an approximate return on equity of 11.12%, which increased to 15.28% in 2008. This compares to a return on equity for FPL of 11.29% in 2007 and 10.27% in 2008.

Q. NEXTERA APPEARS TO BE AN IMPORTANT AFFILIATE. WOULD YOU DESCRIBE THIS COMPANY IN GREATER DETAIL?

A. Yes. NextEra "owns, develops, constructs, manages and operates primarily domestic electric-generating facilities in wholesale energy markets." (FPL Group 2008 Form 10-K, p. 10.) Other services provided by NextEra include "full energy and capacity requirements services primarily to distribution utilities in certain markets," and it owns a retail electric provider in Texas. (Ibid.) According to its

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website, NextEra was founded as ESI Energy in 1985, established as FPL Energy in 1998, and changed its name to NextEra Energy Resources, LLC on January 7, 2009. It owns wind projects as well as solar and gas projects, and nuclear facilities. It claims to be the largest generator of wind and solar power in North America. NextEra has a presence in 25 states and Canada and has more than 17,000 megawatts of generation assets in operation. (http://www.nexteraenergyresources.com/content/who/facts.shtml.)

NextEra expects its future portfolio capacity growth to come from wind and solar and from asset acquisitions. NextEra plans to add a total of 7,000 MWs to 9,000 MWs of new wind generation from 2008 to 2012. It also plans to pursue opportunities for new solar generating facilities. In April 2009, NextEra announced plans to build a wind turbine service facility in Iowa and launched the EarthEra Renewable Energy Trust, which allows businesses to purchase renewable energy certificates to meet their own sustainability or green energy goals. One hundred percent of the proceeds from the sale of EarthEra renewable energy certificates goes into the EarthEra Renewable Energy Trust which is then used for solar and wind renewable energy construction projects. (FPL Group 2008 Form 10-K, p. 11; News Release, "NextEra Energy Resources to build wind turbine service facility in Iowa," April 1, 2009; News Release, "NextEra Energy Resources launches the EarthEra Renewable Energy Trust to accelerate America's move to a clean energy future," April 1, 2009.)

Q. **NEXTERA ALSO APPEARS TO BE IMPORTANT FOR ITS ABILITY TO GENERATE REVENUES AND EARNINGS FOR FPL GROUP AND ITS**

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PRESENCE IN THE FPL GROUP. HAVE YOU EXAMINED ANY DOCUMENTS WHICH SHOW THE EMPHASIS PLACED ON THIS COMPANY?

A. Yes. FPL Group's 2006 Annual Report cover page illustrates the importance of NextEra to the company's future growth.

The cover page, a copy of which is included in Exhibit KHD-8, shows a picture of solar panels and wind turbines with the words "energy solutions for the **next era**." (emphasis added.) Using the words "next era" on the cover of FPL Group's Annual Report to its stockholders clearly demonstrates NextEra's importance to the management of FPL Group. The same logo and wind turbines are depicted on FPL Group's home pages.

NextEra's future plans are discussed in the Annual Report and, in fact, in the letter to its shareholders, equal space was given to FPL and NextEra—each being discussed on a separate page.

The Annual Report addressed the future plans of NextEra:

> Looking ahead, NextEra Energy Resources has a strong pipeline of attractive renewable energy projects. Our wind project pipeline is more than 30,000 megawatts while our solar development pipeline is approximately 1,000 megawatts. Even though in late 2008 we reduced planned capital spending for 2009 by $1.3 billion in response to economic and financial market conditions, we still expect to add approximately 1,100 megawatts of new wind projects in 2009. (FPL Group 2006 Annual Report, p. AR-4.)

In addition, in January 2009, the Public Utility Commission of Texas awarded NextEra $565 million for construction of transmission facilities to deliver wind power from the Competitive Renewable Energy Zones in west Texas and the Texas panhandle to population centers in Texas. (Ibid.)

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NextEra's importance and the benefits it receives from being associated with FPL was explained in response to OPC's Interrogatory 305, when asking about Ms. Ousdahl's comment about FPL's role as a "service company."

> The focus of this sentence is on the increasing role FPL plays in providing operating support, specifically in connection with the recent growth of FPL's operating affiliate, NextEra, which has provided the opportunity for FPL to serve a more sizable fleet of assets, including nuclear and fossil generation, and therefore to more broadly lever its skills and resources. (Response to OPC Interrogatory 305.)

NextEra clearly derives substantial financial benefits from being associated with FPL Group and FPL. These benefits are not captured in a cost allocation formula that is based upon size.

Q. YOU HAVE IDENTIFIED SEVERAL PROBLEMS WITH THE COMPANY'S ALLOCATION OF ITS AFFILIATE MANAGEMENT FEES. DO YOU HAVE A RECOMMENDATION CONCERNING THE SPECIFIC DRIVERS THAT YOU DISCUSS ABOVE?

A. Yes, I do. First, to overcome the problem associated with the Company's use of stale allocation factors, I recommend that the Commission update the specific drivers reflect the most recent information available. With respect to the Power Generation Division Fee I recommend that the Commission update the installed megawatts using the Company's disclosures in its 2008 annual report and testimony filed in this proceeding. This will make the level of the management fee allocations consistent with the projected test years.

Therefore, I have updated the installed MWs used as the allocation factor to include projects that have been or will be added to the operations of FPL and

NextEra. FPL uses MWs to allocate the salaries and benefits of the Power Generation Division Executives. I have added 1,000 MWs to NextEra for the wind generation projects it intends to add for 2009. I have also added the West County Units 1 and 2 (2,400 MWs) to FPL, which are expected to go online in 2009.

Specifically, using information from the Company's MFRs and FPL Group's 2008 Annual Report, I recommend capacity additions of 1,250 MWs (2009), 1,275 MWs (2010), and 1,349 MWs (2011) to the 2008 level used by the Company for FPL. This produces total MWs for FPL in these years of 19,784 (2009), 21,059 (2010) and 22,408 (2011) compared to FPL's values of 19,753 for each of the years 2009, 2010, and 2011. In other words, the Company assumed that it would not add any capacity during the projected years 2009, 2010, and 2011, much different than its projected test year assumptions.

I made similar updates for NextEra. For 2009, 2010, and 2011, I recommend adding 1,100 MWs, 1,200 MWs, and 1,200 MWs of capacity, respectively. This produced total capacity of 15,941 MWs, 17,141 MWs, and 18,341 MWs for the years 2009, 2010, and 2011, respectively. In contrast, the Company's estimate of total capacity for NextEra was 14,841 MWs for all three years. (Clarke Testimony, p. 11; Response to OPC Interrogatory 23; FPL Group 2008 Annual Report.) Clearly, the Company's estimate of capacity used to allocate the PGD fee is very outdated and should be rejected.

Second, to overcome the problem with the specific drivers of the Affiliate Management Fee, in instances where the Company did not project an increase for

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the projected test years, I recommend that the Commission increase the allocation drivers based upon recent growth. Specifically, if the Company updated the allocation factor for 2008 and 2009, I recommend that the Commission use the average increase in the allocation drivers for those two years to develop the 2010 and 2011 allocation drivers. If the Company did not update the 2009 allocation factor, then I recommend that the Commission use the increase in the allocation factor using the change in the factor from 2007 to 2008 to project the 2010 and 2011 allocation drivers. My recommended drivers are shown on Exhibit KHD-9. My recommended adjustment to overcome these problems is shown on Exhibit KHD-11. As shown, I recommend that the Commission reduce test year expenses by $2.3 million in 2010 and by $5.1 million in 2011.

Q. HOW CAN THE COMMISSION OVERCOME THE PROBLEMS ASSOCIATED WITH THE PROJECTIONS FOR THE NUMERATOR AND DENOMINATOR OF THE MASSACHUSETTS FORMULA?

A. To correct for the failure to update the numerators and denominators of the allocation factors used in the Massachusetts Formula, I compared the three-year average growth rate from 2008 to 2010 for each component, for each affiliate, to the percent change for 2011. If the percent change from 2010 to 2011 was less than the three-year average, I made a determination whether the Company's projection seemed reasonable given the historical data and the assumptions provided by Company.

If it appeared that an affiliate experienced unusually high historical growth one year, I chose the Company's projection as the more conservative approach.

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However, if the Company did not provide an explanation of its assumption or the three-year average was closer to the historical data, I replaced the Company's percentage change with the three-year average percentage change.

For instance, for NextEra, the Company projected **Begin Confidential** [redacted] **End Confidential** [redacted] **End Confidential** The Company's response to discovery does not provide enough detail to explain why the projected 2011 growth in revenue should be less than the prior three year average from 2008-2010. The Company did not provide sufficient documentation of these assumptions and calculations; therefore, the reasonableness of the Company's methodology could not be examined. The amount of growth for 2008 and as projected for 2009 and 2010 is **Begin Confidential** [redacted] **End Confidential** respectively. Rather than use the Company's lower estimate, I recommend that the Commission use the three-year average growth rate to estimate the revenue for NextEra to be used in the Massachusetts Formula.

One instance where the three-year average was higher than the projected change for 2011 is the payroll amount for FPLES. The change in payroll for 2008, 2009, 2010, and 2011 is **Begin Confidential** [redacted] **End Confidential** respectively. The three-year average is calculated as **Begin Confidential** [redacted] **End Confidential** Although the Company did not provide any support for its projection, it is clear that the unusually high 2009 growth projection skews the average. Therefore, as a conservative measure, I accepted the Company's growth projection.

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For each component of the Massachusetts Formula for each affiliate, I applied this logic in examining and testing the Company's projections. If the Company's explanation was not satisfactory and there were no unusual years, I used the average three-year growth rate from 2008 to 2010 to project 2011 revenue, labor and plant. The results of my recommendation are depicted on Exhibit KHD-10.

Q. WHAT ADJUSTMENT ARE YOU RECOMMENDING?

A. I am recommending that the Commission reduce 2011 test year expenses by $1.4 million to address the problems I have identified. My recommendation is shown on Exhibit KHD-11.

Q. WHAT ABOUT THE PROBLEM WITH THE MASSACHUSETTS FORMULA NOT ACCOUNTING FOR THE BENEFITS THE NONREGULATED AFFILIATES RECEIVE FROM ASSOCIATION WITH FPL AND FPL GROUP? HOW CAN THE COMMISSION ADDRESS THIS PROBLEM?

A. To address the problems associated with the size-based nature of the allocation factor and the significant benefits the nonregulated affiliates derive from being associated with FPL and FPL Group, I recommend that the Commission distribute shared executive costs of the FPL Group between FPL and the nonregulated affiliates with 50% assigned to each. The services provided by the FPL Group executives are generally more strategic in nature and benefit the regulated and nonregulated groups as a whole. The proportion of revenue or property, plant and equipment does not reflect the substantial benefits the nonregulated affiliates receive from these executives.

The Company has made a similar determination in a change to its allocation factor for its Nuclear Service Fee. Prior to 2008 the Company allocated this on the basis of the MWs owned by FPL versus NextEra. However, it changed this methodology to allocate the charges based upon the number of nuclear units as opposed to MWs. In making this change the Company stated:

> This allocation was determined to be more representative of the level of service provided with a larger nuclear fleet. When operating as a fleet, the support and services provided by employees included in the fee generally benefit all units. A per-unit allocation basis provides an adequate method of capturing the level of service provided to each unit. For example, FPL will be adding approximately 100 MW to each unit at St. Lucie and Turkey Point once the uprate projects are complete. This increase in megawatts will not change the level of service provided to each of the units. As such, a per-unit basis would not result in a disproportionate share of service costs to FPL. (Response to OPC Interrogatory 17.)

This same argument was made in the August 2008 internal Audit of FPL's affiliate charges. Specifically, the Audit noted: **Begin Confidential** [redacted] **End Confidential**

I believe that a 50/50 allocation factor for FPL's Executive costs would help offset the fact that the smaller affiliates of FPL, like NextEra, FiberNet, and

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FPLES, receive significant benefits from the services provided under the management fee, yet these benefits are not reflected in the allocation methodology.

As shown on Exhibit KHD-11, the changes that I recommend concerning the allocation of the AMF reduce charges to the Company in the projected years by $7.9 million for 2010 and $7.9 million for 2011.

IV. Transactions with Other Affiliates

Q. ARE THERE AFFILIATE COSTS CHARGED TO FPL THAT YOU WOULD LIKE TO ADDRESS?

A. Yes. There are costs charged to FPL by FiberNet that should be adjusted. FiberNet provides wholesale fiber-optic network capacity and dark fiber capacity to FPL. With respect to costs allocated from FiberNet, for the projected test year costs were allocated using fiber miles, fiber capacity, and DS3 capacity. I am recommending one modification to the methodology employed to allocate these costs to FPL. As shown on Exhibit KHD-12, the allocation of costs to FPL is based upon the assets owned by FiberNet. A large portion of the costs allocated to FPL are based upon the return on the assets used by FPL. In developing the amount to charge FPL, the Company used a return on investment of **Begin Confidential** [redacted] **End Confidential** I have modified this return to be consistent with the pre-tax overall cost of capital recommended by Dr. Woolridge. The Commission should reject the Company's request to use a rate of return that is substantially in excess of FPL's allowed rate of return and utilize the rate of return recommended by Mr. Woolridge. As shown on this exhibit, this change results in an estimated reduction

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to charges for the years 2010 and 2011 of $1,182,224.

Q. FPL ENERGY SERVICES ("FPLES") IS ANOTHER AFFILIATE OF FPL. WHAT SERVICES DOES IT PROVIDE?

A. FPL Energy Services provides energy related products and services to residential, commercial and governmental customers. (http://www.fples.com/aboutus.shtml.) For residential customers, FPLES provides the following services, as described on FPLES' web page.

Protection from Costly Power Surges

SurgeShield is heavy-duty surge protector installed at your meter which prevents power surges from entering your home thru your meter and causing damage to major appliances and systems.

Appliance Protection

Home repair bills leaving you with the feeling of empty pockets? Appliances can break down when you least expect it leaving you with costly home repair bills. ApplianceGard can save you hundreds of dollars.

Water Lines and Electric Wiring Protection

Water lines inside and outside of your home and electric wiring inside your home can become damaged or simply worn out over time and can be costly to repair or replace. UtilityGard offers 3 great plans for 1 low price.

Power Surge Protection for your Electronics

While there's no way to prevent power surges, Power Surge Protection provides coverage for the repair or replacement of your essential electronics and appliances. Best of all, you choose the level of coverage that meets your needs.

Readi Power

Purchasing a permanent or portable back-up generator is easy with the Readi-Power program. Find out how you can get a customized system that fits your needs and budget.

One Plug

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The One Plug device is a meter-based transfer switch installed at your electric meter, making powering appliances through your portable generator quick, easy and convenient.

(http://www.fples.com/residential.shtml.)

For commercial customers, FPLES offers the following services and products:

Natural Gas

Reliable supply, competitive and flexible pricing options, strong financial backing, and expert advice are all part of the FPL Energy Services advantage. Learn more on how you can get a FREE cost savings analysis today.

ESCO-Performance Contracting

Replace your aging energy infrastructure and fund the entire project with future energy savings from FPLES. Learn how.

Energy Efficiency Solutions

Saving money and obtaining financing for turn-key and comprehensive energy efficiency solutions designed for your specific business needs is as simple as one-stop shopping.

Power Monitoring

Occurrences such as lightning and high winds can happen at all hours of the day and night - whether you're open for business or not. Power Monitoring protects your sensitive electrical equipment and inventory. (http://www.fples.com/business.shtml.)

Finally, for government customers, FPLES offers performance contracting for installation of energy efficient products. It also provides assistance with financing and funding of the project with "future energy savings." (http://www.fples.com/largebusiness/products/fpl_services_energy_management.shtml.)

Q. DO YOU HAVE ANY CONCERNS ABOUT THE AFFILIATE RELATIONSHIP BETWEEN FPL AND FPLES?

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A. Yes. I have several concerns. First, on January 1, 2006, FPL sold to FPLES the natural gas business of FPL. Second, FPLES provides some nonregulated services which may be billed with FPL's electric bill. Third, there may be other relationships between FPLES and FPL which are not priced at the higher of market or cost.

Q. WOULD YOU PLEASE DISCUSS YOUR FIRST CONCERN? PRIOR TO THE SALE OF FPL'S CUSTOMERS TO FPLES, HOW WAS THE REVENUE EARNED FROM THESE CUSTOMERS TREATED?

A. Prior to the sale, the margin for the natural gas business was distributed between FPL and FPLES based upon whether the customer was within FPL's service territory or outside its territory. Under this method, the margin earned on the sale of gas to FPL electric customers was recorded on the books of FPL. This margin ranged between **Begin Confidential** [redacted] **End Confidential** per year. According to the Company, it no longer applies these gas margins to the Company's regulated operations because:

> During the 2005 rate case proceedings in Docket No. 050045-EI, the MFR's that FPL filed with the Florida Public Service Commission ("PSC") for the 2006 test year reflected the transfer of FPL's in-territory Florida Natural Gas business (the "In-Territory Gas Business") to FPLES. This position was presented and discussed in pre-filed testimony by Dennis Brandt (Rebuttal Testimony of C.Dennis Brandt, Docket Nos. 050045-EI, 050188-EI, pages 3-4). This transfer was based on the following: the key infrastructure that supports the business resides in FPLES; a dedicated sales force was established for this business independent of FPL; and this business is unrelated to the provision of electric service. FPL reached a settlement in Docket No. 050045-EI based on those MFR's. (Response to OPC Interrogatory 41.)

Q. DO YOU BELIEVE THE COMPANY'S EXPLANATION FOR MOVING THE GAS MARGIN REVENUES TO ITS NONREGULATED AFFILIATE

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IS REASONABLE?

A. No, I do not. First, there is nothing in the settlement that endorsed this treatment of these gas margins.

Second, the Company's response is inadequate for justifying the proposed ratemaking change of these gas margins. The Company appears to have removed a profitable revenue producing operation from the regulated operations and moved it to a nonregulated affiliate. FPL has not demonstrated that there have been any changes in the operations of FPL or FPLES that would justify removing these revenues from FPL's regulated operations. FPL has not demonstrated that there have been any changes in the functions performed by FPL in connection with these gas sales and margins. In fact, FPL still procures gas on behalf of FPLES and transfers that gas at cost to FPLES. (Response to OPC Interrogatory 31.)

Q. **IS THERE AN AGREEMENT THAT MEMORIALIZES THE SALE OF THESE GAS CONTRACTS TO FPLES?**

A. Yes. There is a two-page agreement for the assignment of in-territory gas contracts to FPLES. The contract is signed by a representative of FPL and a representative of FPLES. The contract specifies the sale price and the accounting treatment of the sale for both companies. It is important to recognize that while the agreement is signed by two different people, the contract is clearly not an arms-length arrangement. In fact, in this instance, understating the value of the contracts being sold would benefit both parties. FPL would recognize a lower gain on sale and therefore pass though to customers (assuming the gain covered a period when rates would change) a smaller amount. FPLES would recognize a lower cost for the contracts being sold and at the

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same time reap the benefits of the gas margins that have been historically attributed to regulated ratepayers. For the parent company, FPL Group, it's a win-win situation. For customers, it's not. The existence of a contract should not put the Commission at ease that the sale represented an arms-length result.

Q. **WHAT PRICE DID FPLES PAY FOR THESE CONTRACTS?**

A. The Company has indicated that it transferred the gas contracts to FPLES at a gain of $611,295. (FPL 2006 Annual Report to the FPSC, p. 455.) According to the agreement between FPL and FPLES, the gain was **Begin Confidential** [redacted]. **End Confidential** (Response OPC Document Request 246.)

Q, **DOES THE COMPANY HAVE ANY DOCUMENTS WHICH INDICATE THAT THE CONTRACTS WERE SOLD AT THE HIGHER OF COST OR MARKET?**

A. OPC asked the Company to provide all documents, analyses, and studies that demonstrated that the gas contracts transferred to FPLES were at the higher of cost or market. In response to Document Request Number 231 (b), the Company stated: "FPL has no documents responsive to this request." (Response to OPC Document Request 231.)

Q. **HOW WAS THE PURCHASE PRICE DEVELOPED?**

A. In response to an OPC data request, the Company provided an electronic spreadsheet which developed the purchase price of $611,295. (Ibid.) It appears from an audit of this spreadsheet conducted by Risk Management that the purchase price was arrived at with a **Begin Confidential** [redacted]

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[redacted] End Confidential

Q. WHAT ARE YOUR CONCLUSIONS AND RECOMMENDATIONS REGARDING THE SALE OF FPL'S GAS CONTRACTS TO FPLES?

A. The sale of the FPL gas contracts to an affiliate was clearly not an arms-length transaction. Moreover, it does not appear that the price at which FPL sold the contracts was reasonable. One of the key assumptions to the analysis that was performed was that the contracts Begin Confidential [redacted] End Confidential. This does not appear to be a reasonable assumption given the margins that had been earned in the past. These contracts (or like ones) had generated yearly margins for FPL of Begin Confidential [redacted] End Confidential over the five years preceding the sale. Compared to this profit margin, the price at which FPL sold these gas contracts appears low. In addition, the Company has failed to demonstrate that the price at which it sold these contracts was at the higher of cost or market.

Given these deficiencies, I recommend that the Commission assume that the contracts had not switched hands and that they still reside with FPL. As was done in the past, I recommend that the gross margin associated with these contracts be flowed through to ratepayers. I developed my recommended adjustment by averaging the gross margin earned from these contracts over the five years preceding the sale. As shown on Exhibit KHD-14, this results in an adjustment to test year revenues of Begin Confidential [redacted] End Confidential for each of the 2010 and 2011 test years.

Q. WHAT IS YOUR SECOND CONCERN REGARDING FPL AND FPLES?

A. During the FPL service hearing in Plantation, Florida a customer brought an

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advertisement he received from FPL Energy Services regarding surge protection service it provided. Apparently, the advertisement indicated that the service could be provided and billed with the customer's electric bill. As discussed above, many of the products and services offered by FPLES could be used by FPL's customers. Clearly, if FPL is billing on its electric bills for services that FLPES provides to FPL's residential, commercial, and governmental customers, FPLES should compensate FPL for the use of its personnel, billing systems, collection systems, postage, paper and any other costs associated with billing the customer. OPC has issued additional discovery on these matters and intends to present additional information to the Commission on the subject.

Q. WHAT IS YOUR NEXT CONCERN REGARDING FPLES AND FPL?

A. There may be other practices between FPL and FPLES for which the Company is not properly compensated. For example, to the extent that FPL service representatives provide referrals or perform similar functions for FPLES, FPL should be compensated for this invaluable service. OPC has issued additional discovery on this matter and intends to present additional information to the Commission on the subject.

Q. ARE YOU ALSO RECOMMENDING AN ADJUSTMENT FOR THE COSTS RECORDED ABOVE THE LINE FOR FPL HISTORICAL MUSEUM, INC.?

A. Yes. I am recommending that the Commission reduce test year expenses by $45,470 in 2010 and $46,764 in 2011 for the contributions made by FPL to the Historical Museum. (Response to OPC Interrogatory 69 and AG Interrogatory 27.)

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According to FPL, the museum maintains records and artifacts concerning the electric industry as well as FPL historical records. (Supplemental Response to OPC Interrogatory 27.) The museum is a not-for-profit affiliate. FPL pays the operating costs of the museum and records them to FERC Account 930. These costs are reflected on the financial statements of the museum as a contribution. (Second Supplemental Response to OPC Interrogatory 69.)

Q. IT APPEARS THAT THIS IS THE SAME AS A CHARITABLE CONTRIBUTION. HOW HAS THE COMMISSION TREATED THESE TYPES OF EXPENSES IN THE PAST?

A. The Commission has consistently not required customers to bear these costs. In fact, in previous rate cases, the Commission has removed charitable contributions from test year expense.

Q. HOW WERE THE COMPANY'S CHARITABLE CONTRIBUTIONS TREATED IN PREVIOUS YEARS?

A. The most recent three rate cases resulted in settlements which did not address charitable contributions. However, in FPL's 1984 rate case, the Commission found:

> Consistent with our decisions in FPL's last two rate cases, we remove from operating expenses $556,000 of charitable contributions in 1984 and $434,000 in 1985. FPL may, of course, continue to make contributions to charities; our decision merely provides that the stockholders, and Federal and State governments make the contributions, not the ratepayers. (FPSC, Docket No. 8304650EI, Order No. 13537, July 24, 1984.)

The orders in the "last two rate cases" cited in the above quotation were issued in 1981 and 1982. In both these proceedings, the Company sought to recover

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charitable contributions from ratepayers. In the first of these cases, the Commission stated in its order:

> The Company has included as an operating expense $386,411 in charitable contributions. In earlier rate cases, we have held that it is within our discretion and authority to allow charitable contributions in reasonable amounts as operating expenses for ratemaking purposes, and the decision to include or exclude them is discretionary with the Commission. However, there are policy considerations which argue both for and against the inclusion of such expenses for ratemaking purposes. In this case, FP&L Witness Tallon asserted that the Company's customers are the beneficiaries of the work that charitable organizations accomplish. However, upon consideration, we disagree that such contributions are "truly contributions from the corporation" rather than from the customers. We are persuaded that such contributions are instead more in the nature of involuntary contributions by ratepayers. As a matter of policy, we do not believe such contributions should be borne by ratepayers.... Accordingly, we have removed from operating expenses the entire amount of contributions to charities projected for the test period. (FPSC, Docket No. 810002-EU (CR), Order No. 10306, September 23, 1981.)

Q. HAS THE COMMISSION'S POLICY CHANGED SINCE FPL'S PRIOR RATE CASES?

A. No. In the recent Florida Public Utilities Company rate case, the Commission reiterated its policy. In fact, in this case, the Commission quoted from one of FPL's earlier rate cases.

> Our policy concerning the recoverability of charitable donations is stated in the following quote:
>
> > In earlier rate cases, we have held that it is within our discretion and authority to allow charitable contributions in reasonable amounts as operating expenses for ratemaking purposes, and the decision to include or exclude them is discretionary with the Commission. However, there are policy considerations which argue both for and against the inclusion of such expenses for ratemaking purposes. In this case, FP&L Witness Tallon asserted that the

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> Company's customers are the beneficiaries of the work that charitable organizations accomplish. However, upon consideration, we disagree that such contributions are "truly contributions from the corporation" rather than from the customers. We are persuaded that such contributions are instead more in the nature of involuntary contributions by ratepayers. As a matter of policy, we do not believe such contributions should be borne by ratepayers. We note our disallowance of such contributions for ratemaking purposes does not have the effect of precluding the Company from continuing to make contributions to charities. It only requires that such contributions be borne by stockholders rather than ratepayers. Accordingly, we have removed from operating expenses the entire amount of contributions to charities projected for the test period. (FPSC, Docket No. 070107-GU, Order No. PSC-07-0671-PAA-GU, p. 11.)

Q. DO YOU BELIEVE THE COMPANY HAS PRESENTED ANY INFORMATION THAT WOULD INDICATE THE CONTRIBUTIONS TO THE HISTORICAL MUSEUM SHOULD BE TREATED DIFFERENTLY THAN IN ACCORDANCE WITH THE COMMISSION'S PAST POLICY?

A. No. Therefore, I recommend that the Commission reduce test year expenses by \$45,470 for 2010 and \$46,764 for 2011.

Q. WOULD YOU DISCUSS YOUR NEXT ADJUSTMENT?

A. Yes. This adjustment concerns the gains on sale of utility assets sold to FPL's nonregulated affiliates. As shown on Exhibit KHD-14, during 2007 and 2008 the Company sold several assets to its affiliates which resulted in a gain on sale. During 2007, the Company sold 15 assets which resulted in a total gain of \$4.6 million . The largest gain resulted from the sale of a combustion turbine rotor to FPL Group, Inc. which resulted in a gain of \$4.5 million. During 2008, the Company sold 14 assets

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which resulted in a gain of $877,706. The largest gain, $872,974, related to a transformer sold to Calhoun Company I, LLC. The total gains for both years amounted to $5.5 million.

Q. WHAT IS THE COMMISSION'S POLICY ON GAINS ON SALE OF UTILITY ASSETS?

A. There have been numerous cases in which the Commission has ruled on the disposition of either a gain or a loss on the sale of utility assets. The Commission has typically included the gain on sale above the line and amortized the gain over five years. The Commission recently addressed this issue in connection with transaction and transition costs concerning Florida City Gas. In its decision, the Commission found:

> We find that the transaction and transition costs do not fit the description of plant costs to be included in Account 114. These costs are more appropriately recorded as a regulatory asset to be amortized over five years. A regulatory asset is a cost that is capitalized and recovered over a future period, rather than charged to expense when incurred. This approach has been used by us for recording of gains and losses for plant sales. Normally, gains are amortized back to customers over an appropriate period as decided by this Commission, usually five years. For instance, Southern States Utilities, Inc. was required to amortize gains on the sale of facilities and land over a period of five years. We found that "[when] a utility sells property that was formerly used and useful or included in uniform rates, the ratepayers should receive the benefit of the gain on sale of such utility property."
>
> Similarly, in an FPL rate proceeding, we stated:
>
> > We have addressed the issue of the actual sale of Utility property in FPL's last full rate case and in a number of other rate cases. In those cases, we determined that gains or losses on disposition of property devoted to, or formerly devoted to, public service should be recognized above the line and that those gains or losses, if prudent, should be

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> amortized over a five-year period. We reaffirm our existing policy on this issue. (FPSC, Docket No. 060657-GU, Order No. PSC-07-0913-PAA-GU.)

Q. WHAT IS YOUR RECOMMENDATION CONCERNING THESE GAINS?

A. I recommend that the Commission pass theses gains onto customers and amortize them over five years as shown on Exhibit KHD-14. This adjustment amounts to $1.1 million each for 2010 and 2011.

Q. WOULD YOU PLEASE DISCUSS YOUR LAST ADJUSTMENT?

A. Yes. My next adjustment relates to power monitoring revenue. The Company has provided conflicting data on the amount of this revenue included in test year results. Power monitoring revenue results from a service provided by FPL to commercial and industrial customers that allows them to monitor their power and record their voltage conditions. In response to one of OPC's discovery questions, the Company indicated that this revenue was $654,000 in 2010 and $667,000 in 2011. In response to another discovery question, the Company indicated that the revenue was $890,366 and $934,885 for 2010 and 2011, respectively. I am recommending an adjustment of the difference between these two amounts to ensure that the test year reflects the higher revenue. As shown on Exhibit KHD-15, my adjustments for the test years are $236,336 for 2010 and $267,885 for 2011.

V. FPL-New England Division (FPL-NED)

Q. WOULD YOU PLEASE DESCRIBE FPL-NED?

A. FPL-NED is a separate division of FPL created to hold the expenses and assets of the Seabrook Substation located in New Hampshire. These assets were originally owned by FPL Energy Seabrook, LLC and were purchased by FPL on May 31, 2004. (Response to OPC Interrogatory 73.)

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When NextEra purchased Seabrook Generating Station, the rules and procedures applicable in New England regarding cost recovery of transmission facilities and related expenses did not allow entities, other than Transmission Providers, to receive cost recovery associated with such transmission facilities. NextEra is registered as a generator, and therefore was not able to receive payment for use of its facilities. Therefore, ownership of the Seabrook Transmission Substation, among other things, was transferred to FPL-NED, a division of FPL, which was recognized by NEPOOL, ISO-NE and the FERC as a Transmission Provider in New England. (Ibid.) While FPL claims that all costs associated with operating FPL-NED are properly removed from the test year, the value of being part of FPL is considerable.

Q. HAS THE COMPANY RECENTLY BEEN BEFORE THE COMMISSION REGARDING FPL-NED?

A. Yes, on October 1, 2008, FPL filed an application requesting authority to issue and sell securities. FPL's application also included a request for authority to finance construction expenditures of approximately $30 million for the planned Seabrook Substation Reliability Improvement Project (Seabrook Substation) in the State of New Hampshire on behalf of FPL-NED. FPL-NED was created as a separate division of FPL for the purpose of keeping the Seabrook Substation independent from FPL's utility operations in Florida. The Commission voted to approve FPL's application, with the caveat that the consideration of the portion of FPL's application related to FPL-NED be deferred.

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Subsequent to the Commission's vote, the Company withdrew that portion of its application and filed a Petition for Approval of Financing for the Seabrook Transmission Substation Upgrade with the New Hampshire Public Utility Commission to seek regulatory approval for the financing of the improvements to the Seabrook Substation.

Q. DID THE COMMISSIONERS RAISE CONCERNS ABOUT THE FINANCING AND OWNERSHIP ARRANGEMENTS OF FPL-NED AT THE NOVEMBER 13, 2008 AGENDA CONFERENCE?

A. Yes, they did. In particular Commissioner Skop expressed concern about a regulated Florida utility financing the construction of Seabrook assets which are located in New Hampshire and do not benefit Florida's customers. Specifically, Commissioner Skop commented:

> Also, I recognize the absolute right of FPL to withdraw the petition and do appreciate the nonrecourse finance via the intercompany loan. I think that the concern that existed that was objected to last time by myself, OPC, Mr. Wright, was the funding of the out-of-state asset that had no nexus to Florida operations. And I think that, you know, essentially by going to the New Hampshire Commission certainly that is another way of accomplishing the same thing via a different forum. But I would like to recognize FPL's good faith effort to address the concerns that were previously raised to the extent that, you know, I see that the nonrecourse finance and intercompany loan protects Florida ratepayers, but the remaining issue which was the same one as before concerns the precedent -- the fact that there is no benefit to FPL ratepayers, that FPL is still incurring debt on its balance sheet on behalf of out-of-state operations that have no nexus to the state of Florida. I think staff would back me on both of those points if I were to ask them directly. But the commitment by FPL to look at a better entity to move this orphan asset into, I think, solves a lot of the problems. Because particularly in light of a pending rate case, staff has to spend their time to account for an accounting transaction to make sure all the numbers are worked out and the

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> entity adjustments are properly done, and that takes staff time away from doing the other things associated with the rate case.
>
> So I do think that there is some incremental opportunity costs, but I recognize that we need to move forward and address this issue and help, you know, find a better home for the asset. So if FPL will make a good faith commitment towards doing, that certainly will go a long way in resolving my concerns. The only concern I would have in passing that this not be used as precedent on a forward-going basis, but I think that the Commission action and the objections, I think, pretty much speak for themselves on that one. (FPSC, Agenda Conference, November 13, 2008, in Docket No. 080621-EI.)

Q. DID FPL AND FPL GROUP CAPITAL SUBSEQUENTLY ENTER INTO AN AGREEMENT FOR THE PURPOSE OF FINANCING THE FPL-NED ASSETS?

A. Yes, they did. On December 12, 2008, an agreement was executed whereby FPL Group Capital extended a line of credit to FPL in the amount of $36.0 million for use in connection with the Seabrook Substation. The contract was signed by Ms. Kathy A. Beilhart on behalf of FPL and by Ms. Kathy A. Beilhart on behalf of FPL Group Capital, Inc. Again, as with other FPL affiliate arrangements, this is not an arms-length agreement.

Q. DID OPC INQUIRE ABOUT FPL'S PLANS TO MOVE THESE ASSETS OUT OF FPL?

A. Yes, it did. In Interrogatory 72, OPC asked FPL about its efforts to move these assets into a different company. The Company responded that the FPL-NED assets will be transferred to a new entity that will be formed under FPL Group Capital. Once the new entity is formed, the Company will transfer the assets

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subject to a condition precedent for the regulatory approvals. (Response to OPC Interrogatory 72.)

Q. DO YOU HAVE ANY RECOMMENDATIONS FOR SAFEGUARDING RATEPAYERS FROM ANY RISKS RELATED TO THE TRANSFER OF FPL-NED ASSETS TO A SEPARATE COMPANY UNDER FPL GROUP CAPITAL?

A. Yes. FPL-NED and the subsequent owner of these assets have benefited significantly from their ownership by FPL. The Commission should ensure that at the time of the transfer to this new company, the assets are transferred at the higher of cost or market as required by its affiliate transaction rules. In addition, the Commission should order that an independent appraisal be prepared as to the fair market value of these assets, as required by its rules on affiliate transactions. Specifically, Commission Rule 25-6.1351(d) states that "An independent appraiser must verify the market value of a transferred asset with a net book value greater than $1,000,000. If a utility charges less than market price, the utility must notify the Division of Economic Regulation in writing within 30 days of the transfer." Any gain should be passed through to ratepayers.

VI. Summary of Recommended Adjustments

Q. WOULD YOU PLEASE SUMMARIZE YOUR RECOMMENDED ADJUSTMENTS?

A. Yes. My adjustments are depicted on Exhibit KHD-16. As shown, the total adjustments that I recommend amount to **Begin Confidential** [redacted] **End Confidential** million for the 2010 test year and **Begin Confidential** [redacted] **End Confidential** million to the 2011

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test year.

Q. DOES THIS COMPLETE YOUR TESTIMONY PREFILED ON JULY 16, 2009?

A. Yes, it does.

BY MR. BECK:

Q. And, Ms. Dismukes, you have also 16 exhibits that have been marked KHD-1 through KHD-16, is that correct?

A. Yes.

Q. And one of those, Page 1 of 2 of Exhibit KHD-11 -- well, let me address this to the Commissioners.

MR. BECK: This was originally a confidential document, but I have spoken with Florida Power and Light, and they have agreed that it not be confidential. So I thought I would pass out that and ask that it be marked as Exhibit 428.

COMMISSIONER EDGAR: All right. We will do so. Thank you.

A title, Mr. Beck.

MR. BECK: Revised Page 1 of 2, Exhibit KHD-11.

COMMISSIONER EDGAR: Revised 1 of 2, Exhibit KHD-11.

MR. BECK: And, again, the only difference is the word confidential has been taken off the exhibit.

(Exhibit Number 428 marked for identification.)

BY MR. BECK:

Q. Ms. Dismukes, your 16 exhibits, KHD-1 through 16, have been marked previously as Exhibits 191 through 206 for identification. Let me just say that for the record.

Finally, you have one change to one of your confidential exhibits, do you not?

A. Yes.

Q. KHD-9?

A. Correct.

MR. BECK: And this is my last one, Madam Chairman, and this is -- I would ask that 429 be -- it is a confidential exhibit, and it is a revised KHD-9. And I would ask that be marked as Exhibit 429 for identification.

COMMISSIONER EDGAR: Okay. We will mark as -- thank you -- Exhibit 429, Revised KHD-9. And for the record, this is confidential in the red folders.

(Confidential Exhibit 429 marked for identification.)

BY MR. BECK:

Q. Ms. Dismukes, have you prepared a summary of your testimony?

A. Yes, I have.

Q. Would you please provide that?

A. Good afternoon, Commissioners. The purpose of my testimony is to address the relationships between FPL and its affiliates. FPL has over 500 affiliates that are owned by its parent company, FPL Group. The transactions between FPL Group, FPL, and its affiliates are significant and numerous. My testimony on the subject of affiliate transactions covers five areas.

First, I make recommendations concerning the cost allocated from FPL to its affiliates. In this area I recommend that the Commission make three adjustments. First, the Commission should correct the company's Massachusetts formula used to allocate general overhead costs to its affiliates. For the projected test year 2011, the company failed to adequately project the underlying costs used to make up the components of the Massachusetts allocation factor. I recommend that the Commission correct this error and reduce test year expenses by 1.4 million in 2011 -- in 2011.

Second, I recommend that the Commission adjust the specific drivers used to allocate shared costs. For the majority of these drivers the company used allocation factors from 2008, which is not reflective of a 2010 and 2011 projected test year. This recommendation reduces test year expenses by 1.6 million in 2010 and 2.9 million in 2011.

My third adjustment relates to the

distribution of salaries from FPL Group's executives to its affiliates. I recommend that these costs be distributed 50 percent to FPL and 50 percent to the affiliates to recognize the significant benefits and value FPL's affiliates derive from their association from FPL and FPL Group's executives. This recommendation reduces test year expenses by $7.9 million.

Second, with respect to charges from FiberNet (phonetic) to FPL, I recommend that the Commission use FPL's rate of return to determine the charges to FPL. This recommendation reduces projected test year expenses by 1.8 million.

My third recommendation relates to FPL's affiliate, FPL Historical Museum. FPL pays for the operating costs of the museum and includes these costs above the line for ratemaking purposes. I recommend that the Commission reduce test year expenses for these costs which are analogous to a contribution.

The next area I address concerns FPL affiliate FPL Energy Services. In 2006, FPL sold its gas procurement business to FPL Energy Services. Prior to 2006, net margins from the gas business were allocated between FPL and FPL Energy Services based upon whether or not the natural gas customers were in the territory that FPL served or outside of FPL's service territory.

Compared to the profit margin earned on these contracts, the price at which FPL sold this business appears low and does not adequately compensate FPL and its ratepayers for the value of the business. In addition, the company failed to demonstrate that the price for which it sold this business was at the higher cost to market.

Clearly, this is not an arm's-length transaction. In the absence of independent unaffiliated analysis of the price of this business, I recommend that the Commission treat these margins as they did prior to the sale. The amount of my adjustment on this particular one is confidential.

Finally, I examined the relationship between FPL and FPL's New England Division. FPL NED is a division of FPL created to hold the transmission substation assets of Seabrook, which is located in New Hampshire. As the Commission is aware, late last year it expressed concern about FPL owning assets in the state of New Hampshire. I recommend that the Commission monitor FPL's efforts to spin-off this division into a separate subsidiary. In addition, the Commission should also examine the relationship at the time of the sale and require that the assets be sold at the higher cost of market.

Thank you.

MR. BECK: Madam Chairman, we tender Ms. Dismukes for cross-examination.

COMMISSIONER EDGAR: Thank you. Are there questions for this witness on cross from any of the intervenors? I am seeing none.

Mr. Moyle.

MR. MOYLE: Just a couple of brief ones, if I can.

CROSS EXAMINATION

BY MR. MOYLE:

Q. Are you familiar with NARUC cost allocation and affiliate transaction guidelines?

A. Yes.

Q. And has that governed your recommendations in this case in part?

A. I think the cost allocation principles I follow. I think that in terms of how the costs are allocated are a matter of judgment and experience and what is happening with the particular utility that you are examining.

Q. I will represent to you that I understand that the NARUC says that there are a couple of reasons why you need to look closely at affiliate transactions, one being there are no market forces coming to bear, is that right?

A. That is correct.

Q. And the other is that there is a temptation to book things on the regulated side of the house as compared to the unregulated side?

MR. BUTLER: I am going to object to this line of questioning unless Mr. Moyle can point to some divergence of interest between his client and the Office of Public Counsel. I think this is clearly friendly cross just aimed at getting Ms. Dismukes to elaborate on points that he would like to make from their sort of joint interest.

COMMISSIONER EDGAR: Mr. Moyle.

MR. MOYLE: Well, I mean, I don't want to get into the big friendly cross discussion, but, you know, it's a disputed issue in the case with respect to allocation, as I understand it. Essentially, what I wanted to ask her is a policy question about what incentive does a utility have not to put things on the regulated side of the house? Is there any penalty, any negative consequence other than it being disallowed? That is all I wanted to ask her.

COMMISSIONER EDGAR: Mr. Butler.

MR. BUTLER: That is clearly already covered in her testimony. And, again, the fact that we have a dispute with the Office of Public Counsel doesn't establish a dispute between Mr. Moyle's client and Public Counsel. I don't think there is any difference of interest on their part on this point; and, therefore, no reason for the cross.

COMMISSIONER EDGAR: Mr. Moyle, can you speak for my benefit to the point Mr. Butler has raised about adversarial versus almost exact positions?

MR. MOYLE: I can. You know, I can. I mean, I don't think we have engaged in abuse of friendly cross over the years. There have been degrees of magnitude of it. I think that we have tried to be pretty constrained in it. I think we have thus far done a good job on it.

I guess in my mind the notion that, you know, my client has intervened, and, you know, merely because there is no adverse position I am precluded from asking any question of the witness I think is an extreme interpretation of the friendly cross. And I think the point I am simply trying to raise with respect to policy considerations is, you know, consistent with some policy discussions we have had on a number of issues, GBRA and others.

COMMISSIONER EDGAR: I am going to do this. At this time I am going to overrule the objection. I am going to allow the question, but I am also going to take you at your earlier word of brief.

BY MR. MOYLE:

Q. Ms. Dismukes, is there any disincentive currently as it relates to Florida Power and Light, the regulated utility company, to the extent that they improperly allocated cost from a nonregulated entity to the regulated entity and were seeking ratepayers to pay for that? Is there any disincentive other than the fact that those costs may not be recovered?

A. No.

MR. MOYLE: That's all I have.

COMMISSIONER EDGAR: Thank you. Any other intervenors? No.

Mr. Butler, you're up.

MR. BUTLER: Thank you, Madam Chairman.

CROSS EXAMINATION

BY MR. BUTLER:

Q. Good afternoon, Ms. Dismukes.

A. Good afternoon.

Q. Your background is in consulting, correct?

A. I wouldn't say my background is in consulting. I would say that my background is in the field of public utility regulation. I have a degree in finance and I have an MBA.

Q. Have you ever worked for a utility?
A. Yes.
Q. What utility was that?
A. It was in connection with a consulting project. It is Evangeline Gas Company in Louisiana.
Q. I'm sorry, have you ever been employed by -- probably imprecise with my terminology, have you ever been employed by a utility as an employee?
A. As an employee?
Q. Yes.
A. No.
Q. Okay. Are you an accountant?
A. No, I'm not.
Q. Do you have an accounting degree?
A. No, I do not.
Q. Okay. Is your firm listed as a consultant on the website of the National Association of State Utility Consumer Advocates?
A. Yes, it is.
Q. And that association's mission, would you agree, is to represent the interests of utility consumers before state and federal regulators and in the courts?
A. Could you repeat that?
Q. That association's mission is to represent the

interests of utility consumers before state and federal regulators and in the courts?

A. Yes.

Q. In your testimony, Page 3, Lines 4 to 7, you have the statement that there is an incentive to misallocate or shift costs to regulated companies so that the nonregulated companies can reap the benefits.

Now, were you involved in -- did you review the written discovery served on FPL in this proceeding concerning affiliate transactions?

A. Yes, I was.

Q. Okay. Did you find any evidence that FPL deliberately misallocated costs so that its nonregulated affiliates would reap benefits?

A. I don't know that I could say that they intentionally did it. I can say that there were some instances where they were careless in terms of the data that they used. The methodology that they employed failed to adequately take into consideration that these are projected test years, 2010 and 2011. They tended to use outdated allocation factors.

So from that perspective, if you have a growing non-regulated business, you are going to tend to underallocate costs during the test year to the unregulated operations, and then those dollars are going to be included in the test year.

Q. Would you agree, Ms. Dismukes, that FPL's affiliate transactions are subject to review and audit by this Commission?

A. I think they are subject to review in a rate case like this.

Q. Is it your understanding that also FPL's affiliate transactions would be subject to review and scrutiny by the Federal Energy Regulatory Commission?

A. I'm not aware of the degree to which the Federal Energy Regulatory Commission reviews the affiliate transactions of FPL.

Q. Would you agree that FPL and its parent, FPL Group, make filings with the Securities Exchange Commission?

A. Yes, they do.

Q. Would those filings be subject to review by the SEC?

A. Well, I believe those filings are subject to review by the SEC, but they do not look at the affiliate transactions at the level of detail that we go through in a rate case like this, or the level of detail that I looked at in this rate case.

Q. Do you know whether the SEC staff has the ability to audit financial statements and other data that is made by publicly traded companies such as FPL?

A. No, I do not.

Q. Do you know whether FPL and FPL's parent, FPL Group, their books are audited by external auditors that are required to opine as to the fairness of the statement of the finances for those entities?

A. Those entities being FPL and FPL Group?

Q. And in the case of FPL Group, the various companies that are underneath it.

A. There are certain requirements in terms of what an auditor looks at in connection with the development of the financial statements. I do not believe that in that respect that they go to the level of detail to try and ascertain whether or not there is any cross-subsidization between FPL's regulated operations and FPL's nonregulated operations. Nor are they going to be looking at the Commission's affiliate transaction rules in connection with their audit for the company's financial statements.

Q. Did you review any documentation with respect to FPL on the scope of the audit conducted by FPL's external auditors?

A. No, I did not.

Q. Have you ever been on the audit staff of any major accounting firm?

A. No, I have not, but I have looked at auditors' workpapers.

Q. Have you found anything in the results of your review of FPL's data here that suggests that any of the entities that I have identified, the Florida Public Service Commission, the Federal Energy Regulatory Commission, FERC, SEC, FPL, and FPL Group's external auditors have criticized FPL's transactions with its affiliates?

A. No, I have not seen anything like that, but it is rare if you will ever see anything like that in connection with a utility and their affiliates.

Q. I would like you to turn, Ms. Dismukes, to Page 25 of your testimony. At the bottom of the page, starting on Line 18 you talk about an audit that resulted in some comments. I believe this is in the confidential portion. So I will be careful how I word this, but where on -- excuse me -- there was assistance from one FPL affiliate to FPL with respect to certain employees of that -- I'm sorry, I will have to start over again to try and make this generic.

That there was assistance by FPL to one of FPL's *affiliates, in particular certain employees of* FPL's assisting that affiliate, is that correct?

A. That is correct.

Q. Did your review indicate whether the opposite also occurred, whether FPL received services from employees of that same affiliate?

A. I am aware of the fact that FPL does receive services from its affiliates through the direct charge process. Whether or not they receive services from -- this is NextEra and, in particular -- a particular nuclear plant, I'm not aware of that. This citation in my testimony was from an audit that was conducted of the company's affiliate transactions. It was an internal audit.

Q. So you don't know one way or the other whether NextEra employees have provided similar benefits back to FPL by providing services for FPL facilities?

A. That is correct.

Q. Would you agree that there is a benefit to having a pool of employees who can provide services both to other affiliates of FPL and then benefit from those affiliates' employees providing services back to FPL as opposed to FPL having to have a workforce that is sufficient for all of its needs and fully paid for by FPL's ratepayers?

A. Well, I think your question assumes that the size of FPL would not change to the extent that it no longer had its affiliates. The affiliates that FPL has are very sizable. They represent more than 35 percent of the total FPL Group operations. They are growing, they are diverse, they are not regulated, they are complex. I don't believe that you have presented any information in this proceeding that shows that there is any benefit to FPL associated with being part of the FPL Group and their unregulated affiliates.

Q. Are you aware of the testimony of Mr. Stall in this proceeding? Were you here when he testified?

A. I'm sorry, Mr. Who?

Q. Mr. Stall, Art Stall, the president of the nuclear operations.

A. No, I missed his testimony.

Q. So you are not aware of Mr. Stall's testimony of the benefits of owning and operating a large fleet of nuclear plants that include both ones owned by FPL and ones owned by its affiliate?

A. I did not hear his testimony.

Q. Okay. Would you turn to Page 33 of your testimony. You are proposing a 50/50 allocation between FPL and NextEra for certain FPL Group executive costs, is that correct?

A. That's correct.

Q. Okay. Am I correct that this recommendation is based on the rationale that FPL used to allocate its nuclear fleet costs?

A. I wouldn't say that it is based upon that. I used the methodology, or I used the company's rationale for purposes of how and the comments that it makes in connection with the allocation of its nuclear fleet costs, but that is not the sole reason, or that is not the reason that I am making this allocation recommendation.

Q. Your testimony on Page 34 discusses a change from a megawatt basis to a unit basis for allocating costs with respect to the nuclear service fee, correct?

A. Yes.

Q. Okay.

A. And my testimony says the company made a similar determination in a change to its allocation factor.

Q. Are you not saying there that you are analogizing the appropriateness of your 50/50 split to the logic of the switch from the megawatt to a per unit basis?

A. Yes, I think that is exactly what I am doing.

Q. Would you agree that with respect to nuclear plants, that method is justified by the fact that the units involved, be they larger megawatts or smaller megawatt capacity, are all nuclear plants and have, therefore, somewhat similar operational requirements?

A. I believe that would be true, yes.

Q. Okay. Is it your understanding that the operations of FPL's power generation division and of its -- NextEra non-nuclear operations involve the same technologies?

A. I'm sorry, could you repeat that?

Q. Is it your understanding that the operations of FPL's power generation division and FPL -- I'm sorry, NextEra's non-nuclear operations involve the same basic technologies, or do you know?

A. No, they don't.

Q. Okay.

A. They have some overlap, but they are not identical.

Q. In one instance you have, for example, with NextEra some projects in the wind/solar areas that are not necessarily comparable to what you see at the utility, correct?

A. Not in the same magnitude.

Q. Okay. Given those differences and the nature of the operation, would you agree that the analogy to the basis for allocating FPL's nuclear units where the same technological is applied in both instances is not direct?

A. I am sorry, I didn't understand your question.

MR. MCGLOTHLIN: Did you say not direct or correct?

MR. BUTLER: Not direct.

BY MR. BUTLER:

Q. Do you want me to start over again with the question?

A. Yes.

Q. Okay. If the technologies are different between FPL's power generation division and the nonnuclear operations at NextEra, would you agree that analogizing the allocation methodology to how FPL has handled the nuclear division where you have the same types of power plants on both the regulated and the unregulated side of the business would not be a direct analogy?

A. Would not be a direct analogy in connection with FPL's makeup of their power plants versus the entire makeup of NextEra's power plants?

Q. That's right.

A. I wasn't drawing that analogy in that connection. I think what is important to realize is the significant benefits that NextEra gains from being associated with FPL and FPL Group.

Q. Okay. Do you have -- other than analogizing to the FPL basis for allocating costs for its nuclear service fee, do you have any other specific documentation to support your 50/50 allocation proposal?

A. Yes, I do. Recently, City Group forecasted the stock price of FPL to be $58 a share for 2010. And they -- or FPL Group. And they associated $29 of that value was attributable to FPL and 28.57 was attributable to NextEra, which approximates a 50/50 split in terms of what drives the value of FPL's common stock.

Q. I would like for you to turn to Page 22 of your testimony, please. Near the bottom of the page you cite some statistics or some percentages for the percentage of -- excuse me, for the percentage of costs that were allocated to NextEra, and it is confidential information, but there are three percentages shown there on Line 21, do you see that?

A. Yes.

Q. Okay. In deriving those percentages, do you know do those include the assets or the asset value associated with NextEra's three nuclear plants?

A. You probably didn't have time to check my errata sheet, but I did correct these on the errata sheet. They initially did not.

Q. Okay, thank you. I would like for you to turn to something you had mentioned a moment ago, Ms. Dismukes. If NextEra's business were to -- its earnings were to go down, and FPL's business remain steady, would, in your mind, that be a basis for changing the allocation between FPL Group -- I'm sorry, between NextEra and FPL?

A. No, not necessarily.

Q. Well, if you are using the relative prospects of the businesses or earnings of the business to justify the 50/50 allocation, wouldn't it also justify changing that allocation in the event of a change in the relative fortunes of the businesses?

A. You asked me whether or not I had any other information that would support a 50/50 allocation, and I provided you with that additional information. My testimony is based on the fact that there are substantial benefits provided to NextEra of being associated with FPL Group. NextEra is a large diverse organization. It has operations all over the United States. It receives substantial benefits of being associated with FPL, sharing FPL's employees, sharing the administrators of FPL.

Q. When did you first learn of the CitiBank information that you had referred to in your response a moment ago?

A. That was provided as a late-filed deposition exhibit to Ms. Ousdahl's testimony.

MR. BUTLER: I am going to hand out now a confidential document, Madam Chairman, that I would like to examine Ms. Dismukes about.

COMMISSIONER EDGAR: Is this something we need to mark or not?

MR. BUTLER: I think we do, Madam Chairman. This is -- I was checking to confirm whether it was part of the confidential Composite 36, and I don't believe that it is.

COMMISSIONER EDGAR: Okay. With that understanding, thank you, we will mark it as Exhibit Number 430. And will you please give me a title, Mr. Butler.

MR. BUTLER: Sales of Gas Contracts.

COMMISSIONER EDGAR: I'm sorry, one more time.

MR. BUTLER: Sales of Gas Contracts.

COMMISSIONER EDGAR: Sales of Gas Contracts. Thank you.

(Confidential Exhibit Number 430 marked for identification.)

MS. HELTON: Madam Chairman.

COMMISSIONER EDGAR: Ms. Helton.

MS. HELTON: Can I just confirm with Mr.

Butler, since this is copied on yellow paper, that FPL believes that the entire document and all the words thereon are confidential?

COMMISSIONER EDGAR: Mr. Butler.

MR. BUTLER: That is the basis that the -- or the manner in which the confidentiality request was made, yes.

COMMISSIONER EDGAR: Okay. Go right ahead.

MR. BUTLER: Thank you.

BY MR. BUTLER:

Q. Ms. Dismukes, have you reviewed the documents -- I'm sorry, did we get a number? Is that 430?

COMMISSIONER EDGAR: Yes, sir.

BY MR. BUTLER:

Q. Have you reviewed the agreement that has been distributed as Confidential Exhibit 430?

A. Yes.

Q. I don't have many questions for you on this. What I wanted you to confirm in particular, if you would look at the second page of it, this agreement is executed on behalf of both Florida Power and Light Company and FPL Energy Services, Inc., correct?

A. Yes.

Q. Okay. And would you confirm it is executed by the vice-president, controller, and chief accounting officer for FPL, correct?

A. The vice-president, controller, and I don't know what the last --

Q. I think that's CAO.

A. I don't know what that stands for.

Q. Okay. And then it is executed by a different individual who is the vice-president of FPL Energy Services, Inc., correct?

A. Yes.

Q. Would you turn to Page 31 of your testimony. You recommend, I believe, Ms. Dismukes, don't you, that FPL's -- the affiliate management drivers be updated based on a trending of the growth from either 2007 to 2008 or 2008 to 2009, is that correct?

A. You are talking about the drivers as opposed to the Massachusetts formula?

Q. Yes.

A. Yes.

Q. Have you reviewed Ms. Ousdahl's rebuttal testimony?

A. Yes, I have. I'm sorry, yes, I have.

Q. Concerning the updated drivers that are reflected on KO-14?

A. Yes, I have.

Q. Okay. Would you agree that updating the drivers as shown in Ms. Ousdahl's KO-14 brings the data current and avoids the need for the trending that you are proposing?

A. No, I would not. Ms. Ousdahl's update updates the allocation factors to 2009. The company is using a 2010 and 2011 projected test year, and my factors bring them up to the 2010 and 2011 projected test year level.

Q. What evidence do you have that the trends that would exist historically in the growth rates for NextEra would continue into the test years?

A. The evidence that I have is what has happened in the past in addition to the fact that NextEra is growing. They are planning on adding 2,000 megawatts of wind power in the next two years. They are also uprating one of the nuclear power plants. I believe that there is a strong indication that they are going to continue to grow.

Q. Have you attempted to quantify any of those differences that you just mentioned in terms of how they would affect the -- how they would affect the drivers?

A. Well, in terms of the allocation factors that are a direct function of the megawatt capacity of the different facilities, those are directly input into the allocation factors.

In terms of the other drivers that are -- these other drivers are like head count. So, clearly, if you are expanding your megawatt capacity you are going to need more people to run the plant. They are things like computers, they are things like office space, those are the drivers that we are talking about. So with the expansion of NextEra, I would assume that those types of activities would also need to be expanded.

Q. But you have assumed, you don't have any basis for having quantified the --

A. I have not quantified it, but I think it is logical, and it is better than doing nothing.

Q. Well, would you agree that FPL has, in fact, not done nothing, but, in fact, has adjusted based on the most current information available?

A. I have not seen the underlying data that was utilized by Ms. Ousdahl in her rebuttal testimony. She did say that she updated the allocation factors to bring them up to a 2009 level. My understanding of the way the company develops their allocation factors is they basically lag a year or six months or so. So you are still talking about data with a 2009 factor that is based upon most likely 2008 information.

Q. Would you turn to Page 47 of your testimony, which covers the FPL NED? Are you aware that FPL NED activity is isolated in separate plant accounts, they are given a separate jurisdictional separation factor of zero?

A. FPL NED is also allocated cost, just like the company allocates costs to its affiliates. Typically, when you are talking about -- also when you are talking about the jurisdictional allocation study when a -- my experience has been is when you have items that belong in the FERC jurisdiction, that those are separated with a jurisdictional separation study and they are allocated. In this particular instance the company has actually allocated some of those costs under its normal Massachusetts formula allocations, and then it has also used a direct assignment type of methodology to capture some of those costs.

Q. I don't believe you have answered my question, though. Having had the costs allocated to FPL NED, is there a jurisdictional separation factor of zero applied to all of FPL NED's costs for the purpose of avoiding impact on the retail rate calculation?

A. I am aware of the company's testimony in connection with how they say they are treating FPL NED, and you are correct in the sense that there is a zero jurisdictional allocation factor for purposes of separation. But, nevertheless, you are also allocating costs to this division just like you allocate costs to your affiliates.

Q. And to the extent that the costs are allocated there, and it has a zero separation factor, that would mean that retail customers would not be bearing any portion of those allocated costs, correct?

A. They would not be bearing any of the portion of the allocated costs to the extent that it was done correctly, yes.

Q. Does the Florida Public Service Commission exercise any regulatory jurisdiction over operation of the FPL NED assets, if you know?

A. I don't know that they have any regulatory jurisdiction over the operation of the assets. They do have -- or the company must believe that the Commission has jurisdiction over some aspect of FPL NED, because you came before the Commission when you were seeking to seek authority to issue securities or raise funds to have improvements associated with the facilities.

Q. Are you aware that FPL withdrew that portion of its securities application request so that there was no funding for FPL NED operations in it?

A. Yes, I am aware of that. After the Commission expressed some serious concerns about the fact that you would be incurring debt that would be on the regulated books of the utility, the company agreed to seek an alternative -- look for an alternative vehicle to get financing for that, and I believe they have gone through FPL Capital Group with a line of credit.

Q. Operationally, Ms. Dismukes, do you know where the FPL NED assets are located?

A. New Hampshire.

Q. Does the Florida PSC regulate the operations of those facilities in any respect in terms of their operation, the safety, reliability, et cetera?

A. No.

MR. BUTLER: Madam Chairman, one moment. Let me confer on remaining questions. FPL has no further questions of this witness. Thank you, Ms. Dismukes.

COMMISSIONER EDGAR: Are there questions from staff?

MS. BROWN: Just a very few, Madam Chairman.

COMMISSIONER EDGAR: Okay. Then let's go ahead.

CROSS EXAMINATION

BY MS. BROWN:

Q. Good afternoon, Ms. Dismukes. I am Martha Brown with Commission staff.

A. Good afternoon.

Q. You spoke briefly with Mr. Butler about FPL's sale of FPL's gas business to its affiliate, FPL ES, correct?

A. Yes.

Q. And your discussion of that transaction begins on Page 38 of your testimony. If you would, take just a minute to describe the nature of FPL's natural gas business as you understand it, how it functions, and how the revenues were accounted prior to the sale?

A. In 2006, the decision was made to sell the natural gas procurement business from FPL and give those contracts or sell those contracts to FPL ES, which is one of its unregulated affiliates. Prior to the sale, the margins, the net margins earned on those gas contracts were split between FPL and FPL ES based upon the -- actually, based upon therm sales between the in-territory customers and the out-of-territory customers.

Prior to the sale, roughly 70 percent of the therms or customers associated with the in-territory piece of this natural gas business was FPL's -- was from FPL customers. In 2006, when they decided to sell off the business, or sell off the natural gas contracts that were FPL's in-territory customer contracts, they sold it to FPL ES. They did an -- I would like to call it an in-house evaluation of the value of those contracts. My examination of the information indicates that the valuation of the assets, i.e., the contracts that were sold, was done by the entity that was purchasing the contracts. So the valuation was done by FPL ES. There was no independent unaffiliated company that came in and valued whether or not those -- what the value of those contracts should be.

In addition, when they valued those contracts, they assumed that as of January 1, if the contract was going to be ending in February, they assumed that they would never -- that contract would never be renewed. I would say that roughly probably 95 percent of the contracts -- and there were like 1,000 contracts, okay -- had an evergreen provision in the contract. So when they valued the sale of these natural gas contracts and sold them to FPL ES, they completely ignored the fact that the contracts would most likely be renewed. And not only did they ignore that fact, but they didn't even look beyond a one-year period.

Q. Could you just more generally describe the nature of the transactions that the contracts represented? I mean, who were the parties, what was the purpose of them, generally, as far as you know?

A. FPL was procuring gas on behalf of its wholesale or large customers. That's what they were doing, and they were making a profit on that. And prior to 2003, they were part of the sales business. So they were going out there and actually marketing the business and getting the customers. It is my understanding that after 2003, FPL ES took over that aspect of it after FPL had gotten all of its customers to be part of this group, and then at that point FPL, and FPL still does, procure the natural gas business. I mean, procures natural gas for the customers that are now being -- now under FPL ES. In addition, I believe that Ms. Ousdahl indicated in her deposition -- she did indicate that they also do credit checks on these customers.

Q. Are you aware of any other Florida investor-owned electric utilities that have natural gas marketing businesses accounted for on the electric utility's books?

A. No.

Q. Ms. Dismukes, I am going to pass out a copy of Commission Rule 25-7.072, entitled Code of Conduct, which is part of the Commission's rules governing Florida's natural gas utilities. Do you have that in front of you?

A. Yes, I do.

Q. As you can see there, Subsection 1 of that rule defines marketing affiliate, and Subsection 2 sets forth the obligation of the utility to apply tariff provisions to an affiliate in the same manner as nonaffiliated marketers, brokers, or agents. Do you see that?

A. Yes.

Q. Now, Subsection 2 has some subparts to it, four of which I would like for you to read, if you would. Subsection 2(a) is first followed by Number 4, and 5(c), and 5(g). You will find them highlighted in yellow there for your convenience.

MR. BUTLER: Madam Chairman.

COMMISSIONER EDGAR: Mr. Butler.

MR. BUTLER: I would like to inquire as to staff's intended use and the relevance of this rule provision. It is from Chapter 25-7. It appears to be related to tariff requirements for gas utilities, and I'm not sure of its role in this electric utility rate proceeding.

MS. BROWN: Madam Chairman, this is the gas utility code of conduct for marketers. And we believe it is relevant to Issue 109, affiliate transactions in this case. As I know you are aware, the evidentiary standard in administrative proceedings under 120.569 is broad, and it provides for any -- the admission of any evidence that a reasonable person would rely upon in the normal course of his business, and I think this rule is indicative of that.

COMMISSIONER EDGAR: Mr. Butler.

MR. BUTLER: My question really goes to, you know, the sense in which staff believes this to be relevant. Are they looking to use it by analogy to what would apply to a gas utility? Are they alleging that either FPL or FPL ES is a gas utility regulated by the section? It is not clear to me how this plays into the electric utility rate case proceeding.

COMMISSIONER EDGAR: Ms. Brown.

MS. BROWN: Perhaps if we finish the question and the answer that relevance will become clear.

COMMISSIONER EDGAR: Let's see where it takes us.

BY MS. BROWN:

Q. Would you like me to repeat that, Ms. Dismukes?

A. Yes.

Q. Okay. If you would read Subsection 2(a) followed by Number 4, and 5(c), and 5(g).

A. Will not, through a tariff provision or otherwise give its marketing affiliate or its marketing affiliate's customers preference over nonaffiliated marketers or their customers in matters relating to: 4, purchasing gas or capacity; or (c), will charge the marketing affiliate the fully allocated cost bringing general and administrative and support services provided to the marketing affiliate; (g), will maintain its books and records separately from its marketing affiliate; and.

Q. Ms. Dismukes, are you aware of any Commission rule that imposes the same code of conduct on an electric utility marketing natural gas in the state?

A. A rule of the Commission?

Q. Yes.

A. No, I'm not.

Q. Do you think there should be one?

A. Yes.

MS. BROWN: We have no further questions. I would actually like to mark that.

COMMISSIONER EDGAR: Okay. Ms. Brown, we are at 431.

MS. BROWN: All right.

MR. BUTLER: Do we need to have a Commission rule as an exhibit?

COMMISSIONER EDGAR: I don't think we need to, but recognizing that it is short and it has been discussed we will go ahead and do it.

MR. BUTLER: Okay.

COMMISSIONER EDGAR: And it will just be Rule 25-7.072, F.A.C.

(Exhibit Number 431 marked for identification.)

COMMISSIONER EDGAR: Okay. I think we can do -- no, we can't. I'm sorry, I was getting ahead of myself trying to look at 3:30. So let me do this, then. Are there questions -- did you say you were finished with this witness?

MS. BROWN: Yes.

COMMISSIONER EDGAR: I thought I heard that. Okay. I was getting ahead of myself. Are there questions from Commissioners for this witness?

Yes, sir, Commissioner Skop.

COMMISSIONER SKOP: Thank you, Madam Chair. Good afternoon, Ms. Dismukes.

THE WITNESS: Good afternoon.

COMMISSIONER SKOP: If I understand your testimony correctly, many of your concerns relate to cross-subsidization and affiliate transactions between the nonregulated and regulated entities under FPL Group, is that correct?

THE WITNESS: Yes.

COMMISSIONER SKOP: Okay. With respect to the

FPL Group executive compensation, would you generally agree that that is allocated to Florida Power and Light based on a pro rata basis on operating revenue in terms of the 70 percent?

THE WITNESS: A portion of it. One-third of it is based upon operating revenue, yes.

COMMISSIONER SKOP: Okay. And with respect to, I guess, some of the issues you have raised, I guess I would like to turn your attention to Page 48 of your prefiled testimony, Lines 1 through 11. And could you briefly elaborate on the significance of that testimony?

THE WITNESS: Yes. It is my understanding that at the time that NextEra purchased the Seabrook Generating Station there was no mechanism for them to, as I understanding it, get paid if they were part of the need pool group for their transmission. And so what they did -- they couldn't get paid unless the assets of the Seabrook substation were owned by a transmission company. And so what they did at that point in time is they sold those assets, or I'm not exactly sure how the transaction took place, but those assets were actually put onto the books and records of FPL.

COMMISSIONER SKOP: Okay, thank you. And, again, I apologize for going down this line of questioning. I guess a can of worms got opened back up again, so I'm going to pursue it. But on Line 1, NextEra purchased Seabrook Generating Station. NextEra is the unregulated subsidiary of FPL Group, is that correct?

THE WITNESS: Yes.

COMMISSIONER SKOP: Okay. So in a nutshell, basically the transmission assets associated with FPL NED were placed into the regulated entity that this Commission regulates for the convenience of an unregulated subsidiary, is that generally correct?

THE WITNESS: Yes.

COMMISSIONER SKOP: Okay. All right. And then Mr. Butler, I guess, referred in a line of questioning -- and, again, let me turn your attention to Page 49 of your prefiled testimony, and would you generally agree that I, as Commissioner Skop, raised the concern initially?

THE WITNESS: Yes, you did.

COMMISSIONER SKOP: All right. Thank you. I guess the concern I had was that there was discussion made about the withdrawal of the application to finance $30 million of financing on FPL's book to support the -- I mean, the affiliate out of state entity. Which, again, FPL withdrew its application, but then it petitioned the New Hampshire Commission for approval to do the same financing through FPL Group Capital. Is that your general understanding?

THE WITNESS: Yes, it is.

COMMISSIONER SKOP: Okay. So at the very least, if a regulated entity were to engage in a transaction that had potential impact to the ratepayer, that this Commission, at the very least, would exercise concurrent jurisdiction over that transaction, is that correct?

THE WITNESS: Yes.

COMMISSIONER SKOP: Okay. All right. Thank you. And I guess with respect to your recommendation as to the spinning off of those assets into a separate entity that you feel that the assets should be transferred at the higher cost or market as required by affiliate transaction rules, is that correct?

THE WITNESS: Yes.

COMMISSIONER SKOP: Okay. All right. Thank you. Moving back to the transfer of the -- give me one second, please. On Page 40 of your prefiled testimony, looking at the transaction pertaining to the sale of, or the transfer of gas accounts between FPL and FPL Energy Services, Inc., you mentioned at the bottom of Page 40, Lines 14 through 18, that there was really no analysis as to whether the higher cost analysis or market was provided. Can you elaborate on that briefly?

THE WITNESS: Yes. We asked the company to provide in discovery all documents that showed that they -- that the sale was done at the higher cost or market, and their response was that no such documents exist. But they did produce, they did produce, I guess it would be a study. It was an Excel spreadsheet that valued the contracts that were being transferred from FPL to FPL ES.

And as I was -- when I was talking with the staff attorney, the way they valued those contracts, in my opinion, is fairly deficient. It assumes that the, like I said, the contracts -- they looked it for a one year time period. If the contract ended in that year, they cut it off at whatever time that contract would have ended. If it was going to end -- they would only carry the contract out for a one year period. It significantly understates the value of those contracts. And as I also said, they were evergreen contracts. Most of them were evergreen contracts.

COMMISSIONER SKOP: Okay. And if I heard your testimony in response to Mr. Butler's question, specifically while they may have done nothing wrong, could they have done things better in terms of making the affiliate transaction more transparent in terms of how the purchased price was arrived at or showing additional analysis? I mean, is there something that would, I guess, if done in the future, not cause you to have the same concerns that you have expressed here, some best practices, if you will?

THE WITNESS: Well, I think this one was tremendously egregious, because the entity that valued the contracts was the entity that they were selling the contracts to. I mean, it's like --

COMMISSIONER SKOP: That was my next question. Is it appropriate for the acquiring firm to do the valuation analysis?

THE WITNESS: No, and it would never happen if it wasn't an affiliate. And the other thing I think you should look at is why would FPL agree to sell this? It was a profitable business.

COMMISSIONER SKOP: Okay. Let me move on to one other issue.

Madam Chair, I know that we are looking at 3:30, so I just have two additional questions.

If I could turn --

COMMISSIONER EDGAR: Commissioner, it's your choice as to whether you want to do it now or after, just your choice.

COMMISSIONER SKOP: Just very quickly.

COMMISSIONER EDGAR: Sure.

COMMISSIONER SKOP: I just need to find my place in this voluminous document, but I think I have found it. Bear with me for one second.

Okay. On Page 36 of your confidential testimony, you discuss Energy Services and that they are an affiliate of FPL, and the services they provide, and some of those have already been covered within the discussion of Witness Santos.

From your perspective, given the fact that these services are offered to FPL customers, who may or may not be aware of who is actually providing the service, whether it be a third party or what have you, but is it appropriate for a nonregulated affiliate to generate revenue from these product offerings while billing it through or leveraging the assets of the regulated entity to do so?

THE WITNESS: I would say no. I think what you would want to look at is how much profit is being earned by the -- this is the same entity, FPL Energy Services -- on these services that they are providing, and then determine how you want to treat those revenues. You can treat them as above-the-line, you could take the net income and move that above-the-line, as well.

COMMISSIONER SKOP: Okay. So on that same issue from a regulatory accounting and consumer protection perspective, would it be more appropriate if they were to offer these products for them to do so on a stand alone basis and bill them from FPL Energy Services directly and have no direct piggybacking effect off the regulated entity, would that make things a lot more simpler?

THE WITNESS: I think that would help, but I still think you have the situation where customers are looking at this material and they are probably thinking it is FPL.

COMMISSIONER SKOP: Okay. And in your professional opinion, could many of these thorny issues be avoided if more forethought and deference were given to the regulatory accounting issues that might arise from doing some of these transactions?

THE WITNESS: Yes.

COMMISSIONER SKOP: Okay. And one final question. With respect to your testimony as viewed as a whole, in your opinion, have the common services provided between the regulated and unregulated entities of FPL Group become so intertwined that it would be impossible to determine what services of any given functional group or employee provides to whom absent a properly worded cost allocation?

THE WITNESS: I think you are absolutely right. My examination of some of the documents in this proceeding indicates that there is a very close relationship between FPL and its affiliates. When they need -- when NextEra needs help from FPL on something, they pick up the phone and say I need you to help me work on this. And they don't, in any opinion, have a very good accounting process to keep track of that or a time keeping process to keep track of that, as well.

COMMISSIONER SKOP: Thank you.

COMMISSIONER EDGAR: Thank you, Commissioner.

Mr. Beck, do you have redirect?

MR. BECK: Very briefly, Madam Chairman.

COMMISSIONER EDGAR: Okay. Then let me just ask between you and Mr. Butler, we are a little over time, but yet it may make more sense to play through. Are you okay with that?

MR. BUTLER: That's fine, yes. Why don't we just go ahead and have the redirect completed.

COMMISSIONER EDGAR: Okay. All right. Go right ahead.

MR. BECK: Thank you, Madam Chairman.

REDIRECT EXAMINATION

BY MR. BECK:

Q. Ms. Dismukes, you discussed the contracts that were sold from Florida Power and Light to Florida Power and Light Energy Services for gas, do you recall?

A. Yes.

Q. Okay. And you mentioned that the vast majority of those contracts had an evergreen provision?

A. That's right.

Q. Have you done any sensitivity analysis of what the price or the valuation might have been under assumptions different than was conducted by that valuation by the company?

A. Yes, I have. I have done two. The first one that I did actually assumed that any contract that had an evergreen provision would have been extended through the full year of 2006. So if it ended in February, I assumed that that contract would continue for the remainder of 2006. And when I did that analysis, it indicated that the gross margin associated with those contracts was $2.3 million, and the net margin, that is after the selling and administrative and general expenses, was 1.2 million, which was roughly about twice what the company's estimate was.

I also did a subsequent analysis where I looked at the same dollar value, but I looked at it over a five-year period, so basically assuming that the contracts would be there for five years, that they would have essentially the same margin for a five-year period, and I discounted that back to the present.

And under that methodology, the net margin -- I used two different discount rates. At a 10 percent discount rate the net margin would be $5 million and at a 12 percent discount rate, the net margin would have been $4.8 million.

MR. BECK: Thank you. That's all I have.

COMMISSIONER EDGAR: Commissioner Skop.

COMMISSIONER SKOP: Thank you, Madam Chair. Just briefly, Ms. Dismukes, could you please turn to Page 38 of your testimony. And going back to the sale of the gas accounts, I believe on Page -- I mean, on Lines 19 and 20, you discuss some testimony. Can you briefly elaborate on that?

THE WITNESS: This is the testimony that was taken from the 2005 rate case. It was, I believe, the rebuttal testimony of Mr. Brandt. The one thing that they were claiming is that the transfer was based upon the fact that the infrastructure that supports the business resides with FPL ES, and that the dedicated sales force was established for this business independent of FPL. But prior to 2003, FPL was actually part of the sales force and FPL is still today procuring the gas.

COMMISSIONER SKOP: Okay. And given this testimony in those dockets, do you know if Mr. Brandt was giving his testimony from a marketing perspective, or a technical perspective, or financial perspective?

THE WITNESS: I don't know.

COMMISSIONER SKOP: All right. Thank you.

COMMISSIONER EDGAR: Anything further from Commissioners? Hearing none, let's take up exhibits.

Mr. Beck.

MR. BECK: Madam Chairman, I would move in Exhibits 191 through 206 and 426 through 429.

COMMISSIONER EDGAR: Hold on. 191 through -- I'll get there, hold on -- through 206?

MR. BECK: Yes.

COMMISSIONER EDGAR: Admitted at this time.

(Exhibit Numbers 191 through 206 admitted into the record.)

COMMISSIONER EDGAR: And then 426, 427, 428, 429. Any objections?

Mr. Butler, no objections? Just double-checking.

MR. BUTLER: No objection.

COMMISSIONER EDGAR: Okay. All right. Then 426, 427, 428, and 429 admitted at this time.

(Exhibit Numbers 426, 427, 428, and 429

admitted into the record.)

COMMISSIONER EDGAR: Mr. Butler, 430?

MR. BUTLER: I would move admission of Exhibit 430.

COMMISSIONER EDGAR: Any objections? Seeing none, 430 is admitted.

(Exhibit Number 430 admitted into the record.)

COMMISSIONER EDGAR: 431 is --

MS. BROWN: Staff moves admission of 431.

COMMISSIONER EDGAR: Thank you, staff. 431 is admitted into the record at this time.

(Exhibit Number 431 admitted into the record.)

COMMISSIONER EDGAR: And we are going to take just a couple of minutes off the record to have the red folders picked up and to bring up the next witness, Mr. Butler, which will be your witness. So five and we will be back.

MR. BUTLER: Thank you.

COMMISSIONER EDGAR: We are on recess.

(Off the record.)

COMMISSIONER EDGAR: Okay. We are back on the record, and I believe that -- to FPL, it is your witness.

MR. ROSS: Yes. Madam Chairman, before we get started, I just want to disclose that -- all the three witnesses that fall under the stipulated category, the parties have all agreed to stipulate them, and we will go through the motions on Wednesday to do that. That's Sonnelitter, Hicks, and Mailhot.

COMMISSIONER EDGAR: Okay. We will look forward to that on Wednesday.

MR. ROSS: And FPL calls Mike Spoor. He is on the stand, and I do not believe he has been sworn.

COMMISSIONER EDGAR: All right. Mr. Spoor, please stand with me and raise your right hand.

(Witness sworn.)

MICHAEL G. SPOOR

was called as a witness on behalf of Florida Power and Light Company, and having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ROSS:

Q. Would you please state your name and business address?

A. My name is Michael Spoor, 700 Universe Boulevard, Juno Beach, Florida.

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

A. I am employed by Florida Power and Light Company as Director of Distribution Operations.

Q. Have you prepared and caused to be filed 32 pages of prefiled direct testimony in this proceeding?

A. I have.

Q. Do you have any changes or revisions to your prefiled direct testimony?

A. I do. As I stated just a moment ago --

COMMISSIONER EDGAR: Hold on, Mr. Spoor.

Commissioner McMurrian, do you know what notebook we are on? Number 2. All right. Hold on.

MR. ROSS: Please continue.

COMMISSIONER EDGAR: Thank you. Go right ahead.

THE WITNESS: As I just mentioned, since filing my testimony, my title has changed. If I can draw a reference to Page 1 of my testimony, Page 11, as just mentioned, I am now the Director of Distribution Operations.

BY MR. ROSS:

Q. And do you have any changes to the next question and answer, duties and responsibilities?

A. Yes, I do. Again, on Page 1, Lines 13 through 15, I would strike that and say that now I am responsible for distribution field operations, which includes construction, maintenance, and restoration activities.

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

A. Yes, they would.

MR. ROSS: Madam Chairman, I would ask that the prefiled direct testimony of Mr. Spoor be inserted into the record as though read.

COMMISSIONER EDGAR: The prefiled direct testimony will be admitted into the record as though read, with the changes noted by the witness.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

FLORIDA POWER & LIGHT COMPANY

DIRECT TESTIMONY OF MICHAEL G. SPOOR

DOCKET NO. 080677-EI

Q. Please state your name and business address.

A. My name is Michael G. Spoor. My business address is Florida Power & Light Company, 700 Universe Blvd., Juno Beach, Florida, 33408.

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

A. I am employed by Florida Power & Light Company ("FPL" or the "Company") as Director of Business Services, Distribution.

Q. Please describe your duties and responsibilities in that position.

A. I am the Distribution Business Unit's (Distribution) controller responsible for managing Distribution's budget, business planning and processes, quality, and streetlight organization.

Q. Please describe your educational background and professional experience.

A. I have a Bachelor Degree in Industrial Engineering from Auburn University and a Masters of Business Administration from Nova Southeastern University. I am a Registered Professional Engineer in the State of Florida. I joined FPL in 1985 and have served in a variety of positions in Distribution, including engineering, Field Supervisor, Area Operations Manager, Manager of Reliability, Director of Distribution System Performance and Director of Business Services. I am also a senior member of the Institute of Industrial Engineers.

Q. Are you sponsoring any exhibits in this case?

A. Yes. I am sponsoring Exhibits MGS-1 through MGS-3, which are attached to my direct testimony.

- Exhibit MGS-1 Distribution Reliability Program Initiatives
- Exhibit MGS-2 Distribution Reliability Results
- Exhibit MGS-3 Distribution Costs by Cost Category 2006-2011

Q. Are you sponsoring or co-sponsoring any Minimum Filing Requirements (MFRs) in this case?

A. Yes. I am co-sponsoring the following MFR schedules:

- B-13 – Construction Work in Progress
- B-15 – Property Held for Future Use – 13 Month Average
- B-24 – Leasing Arrangements
- C-15 – Industry Association Dues (Test/Subsequent)
- C-34 – Statistical Information
- C-41 – O&M Benchmark Variance by Function
- E-7 – Development of Service Charges
- E-14 – Proposed Tariff Sheets and Support for Charges

In addition, I am co-sponsoring the following 2009 supplemental MFR schedules that FPL has agreed with the Commission Staff and the Office of Public Counsel to file:

- B-13 – Construction Work in Progress
- C-15 – Industry Association Dues

- C-34 – Statistical Information
- C-41 – O&M Benchmark Variance by Function

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to describe initiatives being employed to harden and improve the storm resiliency and reliability of the distribution system's infrastructure, demonstrate that Distribution provides superior reliability and excellent customer service, and present an overview of Distribution's effectively managed capital expenditures and Operations and Maintenance (O&M) expenses.

Q. Please summarize your testimony.

A. Distribution is responsible for the planning, engineering, construction, operation, maintenance, and restoration of FPL's distribution infrastructure. FPL's recently Florida Public Service Commission ("FPSC" or "Commission") approved infrastructure storm hardening and storm preparedness initiatives, including its hardening plan, pole inspection and vegetation management programs, are further strengthening FPL's distribution system, providing value and long term benefits to customers. Distribution also continues to deliver excellent system reliability performance to FPL's customers. FPL's distribution reliability, as measured by System Average Interruption Duration Index (SAIDI), has been the best among major Florida investor owned utilities (IOUs) for four out of the last six years, ranks among the industry's top performers, and for the last decade has been, on average, 45% better than the Edison Electric Institute (EEI) industry average. Additionally, Distribution's 2008 reliability results reflect extraordinary performance, with best-ever recorded results achieved for most of our reliability indicators including SAIDI, System Average Interruption Frequency Index (SAIFI), Momentary Average Interruption Frequency Index (MAIFI and MAIFIe) and Customers Experiencing More Than 5 Interruptions (CEMI-5).

Distribution has continued to search for and implement enhancements to its customer service initiatives. The cumulative success of these initiatives has resulted in a reduction of over 50% in logged service quality complaints per 1,000 customers filed with the Commission over the last decade. Also, in 2008, there were 20% fewer service related complaints recorded than in 2007.

Distribution's reliability and customer service performance has been delivered while maintaining a continual focus on safety. In fact, Distribution's 2008 safety performance, like its 2008 reliability results, is the best on record for FPL. The industry standard metric for reportable injuries has improved by almost 55% since 1998 and the number of work-related injuries has declined by nearly 60% during this same time period.

All of these operational improvements have been achieved while still effectively managing and controlling costs. Historical Distribution O&M expenses have remained quite stable over the last few years and this trend is expected to continue in the forecasted period 2009-2011. The stability in Distribution's O&M expenses has been accomplished despite the fact that, over the last decade, more than 1,000,000 new service accounts have been added and FPL has been required to meet regulatory commitments associated with its storm hardening and storm preparedness initiatives. As in the past, capital expenditures primarily result from the requirement to fund construction of the infrastructure necessary to serve on-going customer growth, our reliability programs, and the regulatory commitments associated with the recently approved storm hardening and preparedness initiatives.

Distribution has delivered excellent balanced performance resulting in substantial value and benefits to customers – not only for today, but for the future as well. This has been achieved as a direct result of Distribution's management and employees who are committed to safely provide superior reliability and customer service at a reasonable cost.

OVERVIEW OF DISTRIBUTION

Q. Please provide an overview of the Distribution organization and system.

A. Contained within the 28,000 square miles of FPL's service territory, there are approximately 67,000 miles (over two and a half times the circumference of the earth) of electrical conductor consisting of approximately 42,000 miles of overhead wire and approximately 25,000 miles of underground cable, over 1.1 million poles, and almost 800,000 transformers that serve our customers. Distribution is organized into five regions (North, East, West, Broward, and Miami-Dade) which are further divided into 17 management areas that contain 35 service centers. There are also two dispatch centers. Today, within Distribution, there are approximately 2,600 full-time FPL employees in total, including bargaining unit and non-bargaining unit employees.

STRENGTHENING THE INFRASTRUCTURE

Q. Did the 2004 and 2005 storm seasons cause FPL to make any changes regarding the strength and resiliency of its distribution infrastructure?

A. Yes. The seven hurricanes (five direct landfalls and two indirect impacts) that affected FPL's service territory during 2004 and 2005 resulted in significant customer outages and required extraordinary efforts to rebuild and restore the system. Additionally, during that timeframe forecasters were predicting decades of heightened tropical storm activity. As a result, FPL concluded that fundamental and significant changes in the design, construction and operation of its system were required.

Q. What actions did FPL take to effect these changes?

A. In January 2006, FPL filed its "Storm Secure Plan" with this Commission. This comprehensive plan for increased storm preparedness included the following four areas: hardening FPL's distribution network; investing in overhead to underground conversions; modifying FPL's pole inspection program; and enhancing FPL's vegetation management activities.

Q. Was the FPSC also undertaking its own initiatives regarding storm preparedness and electric infrastructure hardening?

A. Yes. In 2006, the FPSC began to develop its own requirements for electric utilities to improve their storm preparedness and harden their electric infrastructure. These initiatives resulted in: requiring plans to implement an eight year pole inspection cycle for distribution poles; requiring plans to address 10 storm preparedness initiatives; adopting new Contribution-in-Aid-of-Construction (CIAC) rules for underground projects; and adopting new rules requiring the filing of detailed electric infrastructure hardening plans.

Q. Did FPL participate in these initiatives and is FPL complying with these regulatory requirements and commitments?

A. Yes. During 2006 and 2007, FPL participated in the various Staff workshops, meetings and FPSC proceedings, and is complying with all of the resulting new rules and orders. In 2006: (1) FPL's pole inspection plan was reviewed and approved, with implementation initiated in May 2006; (2) FPL filed and received approval of its Governmental Adjustment Factor (GAF) tariff, where, if certain criteria are met, FPL will provide a 25% investment in local government sponsored overhead to underground conversions; and (3) FPL's plans to address the 10 storm preparedness initiatives were reviewed and approved, including the adoption of a six-year average vegetation management cycle for laterals.

In 2007, the FPSC approved its "hardening rule", Rule 25-6.0342. This rule requires the filing, review and approval of detailed hardening plans every three years, including the overall hardening strategy, proposed projects, and expected costs and associated benefits. Additionally, an annual update is filed each March that specifies projects to be completed in the current year, including their expected costs. Also included in the annual filing are the actual hardening results and costs from the previous year. In 2007, as required, FPL filed and received approval of its detailed electric hardening plan. FPL's approved plan includes its three-prong hardening approach that: (1) applies Extreme Wind-Loading criteria (EWL) to infrastructure that serves critical customers (e.g., hospitals and 911 centers); (2) targets strengthening existing infrastructure, up to and including EWL, that serves community needs (e.g., gas stations and grocery stores); and (3) employs revised design guidelines to apply EWL to new overhead construction, major planned work, relocation projects and daily work activities where feasible and practical. By the end of 2009, FPL expects to have hardened to EWL over 150 feeders serving critical infrastructure customers, including all feeders serving hospitals and half of all feeders serving 911 centers, as well as more than 110 highway crossings. Additionally, more than 65 community project feeders will have been incrementally hardened, up to and including EWL.

Q. **What benefits do these approved initiatives and programs provide to FPL's customers?**

A. These hardening initiatives and investments will result in permanent long-term improvements to the distribution system. These improvements will not only improve the system's resilience against future storms and severe weather events, but will also provide an increased level of day-to-day reliability for our customers. The key long-term benefits derived from these initiatives will be reductions in storm and non-storm restoration costs, customer outages and outage duration.

RELIABILITY

Q. Please describe Distribution's reliability program, initiatives and achieved results.

A. Distribution's comprehensive reliability program is comprised of multiple initiatives designed to reduce the average time a customer is without electricity and to sustain these improved results. Improvements are sought to both prevent outages from occurring and to minimize outage time if an outage does occur. Avoiding outages and minimizing outage time not only reduces customer inconvenience, but also results in restoration cost savings.

These reliability initiatives are developed by identifying, analyzing and prioritizing causes of past interruptions and then targeting those causes that, if remedied and/or repaired, will yield the largest customer benefits. An integrated set of initiatives has been designed to address the greatest areas of opportunity to further improve reliability. A list of initiatives with annual costs greater than $1 million is provided in Exhibit MGS-1. The effectiveness of each initiative within the program is evaluated on an on-going basis and resources are redeployed as necessary to maximize overall performance results.

For more than a decade, FPL has consistently delivered a superior level of distribution reliability to its customers. Exhibit MGS-2 shows Distribution's actual SAIDI performance over the last 10 years. SAIDI, a standard industry performance metric for reliability, measures customers' average annual outage time. It is the most relevant and best overall reliability indicator since it encompasses two other standard performance metrics for reliability, SAIFI and the Customer Average Interruption Duration Index (CAIDI). As can be seen, except for 2006 and 2007, where the lingering after-effects of the 2004 and 2005 hurricane seasons were still affecting the system, Distribution's SAIDI over the last decade and particularly over the period 2000-2005 remained extremely stable. During this six-year period, SAIDI fluctuated, on average, only about one percent per year. Additionally, SAIDI results for 2007 and 2008 both show improvement from the previous year. 2008 reliability results indicate extraordinary performance with Distribution achieving best-ever recorded results for many of its reliability indicators including SAIDI, SAIFI, MAIFI, MAIFIe and CEMI-5.

Distribution's SAIDI performance compares very well to other electric investor owned utilities, both within the state as well as on a national basis. In Florida, which as a whole compares quite favorably on a national basis, Distribution's SAIDI has been the best among the major investor owned utilities for four out of the last six years. Additionally, based on the EEI Annual Reliability Report, FPL's Distribution SAIDI performance over the last decade ranks among the industry leaders and, on average, has been approximately 45 percent better than the industry average.

Q. **Please provide some examples of Distribution's reliability initiatives and how these programs benefit FPL's customers.**

A. Vegetation Management – Vegetation related outages represent one of the top causes of customer interruptions and are a particular challenge in Florida due to the year-round growing season. While FPL has always had a program in place for vegetation management, in 2007 a significant change was implemented. As mentioned earlier, in response to the 2004 and 2005 storm seasons, both FPL and the FPSC realized that increased vegetation management was necessary for improved storm preparedness and storm resiliency. FPL's approved plan to address Initiative One of the FPSC's 10 Storm Preparedness Initiatives called for FPL to continue with its three-year average trimming cycle for feeders and, in 2007, to begin to place its laterals on a six-year average trimming cycle. Additionally, beginning in 2007, and by its own initiative, FPL now completes trimming on circuits serving critical customers prior to the start of each storm season. This provides a better opportunity for these critical customers to avoid severe storm-related interruptions and damage to facilities serving them caused by vegetation.

In 2008, FPL was recognized for the seventh straight year as a Tree Line USA Utility by the National Arbor Day Foundation. To qualify for this recognition, utilities must adopt certain work practices associated with pruning and working around trees, conduct documented training on these work practices, have a community tree-planting program sponsored by the utility and provide educational information about trees to customers, for example, planting the appropriate tree species near utility lines. Long-term benefits associated with being a Tree Line USA Utility include lower vegetation management costs and improved customer and community relations.

It is worth noting, however, that Distribution's vegetation program cannot address all vegetation issues throughout its service territory. Local governments and communities must also be willing to assist, for example, by adopting and embracing FPL's "Right Tree, Right Place" program.

System Expansion – This on-going program ensures that there is sufficient feeder capacity to serve all customers, during normal as well as emergency periods, preventing outages caused by overloading. As a result of customer growth, demand and/or increased usage by our customers, FPL is required to install new feeders and other infrastructure to meet this new load.

Pole Inspections – Distribution's reliability initiatives have always included a pole inspection program. However, beginning in mid-2006, this program was significantly upgraded. Again, as a result of the 2004 and 2005 storm seasons, both FPL and the FPSC recognized that a more robust pole inspection program was necessary to improve storm preparedness and resiliency. FPL is now inspecting its distribution pole population on an eight-year cycle and has completed over one third of its initial eight year cycle. Inspections include tests for strength as well as loading. Poles failing inspection are either reinforced or replaced. This program ensures that FPL's pole population remains healthy and is better able to withstand storm impacts and avoid or minimize storm related outages.

Feeder/Lateral Cable – Another significant cause of interruptions for Distribution has been underground cable failures. This program addresses direct buried feeder and lateral cable through rehabilitation either by injecting the cable with silicone which extends its life or, when injection is not an option, by replacing the cable. Our experience has shown that once a section of cable experiences several failures, replacing or injecting the cable is the best way to avoid increasingly frequent outages. When direct buried cable is replaced, it is replaced with cable in conduit. This makes subsequent restoration and/or repair quicker and more efficient, reduces water intrusion, and thus decreases the likelihood of future cable failure.

Priority Feeders and Laterals – The purpose of this program is to address those feeders and laterals, and thus customers, experiencing the highest number of outages and momentary interruptions on our system. While this has been a long-standing initiative for feeders, Distribution has now incorporated laterals into this initiative. Annually, these feeders and laterals are identified and targeted for review and analysis in order to determine and implement the appropriate corrective measures.

In summary, Distribution's reliability initiatives significantly contribute to the avoidance and minimization of outages and customer inconvenience. These initiatives have also made a major contribution towards FPL's superior reliability results, including achieving best-ever reliability results in 2008.

Q. **Are there any research and development efforts currently in progress to further improve Distribution's reliability?**

A. Yes. In 2006, the FPSC directed Florida's electric IOUs to solicit participation from municipal electric utilities, rural electric cooperatives and other available educational and research organizations in order to increase collaborative research efforts. Specifically, these research efforts were intended to further the development of storm resilient electric utility infrastructure and technologies that reduce storm restoration costs and outages to customers. As a result, FPL, the other Florida electric IOUs, and municipal and rural cooperative electric utilities entered into a Memorandum of Understanding (MOU) with the University of Florida's Public Utility Research Center (PURC). The MOU, which initially has a three year term, can also be renewed by mutual agreement. Initial research areas include the economics of placing electrical facilities underground, measuring hurricane winds at a granular level, best practices in vegetation management, and improved materials for distribution facilities.

Q. Given the success of Distribution's reliability program, what are FPL's plans going forward?

A. FPL will continue to seek ways to further improve on the superior reliability provided to our customers. As I've discussed previously, there have been significant changes implemented since the 2004 and 2005 storm seasons. These changes were necessary to address the resiliency of FPL's system against future severe weather events. Although FPL's service territory has been less affected by storm events during the last three years when compared to those in 2004 and 2005, FPL must continue to invest in these hardening initiatives to meet customer needs now and in the future. Specifically, FPL is strengthening its electric infrastructure through higher standards for construction and increasing the level of certain existing reliability initiatives, such as, the six-year average vegetation management cycle for laterals and eight-year pole inspection cycle. These initiatives, coupled with FPL's more established reliability initiatives and research efforts, will continue to provide our customers with superior reliability, help avoid outages and reduce overall restoration costs.

STORM PREPAREDNESS

Q. As was evident from the unprecedented 2004 and 2005 seasons, restoration of service after hurricanes and tropical storms is an important issue in Florida. Please comment on FPL's emergency preparedness efforts.

A. As I've discussed earlier, FPL's approved system infrastructure hardening initiatives will help reduce the amount of damage to the distribution system, reduce the number of outages and reduce overall restoration time. Also, as part of FPL's approved storm preparedness initiatives, FPL has increased its overall vegetation trimming by integrating a six-year average trimming cycle for laterals. Additionally, FPL now clears all lines serving critical customers prior to the beginning of each storm season.

FPL also continues to hone its comprehensive plans for rapid and safe restoration of customers' service. FPL's primary mission is to safely restore the greatest number of customers in the least amount of time so that the communities served by FPL are able to return to normal as rapidly as possible. FPL's restoration plans are thoroughly tested and refined through annual "dry run" exercises and by performance analysis after each event. Our many years of experience have shown that extensive planning, training, process discipline, on-site management teams' expertise, and scalable implementation are critical. Planning and preparation include ensuring that: (1) storm roles and responsibilities are known; (2) adequate training is provided (3) foreign crews are secured, including additional contractor support and mutual assistance from other electric utilities; (4) staging sites are identified, secured and ready; (5) all equipment and logistic needs are satisfied; and (6) communication plans and processes, for internal as well as external purposes, are in place.

FPL is recognized as an industry leader in storm restoration. Numerous other utilities have visited FPL to learn and implement our processes and practices.

Further validation of this expertise is the industry awards the Company has received. FPL received EEI awards for its emergency response performance in 2000, 2003, 2004 and 2005.

In summary, FPL has been and continues to be recognized as an industry leader in storm preparedness and restoration. The Company's initiatives to strengthen its infrastructure and continuously improve its storm preparedness plans, systems and processes should allow FPL to continue to be an industry leader in storm preparedness and restoration efforts and provide benefits to our customers today as well as in the long-term.

CUSTOMER SERVICE

Q. What measures has Distribution undertaken in order to continue its efforts to provide excellent customer service?

A. While the Company is always striving to improve customer service, several recently implemented initiatives address improving customer communications. One prime example is providing better information to our customers when they experience an outage. FPL was an industry pioneer in providing customers with immediate Estimated Time of Restoration (ETR) for service when a customer calls to report an outage. The Company continues to work to improve the quality of both the estimates and the delivery mechanisms. The voice response unit and screens used by Care Center representatives are reviewed to ensure consistency, the use of customer-friendly terms, and to include additional information and scripting regarding issues such as the crew's status, outage cause, ETR updates, and area-specific emergency messages. Finally, like other care center processes, random samples of interactions with customers are monitored and evaluated to ensure proper quality control and performance. Additionally, Distribution has worked along with Corporate Communications and External Affairs to implement a dedicated "Government Portal" website that has been customized with the types of information that government leaders rely on to assist them with their storm recovery efforts. As significant weather approaches, FPL informs government users that the website is available. Information on this site includes: media alerts and releases; customer outage information and outage maps; maps of impacted areas; critical infrastructure facility information; estimated times of restoration; FPL staging site locations; and crew work location maps.

Q. **Since excellent customer service relies on consistent process performance, how do you ensure FPL is delivering on this throughout its service territory?**

A. FPL has always focused on continuous improvement in this area since establishing consistent standards and processes, and then executing per those standards, results in more efficient operations and ensures all customers are treated equally and fairly. For example, building on previous efforts to achieve operational excellence through standardized processes, Distribution implemented an initiative in 2008 that resulted in what we refer to as our "Operational Model". The goal of this initiative is to standardize well executed processes, replicate best practices and provide a centralized location for information that is easily accessible by all of our employees. This new tool, which now resides on the internal Distribution website, is a "one-stop shop" for procedures, processes, forms and training materials. It helps to better define the manner in which we execute core business processes by allowing employees easier access to the resources needed to do their jobs more efficiently and effectively.

Q. Can you further explain the role technology is playing in delivering enhanced customer service?

A. Yes. Distribution has made, and continues to make, investments to expand existing computer system capabilities to provide customers better and more efficient service and information. Examples of this, in addition to those that I've previously discussed, include:

(1) An automated engineering design tool that standardizes the creation of construction drawings for underground as well as overhead to underground conversion projects. This tool automatically determines engineering calculations including voltage drop, flicker, phase balance and cable pull calculations. Future phases of this initiative will include the automation of required inventory, along with additional engineering calculations like pole wind loading and clearance sags and interfaces with other existing FPL systems. FPL estimates that this tool, when fully implemented, will reduce the amount of engineering time currently required to complete these types of projects by up to 50%;

(2) Initial implementation of an automated notification to our field offices that informs them immediately when a feeder in their area has experienced a momentary interruption. This provides the opportunity for these field offices to immediately know that a momentary interruption has occurred, and if necessary, take action to investigate and remedy the problem. These actions could potentially avoid an outage or, if an outage occurs, reduce outage restoration time; and

(3) Continued development of the asset management system, which contains records of all distribution facilities with their precise location and other relevant information displayed in a geographical format. This system also is currently being loaded with other information including pole inspection data and results, joint use ownership/attachment/inspection data, hardening data, and streetlight data.

All of these measures, and others that I have previously discussed, are improving process consistency, achieving efficiencies, and enhancing already excellent customer service.

Q. **Have these actions resulted in improved customer service?**

A. Yes. Over the last decade, there has been a reduction of more than 50% in distribution service related FPSC logged customer complaints per 1,000 customers. Additionally, in 2008, there were 20% less service related FPSC logged complaints recorded than in 2007.

SAFETY

Q. Previously you mentioned "safe restoration" and "safely restore the greatest number of customers" as priorities of Distribution. Is safety emphasized within Distribution?

A. Yes. FPL considers safety to be integral to effective operations. The superior reliability and excellent customer service discussed earlier have been delivered while maintaining a continual focus on employee safety. In fact, in 2008 Distribution recorded its best safety performance on record. As a result of concerted and sustained efforts, we have achieved an almost 55% improvement over the last decade in the Occupational Safety & Health Administration's (OSHA) industry-standard metric of reportable injuries per 200,000 man-hours. The absolute number of injuries has declined by nearly 60% over this same period. A key reason for this dramatic improvement is our continued commitment to a "Total Safety Culture." This program involves establishing a partnership with employees to institute an environment where actions are guided by the principles of trust, open communication, mutual respect, and actively caring. Some of the specific actions involved are crew visits by supervisors to ensure compliance with safety rules, peer-to-peer safety observations and coaching, plus constant communication of the safety plan through various means of communication. Distribution continues to enhance and refresh its safety program. New initiatives, such as the recent corporate sponsored program "Zero Today", serve to constantly reinforce the need for everyone's continued commitment to safety principles.

DISTRIBUTION COSTS

Q. Please provide an overview of Distribution's recent actual and forecasted capital expenditures and O&M expenses.

A. Historically, Distribution's capital expenditures have been driven primarily by the requirement to support customer growth in FPL's territory, followed by expenditures required to support reliability initiatives, restoration of service activities, and beginning in 2006, regulatory commitments associated with infrastructure storm hardening initiatives. As can be seen in Exhibit MGS-3, for the period 2006-2011, customer growth expenditures remains the largest cost category. However, in 2007-2009, customer growth expenditures are reduced from previous historical levels as well as from the previous year. This decrease is primarily attributed to the downturn in the economy and housing market, which resulted in fewer new service accounts. Customer growth is forecasted to increase in 2010 and 2011; however, customer growth expenditures will still remain below recent years' historical experience. As a result, the other cost categories increase as a percentage to total capital expenditures. This is especially true for infrastructure storm hardening expenditures, which are increasing consistent with regulatory commitments associated with FPL's approved storm hardening plan, as more circuit miles are being strengthened each year.

Distribution O&M expenses, on the other hand, are less affected by customer growth and more affected by the other cost categories, particularly expenses associated with on-going established reliability programs and day-to-day restoration activities. Additionally, in conjunction with recently approved infrastructure hardening plans and associated regulatory commitments, hardening O&M expenses have emerged as the third highest O&M category.

Q. **Please provide more details for your recent actual and forecasted capital expenditures.**

A. Exhibit MGS-3 shows actual capital expenditures for the period 2006 – 2008 and forecasted capital expenditures for period 2009 – 2011. Total expenditures for the entire period 2006 – 2011 total almost $3.0 billion, with actual expenditures of almost $1.6 billion and forecasted expenditures of almost $1.4 billion. While the ratios of the major cost drivers to the total expenditures vary year to year, these capital expenditures are primarily driven by customer growth, reliability initiatives, infrastructure storm hardening, restoration and customer response.

Q. **For the actual period 2006 – 2008, provide a description and explanation of the capital expenditures incurred.**

A. As mentioned earlier, actual capital expenditures during this period totaled just under $1.6 billion. The major contributor to this increase was the capital expenditures required to meet customer growth. While there were declines in new service accounts in 2007 and 2008 from the previous years, FPL still added almost 300,000 new service accounts over this three year period. This accounted for just over 50%, or approximately $843 million, of the total capital investment required during this period. Customer growth related activities include adding new infrastructure (e.g., services and meters) to serve new customers, adding capacity to accommodate the growth in load (e.g., additional feeders, capacitor banks, and transformers) and adding new streetlights.

The remaining three largest cost categories contributing to this increase were capital expenditures associated with Distribution's reliability programs, restoration activities and approved storm hardening initiatives. Together, these three cost categories accounted for almost 40% (approximately $586 million) of the total, with costs ranging from approximately $155 million to $226 million for each of the three cost categories. Capital expenditures associated with these reliability programs include costs for underground feeder and lateral cable rehabilitation, automated feeder switches, thermovision and improvements on those feeders and laterals experiencing a higher number of interruptions. Restoration capital expenditures include expenditures required to repair and restore facilities that failed and needed to be replaced, or were damaged as a result of severe weather or other outage causes. Hardening activities include expenditures attributable to regulatory commitments associated with approved storm hardening initiatives, such as, the eight-year pole inspection program and the three-prong storm hardening plan.

The remaining nearly 10%, or approximately $146 million, of expenditures were the result of responding to customer requests and field support costs. Customer response expenditures are primarily associated with facility relocation costs resulting from road construction projects. Field support expenditures include the purchase of field vehicles and equipment to support construction activities as well as staff support functions.

Q. Please provide a description and explanation of the capital expenditures forecasted for the period 2009 – 2011.

A. As previously mentioned, total capital expenditures are forecasted to be just under $1.4 billion for the three years 2009-2011. This is over 12% or nearly $200 million less than those capital expenditures required in 2006-2008. Like the previous three year historical period, customer growth related expenditures remain as the highest cost category. However, the ratio of customer growth expenditures to the total, as well as the amount of customer growth expenditures, has fallen from over 50% or approximately $848 million for 2006-2008 to just over 30% or $448 million for 2009-2011. This decrease results primarily from a drop in new service accounts forecasted for the period, primarily caused by the downturn in Florida's economy and housing market. As mentioned earlier, new service accounts for the period 2006-2008 totaled close to 300,000. For the forecasted period 2009-2011, new service accounts are expected to decrease to a total of approximately 109,000, a 60% decrease.

Expenditures resulting from regulatory commitments associated with approved storm hardening initiatives, the next largest category, are also forecasted to be approximately $405 million, or almost 30% of the total expenditures for 2009-

2011. This is approximately double what they were compared to the previous three year historical period. This increase is primarily the result of FPSC approved plans to implement an eight-year pole inspection program and three-prong storm hardening initiative being implemented during the entire three-year period.

Reliability ($197 million) and restoration expenditures ($185 million) together are almost 30% of the total expenditures for 2009-2011. This is similar to the amount incurred for the previous three-year historical period.

As with the previous three-year historical period, the remaining 10% or $138 million are expenditures resulting from our response to customer requirements and field support expenditures.

Q. **Please comment on Distribution's recent and forecasted O&M expenses.**

A. As shown in Exhibit MGS-3, annual Distribution O&M expenses for the historical period 2006-2008 remained relatively stable. This trend is forecasted to continue for 2009-2011. In fact, the average annual O&M expenses for the historical period 2006-2008 compared to the forecasted period 2009-2011 changes by less than 1% ($239 million vs. $241 million). The year-to-year fluctuations that occurred during the historical period 2006-2008 are primarily due to changes in the number of new service accounts seen each year and the costs of regulatory commitments associated with the implementation of our approved storm hardening initiatives in 2006 and 2007. For the forecasted period 2009-2011, these same cost categories contribute to the year-to-year fluctuations.

Q. **Provide a description and explanation of the activities and programs included in Distribution's O&M expenses.**

A. The cost categories contained within Distribution's capital expenditures, which were described earlier, remain the same for O&M expenses. However, the annual amounts and ratios to the total O&M expenses differ. The largest O&M cost category during 2006-2008 contains expenses associated with restoration activities. These expenses averaged approximately $79 million per year during 2006-2008. During 2009-2011, these expenses are forecast to average approximately $65 million per year, which shifts it to the second largest cost category for this period. This decrease is primarily attributed to a projected reduction in the volume of outage tickets, due to expected results from reliability initiatives, as well as cost efficiency gains for the projected period.

The second largest category O&M cost category during 2006-2008 and the largest cost category during 2009-2011 contain expenses associated with Distribution's reliability programs. Expenses associated with the approved vegetation management program make up the vast majority of this cost category. Total reliability related expenses averaged approximately $58 million per year during 2006-2008 and are forecast to average approximately $69 million per year during 2009-2011. This increase is primarily associated with increased feeder vegetation management costs as well incremental cost increases in other reliability initiatives.

Expenses related to FPL's regulatory commitments associated with approved storm hardening initiatives are the next largest cost category. During 2006-2008, these expenses averaged $29 million per year; however, for 2009-2011 these expenses are forecast to average $40 million per year. This increase is primarily due to the fact that these initiatives were not approved and fully implemented during 2006-2008.

Field support expenses, such as salaries of field support employees, training and other general and administrative expenses, remain essentially flat over the entire six-year period, averaging $31 million per year for 2006-2008 and $30 million per year for the period 2009-2011.

The remaining cost category, customer response, consists of expenses associated with joint use, environmental programs, and customer requests. Costs for 2006-2008 averaged $24 million per year and $29 million per year for 2009-2011. The increase in the forecasted period primarily results from higher joint use pole expenses and increased environmental program expenses.

Q. Are there other O&M expenses included in the Distribution FERC O&M accounts and functional total presented in FPL's MFRs?

A. Yes. Included in the Distribution FERC O&M accounts (accounts 580-598) and functional total are O&M expenses incurred or associated with other FPL business units that relate to operation and maintenance of the distribution system (as defined by FERC). Examples of these expenses would include those incurred by the Transmission business unit associated with distribution substations and expenses incurred by the Customer Service business unit associated with meters. In Exhibit MGS-3, an "Other" line has been provided that includes these expenses in order to reconcile the Distribution Business Unit O&M expenses with the Distribution FERC functional totals contained in the MFRs.

Q. Has Distribution taken any actions in response to the 2008 economic downturn?

A. Yes. As a result of these changing economic conditions, Distribution had to re-evaluate its plans and projected expenditures, not only for 2008 but also for 2009. Opportunities to reduce costs were determined without affecting our high standards for customer service, superior reliability, long term capacity plans and safety. Actions taken include making significant reductions in spending due to fewer than planned new service accounts, deferral of projects by customers, and reducing our contractor and FPL workforce to match workload.

As more information became available, new service accounts forecasts were reduced to reflect changing conditions in the housing and construction industry. In fact, during 2008, the forecast for new service accounts was reduced several times. For 2009, in order to reduce planned expenditures even more, Distribution ultimately utilized a forecast for new service accounts that was substantially lower than the corporation's 2009 budget assumption, based on the continuing trend of fewer new service accounts that were being realized at the time the budget was being developed. Accordingly, this resulted in a reduction in expenditures related to growth. Reduced growth related construction activity has also allowed for reductions in Distribution's contractor workforce. Specifically, in mid-2008, FPL eliminated its entire contractor engineering workforce, a reduction of nearly 50 engineers. Similarly, by the end of 2008, Distribution had reduced its overhead, underground and other contractors by approximately 20%. Also, in 2008, Distribution eliminated over 60 full-time permanent positions. Finally, in mid-2008, a hiring freeze was instituted, which still remains in effect as of the date of this filing.

These key actions, in addition to reducing O&M expenses, resulted in Distribution being able to reduce its planned capital expenditures by almost $120 million in 2008 and over $250 million in 2009.

Q. **Has Distribution effectively managed its costs?**

A. Yes. First, customer growth, as reflected in the annual number of new service accounts added each year, has grown at a relatively constant rate over the last decade. Since 1998, over 1,000,000 new service accounts have been added, an average of over 100,000 new service accounts per year. These new service accounts require new facilities to be added, maintained, restored, as well as new customers that need to be adequately served. Costs associated with these activities impact our required annual capital expenditures and O&M expenses.

For capital expenditures, over the last decade there has been a strong correlation between new service accounts added in a particular year and the capital expenditures required for that year. However, in 2004 there was an exception to this trend when new service accounts increased yet capital expenditures decreased. This unique occurrence resulted from the deferral of planned capital expenditure projects due to the need to shift resources to support 2004 storm restoration efforts. Also, beginning in 2006, capital expenditures started to reflect an increase associated with the newly required and approved hardening initiatives. For 2009-2011, the correlation between the required level of capital expenditures and new service accounts continues. However, this correlation is not quite as strong due to the increasing level of costs associated with the hardening initiatives.

Regarding O&M expenses, from 1999 – 2003 annual increases in O&M expenses averaged only about 1% a year. Decreases in O&M expenses occurred during 2004 and 2005, primarily the result of expenses being deferred or not incurred as resources were shifted to support the 2004 and 2005 storm restoration efforts. However, had the same trend occurred in 2004 and 2005 as in previous years, 2006 would have also shown a 1% increase. As I discussed earlier, annual O&M

expenses for the three-year period 2006-2008 averaged $239 million per year vs. $241 million per year for the forecast period 2009-2011. This again represents an increase of less than 1%. These modest O&M increases have been achieved despite the recently required costs related to the regulatory commitments associated with FPL's approved storm hardening and storm preparedness initiatives as well as other cost pressures, including salary costs increases.

In summary, Distribution has worked hard and continues to work hard to provide efficient and reliable service at a low cost. Over the last decade Distribution's capital expenditures and O&M expenses have been effectively managed. Historically, capital expenditures have shown increases that can be primarily attributable to customer growth requirements and, beginning in 2006, to regulatory commitments associated with storm hardening initiatives. The same holds true for FPL's forecast of capital expenditures. For O&M expenses, annual average increases have been held to 1% for almost the entire historical period 1999- 2008. For the forecasted period 2009-2011 vs. 2006-2008, the average annual O&M expenses are expected to increase less than 1%. Despite the addition of over 1,000,000 new service accounts during this ten year period, additional costs required to implement storm hardening and storm preparedness initiatives and other cost pressures, Distribution has effectively managed its costs.

Q. Does this conclude your direct testimony?

A. Yes.

BY MR. ROSS:

Q. Mr. Spoor, are you also sponsoring exhibits to your direct testimony?

A. Yes, I am.

Q. And do those exhibits consist of three pages shown as Exhibit MGS-1 through MGS-3 on staff's exhibit list?

A. Yes, they do.

MR. ROSS: Madam Chairman, I would note that Mr. Spoor's exhibits have been premarked for identification as Exhibits 95, 96, and 97.

COMMISSIONER EDGAR: Thank you.

BY MR. ROSS:

Q. Mr. Spoor, have you prepared a summary of your direct testimony?

A. I have.

Q. Would you please provide that summary to the Commission?

A. Good afternoon, Commissioners. The distribution business unit is responsible for planning, constructing, operating, maintaining, and restoring FPL's distribution system. Our distribution system is expansive, spanning over 67,000 miles, which equates to over 2.5 times the circumference of the earth. We have delivered superior reliability and customer service while effectively managing costs. Additionally, we are diligently strengthening our distribution infrastructure to increase its storm resiliency and improve reliability.

Let me highlight some our excellent results. Our service reliability, as measured by SAIDI, the most relevant reliability measure for customers, ranks among the industry's top performers and has averaged 45 percent better than the national average for the last decade, as indicated on my exhibit to my right.

In 2008, we achieved our best ever overall reliability performance. Our continued efforts to improve customer service have helped us reduce our logged service quality complaint percentage by more than 50 percent over the last decade.

We continue to maintain a focus on safety. Our 2008 safety performance was best ever.

Our distribution system is becoming more storm resilient and reliable as we implement our recently improved storm hardening plan and storm preparedness initiatives.

Finally, all of these excellent results have been achieved while effectively managing costs, despite adding more than one million new service accounts over the last decade together with the additional costs from our recently approved regulatory commitments, O&M expenses have been and are expected to remain stable. Capital expenditures will continue to be primarily driven by customer growth, reliability programs, and our storm hardening and preparedness initiatives.

In summary, Commissioners, distribution has delivered excellent balanced performance resulting in substantial value and benefits to our customers for today and the future. Our management and employees continue to remain committed to safely providing superior reliability and excellent customer service at a reasonable cost.

This concludes my summary.

MR. ROSS: I tender the witness for cross.

COMMISSIONER EDGAR: Thank you. Are there questions from the Hospital Association on cross?

MR. WISEMAN: No questions.

COMMISSIONER EDGAR: No questions.

Mr. Beck.

MR. BECK: Yes. Thank you, Madam Chairman. And through a prior agreement with Florida Power and Light, they designated Mr. Spoor to answer a few questions about LED streetlights, and that is what I intend to ask, if I could.

CROSS EXAMINATION

BY MR. BECK:

Q. Good afternoon, Mr. Spoor.

A. Good afternoon.

Q. Could you tell me what an LED streetlight is?

A. An LED streetlight is a new technology. It is one that we are actually piloting as we speak for lighting.

Q. It is my understanding that LED lights, not streetlights, but have been around a long time, such as in exit signs in buildings. Are you familiar with that?

A. I'm not familiar with -- I am familiar with LED lights. However, I'm not familiar with the specifics of how they are used for streetlighting or billboards and such as you just mentioned.

Q. Okay. How does the energy consumption of an LED streetlight compare to the energy consumption of the lights that Florida Power and Light typically uses?

A. It is our understanding that the energy consumption of these lights is less than the traditional light that is offered right now. However, again, these are a newer technology, and that is why, in fact, we are piloting them. The pilot began in March of this year. We plan to run that pilot for a year to understand, you know, just everything about this new technology. How specifically it may perform in the environment here in

Florida, specifically as it relates to humidity, lightning, rain, et cetera.

Q. You mentioned that the lights use less energy. Do you have any estimates of by how much less energy or how much less energy they use compared to FPL's streetlights?

A. Well, again, at this point, it is strictly just an estimate, and the estimate has ranged anywhere from the vendors that are developing these lights from 30 to 50 percent.

Q. You said that it is a new technology. Could you tell us how long the technology has been available?

A. Well, I know specifically in the case that we are looking at in terms of streetlights and that such, it is fairly new. In fact, I believe we are one of just a handful of entities that actually have some of these lights to test them. So for the application that we are looking at in terms of street lighting and such, it is a fairly new technology.

Q. And by fairly new, how long is that?

A. Well, again, we installed these lights back in March on a pilot basis, and I believe they were just available just a short time before that. So it is fairly new technology.

Q. Is it correct that your test that you are doing consists of you have put in LED lights on eight poles in the corporate parking lot in Juno Beach?

A. Yes, that is correct.

Q. Is that the full extent of the test that is being done?

A. That is the extent of the pilot. And, again, we felt like it was prudent to first test it in this limited capacity to understand ultimately how these lights will function before offering them on a wider basis.

Q. Have you reviewed the results of tests conducted by other utilities or any other entities?

A. I am not familiar with what our engineering team may have done in terms of -- I know as part of this pilot they have looked to see what other pilots and technologies or pilots may have been going on, but I'm not familiar with the results of those.

Q. Will FPL be taking the results of those other tests into account when you decide what to do?

A. I think we will be looking at a number of factors, but certainly I would say the primary factor will be how these lights are functioning within the Florida environment. Again, I think that is a big key that we are looking at in this pilot is just to understand how this new technology will function in high humidity, lightning, rain, et cetera.

Q. Were you present at the Plantation service hearing when Mayor Richard Kapland (phonetic) of Lauderhill testified about this subject?

A. No, I was not.

Q. Have you reviewed the written transcript of his testimony?

A. I have been provided a summary of that. And as I understand it, Mayor Kapland continues to work with our streetlighting team. He had, I understand, at that particular hearing expressed an interest in this type of lighting. As a result of that, we continue to work with the mayor and his folks to understand, you know, the desires that they have, and we have educated them, again, on our pilot.

I will also point out that not only for this particular city, but others as well that have expressed an interest in this, there is an option available today for those that want to pursue LED lighting and that would be those that want to own their own customer LED lights. We have today certainly a way we can provide energy only type of services to those lights. So we do provide that offering as of today.

Q. Did Mayor Kapland tell FPL that he wished to use federal stimulus dollars to procure LED lights for streetlights in his city?

A. I'm not familiar with that.

Q. Have you had any discussions with other cities or any inquiries from other cities asking about LED streetlights?

A. I do know of a few other cities that have expressed some interest in this lighting and, again, our lighting team is willing to meet with them. In fact, I think in some occasions we have met with them. We, in fact, developed a brochure that highlights the pilot that we have currently going on with these LED lights to not only highlight the potential benefits, but also some of the challenges of these lights. In fact, one of the challenges right now is the initial installation or the initial cost of these lights is seven times the cost of a traditional light that we would offer today.

Q. And have you compared the energy -- the offsetting energy efficiency of these lights compared to traditional lights?

A. We have. And, again, from, you know, what the vendors that have supplied these lights to us as part of this pilot have expressed to us is you could anticipate, again, it is an estimate at this point, energy usage that could be in the range of 30 to 50 percent less.

Q. Is the City of Tamarac testing 25 of these LED streetlights at the corner of Commercial Boulevard and Pine Island Road?

A. I'm not familiar with that pilot.

Q. Has FPL not looked into that?

A. I don't know if we have looked into it or not. I am just not familiar with that specific pilot.

Q. Are you investigating pilots by any other government entities concerning their tests of LED lights and seeing how FPL might use the results of those tests?

A. Well, again, I know there are other entities that are piloting lights. Again, to date I'm not sure of any -- certainly any utility within the state of Florida that -- public utility that is offering it as part of its streetlight offering. But as this technological, again, evolves we would certainly not only consider the factors that we learned from our pilot, but others that are potentially piloting these on their system.

Q. Okay. Now, FPL's pilot in the corporate parking lot started in March of this year, is that correct?

A. That is correct.

Q. And how long is that pilot expected to continue?

A. Our plans now are to run the pilot for one year at that point, as we would do with any new product offering. We would understand certainly what we learned during that pilot period and ultimately produce some form of final report to identify certainly the pros and the cons that we learned through the study.

Q. Why will it take as long as a year to conduct the pilot?

A. Well, again, one of the key factors that we want to understand with these lights is how they perform with the weather that we experience here in the state. So, we certainly want to make it through the summer months, understand the humidity, the lightning, the rain, and we feel like one year is an appropriate period to run for this new technology.

Q. So can we expect a report from FPL and a filing of some sort shortly after March of 2010?

A. We would certainly not be opposed to providing to the PSC staff and Commission as requested the results of this pilot. Again, we would expect -- our plan right now is to run the pilot for one full year, likely take somewhere in the 60 to 90-day time frame to produce a final report, and at that time it would certainly be available.

MR. BECK: That's all I have, Madam Chairman. Thank you.

COMMISSIONER EDGAR: Thank you.

Mr. Moyle.

MR. MOYLE: Thank you. Thank you, Madam Chair.

CROSS EXAMINATION

BY MR. MOYLE:

Q. I'm Jon Moyle. I represent Florida Industrial Power Users Group. I have a few lines of questioning I want to explore with you.

Obviously, hurricanes can have a big impact on your distribution system, isn't that correct?

A. Yes.

Q. And we haven't had hurricanes to significantly impact FPL's system since '04/'05, is that correct?

A. We have not had any major hurricanes effect our service territory since '04/'05, although those two years, I don't think I have to remind anybody, were very active years for us.

Q. And you would agree it is very difficult to predict hurricanes, correct?

A. Well, I am certainly not a predictor of hurricanes, but I'm sure it is challenging.

Q. In terms of the number annually that may occur, you would agree?

A. I would agree that it would be difficult to predict hurricanes.

Q. When hurricanes or tropical storms hit and they knock out your distribution system, how do you go about making efforts to restore it? And maybe if I need to back up a little bit, I mean, I presume that your transmission system is the first to be restored. So you have the main lines back up, and then you go from distribution, is that right?

A. Actually, our restoration processes would first call to ensure that we have the generating units up.

Q. Okay. Well, just describe for me how you go about making decisions as to what distribution areas should be restored.

A. Well, first, I think it is important to highlight that we do have very well-tested and solid plans when it comes to hurricane restoration. And really at 50,000 feet our primary objective is to restore the highest number of customers in the shortest amount of time, certainly doing that safely, as well as in parallel restoring power to critical infrastructure, such as hospitals, 911 centers, those type of facilities and such that are important to the communities.

Q. I remember a few years ago I think there was a little bit of questioning about efforts to restore distribution systems to key FPL employees before critical infrastructure or the highest number within the shortest period. Has that practice been discontinued?

MR. ROSS: Objection. Assumes facts not in evidence.

MR. MOYLE: I can ask him the question.

COMMISSIONER EDGAR: Why don't you try to rephrase?

MR. ROSS: Okay.

COMMISSIONER EDGAR: And see where that goes.

BY MR. MOYLE:

Q. Did FPL ever have a practice where key executives' power was restored as a priority matter?

A. I'm not familiar with that practice.

Q. Do you know, does FPL have a list, a key elected officials list that they maintain with respect to restoration of power?

MR. ROSS: Madam Chairman, I am going to object, again. I don't know how this relates to any issue in the case. It is outside the scope of his direct testimony, as well.

COMMISSIONER EDGAR: Mr. Moyle, can you point to --

MR. MOYLE: Sure. He is the guy who is talking about distribution. He has testified their order of priority is with respect to, number one, restoring it to the highest number within the shortest period of time; number two, to restore it to critical infrastructure facilities. I have reason to believe that there is also a list maintained of key elected officials, and if that is a priority, I just want to ask him that question.

COMMISSIONER EDGAR: And I am going to look to FPL, and I'm sorry, I have forgotten your name.

MR. ROSS: Mr. Ross. It's Ross.

COMMISSIONER EDGAR: Thank you, Mr. Ross. Would you like to reply?

MR. ROSS: He is making an assumption about some list. Again, I don't know how that list applies to any issue in the case. With respect to Mr. Spoor's response to questions about restoring customers, those were responding to Mr. Moyle's question. So he is like trying to create an issue, and now claiming it's an issue in the case. I just don't see it.

COMMISSIONER EDGAR: Ms. Helton.

MS. HELTON: Madam Chairman, I didn't hear any issue to which this line of questioning is going to, and I am still struggling with the relevance to the case for this particular line of questioning.

COMMISSIONER EDGAR: Okay. And, Mr. Moyle, I will ask you again, because I don't have all 100 and however many issues we have memorized, can you point us to an issue that your questions relate more directly to?

MR. MOYLE: Well, I mean, there is a --

COMMISSIONER ARGENZIANO: Excuse me, Madam Chair. I can't hear very well. Is there any way Chris can help crank up the volume?

COMMISSIONER EDGAR: We will certainly see.

COMMISSIONER ARGENZIANO: Thank you.

COMMISSIONER EDGAR: He is walking that way.

MR. MOYLE: I am simply trying to -- do you want me to wait? I am simply trying to have answered a question as to whether FPL maintains a list for the purposes of restoring distribution areas that focuses on key elected officials. As I indicated, I believe that that is the case. You know, he can answer yes or no, he doesn't know of it.

With respect to the issues, you know, we go through the issues identification process. A lot of issues get subsumed. The global catch-all issue is is the operation and maintenance expense appropriate in this case. There is also an issue with respect to their seeking a return on equity enhancer due to good quality, reliable service. And I think that to the extent that such a list is maintained and efforts are made to restore people on a piecemeal basis that that would work against the idea of providing good quality, reliable service to the most people in the shortest period of time. So I think it is relevant.

COMMISSIONER EDGAR: Ms. Helton, I am coming back to you.

MS. HELTON: This is one of those tough ones, Madam Chairman, I think. As I think we probably all have figured out sitting here. Perhaps we can go ask one or two questions down this line and see where it leads and then go from there.

COMMISSIONER EDGAR: Mr. Moyle, let's see where it takes us.

MR. MOYLE: Okay.

BY MR. MOYLE:

Q. Are you familiar with such a list as we have been talking about with respect to key elected public officials that is maintained by FPL?

A. Absolutely not. In fact, I was involved personally with the restoration after the '04 and '05 seasons, and as I stated before, the primary restoration processes were to --

COMMISSIONER ARGENZIANO: Excuse me. Excuse me, sir. Could you speak into the microphone, please.

THE WITNESS: Sorry, Commissioner.

A. Absolutely not. I was involved personally with the 2004 and 2005 restoration efforts, and during those events, we restored service to our customers, as I just stated earlier, which was first to restore to the highest number of customers safely in the shortest amount of time, as well as in parallel restoring power to our critical infrastructure throughout the communities that we serve.

Q. So it is your testimony that as we sit here today you have no knowledge of a list maintained by FPL of key elected officials for the purposes of informing FPL during distribution restoration efforts, is that correct?

A. I'm sorry, can you state that question again?

Q. Sure. Your testimony is you do not have a list of key elected officials in any jurisdiction that would be part of any FPL decision with respect to restoring power after an outage, is that correct?

A. That is correct.

Q. Okay. Let me direct you to Page 13, Line 19.

MR. ROSS: You are referring to his testimony, Mr. Moyle?

MR. MOYLE: Yes, sir.

BY MR. MOYLE:

Q. And you describe this program of priority feeders and laterals. And as I read your testimony, it is designed to remedy situations for customers who are experiencing the highest number of outages and interruptions on the system, is that correct?

A. Yes, that is correct.

Q. Okay. So, in order to qualify for attention under this program, how many interruptions or outages must one have?

A. For this particular initiative there are actually several thresholds, if you will, that our local areas start to address circuits, if you will, that would fit into this category. Typically, it can be as many as two is when they start to take a look at the number of, or the initiatives that we have that would pertain to those specific circuits.

Q. So there is not a set number of times that somebody needs to be interrupted or anything that puts you on that list for that program, is that correct?

A. Again, the primary focus of this is if the circuits in question had multiple interruptions, multiple being defined as anything typically over two or three.

Q. Now, with respect to the circuits that are interrupted, you have loop feed, you loop feed circuits, is that right? Are you familiar with the term loop feed?

A. Yes. Can you state the question, again, please?

Q. Sure. Do you have familiarity with the term loop feed?

A. Yes, I am familiar with that term.

Q. What is it?

A. Loop feed, if I understand the way you have stated that, typically applies to our underground circuits in which they may be fed from multiple directions. And so you could be feeding it either from Point A or Point B to provide electric service to those customers.

Q. And the other way to feed them is through a single feed, is that right, as compared to a loop feed is only being fed from one direction?

A. Yes, that is correct.

Q. And do you have a focus on increasing reliability by trying to increase the circuits which are fed by loops as compared to single feeds?

A. Can you state that question, again?

Q. Sure. Is there an initiative or an object of the distribution system to increase reliability by having circuits fed on a looped feed basis as compared to a single feed basis?

A. If I understand your question correctly, we don't have a set initiative to increase the number of loops or loop feeds that we provide to our customers.

Q. Did FPL receive any FEMA dollars for assistance after the '04/'05 storms in repairing its infrastructure, if you know?

A. I'm not sure. That would not be my area of responsibility.

Q. I want to ask you a little bit about the ETR system. That is the estimated time restoration system, correct?

A. Yes, correct.

Q. Okay. If I understand that system, you can call up and the computer will tell you how long it is until your electricity will be restored approximately, isn't that correct?

A. No, that is not exactly correct. Actually, the ETR system that we were actually one of the pioneers in the industry to introduce this, when a customer experiences an interruption initially, and they call in, it will give immediately, even before we have fully trouble shot what might have caused that outage, this estimated time of restoration to the customer so that they can plan according based on how long or how short that outage may be.

Q. Do you know how many percent of customers have their power restored within one hour of the estimated time that you initially give them?

A. I don't know the exact percentage. I know it is a very high percentage, somewhere in the 80 percent range, if I'm not mistaken.

Q. It is true, is it not, that your O&M expense for the distribution system, the average expense is going up over the years 2009 to 2011 as compared to the years 2006 to 2008, correct?

A. I would have to reference my testimony. Can you be more specific?

Q. Well, I can show you Page 32, Line 14.

A. Can you restate the question, please?

Q. Sure. And we can refer to your testimony. I am just trying to understand for the test year, your O&M expenses are projected to go up for 2009 to 2011 as compared to 2006 and 2008, correct? Maybe it might be easier to look to your Exhibit MGS-3.

A. Okay. Can we try it one more time?

Q. Sure. Why don't we just go to MGS-3, Page 3 -- I'm sorry, Page 1 of 1.

A. Okay.

Q. If I am understanding this graph and category correctly, about the middle of the page it shows average for 2006 to 2008 of O&M expense, correct?

A. That is correct.

Q. Okay. And then there is two bold numbers, one for distribution BU costs, and then the other distribution preferred cost, correct?

A. That is correct.

Q. Okay. And then if you continue on down, there is the average for 2009 to 2011 O&M, correct?

A. That is correct. And I think the other part of my testimony that you were referencing highlights that. If you look at the average O&M cost for distribution for 2006 to 2008 and compare that to the O&M costs on average for 2009 to 2011, that is approximately about a 1 percent increase in O&M costs.

Q. Yes, sir. And I was just trying to ask you, it is increasing in those years, 2009 to 2011 as compared to 2006 to 2008, correct?

A. That is correct. And if you look specifically on that particular exhibit, one of the primary drivers, if not the primary driver of that increase is the additional O&M that is required for our hardening commitments that we have certainly made to this Commission and Commission staff to fulfill.

Q. Have you done any analysis or study to try to determine whether the hardening is working effectively?

A. Well, we certainly have done analysis, extensive analysis following those hurricanes that ultimately led to our hardening plans that we have filed and have been approved by this Commission. So there has been extensive analysis done.

Q. And you are moving along with your hardening efforts, correct?

A. Yes, we are.

Q. Have you done any kind of analysis to look at an area prehardening/post-hardening that may have experienced tropical force winds to see if there was a reduction in the number of outages associated with a tropical force wind event?

A. We have not done it for a tropical storm force wind event. And, again, since we have begun our hardening efforts following the very active seasons of '04 and '05, we thankfully have not experienced a major hurricane on our system.

Q. Just a few more questions, and I think we will be done.

On Page 30, you talk about eliminating contractor engineering workforce, 30, Line 9. This is not internal FPL employees, is it?

A. The 50 that are referenced in my testimony in the line you just mentioned are not internal FPL employees. However, if you read down to Line 12, there were 60 full-time FPL permanent positions that were eliminated last year.

Q. And with respect to the 69 contract, do those -- are those people -- previously were they under a retainer type agreement or did you just call them when you needed their services?

A. You are talking about the 50 engineers, contract engineers?

Q. That's right.

A. They were not on any type of retainer. They were paid by -- it was the function of the work that they actually designed and engineered for us. So it was not a retainer type of agreement. It was in essence work paid for work engineered.

Q. Staff has a document I believe that they are going to use that is entitled Review of Florida's Investor-Owned Utilities Distribution Reliability, and it says 2003, November 29th, 2004. Are you familiar with this document?

A. I have -- I believe I have reviewed that. I do not have a copy.

Q. Okay. Do you know if that is the most recent review of Florida's investor-owned utilities distribution reliability systems?

A. I don't know if that is the most recent. I do know that we file every March 1st with the Commission staff the results of our reliability programs as well as all of our storm initiatives and hardening initiatives. So it is a very extensive report that is filed with Commission staff every March 1st.

Q. Would you agree that the conclusion with respect to this document was that FPL's distribution system received a mixed review?

MR. ROSS: Madam Chairman, if he is going to ask questions about the document, he should put it in front of the witness.

COMMISSIONER EDGAR: Go ahead, Mr. Moyle.

BY MR. MOYLE:

Q. I have handed you the document that I just referenced. You have it in front of you, correct?

A. Yes.

Q. Section 3 is entitled Executive Summary, and the first question is what are the trends in the distribution reliability indices and measures from 2000 to 2003. Would you just read the first sentence, please, into the record?

A. The overall trends for Florida Power and Light, Gulf Power, and Florida Public Utilities Corporation were mixed for the report system indices.

Q. Thank you.

A. If I may add, just in looking at this, I do believe, again, the Commission staff has published -- this one is somewhat dated. This is back from 2004. I believe they have published more recent reports since this one.

MR. MOYLE: I am handing out an exhibit.

COMMISSIONER EDGAR: Would you like this marked?

MR. MOYLE: Yes, ma'am.

COMMISSIONER EDGAR: Okay. This will bring us to Number 432, FPL's Response to OPC's First Set of Interrogatories 100.

MR. MOYLE: Yes, ma'am.

(Exhibit Number 432 marked for identification.)

BY MR. MOYLE:

Q. Sir, you reference in your answer to the interrogatory -- you have it in front of you, correct?

A. Yes, I do.

Q. -- a number of improvements that FPL is making, and you reference Pages 19 and 20 of your testimony. You state on the last sentence of your answer, and I quote, however, at this time those impacts have not been determined. I take it from that answer that with respect to the improvements that are being made, you have not quantified those improvements, correct?

A. Yes, that is correct. As I state earlier on in the answer, some of these new technologies that are referenced, that I reference, in fact, in my testimony, are still under development in the very early stages. And so, therefore, it has been difficult, and that is why we have not fully identified the impacts of these technologies.

Q. And at this point, given that, we are not -- you don't have good data as to whether it is going to improve customer service or whether the jury is still out, correct?

A. Well, again, some of these are not necessarily directed specifically at improving customer service. Some of them speak to our ability to continue to increase the efficiencies that we have been able to experience within our business unit.

Q. Okay. One final question or two. You would agree that FPL's distribution system is not at any greater risk of weather, hurricanes, than the systems of Tampa Electric Company, or Progress Energy, or Gulf Power, or even Mississippi Power, in that all of them are located in an area that is susceptible of being struck by hurricanes, correct?

A. I would agree that certainly all of the utilities you just mentioned are susceptible to the impacts of a hurricane. However, I think if you were to look at what Florida Power and Light faces, again, we serve almost the entire east coast of Florida, and almost the entire west coast of Florida, so the expansiveness of our service territory and certainly its location in terms of where hurricanes have a likelihood to hit, I would say are greater.

Q. And I guess that would be a risk analysis that would need to be done. Like Tampa Electric, they are in a specific geographical location. You are in 35 counties, I believe. It would probably be less likely that a hurricane would impact all 35 of your counties as compared to four or five counties where Tampa Electric might be, correct?

A. Again, I don't know if I can speak to the probabilities of us relative to TECO. I believe that Witness Harris would probably be able to answer that in terms of --

Q. Okay. And I will ask him some questions, but you don't have any analysis or study that is done that has measured impacts of hurricanes on your system as compared to other southeastern utilities, do you?

A. I do not know of any that I have personally done or my team has done, but that is not to suggest that that type of analysis that you just mentioned has not been done.

MR. MOYLE: Thank you, Madam Chair.

COMMISSIONER EDGAR: Ms. Bradley.

MS. BRADLEY: Thank you.

CROSS EXAMINATION

BY MS. BRADLEY:

Q. Mr. Spoor, I just have a couple of questions for you. I believe Ms. Santos indicated that you oversaw customer service as it relates to reliability, and power outages, and that type of thing, is that correct?

A. Yes, that is correct.

Q. Okay. Do you get clip services that tell you what is going on and what the papers are saying and the customers are saying about your company?

A. Yes. We do get news clips. We also from time to time have customers contact us or inquire if they have got a question about the service that they are receiving.

Q. Is that usually by e-mail, or they call you up, or how do they do that?

A. In terms of customers?

Q. Yes, I'm sorry.

A. Generally, customers have a variety of ways of getting in touch with us, but many times they will call into our care center. And if the care center cannot resolve their question, then many times those are dispatched -- those types of calls are dispatched to our folks and our employees that work throughout our service territory.

Q. And do you get reports from what is going on in the call centers and the complaints that are coming in?

A. I don't get reports in terms of what is coming into the care center, but I certainly do from time to time get reports about concerns that our customers may be raising.

Q. All right. Did you see something in the paper last week about a problem down in a neighborhood called Poinciana Heights down in Fort Lauderdale, I believe it is?

A. Yes, I am familiar with that particular article. Again, I would say that I don't necessarily know that our team needed to read about it in the newspaper specifically in this case, because our folks located within that part of our service territory had already been working closely with that homeowners association to address the concerns that they had regarding the reliability. But I think the article that you reference, in fact, highlights some of the challenges that we have.

In this specific case, the root cause really of some of the reliability concerns that the customers were experiencing were customer-owned trees. In fact, I believe, the president of the homeowners association in this case highlights in the article that, you know, there is still some work that they need to do with other homeowners who, for whatever reasons, continue to refuse to allow us to trim or in many cases remove the trees that are in conflict to the service that they are provided by.

Q. The article seemed to indicate that you have been getting calls about this dating back to 2008, is that correct?

A. I'm not familiar with the specific time frame. Again, I do know that, in fact, in this case over the last month or so we had some of our local folks actually meet with not only the president of the homeowners association, but many of the residents. In fact, what I understand is that we had folks that actually were pointing out to many of the customers, while they were at the location, the trees that we had concerns with to try to see if we could secure the necessary agreements to remove some of these trees that continue to plague this specific area as it relates to service reliability.

Q. Would it be fair to say that a big rate case like this puts a lot of pressure on you all to try to get things fixed as quickly as possible so it doesn't become an issue?

A. No, I wouldn't agree with that. Again, certainly, as I mentioned in my opening statement and as demonstrated to this chart to my right, which is Exhibit 2 in my testimony, I think we have a long-standing history certainly over the last decade of providing superior reliability to our customers day in and day out. And so we certainly don't have to wait for a rate case to continue to do that. I think, certainly, this chart demonstrates that we have been doing that for a number of years.

Q. You said you didn't go to the Plantation hearing. Did you go to any of the hearings, public service hearings?

A. I did. I went to -- the quality of service hearings?

Q. Yes.

A. I went to --

Q. Well, we seem to disagree on that, but --

MR. ROSS: Objection, move to strike.

MS. BRADLEY: Hearings that we have had for the customers to come in and talk.

COMMISSIONER EDGAR: Hold on. Was there an objection?

MR. ROSS: Yes, there was an objection.

COMMISSIONER EDGAR: I think we were talking over one another, perhaps. Well, somebody was, not me.

MR. ROSS: I objected to one of Ms. Bradley's comments, but we can move on.

COMMISSIONER EDGAR: Ms. Bradley, why don't you go ahead and ask the question again, please.

MS. BRADLEY: Thank you.

BY MS. BRADLEY:

Q. Did you -- you started to say that you attended some of the hearings that were held for the customers to come in?

A. Yes. I attended two of the hearings, and the others that I didn't attend I received briefings.

Q. Were you aware that there were customers that complained about things ranging from tree trimming, to power outages, and power surges, and losing appliances, and various things like that at the hearings?

MR. ROSS: Objection, assumes facts not in evidence.

MS. BRADLEY: It absolutely is in evidence. It's made part of the record in this case.

COMMISSIONER EDGAR: Mr. Ross, can you be more specific?

MR. ROSS: And to the extent that counsel has got specific questions about specific customer comments, I would request that they be put in front of the witness.

MS. BRADLEY: I do not, but I think I can ask him if he is aware of the comments that were made.

COMMISSIONER EDGAR: Overruled.

BY MS. BRADLEY:

Q. Can you answer, sir?

A. Can you ask the question again, please?

Q. I will give it a try. Were you aware that there were customers that came in and made complaints about things ranging from tree trimming problems to power outages, power surges, things of that type?

A. Yes, I am aware of the nine service hearings that we held throughout our service territory, that 34 customers of the 418 that came had inquiries or had raised concerns regarding the level of service that they receive.

I also know, though, that since those hearings, 30 of those customers we have already resolved their concern to their satisfaction, and the other four are in progress.

Q. I can't remember if it was Mr. Olivera, but he talked about -- one of the witnesses talked about you only paid for it if you considered it a cause by an act of God. How do you define that?

A. I'm sorry?

Q. Let me repeat that question. I was getting ahead of myself.

Mr. Olivera, I was asking him about some of the customers that came in and complained about power surges, that it caused damage to their house or their appliances, and they said that your company had refused to pay for it. And I understood Mr. Olivera to say that you only make -- pay them something if you consider it an act of God. And I am just asking what you consider an act of God?

MR. ROSS: That question also assumes facts not in evidence. It mischaracterizes Mr. Olivera's testimony.

COMMISSIONER EDGAR: Ms. Bradley.

MS. BRADLEY: I certainly heard him say that, so --

COMMISSIONER EDGAR: Ms. Helton, I do not remember, so I am going to look to you.

MS. HELTON: I actually do remember Mr. Olivera discussing that with respect to what damages the company would pay for.

MR. BUTLER: Madam Chairman.

COMMISSIONER EDGAR: Mr. Butler.

MR. BUTLER: I'm sorry, just to clarify, though. FPL pays if there is some evidence that FPL was responsible, FPL did something wrong. FPL does not pay if it is an act of God. So it is kind she has the hypothetical reversed.

MS. BRADLEY: Was that an objection or testimony? I'm sorry, I'm not sure.

MR. BUTLER: I'm just trying to clarify the nature of the objection.

COMMISSIONER EDGAR: Let's move forward. Ms. Bradley, you have posed a question and if the witness needs it to be repeated, and if not, he can do his best to answer it.

MS. BRADLEY: Thank you.

BY MS. BRADLEY:

Q. Can you answer the question?

A. I'm sorry, can we try it one more time. I'm sorry.

Q. I was trying to give you some background to make sure we were on the same page, but I was asking

Mr. Olivera about some of the testimony where your customers had complained that you refused to provide payment for damages to appliances in their houses caused by what they felt was power surges and things that were attributable to the company. And he stated that they did not -- they only covered things that he considered an act of God. And I'm just trying to find out what you consider what that means.

A. If I understand the question correctly, I believe it is do we pay claims that are caused by acts of God?

Q. I just want to know what that means, what it covers?

A. I don't know all of the specifics of acts of God or the payment of claims. I will tell you, though, that of those 34 customers of the 418 that did speak at the hearing, there were four that highlighted some sort of claim issue. As I mentioned, you know, we have followed up since then with all of our customers that came out with just a couple of exceptions -- actually, just one exception where we have yet been able to reach the customer.

Of those four that raised a concern about claims, two of them, after we discussed it further with them, opted not to file a claim. One customer of the four actually acknowledged to us that they just had to reset their breaker, and, in fact, they did not have any damage. And then the fourth actually did file a claim, and we did pay the claim.

Q. Were you aware that there were a couple of people that testified about, not a hurricane, but as having a storm in their neighborhood and that they sat there in the dark for a couple of days while the people across the street who had a different utility were sitting there with electricity?

A. I am not familiar with that as I was briefed on. I did not hear that specifically in the two that I attended, and the other seven that I was briefed on, I did not recall hearing that specific case.

Q. Were you aware from the briefing you got that there seemed to be differences between reliability in different neighborhoods?

A. No, I didn't get any information to suggest that certain neighborhoods were receiving different levels of reliability relative to others. Again, of the customers that spoke at the service hearings, all of these customers we followed up with to understand more about their concern and we have since resolved or are in the process of resolving those, so --

Q. Is there anything that would account from the neighborhoods where a company -- where people came in and said they were getting good service versus the ones where they came in and said they were making complaints about the service, and the frequent power outages, and that type of thing?

A. Can you restate that question again, please?

Q. How would you explain the difference between the areas where people came in and said they were getting very good service, and the other areas where several people came in and complained about frequent power surges, and power going out for periods of time, and that -- what explains that difference between those good service and complaints about frequent problems?

A. Well, again, I don't know if there was anything that I gathered from the service hearings to suggest that some neighborhoods were receiving good reliability and others weren't. What I heard were some individual cases, which, again, you would -- I would expect with the level of customers that we serve from time to time may have a question or concern about the level of reliability they are getting.

And just as we do every day, we don't certainly need the quality of service hearings to highlight this, but just as today, or tomorrow, or how we have been doing it for many years, if a customer has a concern or an inquiry regarding the level of service they get, when provided the opportunity we follow up with that customer and more times than not are able to resolve and satisfy that customer.

MS. BRADLEY: I don't think I have any more questions. Thank you.

COMMISSIONER EDGAR: Which brings us to the Retail Federation.

MR. LaVIA: No questions.

COMMISSIONER EDGAR: All right. Thank you. Are there questions from staff?

MS. BENNETT: Yes, we have questions. But, before we have questions, we presented a bunch of documents, and I think all of the parties agreed that would cut down staff's time quite a bit if we don't have to enter all of those into the record. So we might want to check and see if everyone can stipulate to staff's exhibits before we start the questioning.

MR. ROSS: FPL has no objection.

COMMISSIONER EDGAR: FPL has no objection.

MR. WISEMAN: No objection from SFHHA.

MS. PERDUE: Nor from AIF.

MR. BECK: No objection from OPC.

MS. BRADLEY: No objection.

MR. MOYLE: No objection.

MR. LaVIA: No objection.

COMMISSIONER EDGAR: Wonderful.

MS. BENNETT: Very good. Then that cuts us way down.

(Transcript continues in sequence with Volume 18.)

STATE OF FLORIDA)

: CERTIFICATE OF REPORTER

COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, 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' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 10th day of September, 2009.

JANE FAUROT, RPR
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