

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

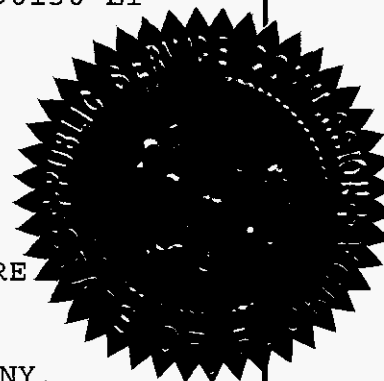
In the Matter of:

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

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

VOLUME 18  
Pages 2255 through 2353

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PROCEEDINGS: HEARING

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

DATE: Monday, August 31, 2009

TIME: Commenced at 5:00 p.m.  
Concluded at 6:50 p.m.

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

REPORTED BY: CLARA C. ROTRUCK  
Court Reporter  
(850) 222-5491

**ORIGINAL**

PARTICIPATING: (As heretofore noted.)

DOCUMENT NUMBER - DATE

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FPSC-COMMISSION CLERK

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

1  
2 (Transcript follows in sequence from  
3 Volume 17.)

4 ACTING CHAIRMAN EDGAR: Do you need a moment,  
5 or are you good to go?

6 MS. BENNETT: Good to go.

7 ACTING CHAIRMAN EDGAR: Okay.

8 MS. BENNETT: I would like to have Mr. Vickery  
9 hand out Staff's Fifth Set of Interrogatories, No. 62,  
10 and also -- and we will have that marked as Exhibit 433,  
11 and also, for Exhibit 434, a FPL Outage Events for the  
12 years 2004 through 2008.

13 ACTING CHAIRMAN EDGAR: I'm going to go  
14 backwards. You said the last one, which we will mark as  
15 434, FPL Outage Events, 2008, and could you repeat the  
16 title that you gave to me for 433?

17 MS. BENNETT: Actually, it is FPL's Outage  
18 Events, 2004 through 2008.

19 ACTING CHAIRMAN EDGAR: Okay, that will be No.  
20 434?

21 MS. BENNETT: Correct. The 433 is Staff's  
22 Fifth Set of Interrogatories, No. 62.

23 ACTING CHAIRMAN EDGAR: So marked.

24 (Exhibit Nos. 433 and 434 marked for  
25 identification.)

1 MS. BENNETT: And while Mr. Vickery is handing  
2 this out, I did want to make sure that the record was  
3 clear and I -- in an effort for full disclosure, we had  
4 talked about -- or Mr. Moyle had cross-examined the  
5 witness on the reliability report for 2003, which is a  
6 part of Staff's composite exhibit. There's also  
7 reliability reports for 2005, '06 and '07 in that same  
8 set of documents. I just wanted to make sure you were  
9 aware of that in case there were concerns about that  
10 being entered into the record.

11 ACTING CHAIRMAN EDGAR: Okay, thank you.

12 Does everybody have everything that they need  
13 so that we can move forward?

14 CROSS EXAMINATION

15 BY MS. BENNETT:

16 Q Mr. Spoor, do you recognize the document that  
17 Mr. Vickery handed to you? It's Staff's Fifth Set of  
18 Interrogatories, No. 62.

19 A Yes.

20 Q Was it prepared by you or under your  
21 supervision?

22 A Yes.

23 Q And this interrogatory refers to FPL's annual  
24 distribution reliability report in the Executive Summary  
25 that was filed March 2, 2009, correct?

1 A Yes, it does.

2 Q Would you briefly summarize the question and  
3 subpart (d) of your response?

4 A Would you like me to state the question first?

5 Q Please.

6 A Subsection (d) states, on page 2 under 10,  
7 "Storm Preparedness Initiatives, Vegetation Trim Cycles.  
8 FPL states its cost for vegetation management activities  
9 in 2008 totaled 57.9 million. Please provide a  
10 breakdown of this 2008 amount by management region and  
11 provide comparable data by management region for the  
12 2004 through 2007."

13 I believe on -- the response provides it by  
14 our regions that we serve.

15 Q And on page 3 of your response, what are the  
16 total vegetation costs for the years 2004 through 2008?  
17 And if you'll give them by year, that would be  
18 appreciated.

19 A For 2004, 38.6 million; 2005, 39.3 million;  
20 2006, 52.6 million; 2007, 65.2 million; 2008, 57.9  
21 million.

22 Q And you would agree with me that the  
23 vegetation management costs appear to be trending  
24 upward?

25 A I would agree, yes, that they are -- that the

1 costs, as I just stated, are increasing from 2004  
2 through 2007, and that is primarily driven by the fact  
3 that starting in, really, 2006 and I believe 2007 was  
4 the first full year that we implemented our incremental  
5 trimming on average six years for our lateral circuits.  
6 That, again, was filed with this Commission and  
7 approved.

8 Q Are you familiar with the data that is allowed  
9 to be excluded from FPL's distribution reliability data  
10 pursuant to Rule 25-6.0455?

11 A Yes, in general terms.

12 Q Are vegetation outages part of this data that  
13 can be excluded?

14 A No, not to my knowledge.

15 Q The next document I want you to look at is the  
16 chart, which we have identified as 434, and it contains  
17 FPL's outage events for the years 2004 through 2008. On  
18 this exhibit, would you agree that the vegetation graph  
19 line appears to be trending upward?

20 A Let me just make sure, there's a lot of lines  
21 on this graph, let me make sure I see which one is the  
22 veg.

23 Yes, I would agree that, if I have the right  
24 line here, that from 2006 through 2008 there is a slight  
25 increase from the number of vegetation-related outages.

1           I will point out, though, that one of the  
2 primary drivers of that, if you look at it relative to  
3 2004 and 2005, is because those were very active  
4 hurricane seasons, the hurricanes did provide really  
5 some natural pruning, if you will, of trees that  
6 occurred, and so a lot of trees were impacted by the  
7 hurricanes, and thus, because of that, there were fewer,  
8 ultimately, at the end of -- at the end of each of those  
9 years, fewer tree-related outages because of that  
10 natural pruning that was experienced because of the  
11 hurricanes.

12           If I may, if -- actually, because I have seen  
13 this graph even going back to 2003, and I think if you  
14 were to go back to 2003 as shown, it would also be even  
15 higher than 2008; in fact, it would be even higher than  
16 the 2004 year shown.

17           Q     I think you answered my next question, which  
18 was to explain why the percentage of vegetation outages  
19 appear to be increasing for the years 2007 and 2008.  
20 And I understand you were telling me that actually the  
21 prior years, because of the natural removal of trees by  
22 the hurricanes, it was actually a downward trend then  
23 and then back up again. Is that correct, was that a  
24 correct statement?

25           A     That's why, certainly, 2005 shows fewer tree-



1 related outages, because of that natural pruning that  
2 occurred for the hurricanes -- as a result of the  
3 hurricanes.

4 Q I next want to ask you a few questions  
5 regarding FPL's proposal to close the relamping option  
6 on the street lighting and outdoor lighting tariff for  
7 new streetlight installations. Are you the correct  
8 witness to answer those questions?

9 A Yes, I am.

10 Q What service exactly is FPL currently  
11 providing under the relamping option?

12 A Well, first, let me, if I may, just explain  
13 what this particular area is. This is a small  
14 percentage of our streetlights and outdoor lights; in  
15 fact, it is, I believe, less than two percent of the  
16 lights that we actually have that we provide service to.  
17 This particular tariff only requires us to actually  
18 change the bulb if the light goes out.

19 The reason for our proposal to close this is  
20 you can imagine if a customer calls in, states that they  
21 have a streetlight that is out, we go out to try to make  
22 the repair, we change the bulb and the light still  
23 doesn't work, it's then the customer's obligation to  
24 take care of that, because they actually own the  
25 fixture. So the proposal to close this, we would

1 certainly -- those that are currently in this particular  
2 option we would grandfather in, but we believe it would  
3 certainly help customer satisfaction by not offering  
4 this to new customers.

5 Quite frankly, a lot of times, in fact, the  
6 customers that have this option right now aren't aware  
7 of the difference. They do not understand that when we  
8 go out there, it only limits us -- or it only allows us,  
9 I should say, to actually change the bulb. So we are  
10 proposing to close this out to any new customers that  
11 may be interested in it.

12 Q At the risk of sounding like a joke, who would  
13 be changing the light bulbs?

14 A It's a fair question. Our proposal is  
15 actually to provide to our customers the two tariffs, if  
16 you will, that are the overwhelming majority. It's the  
17 other 99 percent or 98 and a half percent of the lights  
18 that we serve, and those are either full maintenance  
19 agreements to where if a customer calls in because a  
20 light is not working, we will go out and fix that light  
21 regardless of what it takes. So even if it takes more  
22 than just changing out the bulb, we will repair that  
23 light. The other option is an energy-only option, which  
24 is customer-owned lighting and we just provide energy to  
25 that light.

1           Q     Do you know if any other entities, investor-  
2 owned electric utilities, provide relamping service, and  
3 can they provide that at a higher or lower cost than FPL  
4 does?

5           A     I do not know.

6           MS. BENNETT: I'm going to ask that another  
7 exhibit be handed out. This is a POD response sponsored  
8 by Mr. Spoor. It's Staff's Third POD, No. 15.

9           ACTING CHAIRMAN EDGAR: Which will bring us to  
10 435?

11          MS. BENNETT: That would be 435, and the title  
12 would be Staff's Third POD, No. 15.

13                   (Exhibit No. 435 marked for identification.)

14 BY MS. BENNETT:

15          Q     Mr. Spoor, are you familiar with this  
16 document?

17          A     Yes, I am.

18          Q     Was it provided by you or under your  
19 supervision to the staff of the Commission in response  
20 to POD No. 15?

21          A     Yes, I believe it was.

22          Q     And this POD shows FPL's assumptions and costs  
23 of service for its streetlighting and outdoor lighting  
24 schedules, is that correct?

25          A     Yes, it provides the assumptions as well as

1 many of the calculations.

2 Q I know this is a large document. Could you  
3 briefly summarize what it contains for the Commission,  
4 kind of explain -- walk us through it?

5 A I guess at a very high level what this  
6 provides is the cost of installing new streetlights, as  
7 well as, I believe, maintaining streetlights and the  
8 various wattages, fixtures and all of the components  
9 that go into, ultimately, the streetlights and outdoor  
10 lights that we provide as an option to customers.

11 Q Thank you, and I have one final question. Are  
12 you in your business unit adding employees in 2010?

13 A No, we are not.

14 MS. BENNETT: No further questions.

15 (Brief pause.)

16 ACTING CHAIRMAN EDGAR: Okay. Where are we?

17 MS. BENNETT: I'm finished.

18 ACTING CHAIRMAN EDGAR: You are finished,  
19 okay. I'm almost finished.

20 Commissioner Skop, do you have questions for  
21 this witness?

22 COMMISSIONER SKOP: Yes, Madam Chair.

23 Good afternoon, Mr. Spoor.

24 THE WITNESS: Good afternoon.

25 COMMISSIONER SKOP: I want to go back to some

1 comments made by Ms. Bradley to which you responded, and  
2 the comments were in relation to customer comments that  
3 were made at the respective service hearings. Did you  
4 attend all of the service hearings?

5 THE WITNESS: No, I did not. I attended two  
6 of the service hearings.

7 COMMISSIONER SKOP: Okay, but there were many  
8 more service hearings than the two that you attended,  
9 correct?

10 THE WITNESS: Correct.

11 COMMISSIONER SKOP: Okay. Let me just say  
12 again, I try to be fair, but I feel that it does your  
13 company a tremendous disservice to appear before this  
14 Commission and shrug off comments as mere inquiries,  
15 when what I heard from the customers in all of the  
16 service hearings I attended were specifically targeted  
17 complaints by customers that had endured hours of  
18 sitting in there, listening to other speakers extol the  
19 virtues of FPL's corporate stewardship. So let's call  
20 it for what it is. Apparently Ms. Santos and you, it  
21 doesn't seem to be in the corporate vocabulary to  
22 recognize the word *complaint*, but that is clearly what I  
23 heard, as a Commissioner.

24 And I know that you have a big service area  
25 and I know that you can't be everywhere, but out of

1 respect for the people that attended your service  
2 hearings and your customers, I would hope that you would  
3 give them the courtesy of acknowledging legitimate  
4 concerns.

5 Now, I'm going to caveat that by what I heard.  
6 I heard specific complaints related to Bradenton to  
7 which I commented upon. Now, I don't know if you were  
8 at that service hearing, but they had a gentleman that  
9 appeared that presented this Commission with a host of  
10 pictures that provided direct visual evidence that there  
11 was a vegetation management issue in your service  
12 territory, to which I asked FPL to be responsive and  
13 have the area manager look at it. Are you aware of  
14 that?

15 THE WITNESS: I believe, Commissioner, if I'm  
16 thinking of the same customer that you just referenced,  
17 we actually have met with that customer, I believe his  
18 name is Mr. Horton, we have met with him. The area  
19 manager, to your advice and I believe even in advance of  
20 that, has met with Mr. Horton and has encouraged Mr.  
21 Horton, as he continues to have concerns, to certainly  
22 contact the local management about those so we can  
23 investigate them to the fullest to ultimately attempt to  
24 satisfy, you know, his complaint or concern that he's  
25 raised.

1                   COMMISSIONER SKOP: Why is it incumbent upon  
2 your ratepayers to raise those concerns? Isn't it  
3 appropriate for the area manager to periodically drive  
4 this area and identify those concerns?

5                   THE WITNESS: Yes, it is, and I would just  
6 add, if I may, that we have not only just the area  
7 managers, but certainly our engineers that we have  
8 within our service territory and our field workforce,  
9 they're out every day responding to customer complaints,  
10 concerns, inquiries, as well as just, you know,  
11 certainly driving the areas either from one job location  
12 to the other, and they're certainly empowered as  
13 appropriate that if there are concerns that they see, to  
14 raise those to the area that they find those in so that  
15 we can address them appropriately.

16                   COMMISSIONER SKOP: And I respect that. What  
17 I hear is a disconnect between what customers are saying  
18 and the response that you just gave, and somewhere in  
19 that process, something's getting lost in the  
20 translation, because I remember customers distinctly  
21 saying they've called and called and called only to have  
22 employees allege that, you know, they were told that  
23 they can't do X, Y or Z.

24                   I want to go back to Miami Lakes, because that  
25 was another specific area of targeted concerns. I think

1 that when you're in a service hearing and -- it is  
2 readily easy for someone with technical experience to  
3 discern mere complaints and gripes versus specific  
4 target concerns. But what I heard was some significant  
5 customer comments related to vegetation management that  
6 was causing interim interruptions, and they may -- they  
7 seemed to imply that that was in a low income  
8 neighborhood, but again, I'm wondering what steps are  
9 being taken to resolve what I felt were legitimate  
10 concerns, not inquiries, but legitimate concerns and  
11 complaints that were expressed to this Commission. And  
12 I would not have said anything had I not heard this  
13 characterized as inquiries. Let's call it for what it  
14 is.

15 THE WITNESS: And I apologize again if the way  
16 I characterized those was not deemed appropriate. I  
17 guess as I call them inquiries, I reference them as such  
18 because I believe day in, day out, we have the  
19 opportunity, when a customer does have a complaint or  
20 inquiry, to resolve that. And I think certainly our  
21 record speaks to that, when provided the opportunity for  
22 a customer to contact us about an inquiry or a concern,  
23 we address it.

24 Those customers that came out and raised these  
25 concerns, the 34 that I mentioned before, at the service



1       hearings, we reached out to every last one of them  
2       afterwards, provided them the local numbers of the folks  
3       within the areas that, two things: one is we are going  
4       to work to resolve your concern, but if for whatever  
5       reason sometime in the future you have an additional  
6       concern, to please contact us and specifically contact  
7       the local management teams for Florida Power & Light  
8       that work in those, because at the end of the day, those  
9       are the folks that are going to be able to resolve these  
10      concerns.

11                COMMISSIONER SKOP:  Okay.  And again, I don't  
12      deny that your record is exemplary, okay, but what I  
13      would expect to hear as a regulator is that there's  
14      always room for improvement, and not to just merely  
15      discount legitimate complaints by customers who endured  
16      hours upon hours of sitting there, listening to others,  
17      you know, talk about corporate stewardship and community  
18      service, but those were legitimate complaints.

19                And again, I think there's always room for  
20      improvement.  You have a vast service area, you can't be  
21      everywhere at once and I recognize that, that's in the  
22      interest of fairness, but I also think it is inherently  
23      unfair not to give full faith and credit to legitimate  
24      complaints received by this Commission.

25                THE WITNESS:  Yes, and I would just -- again,

1 my comment to when provided the opportunity, I'm very  
2 proud of our team and I believe our team, to your point,  
3 are always looking to improve on the level of service  
4 that we provide our customers.

5 COMMISSIONER SKOP: As am I, and your storm  
6 restoration record speaks for itself. Thank you.

7 THE WITNESS: Thank you.

8 ACTING CHAIRMAN EDGAR: Mr. Ross?

9 MR. ROSS: A few questions on redirect.

10 REDIRECT EXAMINATION

11 BY MR. ROSS:

12 Q Mr. Spoor, you were asked some questions by  
13 Mr. Moyle about probabilities of hurricane strikes in  
14 particular counties. Let me just ask you, in the 2004  
15 and 2005 storm seasons, how many counties in FPL's  
16 service territories were unaffected by those storms?

17 A I believe zero. I believe all of our counties  
18 that we serve were impacted in one way or another either  
19 in the '04 or '05 hurricane season.

20 Q You were asked some questions by Mr. Beck  
21 about the LED lights, and one of the questions dealt  
22 with a city that was experimenting or testing LED lights  
23 at a public thoroughfare. Do you remember that  
24 question?

25 A Yes, I do.

1           Q     Do you think that that is a prudent thing to  
2 do, to be testing LED lights at public thoroughfares?

3           A     No, I don't. One of the reasons is, although  
4 we certainly were talking during that line of  
5 questioning about some of the benefits of LED lights,  
6 LED lights also offer a different type of lighting  
7 pattern. There are certainly differences in the  
8 visibility of the lights, the contrast of the lights,  
9 and because of that, I think certainly when you start to  
10 introduce them into roadway lighting you have to make  
11 sure that you really understand all of the implications  
12 of that for driver safety and what-have-you.

13          Q     Finally, Mr. Moyle asked you some questions  
14 about a 2003 review of Florida investor-owned utility  
15 service reliability, a report that was issued by the  
16 Public Service Commission Division of Economic  
17 Regulation. I think you said that that was not the most  
18 recent report, right?

19          A     That's correct.

20          Q     Now, you have just been handed a document. I  
21 wonder if you could just identify it for the record  
22 first?

23          A     This is the Review of Florida's Investor-Owned  
24 Electric Utilities Service Reliability in 2007.

25          Q     So that is a more recent document than the one

1 Mr. Moyle showed you?

2 A Yes, it is.

3 Q And is it the most recent review performed by  
4 the Commission of the reliability of Florida investor-  
5 owned utilities?

6 A Yes, it is.

7 Q Could you read the portion of the document  
8 that I highlighted for you?

9 A Certainly. It says under the heading *Service*  
10 *Reliability of Florida Power & Light Company*, "In 2007,  
11 FPL's adjusted distribution reliability as measured by  
12 System Average Interruption Duration Index," or SAIDI,  
13 "was approximately 73 minutes. This figure is roughly a  
14 1.4 percent improvement over the company's 2006  
15 performance, when its average interruption was 74  
16 minutes. FPL believes this improved SAIDI performance  
17 is a direct result of its storm hardening and  
18 preparedness initiatives, as well as moderate storm  
19 seasons in 2006 and 2007."

20 MR. ROSS: That's all the questions I have,  
21 Madam Chairman.

22 ACTING CHAIRMAN EDGAR: Okay, let's do  
23 exhibits.

24 MR. ROSS: FPL moves admission of Exhibits 95,  
25 96 and 97.

1           ACTING CHAIRMAN EDGAR: Hearing no objections,  
2 95, 96 and 97 admitted into the record.

3           (Exhibit Nos. 95 through 97 admitted into the  
4 record.)

5           ACTING CHAIRMAN EDGAR: Which brings us to Mr.  
6 Moyle.

7           MR. MOYLE: I would move Florida Power &  
8 Light's response to OPC's first set of interrogatories,  
9 specifically interrogatory 101, which was marked as  
10 Exhibit --

11           ACTING CHAIRMAN EDGAR: 432.

12           MR. MOYLE: -- 432.

13           MR. ROSS: I think Mr. Moyle said 101. It's  
14 interrogatory 100. But otherwise, no objection.

15           ACTING CHAIRMAN EDGAR: I have it marked 100  
16 as well.

17           MR. MOYLE: It's getting late, I'm sorry, 100.

18           ACTING CHAIRMAN EDGAR: I'm very tired myself.

19           FPL Response to OPC First Set of  
20 Interrogatories No. 100 marked as Exhibit 432 is  
21 admitted into the record.

22           (Exhibit No. 432 admitted into the record.)

23           ACTING CHAIRMAN EDGAR: And that brings us to  
24 staff for exhibits.

25           MS. BENNETT: Staff moves Exhibits 433, 434,

1 435 on the comprehensive exhibit list into the record,  
2 and then I have a list for the composite exhibits.

3 ACTING CHAIRMAN EDGAR: Okay. Hearing no  
4 objections, 433, 434 and 435 are admitted into the  
5 record at this time.

6 (Exhibit Nos. 433, 434 and 435 admitted into  
7 the record.)

8 ACTING CHAIRMAN EDGAR: And you're recognized  
9 to help us with the composite exhibit list.

10 MS. BENNETT: Bear with me.

11 First of all, on page -- I'm working from the  
12 comprehensive exhibit list, not the pink sheet, so if  
13 you'll go to page 4 of the comprehensive exhibit list  
14 and I'll get us started.

15 ACTING CHAIRMAN EDGAR: Is it 35? Does it  
16 look like this?

17 MS. BENNETT: It is the comprehensive exhibit  
18 list in the exhibit list.

19 ACTING CHAIRMAN EDGAR: Got you.

20 MS. BENNETT: In the exhibit list.

21 ACTING CHAIRMAN EDGAR: I'm ready if you are.

22 MS. BENNETT: Page 4, item number 4, Staff's  
23 Fifth Set of Interrogatories, Nos. 56, 57, 59, 60 and  
24 62.

25 ACTING CHAIRMAN EDGAR: Okay, next item.

1 MS. BENNETT: Again on page 4, but backtrack  
2 to item 2, Staff's Third Interrogatories, No. 13.

3 ACTING CHAIRMAN EDGAR: Okay.

4 MS. BENNETT: Same page, item 5, Staff's Sixth  
5 Set of Interrogatories, No. 72.

6 ACTING CHAIRMAN EDGAR: Next.

7 MS. BENNETT: Page 5, item 13, OPC's First  
8 Interrogatories, 104.

9 ACTING CHAIRMAN EDGAR: Okay.

10 MS. BENNETT: And 94 and 95, all on item 13.

11 ACTING CHAIRMAN EDGAR: You said 104, 94 and  
12 95?

13 MS. BENNETT: Yes, I did.

14 ACTING CHAIRMAN EDGAR: Okay.

15 MS. BENNETT: On page 6, item 15, OPC's Third  
16 Interrogatories, No. 175.

17 ACTING CHAIRMAN EDGAR: Okay.

18 MS. BENNETT: Item 16 on page 6, OPC's Fourth  
19 Interrogatories, No. 208; page 8, item 30, South Florida  
20 Hospital's, SFHHA's, Fifth Interrogatories, No. 254.

21 ACTING CHAIRMAN EDGAR: Okay.

22 MS. BENNETT: Page 15, item 70, FPL's  
23 Admissions, 7, 8, 9, 10, and the Distribution  
24 Reliability Reports for 2003, 2005, 2006 and 2007.

25 ACTING CHAIRMAN EDGAR: Okay.

1 MS. BENNETT: Page 9, backtracking, item 38,  
2 Staff's Fifth Set of Interrogatories, No. 58, 61 and 63.

3 ACTING CHAIRMAN EDGAR: Yes, ma'am.

4 MS. BENNETT: Page 10, item 41, Staff's Eighth  
5 Interrogatories, 82, 84, 85, and the same page, item 44,  
6 OPC's Third Interrogatories, No. 98.

7 Page 11, item 46, Staff's Fourth PODs, Bates  
8 stamps 1966 to 2016; item 51, OPC's second PODs, Bates  
9 3834 through 3850, 3896 to 4013, 4182, and 4183 to 4196.

10 And then the 13th -- on page 13, item 58,  
11 South Florida Health Care -- SFHHA's Fifth POD, No. 71.  
12 And that concludes our composite for this witness.

13 ACTING CHAIRMAN EDGAR: Okay. Any questions  
14 about the list that Ms. Bennett just ran through for us?

15 Hearing none, all of the items from the staff  
16 composite exhibit list that Ms. Bennett has just  
17 described will be entered into the record at this time.

18 (Staff Comprehensive Exhibits, Item Nos. 2, 4,  
19 5, 13, 15, 16, 30, 38, 41, 44, 46, 51, 58 and 70 as  
20 heretofore described, admitted into the record.)

21 ACTING CHAIRMAN EDGAR: And I think that  
22 concludes our matters with this witness. Anything else  
23 before we excuse the witness?

24 Hearing none, thank you very much.

25 THE WITNESS: Thank you, Commissioners.



1 MR. MCGLOTHLIN: Commissioner?

2 ACTING CHAIRMAN EDGAR: Yes, sir.

3 MR. MCGLOTHLIN: I have explained to FP&L that  
4 one of our witnesses, Daniel Lawton, has some severe  
5 constraints, and whereas he was scheduled to follow  
6 Sheree Brown, with FPL's consent, we're going to take  
7 him out of order and be our next witness.

8 ACTING CHAIRMAN EDGAR: Okay. We will call  
9 Witness Lawton, then, at this time, and we will  
10 absolutely, as I have, I think, said repeatedly, try to  
11 accommodate time and scheduling constraints as best we  
12 can. I will say, I think I have said it on the record,  
13 but I'll say it again, I'm getting tired and my sense  
14 from the room is that I may not be the only one. So we  
15 will do that and then we'll see how late it is and where  
16 we're at.

17 Okay.

18 MR. MCGLOTHLIN: Mr. Lawton, were you in the  
19 room when the Chairperson swore witnesses?

20 MR. LAWTON: No, I wasn't. I have yet to be  
21 sworn.

22 ACTING CHAIRMAN EDGAR: Okay, let's do that.

23 Stand for me and raise your right hand.

24 Whereupon,

25 DANIEL J. LAWTON

1 was called as a witness on behalf of the Office of  
2 Public Counsel and, having been duly sworn, was examined  
3 and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. MCGLOTHLIN:

6 Q Please state your name and your business  
7 address.

8 A Yes, sir. My name is Daniel J. Lawton,  
9 L-a-w-t-o-n, and my business address is 701 Brazos Ave.,  
10 Austin, Texas, 78701.

11 Q Mr. Lawton, did you prepare the document  
12 entitled *Direct Testimony of Daniel J. Lawton*, dated  
13 July 16th, in this proceeding?

14 A Yes, I did.

15 Q And did you subsequently prepare supplemental  
16 testimony to that direct testimony?

17 A Yes, I did.

18 Q Do you have any changes or corrections to make  
19 to your pre-filed testimony at this --

20 A None to my knowledge.

21 MR. MCGLOTHLIN: I request that the direct  
22 testimony of Mr. Lawson and the supplemental testimony  
23 be entered into the transcript at this point as though  
24 read. Commissioner?

25 ACTING CHAIRMAN EDGAR: I'm sorry, Mr.

1 McGlothlin, I did say that I was very tired.

2 MR. McGLOTHLIN: I understand. He has no  
3 corrections, so I request that the --

4 ACTING CHAIRMAN EDGAR: I'm so glad to hear  
5 that, and I would ask, and have done, the prefiled  
6 direct testimony of this witness to be entered into the  
7 record as if read. Thank you.

8 BY MR. McGLOTHLIN:

9 Q Did you also prepared the exhibits that are  
10 attached to both your --

11 A Yes, I did.

12 Q -- original testimony and the supplemental  
13 testimony?

14 A Yes, I prepared both the original as well as  
15 the supplemental.

16

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1 representing municipalities in electric and gas rate proceedings and other litigation  
2 and contract matters. I have included a brief description of my relevant educational  
3 background and professional work experience in Exhibit \_\_ (DJL-1).

4  
5 **Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN RATE**  
6 **PROCEEDINGS?**

7 A. Yes. A list of cases where I have previously filed testimony is included in  
8 Exhibit \_\_ (DJL-1).

9  
10 **Q. ON WHOSE BEHALF ARE YOU FILING TESTIMONY IN THIS**  
11 **PROCEEDING?**

12 A. I am testifying on behalf of the Florida Office of Public Counsel (OPC).

13  
14 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**  
15 **PROCEEDING?**

16 A. My testimony will address the ratemaking policy and financial implications before  
17 the Florida Public Service Commission ("Commission") surrounding the  
18 overrecoveries of depreciation expenses by Florida Power & Light Company  
19 ("FPL") and FPL's associated excess depreciation reserve. I address and pull  
20 together the recommended excess depreciation reserve flow-back proposal addressed  
21 in the testimony of Mr. Pous, the ratemaking treatment of Mr. Pous' proposal  
22 addressed in the cost of service testimony of Ms. Brown, and the implications of

1 these adjustments on Florida Power & Light Company's ("FPL" or "Company")  
2 financial metrics addressed in Mr. Woolridge's testimony.

3

4 **Q. PLEASE SUMMARIZE YOUR RECOMMENDATIONS IN THIS CASE.**

5 A. As the evidence relates to the FPL depreciation reserve, I conclude and recommend  
6 the following:

7 1) The Company's past depreciation rates have resulted in over-collecting at least  
8 \$1,245,360,415 of depreciation expense, resulting in an excess depreciation reserve  
9 that FPL measures to be \$1,245,360,415;

10

11 2) Mr. Pous' proposal to recommend a return to customers of \$1,245,360,415 is  
12 conservative in light of the numerous additional adjustments to the requested level of  
13 depreciation expenses he recommends, which indicate the excess depreciation  
14 reserve is more than two times the \$1.245 billion level recognized by FPL's own  
15 study;

16

17 3) Mr. Pous' recommendation to amortize the portion of the excess reserve  
18 acknowledged by FPL over a four year period as an offset to current depreciation  
19 expense will result in a significant correction to the excess reserve, and is consistent  
20 with sound regulatory policy and ratemaking guidelines;

21

22 4) Correcting the portion of the excess depreciation reserve targeted by Mr. Pous over a  
23 four year period will not harm FPL's financial integrity or financial metrics; and

1

2 5) Mr. Pous' excess depreciation reserve correction proposal assures that the customers  
3 that paid the excessive depreciation charges will likely be the same customers that  
4 receive the benefits associated with correcting the excess depreciation reserve.

5 **II. DEPRECIATION EXPENSE AND DEPRECIATION RESERVES**

6 **Q. PLEASE SUMMARIZE THE ISSUES THAT ARE BEFORE THE**  
7 **COMMISSION REGARDING THE EXCESS DEPRECIATION RESERVE.**

8 A. There are three basic questions that are before the Commission in this case related to  
9 excess depreciation reserves. The first issue is: Does an excess depreciation reserve  
10 exist and what is the amount of the excess reserve? Given that the Company's own  
11 evidence (depreciation study of Clarke) identifies an excess reserve in the amount of  
12 \$1,245,360,415, there should be little controversy regarding this matter.

13

14 In addition, the \$1,245,360,415 is a conservative estimate of the excess reserve that  
15 accepts FPL's depreciation calculations in their entirety. Mr. Pous recommends  
16 numerous additional adjustments to the Company's depreciation study – the results  
17 of which show an excess depreciation reserve approaching \$2.7 billion, or more than  
18 twice the level of the excess reserve adjustment proposed in this case.

19

20 The second issue is: How can the excess reserve be corrected? Again, Mr. Pous  
21 provides an answer by proposing a four year amortization of a significant portion of  
22 the excess reserve to assure that depreciation rates on a going forward basis are cost  
23 based.

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11 **Q. PLEASE DESCRIBE THE EXCESS DEPRECIATION RESERVE YOU**  
12 **HAVE BEEN DISCUSSING.**

13 A. As a result of the analysis by the Company and Mr. Pous of the Company's most  
14 current depreciation rates, it has been determined that the Company's depreciation  
15 reserve has an excess or surplus of at least \$1,245,360,415; Mr. Pous puts the excess  
16 at \$2.7 billion. This means that customers have overpaid, through rates and charges,  
17 depreciation expense.

18

19 **Q. PLEASE DESCRIBE DEPRECIATION EXPENSE.**

20 A. Depreciation expense is a charge to a company's operating expense to reflect the  
21 annual recovery or amortization of previously expended capital investment. The  
22 annual depreciation expense or charge is a non-cash expenditure or charge included



1 in a company's annual revenue requirement to recover the previously expended  
2 capital investment over the useful life of an asset investment.

3  
4 **Q. PLEASE EXPLAIN WHY YOU REFER TO DEPRECIATION AS A NON-**  
5 **CASH EXPENSE.**

6 A. Depreciation expense does not involve a specific payment during the test period that  
7 is subject to reimbursement in revenue requirements. Unlike test period labor or  
8 operating and maintenance expenses, which are out-of-pocket cash payments,  
9 depreciation charges are not additional cash payments. While both cash  
10 expenditures such as labor and other ordinary costs and non-cash depreciation  
11 charges are included on the income statement and in the revenue requirement for  
12 setting rates and charges, there are no additional cash flows out of the company for  
13 depreciation charges. Rather than reducing cash for depreciation charges, the  
14 depreciation expense charged to cost of service is simultaneously debited from the  
15 balance sheet by increasing the accumulated provision for depreciation, which is an  
16 offset to gross plant accounts. Depreciation is the recovery of previous balance sheet  
17 or rate base investments – the return of capital.

18  
19 **Q. PLEASE EXPLAIN THE ACCUMULATED DEPRECIATION CONCEPT**  
20 **YOU ADDRESSED IN YOUR LAST ANSWER.**

21 A. Accumulated depreciation is the measure of all previously recorded depreciation.  
22 Thus, an asset of \$100 with a five year life, depreciated at \$20 per year, after two  
23 years would have a gross plant value of \$100 (the original cost), an accumulated

1 depreciation of \$40 (two years of depreciation recorded) and a net plant or rate base  
2 value of \$60 (\$100 gross plant less \$40 of accumulated depreciation). Thus, the \$40  
3 accumulated depreciation in the above example, is a record of the two years'  
4 depreciation payments on the return of invested capital to the Company.

5  
6 **Q. DOES THE ACCUMULATED RESERVE REPRESENT A CASH ACCOUNT**  
7 **OR POT OF DOLLARS IN RESERVE?**

8 A. No. The reserve for accumulated depreciation reflects the recovery of depreciation  
9 from a book perspective. The annual dollars of depreciation expense recovered by a  
10 company will be commingled with all other funds and spent on salaries, dividends,  
11 or reinvested into the company to fund other capital projects.

12  
13 **Q. PLEASE EXPLAIN THE INTERRELATIONSHIP OF DEPRECIATION**  
14 **EXPENSE AND DEPRECIATION RESERVES.**

15 A. Companies such as FPL make numerous capital investments in production,  
16 transmission, distribution and general plant facilities to generate, transmit and  
17 ultimately deliver electricity to a customer's delivery point, i.e. the meter. These  
18 various capital investments made by the Company are made with funds from capital  
19 markets (debt, equity, or preferred stocks), or internally generated funds from annual  
20 earnings.

21  
22 Once these capital investments are made (if prudent and included by the regulator as  
23 part of invested capital used and useful in providing service), the utility, through cost

1 of service and charges to customers, is allowed to earn a return on capital investment  
2 and a return of capital investment. The return on capital is the return necessary for  
3 the utility to recover its carrying costs (cost of borrowing) to fund these capital  
4 investments. The return of capital is the annual recovery of the initial capital  
5 investment over the useful life of the facility. This annual recovery of capital is  
6 depreciation expense.

7  
8 As the annual return of capital (depreciation) is recovered by the Company, an equal  
9 and offsetting adjustment is made to invested capital rate base. In other words, as  
10 capital is recovered through rates, the amount of outstanding capital for which the  
11 company needs to earn a return declines, as it has been returned or paid off through  
12 depreciation rate recovery.

13  
14 **Q. WHAT ARE THE GENERAL RATEMAKING GOALS OF CAPITAL**  
15 **RECOVERY OR DEPRECIATION RATES?**

16 A. Generally, regulatory authorities set depreciation rates on a straight-line basis to  
17 recover a capital investment over the useful life of an asset. By straight-line  
18 recovery, I mean a recovery of an equal amount in each year of the asset. Thus, as  
19 an example, if an investment of \$100 in plant is expected to have a useful life of five  
20 years, a depreciation expense of \$20.00 per year included in rates would allow  
21 recovery of \$100 over the five year asset life. This example assumes no salvage  
22 value or cost of removal associated with the asset.

23

1 **Q. WHAT ARE THE CONSEQUENCES OF A LOW DEPRECIATION RATE**  
2 **FOR CAPITAL RECOVERY?**

3 A. If the depreciation rate is set too low, then at some point in the asset life depreciation  
4 recovery will need to be accelerated to fully recover the asset costs over the asset  
5 life. The impact is that customers in early years did not pay the full cost of the asset  
6 and future customers are required to pay higher rates to make up for the early year  
7 shortfall in capital recovery.

8

9 **Q. WHAT ARE THE CONSEQUENCES OF AN ARTIFICIALLY HIGH**  
10 **DEPRECIATION RATE?**

11 A. When depreciation rates are too high, early year customers end up paying more of  
12 the costs than future customers. In this case rates (depreciation) must be reduced to  
13 avoid further cost shifting.

14

15 Setting depreciation rates and capital recovery streams is a continuous estimating  
16 process involving forecasts of numerous variables, thus perfection is not possible or  
17 likely in the rate setting process. But, when over or under-recoveries are found to  
18 exist, the goal should be to correct such capital recovery errors to avoid  
19 compounding the rate inequities.

20

21 **Q. HOW DOES A REGULATORY AUTHORITY DETERMINE WHETHER**  
22 **DEPRECIATION RECOVERY AND ASSOCIATED RESERVES ARE**  
23 **ADEQUATE?**

1 A. As noted above, depreciation cost recovery estimates are based on forecasts of  
2 numerous variables. Recognizing forecasts are inherently imperfect, regulatory  
3 authorities typically require periodic depreciation study updates (usually four to five  
4 years) to assure useful life and/or net salvage estimates remain reasonable and  
5 reliable for setting rates.

6  
7 To determine the adequacy of the depreciation reserve or accrual, a theoretical  
8 reserve is often calculated in new depreciation studies. A theoretical reserve is the  
9 accumulated provision for depreciation at a point in time, assuming the most current  
10 depreciation parameters and estimates had been historically applied in setting rates.  
11 The theoretical reserve is compared to the actual reserve to determine whether there  
12 has been an over/under recovery of depreciation. In this case, applying all of FPL's  
13 assumptions in the Company's depreciation study results in a theoretical reserve that  
14 indicates that the actual depreciation reserve is over-funded by more than \$1.2  
15 billion.

16  
17 **Q. HAS THIS COMMISSION ADDRESSED DEPRECIATION RESERVE**  
18 **ISSUES IN PAST RATE PROCEEDINGS?**

19 A. Yes. In FPL's last rate proceeding, Docket No. 050045-EI and 050188-EI, the  
20 Settlement of that case, which was approved by this Commission, included a  
21 provision to permit FPL to record depreciation credits and thereby reduce the  
22 depreciation reserve by \$125 million per year. In FPL's 1997 rate proceeding,

1 Docket No. 970410-EI, depreciation reserve deficiencies were addressed pursuant to  
2 a previous Florida Public Service Commission Order No. PSC-97-0499-FOF-EI.

3  
4 It should be noted, that in Docket No. 97-0410-EI, FPL witness Hugh Gower pointed  
5 to a number of cases in which this Commission corrected prior depreciation reserve  
6 deficiencies. I have duplicated Mr. Gower's Exhibit (HAG-1) from that case in my  
7 Exhibit\_\_(DJI-2). There are a number of other instances in which this Commission  
8 has addressed the depreciation reserve issue and these cases are discussed in the  
9 direct testimony of Mr. Pous.

10  
11 Thus, the issue of correcting over/under recoveries of capital amortization is not a  
12 new issue. This Commission has recognized the need for such corrections in  
13 numerous cases to assure rates are just and reasonable.

14  
15 **III. FPL'S CURRENT EXCESS DEPRECIATION RESERVE**

16 **Q. IS THERE AN EXCESS RESERVE IN THIS CASE?**

17 A. Yes. Based on the Company's most current depreciation study, the Company has  
18 been collecting excessive amounts of depreciation. This means that current  
19 customers have been overpaying for electric service and future customers will be  
20 subsidized if this problem is not addressed.

21  
22 **Q. WHAT IS THE AMOUNT OF THE EXCESS DEPRECIATION RESERVE?**

1 A. Based on the Company's depreciation study and information provided by witness  
2 Pous, FPL identifies the amount of excess depreciation charged to customers as  
3 \$1,245,360,415. I have included in my Exhibit\_\_(DJI-3) a breakdown of the excess  
4 depreciation reserve calculated by FPL by operating function.

5

6 As is demonstrated in Exhibit\_\_(DJI-3), based on the Company's current best  
7 estimates, customers of FPL have been charged \$1,245,360,415 in excess  
8 depreciation. In other words, past customers have been overcharged for depreciation  
9 and future customers will be charged less than full cost of service if this problem of  
10 past excess depreciation charges is not addressed.

11

12 It is important to note that this \$1,245,360,415 excess depreciation accumulation has  
13 occurred despite the fact that the Company has returned about \$125 million per year  
14 of previously accrued excess depreciation since the settlement of the last case. In  
15 other words, absent the provisions of the last rate case settlement, the excess  
16 depreciation reserve would be about \$1.8 billion today. Further, Mr. Pous sponsors  
17 testimony that shows FPL's calculation seriously understates the excess. Mr. Pous  
18 calculates the excess to be \$2.75 billion.

19

20 **Q. WHAT DOES THE DEPRECIATION RESERVE SURPLUS INDICATE**  
21 **REGARDING PAST DEPRECIATION RATES AND CHARGES TO**  
22 **CUSTOMERS?**

1 A. These reserve surpluses mean that FPL should have been recording and charging  
2 substantially lower depreciation expenses in prior years to recover the costs of using  
3 assets serving customers. But instead, customers have been charged excessive costs  
4 and the depreciation reserve is overstated. Only by reversing these excess charges  
5 by amortizing the excess reserve over the next few years will customers that paid the  
6 excessive rates be compensated, and the depreciation reserve corrected. Any further  
7 delay in correcting this excess reserve or employing a longer amortization period  
8 will inevitably result in continued intergenerational inequities.

9

10 **IV. EXCESS DEPRECIATION RESERVE PROPOSED SOLUTION**

11 **Q. HOW SHOULD THE EXCESS RESERVE PROBLEM BE ADDRESSED IN**  
12 **THIS CASE?**

13 A. Mr. Pous has proposed that \$1.25 billion of the excess reserve be flowed back or  
14 corrected over a four year period. First, Mr. Pous employs \$314,223,000 of the  
15 reserve at \$78,555,750 per year to address the Company's proposed capital recovery  
16 surcharge. The remaining \$931,137,415 of excess reserve is amortized over four  
17 years at \$232,784,354 per year to fund annual depreciation expense requirements.  
18 Quite simply, \$314,223,000 of excess depreciation reserve is being employed to fund  
19 a like amount of currently requested depreciation and amortization expense in this  
20 case.

21

22 Mr. Pous' four year amortization proposal addresses the excess depreciation reserve  
23 problem over a period of time which is consistent with the expected time period



1 between rate increase requests. It is important to note that the last case demonstrated  
2 how depreciation credits of \$125 million annually could simultaneously reduce the  
3 excess in the reserve by \$500 million over a four year period. Waiting for future  
4 studies will only result in estimating larger future excess depreciation reserves and  
5 an even larger problem to resolve. As I noted earlier, had the excess reserve problem  
6 not been addressed in the last case (the Settlement), the excess reserve acknowledged  
7 by FPL would be approaching \$2 billion in this proceeding.

8  
9 Further, Mr. Pous' analysis indicates that the excess depreciation reserve is actually  
10 on the order of \$2.7 billion. Thus, accepting Mr. Pous' recommendations indicates  
11 that this excess reserve problem is likely to continue. Only by addressing the \$1.2  
12 billion excess reserve in this case will this problem be minimized.

13  
14 **Q. WILL MR. POUS' PROPOSAL TO CREDIT DEPRECIATION EXPENSE**  
15 **CREATE OR HAVE ANY PRICING IMPLICATIONS?**

16 **A.** No. As I understand Mr. Pous' proposal, the depreciation excess reserves will be  
17 credited based on functional category. In other words, production excess reserves go  
18 to credit production depreciation expense, transmission to transmission expense and  
19 so on as to other functions. Thus, no pricing or allocation problems are created by  
20 Mr. Pous' proposal – the excess reserves are returned or credited to customers by  
21 function in the same fashion as the excess depreciation was paid. Thus, Mr. Pous'  
22 proposal is both fair and equitable.

23

1 **Q. WHAT IS YOUR UNDERSTANDING OF HOW MR. POUS' PROPOSED**  
2 **ADJUSTMENT TO CORRECT THE EXCESS DEPRECIATION RESERVE**  
3 **WILL BE TREATED IN COST OF SERVICE?**

4 A. Mr. Pous' recommendation is to amortize \$1,245,360,415, the level of excess reserve  
5 that is consistent with the Company's own study, over four years rather than over the  
6 remaining lives of the related assets. Amortizing this amount over a four year period  
7 results in a \$311,340,104 annual adjustment (reduction) to depreciation expense. It  
8 is my understanding that Ms. Brown will reduce depreciation expense in cost of  
9 service by the \$311,340,104 recommendation and increase rate base by one half of  
10 the annual expense adjustment or \$155,670,052.

11

12 **Q. WHAT IS THE CASH FLOW IMPACT TO THE COMPANY OF**  
13 **CORRECTING THE EXCESS DEPRECIATION RESERVE?**

14 A. The cash flow impact is a \$311,340,104 reduction in depreciation expense offset by a  
15 \$20,341,966 increase in return and taxes associated with the increase in rate base. I  
16 have included this calculation in my Exhibit\_\_ (DJL4). Thus, the net impact to the  
17 Company's pre-tax cash flow is a net reduction of about \$290,998,138.

18

19 **Q. HOW WILL MR. POUS' PROPOSAL TO AMORTIZE THE \$1.245 BILLION**  
20 **EXCESS DEPRECIATION RESERVE OVER FOUR YEARS IMPACT FPL?**

21 A. First, with the four year amortization, annual depreciation expenses will be reduced  
22 by about \$311 million per year. This adjustment will reduce cost of service dollar  
23 for dollar; that is, \$311 million. Given that depreciation is not a cash expense, there

1 is no forgone cash recovery by FPL. Instead, the flow of cash to FPL will be  
2 reduced. The rate of recovery of depreciation is adjusted so as to correct the  
3 identified excess reserve deficiency. Because recovery of capital is changed by the  
4 depreciation adjustment, after four years the level of invested capital will be \$1.2  
5 billion higher than it would be absent this adjustment. Again, FPL is not being  
6 denied recovery of any cash expense, rather the rate of amortizing invested capital is  
7 changed to correct for past accelerated capital recoveries.

8  
9 **Q. WILL MR. POUS' ADJUSTMENT TO CORRECT THE EXCESS**  
10 **DEPRECIATION RESERVE IMPACT FPL'S CASH FLOW?**

11 A. Yes. By reducing revenue requirements by about \$311 million per year, the direct  
12 result for a non-cash expense (depreciation), the cash flow paid by customers to the  
13 Company will be reduced by this \$311 million amount. The cash flow to the  
14 Company consists of net income (revenues less expenses) plus depreciation, plus  
15 deferred income taxes.

16  
17 Various measures of cash flow from operations are employed as measures of a firm's  
18 financial metrics. One simple measure as described above can be calculated off the  
19 Company's rate filing schedule MFR No. E-1, Attachment 2 of 3, page 1 of 2 as  
20 shown in my Exhibit \_\_\_(DJI-5).

21  
22 Thus, under the Company's rate filing assumptions, FPL would have (if the full rate  
23 increase were to be granted) \$3,084,666,000 of cash before income taxes. This

1 amount reflects \$1,364,746,000 of return to pay interest on debt, preferred stock, and  
2 income or return for equity shareholders. The \$1,075,373,000 is the depreciation  
3 and amortization request of the Company, which, if granted, represents the return of  
4 capital investment. Lastly, the \$644,545,000 of income taxes represents federal and  
5 state current and deferred taxes. The deferred tax component is approximately  
6 \$171,299,000. Deferred taxes are taxes not currently payable to the taxing authority  
7 and are funds available (cash flow) for other business purposes.

8  
9 Generally, the impact of Mr. Pous' depreciation correction to the excess reserve is to  
10 reduce the claimed non-cash depreciation expense of \$1,075,373,000 by about \$311  
11 million. The impact of this adjustment is to reduce cash flow by about \$311 million.  
12 In other words, rather than a cash flow of \$3,084,666,000 (shown in Exhibit\_\_ (DJL-  
13 5) the annual Company cash flow will be about \$2,773,666,000 (\$3,084,666,000-  
14 \$311,000,000).

15  
16 **Q. WILL MR. POUS' CORRECTION OF EXCESS DEPRECIATION IMPACT**  
17 **THE EARNINGS OF THE COMPANY?**

18 A. No. The return authorized by this Commission will not be impacted by correcting  
19 the excess depreciation reserve.

20  
21 **Q. WILL THERE BE AN IMPACT ON EXPENSES FOR CALCULATING**  
22 **INCOME TAXES AS A RESULT OF MR. POUS' CORRECTION TO THE**  
23 **ACCUMULATED DEPRECIATION RESERVE?**

1 A. No. Whatever depreciation expense is allowed by the Commission will still be used  
2 in the tax calculation. Under Mr. Pous' recommendation, about \$311 million of the  
3 annual depreciation expense is funded not from increasing customer rates, but  
4 instead by reducing the excess depreciation reserve (which was paid by customers in  
5 past years).

6

7 **V. IMPACTS ON FINANCIAL INTEGRITY**

8 **Q. IN YOUR OPINION, WILL CORRECTING THE EXCESS RESERVE**  
9 **EMPLOYING A FOUR YEAR AMORTIZATION HARM FPL'S FINANCIAL**  
10 **INTEGRITY?**

11 A. OPC's witnesses were mindful of the need to preserve FPL's financial integrity  
12 when quantifying the portion of the excess reserve to return to customers more  
13 quickly than the remaining lives. Mr. Pous' recommendation will not harm the  
14 Company's financial integrity, although there will be an impact on cash flow  
15 financial metrics. It is important to note that under Mr. Pous' proposal cash will  
16 decrease by \$290,998,138 per annum, but at the end of four years rate base will be  
17 higher in the amount of \$1,245,360,415. Thus, Mr. Pous' correction decreases the  
18 accumulated provision for depreciation (a rate base reduction) and corrects the  
19 depreciation reserve to more appropriate or theoretically correct levels. Over the  
20 term (four years), the Company remains whole. Only the recovery period of capital  
21 investment changes -- no adjustment or reduction is made to the Company's  
22 investment.

23

1 **Q. WHAT FINANCIAL RATIOS AND METRICS ARE IMPORTANT IN**  
2 **EVALUATING A COMPANY'S FINANCIAL INTEGRITY?**

3 A. There is no one key financial metric or group of financial ratios that if attained will  
4 result in achieving a particular bond rating level. But, the ratios are helpful in  
5 evaluating a company's financial integrity, as these financial ratios are helpful in  
6 broadly defining a particular company's position relative to a bond rating category.  
7 Again, these financial ratios are not used by rating agencies as a prerequisite for  
8 achieving or maintaining a specific debt rating.

9  
10 Key financial metrics and ratios include cash flow-to-debt ratios, a short-term  
11 measure of leverage risk, interest coverage ratios measuring earnings coverage of  
12 fixed cost interest, and debt to total capital ratio – another measure of leverage. For  
13 electric utilities the financial ratio medians by bond rating category are shown in my  
14 Exhibit\_\_(DJI-6).

15  
16 **Q. HAVE YOU CALCULATED THE COMPANY'S FINANCIAL METRICS**  
17 **ASSUMING MR. POUS' \$1.2 BILLION EXCESS RESERVE ADJUSTMENT**  
18 **IS IMPLEMENTED IN THIS PROCEEDING?**

19 A. Yes. Included in Exhibirt\_\_(DJI-6) are the results of the excess reserve correction  
20 on the financials of the Company. First, this analysis evaluates the impact of only  
21 the excess reserve adjustment, so that the Commission can evaluate the impact of  
22 correcting the excess reserve on the Company. As is discussed below, correcting the  
23 excess reserve has a small impact on FPL's cash flow financials. Second, only cash

1 flow is affected by this adjustment. Financial ratios such as “debt ratio” are  
2 unaffected by the correction of the excess reserve.

3  
4 As is demonstrated by the results shown in Exhibit\_\_ (DJL-6), the Company’s cash  
5 flow ratios decline slightly, but remain well above industry averages. FPL maintains  
6 strong financial integrity after correcting for the excess depreciation.

7  
8 **Q. WHAT DO YOU CONCLUDE REGARDING THE IMPACT OF**  
9 **CORRECTING THE EXCESS DEPRECIATION RESERVE ON THE**  
10 **COMPANY’S FINANCIAL METRICS?**

11 A. Correcting the excess reserve is warranted in that the impact on customers of this  
12 correction far outweighs the slight impact on the Company’s cash flow financial  
13 measures.

14  
15 **Q. IN YOUR CASH FLOW ANALYSIS, HAVE YOU TAKEN INTO**  
16 **CONSIDERATION OTHER CASH FLOW IMPACTS TO FPL?**

17 A. No. There will be a number of witnesses in this case that make additional  
18 adjustment proposals that will impact cash flow. For example, alternative return,  
19 depreciation, and income tax recommendations will come before the Commission in  
20 this case. My analysis focuses solely on the excess depreciation reserve impact and  
21 demonstrates that the cash flow reduction allows FPL to maintain solid financial  
22 metrics.

23

1 **Q. BASED ON YOUR ANALYSIS OF THE EXCESS DEPRECIATION**  
2 **RESERVE AND THE CORRECTION PROPOSED BY MR. POUS, WHAT**  
3 **ARE YOUR CONCLUSIONS IN THIS CASE?**

4 A. The excess depreciation reserve, which currently exceeds \$1.2 billion of excess  
5 depreciation costs collected from customers, should be corrected in this case as  
6 recommended by witness Pous. First, if not corrected the situation, in terms of cost  
7 shifting, is likely to become worse, not better. As demonstrated by the results of  
8 FPL's previous rate settlement, wherein about \$500 million of excess reserve was  
9 corrected at a rate of \$125 million per year – the excess reserve has continued to  
10 grow and is now in excess of \$1.2 billion.

11

12 FPL's financials were not harmed as a result of previous corrections to the  
13 depreciation reserve and, as current analysis shows, FPL's financials remain strong  
14 with the correction of the excess depreciation reserve. Moreover, correcting the  
15 excess depreciation reserve does not cut one dollar of cash expense from FPL –  
16 correction of the excess depreciation reserve addresses timing of recovery.  
17 Customers have paid excess depreciation in past years, thereby accelerating FPL's  
18 capital recovery. Correcting the excess reserve assures customers pay the true cost  
19 of service: no more, no less. FPL will still recover its capital investment, but on a  
20 less accelerated basis.

21

22 **Q. ARE THERE ADDITIONAL REASONS WHY THE COMMISSION**  
23 **SHOULD CORRECT THE EXCESS DEPRECIATION RESERVE?**



1 A. Yes. The Company has requested an enormous increase -- approximately a 25%  
2 base rate annual increase in this case. The economic times and conditions faced by  
3 the Company and consumers are well documented and slow recovery is expected.  
4 The correction of the excess reserve is an opportunity for this Commission to correct  
5 the excess reserve and reduce the rate increase by over \$300 million without harming  
6 FPL. Such rate reduction does not disallow cash expenditures, but instead corrects  
7 the rate of asset recovery. For all of these reasons the Commission should correct  
8 the excess reserve at this time as proposed by OPC witness Pous.

9  
10 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

11 A. Yes.

1 BY MR. MCGLOTHLIN:

2 Q Mr. Lawton, have you prepared a five-minute  
3 summary for the Commissioners?

4 A I prepared a five-minute summary, and I think  
5 I've got a shorter one coming out now.

6 ACTING CHAIRMAN EDGAR: Go right ahead.

7 THE WITNESS: Well, thank you, Madam Chairman  
8 and Commissioner.

9 My name is Daniel Lawton, and I'm here on  
10 behalf of OPC, testifying on the policy, ratemaking,  
11 economics and finance issues associated with this excess  
12 depreciation reserve we've all been hearing about, and  
13 you're going to hear about it from more witnesses, too,  
14 I'm sure. But the one thing -- my red light is on  
15 already. It wasn't that short.

16 ACTING CHAIRMAN EDGAR: Go right ahead.

17 THE WITNESS: Thank you.

18 You're going to be hearing from more  
19 witnesses, but I've got some good news about that issue.  
20 The good news is everybody in this room, every party,  
21 including FPL, agrees the excess reserve is  
22 approximately \$1.2 billion.

23 Now, there's more good news associated with  
24 that I'm going to tell you about in a moment, but first  
25 we've got an excess reserve of \$1.2 billion. What does

1 that mean? It means that the company has done a recent  
2 depreciation study, which has been analyzed by company  
3 experts and the experts of the parties, and it indicates  
4 if you apply the latest forecast, depreciation expense  
5 estimates, everything that we know today, if you apply  
6 that to the current depreciation parameters, it would  
7 say that we have collected \$1.2 billion too much. In  
8 other words, past customers have paid too much, which  
9 means future customers will end up paying too little.  
10 So the rates may not be just and equitable, going  
11 forward, and the Commission has as its charge setting  
12 just and equitable rates.

13 Now, while the depreciation rates are  
14 estimates -- and these are estimates, too, that's why  
15 you do your periodic review roughly every four years --  
16 Mr. Pous testified this morning that his depreciation  
17 study would indicate that reserve is even higher than  
18 1.2 billion, which I point out in my evidence that I  
19 present in my testimony.

20 Now, the other good news that you have  
21 associated with this issue, you're faced, and I heard I  
22 think it was Commissioner Skop, excuse me, I have a  
23 visual problem, I can't read far, but anyway, was saying  
24 you've had numerous meetings around the state with  
25 customers, you're faced with an enormous rate increase,

1 over \$1.2 billion, or 25 percent in base rates. What  
2 this excess depreciation reserve means is you can lower  
3 that rate increase by over \$300 million without harming  
4 the company. These depreciation reserves are not cash  
5 expenses. It's not like you're disallowing a labor  
6 expense or anything such as that. It's a non-cash  
7 depreciation item.

8 Lastly, if you look at the company's  
9 financials, if you adopt such an approach and lower the  
10 rate increase, you will not harm the company's financial  
11 integrity. Yes, their cash flow will go down, it will  
12 go down, but it will not hurt their financial metrics.  
13 They can survive it.

14 And with that, I will end my quick summary.

15 MR. MCGLOTHLIN: He is available for cross-  
16 examination.

17 ACTING CHAIRMAN EDGAR: Are there questions  
18 from any of the Intervenors on cross for this witness?  
19 I see "no" across the board. That brings us to you.

20 MR. ANDERSON: We have quite a lot to do, so  
21 we just wanted to get your sense on how you would like  
22 to proceed.

23 ACTING CHAIRMAN EDGAR: I would like to go  
24 home. However, I think that we should go ahead and get  
25 started, let's see where we go. I am fading, and I

1 think that some others are, too, so we're not going to  
2 go real late, but let's go ahead and see if we can make  
3 some progress.

4 And, I'm sorry, Mr. McGlothlin, you said that  
5 we did have some time --

6 MR. MCGLOTHLIN: Yes. So the Chair and  
7 Commissioners are aware, Mr. Lawton must fly tomorrow  
8 for a commitment in Nevada and becomes unavailable for  
9 several days after that, so that's the dilemma we face  
10 here.

11 ACTING CHAIRMAN EDGAR: Then we certainly want  
12 all parties to take the time that they need with every  
13 single witness. We will endeavor to finish with this  
14 witness this evening and then probably call it a night.  
15 Does that answer your question?

16 MR. ANDERSON: It does answer my question.  
17 We'll proceed in that way.

18 ACTING CHAIRMAN EDGAR: Thank you.

19 CROSS EXAMINATION

20 BY MR. ANDERSON:

21 Q Good evening, Mr. Lawton. My name is Bryan  
22 Anderson. I'm one of the attorneys for Florida Power &  
23 Light Company.

24 A Good to meet you, Mr. Anderson.

25 Q Thank you. I'm not going to ask you questions

1 about depreciation today. Your business partner, Mr.  
2 Pous, he's the person who talked about that, right?

3 A Yes, and he's not my business partner.

4 Q Okay. But you've submitted financial  
5 testimony in this case, is that right?

6 A Well, some financials, some ratemaking  
7 guidelines, economic theory.

8 Q I heard you say the words that OPC's requests  
9 could be granted and it would not harm the company's  
10 financial integrity. Did I hear you right just a few  
11 minutes ago?

12 A That's correct, you heard me exactly  
13 correctly.

14 Q And in this case you filed an initial round of  
15 testimony that just handled the adjustment for the  
16 depreciation, is that correct?

17 A That's correct, the incremental adjustment of  
18 the depreciation reserve adjustment.

19 Q Then you filed a Supplement 6 to your  
20 testimony which contained the financial results, as you  
21 see them, of all of the OPC recommendations, right?

22 A Yes, based on the schedules of Ms. Brown, I  
23 believe.

24 Q Which would mean no rate increase and a rate  
25 reduction, correct?

1 A That's what I believe the recommendation is.

2 Q Okay. I would like to ask you some background  
3 questions concerning your qualifications to render an  
4 opinion that FPL's rate request could be denied in its  
5 entirety and have a \$300 million rate reduction without  
6 any effect on our financial integrity.

7 You have not been employed as a chief  
8 financial officer of any electric utility, is that  
9 right?

10 A No.

11 Q You have not been responsible for raising  
12 capital for any utility?

13 A No. I've participated in those endeavors.

14 Q You have not had the operating responsibility  
15 at a utility company to go to market and raise capital,  
16 right?

17 A That's correct.

18 Q You have not been responsible for developing  
19 the financing plan as an officer of a utility?

20 A As an officer of a utility, no.

21 Q You have not been responsible for maintaining  
22 a utility's credit ratings for an electric company or  
23 any company rated by Standard & Poor's, Moody's or  
24 Fitch, right?

25 A That's correct, for any company. What I do is

1 I analyze these companies' finances for regulatory  
2 bodies, and, as an attorney, I advise regulatory bodies  
3 on these matters.

4 Q We'll get to the attorney part in a minute.

5 A Sure.

6 Q But you have never been employed by the  
7 Standard & Poor's rating service, right?

8 A Oh, no.

9 Q Never employed by Moody's?

10 A No, sir.

11 Q Not employed by the Fitch Rating Service?

12 A No, never applied.

13 Q You've not met with FPL's debt investors to  
14 speak concerning the company's debt securities?

15 A No, I haven't, I haven't met with any of the  
16 investors of FPL, whether they be debt or equity.

17 Q You've not spoken directly with FPL's rating  
18 analysts at the Services, right?

19 A No.

20 Q And we already established you've not been  
21 responsible for issuing bonds or stocks at any company,  
22 right?

23 A That's correct.

24 MR. ANDERSON: Okay. Chairman Edgar, I'm  
25 having walked around with a request be marked as Exhibit



1 No. 436. The short title is listed on the cover sheet,  
2 Lawton Article and Case Captions.

3 ACTING CHAIRMAN EDGAR: Okay, 436, titled as  
4 you have indicated, Lawton Article and Case Captions.

5 (Exhibit No. 436 marked for identification.)

6 BY MR. ANDERSON:

7 Q Mr. Lawton, you're an attorney, is that right?

8 A That's correct. Not in Florida.

9 Q You are an attorney, correct?

10 A Correct.

11 Q You own the Lawton law firm in Austin, Texas,  
12 right?

13 A That's correct.

14 Q And I've distributed an article contained in  
15 Lawton Article and Case Captions. Turn to the first  
16 page and look at the highlighted area there. You see  
17 those words beginning, "I think that it is excellent for  
18 the electric consumers in southeast Texas," do you see  
19 that?

20 A I see the highlighted part, that's what it  
21 says.

22 Q And that's a quotation you gave as the Austin  
23 attorney who represents a number of municipalities in  
24 Energy Texas's service area, right?

25 A That is correct.

1 Q And you go on to make some very substantive  
2 comments about not worrying about the cost of joining  
3 ERCOT and the like, right?

4 A That's correct.

5 Q And then, just briefly flipping to the second  
6 page, towards the top they talk about Energy needing  
7 another 700 million in improvements, and where I've  
8 highlighted, "Although Lawton said his firm will  
9 challenge the cost of Energy Texas's future projects,"  
10 you said, "more generation and some upgrades to the  
11 transmission system are necessary." Did I quote that  
12 accurately?

13 A No, you -- well, if you're attributing as a  
14 exact quote from me, I don't recall it, but I can read  
15 it and say what it says.

16 Q But you represent the municipalities served by  
17 Energy Texas, as represented in this article, right?

18 A That's correct.

19 Q Okay, turn to the next page. There is a case  
20 caption, "GUD No. 9670, Consolidated Cases," right?

21 A I see it.

22 Q This is one of the cases you appeared in and  
23 provided counsel, is that right?

24 A Hold on a second.

25 Q You can turn to the second page of the

1 caption.

2 A I'm at the caption. I just want to read it,  
3 if you don't mind.

4 Q Sure.

5 A (Examining document.) Okay, I see it.

6 Q All right, please turn the page. Do you see  
7 Atmos? That's the utility whose case this was, right?

8 A At the Railroad Commission, yes.

9 Q Right. Atmos Texas municipalities, we see Dan  
10 Lawton, the Lawton Law Firm, right?

11 A That is correct.

12 Q So you represented the Atmos Texas  
13 municipalities in this GUD No. 9670, correct?

14 A I was one of a number of attorneys, as you can  
15 see from the list of attorneys.

16 Q Good. Turning to the next document in Lawton  
17 Article and Case Captions, this is called *Special*  
18 *Meeting of the City Council, the City of Nederland,*  
19 *N-e-d-e-r-l-a-n-d*, is that right?

20 A It's Nederland, and yes, you spelled it  
21 correctly.

22 Q Okay. Nederland in Texas, correct?

23 A Yes.

24 Q And they're a municipality that you  
25 represented, is that right?

1 A That's correct.

2 Q And this special meeting set of minutes here  
3 reflects that Dan Lawton, the Lawton law firm, gave a  
4 presentation, is that right?

5 A That's what it says.

6 Q This was about the Texas Gas Service case that  
7 you helped them with, right?

8 A That's correct.

9 Q And then further down in the article, four  
10 lines from the bottom of that paragraphs, it talks  
11 about, "Jack Pous has reviewed the terms of settlement,"  
12 et cetera, right?

13 A I see what it says, yes.

14 Q Okay. So you and Mr. Pous worked together in  
15 this case as well, right?

16 A That's correct, the City of Nederland retained  
17 Mr. Pous and his firm.

18 Q Okay. So in the Texas Gas Service case,  
19 Mr. Pous was the consultant, right?

20 A Yes.

21 Q And you were the attorney, right?

22 A That is correct.

23 Q In this case, though, both you and Mr. Pous  
24 are appearing as witnesses, right?

25 A That is correct.

1           Q     You're not here as an attorney, you're here as  
2 a witness, you say, right?

3           A     That is correct.

4           Q     So you appear before Utility Commissions  
5 representing municipal clients in the same way that  
6 Attorney Brian Armstrong, who was here earlier in the  
7 week, appeared in this case on behalf of City of South  
8 Daytona, right?

9           A     I don't know Mr. Armstrong and I don't know  
10 who he represents. If you represent he represents  
11 Daytona --

12          Q     Yeah.

13          A     Okay.

14          Q     City of South Daytona, represents the  
15 municipality, right?

16          A     Fine.

17          Q     Okay. So many times in these cases you would  
18 be sitting here along the bench with us, not in the  
19 witness seat, right?

20          A     If I was representing a city in Florida, I  
21 would be sitting right beside you.

22                    ACTING CHAIRMAN EDGAR: Mr. Anderson, what am  
23 I looking at?

24                    MR. ANDERSON: This will be Exhibit No. 437.  
25 Short title is listed on the cover sheet, Marked,

1 M-a-r-k-e-d, DJL Supp 6. And, Chairman Edgar, I called  
2 it that because I have marked it for ease of reference  
3 and it makes a better exhibit that way.

4 ACTING CHAIRMAN EDGAR: Okay. We will so  
5 mark.

6 MR. ANDERSON: Thank you.

7 (Exhibit No. 437 marked for identification.)

8 BY MR. ANDERSON:

9 Q Mr. Lawton, isn't it true that OPC claims that  
10 FPL should have less equity and more debt in its capital  
11 structure, right?

12 A As I recall the testimony, I think it's Mr.  
13 Woolridge, yes, I believe he has a different equity debt  
14 spread than the company, as do a number of other  
15 witnesses, I think, in this case.

16 Q And the purpose of your DJL Supp 6, this is  
17 the document which shows the results of all the  
18 adjustments, including the debt and equity adjustments  
19 and everything else, right?

20 A The adjustment that would do that would be  
21 captured on line 2 in the last columns of numbers, the  
22 6.14 percent. I believe that's his recommendation, I'm  
23 sure that's where I got it.

24 Q All right. What I would like to do is, you  
25 have two columns of dollars on DJL Supp 6, one called

1 "FPL Requested Amount," do you see that?

2 A Yes.

3 Q The other called "Adjusted Per OPC," right?

4 A Correct.

5 Q Look at line 15 of DJL Supp 6. Do you see  
6 that?

7 A I see it.

8 Q That line under "FPL Requested Amount" shows  
9 \$5,377,787,000, right?

10 A That's correct.

11 Q You took that from FPL's MFR D-1A, right?

12 A That's what it says and that's where I got it.

13 Q Look at the column next to that under  
14 "Adjusted Per OPC, Sheree Brown exhibit."

15 A It should be the exact same number.

16 Q In fact, that's my point. You have made no  
17 adjustment to the schedule to show any increase in debt  
18 by reason of the equity adjustment, is that correct?

19 A That's correct, nor would I. It would be  
20 inappropriate to do so. I have captured the change in  
21 the cost on line 2. If you'd like, I can explain to you  
22 exactly why you wouldn't change the debt number.

23 Q I'll let your lawyer ask you about that.

24 But you go on in this document to talk about  
25 debt coverage ratios and debt percentages and that type

1 of material, correct?

2 A Yes, I do.

3 Q Okay. Look at line 14 real quick, same  
4 question. Do you see the 362,457,000 on line 14?

5 A Yes, sir.

6 Q It appears in both places, not changed between  
7 "FPL Requested Amount" and the "Adjusted Per OPC,"  
8 right?

9 A That's correct, as it should, and I will  
10 explain to Mr. McGlothlin later why it's the same.

11 Q Okay, that's great.

12 ACTING CHAIRMAN EDGAR: Mr. Anderson, do I see  
13 a 438 coming at me?

14 MR. ANDERSON: Yes, you do.

15 ACTING CHAIRMAN EDGAR: And you have labeled  
16 Lawton Cross-Marked MFR D-1A?

17 MR. ANDERSON: Yes, ma'am, that's right.

18 ACTING CHAIRMAN EDGAR: Okay, so marked as  
19 438.

20 (Exhibit No. 438 marked for identification.)

21 BY MR. ANDERSON:

22 Q For these next questions, what I would like  
23 you to do is have handy the DJL Supp 6, the marked  
24 version which I previously gave you, and the one I just  
25 -- I will give you, the D-1A marked copy. Do you have



1 those two before you, Mr. Lawton?

2 A Are you asking that I get Exhibit 437 with me?

3 Q Yes, 437 and 438, just have them kind of side  
4 by side.

5 A I have them, sir.

6 Q Your exhibit DJL Supp 6 computes debt ratios  
7 and interest coverage ratios, is that right?

8 A That's correct.

9 Q In order to be accurate, the ratios need to  
10 use correct debt amounts and other financial  
11 information, you agree, right?

12 A It depends on -- accuracy for what purpose,  
13 ratemaking or bond ratings? I'm not clear.

14 Q Let's focus. Your testimony -- or your  
15 exhibit talks about S&P coverages, right?

16 A Yes, it does.

17 Q And S&P uses book amounts of debt when ratios  
18 are computed, right, because they look to the company's  
19 public books?

20 A That's absolutely correct, but that's not what  
21 I did, and if you go down that line, then that's totally  
22 different from what I'm talking about. If you'd like, I  
23 can explain.

24 Q What I'm going to do is ask you to look at  
25 Exhibit 438.

1 A Okay.

2 Q Do you see the column 7, "Jurisdictional  
3 Adjusted"?

4 A I'm there.

5 Q Do you see "long-term debt"?

6 A Yes, sir.

7 Q That's where you got the number 5,377,787,000,  
8 right?

9 A Yes, that's reflective of the debt in the  
10 capital structure as proposed by FPL.

11 Q That's the jurisdictional adjusted number on  
12 that, isn't that correct?

13 A That's what it says.

14 Q Okay. And we just talked a minute ago that  
15 S&P looks at book numbers. So look under "Company Total  
16 Per Books" in column 2. Are you there with me?

17 A I see it.

18 MR. ANDERSON: Could you bring the easel  
19 farther up so we can see that easier, up another  
20 15 feet?

21 ACTING CHAIRMAN EDGAR: For the record, for  
22 the fifth, tenth, fifteenth time, I'm not sure what,  
23 I'm tired, are we creating an exhibit? What are we  
24 doing here?

25 MR. ANDERSON: We're going to fill in a few

1 numbers and then hand out a finished version of that,  
2 and then this line probably concludes in about ten  
3 minutes. I've got considerable lines past that, but  
4 this particular line --

5 ACTING CHAIRMAN EDGAR: And we really hope  
6 that Nevada is lovely.

7 THE WITNESS: I can be back next Wednesday.

8 ACTING CHAIRMAN EDGAR: We'll see what we can  
9 do.

10 MR. MCGLOTHLIN: Counsel, do you have copies  
11 of this? I have trouble seeing the easel.

12 MR. ANDERSON: Well, we will be distributing,  
13 but I'm sorry, I don't have copies of that as it stands.

14 MR. MCGLOTHLIN: What will you be  
15 distributing?

16 MR. ANDERSON: I'll be distributing a final  
17 version of that with all the numbers on it, just because  
18 I want to derive the numbers here with the witness, make  
19 sure we've got the numbers correct.

20 Now --

21 ACTING CHAIRMAN EDGAR: Hold on, Mr. Anderson.

22 Mr. McGlothlin, are you relatively  
23 comfortable, all things considered?

24 MR. MCGLOTHLIN: I'm willing to try it. I'll  
25 complain if it gets unwieldy.

1 MR. MOYLE: Can we just get a copy? If he  
2 doesn't want the witness to have it because he wants him  
3 to do calculations, then that would be fine, but maybe  
4 if it's going to be the thing we're going to --

5 MR. ANDERSON: This is just going to take a  
6 few moments, Chairman. There are about four numbers we  
7 need to put up here, and I just ask that we could  
8 proceed, and we can even have that brought closer to Mr.  
9 McGlothlin if he likes.

10 ACTING CHAIRMAN EDGAR: Mr. Anderson, slow  
11 down.

12 MR. MCGLOTHLIN: What I'm trying to understand  
13 better is that you say you've got the completed sheet  
14 you're going to distribute. Why can't we have that now?

15 MR. ANDERSON: Because that's not how I'm  
16 framing my examination, and I'm entitled to ask him  
17 questions and make sure we walk through where the  
18 numbers come from so we can arrive at the same  
19 destination.

20 ACTING CHAIRMAN EDGAR: And for the record,  
21 let's all welcome our pinch-hitter Commissioner adviser  
22 for the evening, Ms. Sabula.

23 Can you help us?

24 MS. SABULA: I guess he can do his examination  
25 whichever way he wants to do it. I don't know how -- I

1 really can't see the easel myself.

2 ACTING CHAIRMAN EDGAR: Thank you, Ms. Sabula.

3 Mr. Anderson, I'm giving you a little leeway,  
4 but Mr. McGlothlin, it's your witness, so we will look  
5 to you to give a rise if indeed there's something that  
6 we need to discuss.

7 MR. MCGLOTHLIN: Okay.

8 MR. ANDERSON: Thank you.

9 BY MR. ANDERSON:

10 Q I just ask that we look at Exhibit 438. We  
11 see the company total per books, which is the basis of  
12 FPL's rate request, long-term debt, the number, please  
13 write up, is 7,072,377,000?

14 A I don't agree with that statement.

15 Q Would you agree that the company total per  
16 books long-term debt is 7,072,377,000?

17 A That I agree with, that's what's on the paper,  
18 but you represented that's what they based their rate  
19 request on, and that's not a correct statement.

20 Q You're entitled to your view, sir. The  
21 evidence will show what it will show.

22 When Standard & Poor's does its ratios, it  
23 also considers all debt, not just long-term debt,  
24 correct? They use short-term debt?

25 A Yes.

1 Q And looking at line 5, there's the number  
2 \$181,615,000, correct?

3 A This is what you show on this schedule, this  
4 is part of the MFRs.

5 Q And just to total the total debt between the  
6 long-term debt and the short-term debt from company  
7 total per books, this is subject to check and I did do  
8 the math and I will be handing this out, the total  
9 long-term plus short-term is seven billion, two hundred  
10 fifty-three million, nine hundred and -- I think it's  
11 92, maybe 82 -- 92? Thank you, 92.

12 A Is that a question or testimony?

13 Q Will you accept, subject to check, the sum of  
14 the short-term debt number and the long-term debt number  
15 are that?

16 MR. MCGLOTHLIN: Accept for what purpose?

17 MR. ANDERSON: That the total of long-term and  
18 short-term debt of company total per books is that  
19 number, that's all.

20 THE WITNESS: Sure. I mean, that's --  
21 mathematically, they add up, I mean --

22 BY MR. ANDERSON:

23 Q Okay. Now, I just want to -- the difference  
24 now between those two totals, the long-term and short-  
25 term debt numbers that Standard & Poor's would use

1 looking at the company's books, is the number we just  
2 put up there. We want to subtract the number you used  
3 in your exhibit, which is written up there, the  
4 5,377,787,000, and that difference is \$1,876,205,000?

5 A That's what the difference of the two numbers  
6 is, but nobody doing this kind of analysis or putting  
7 evidence before the Commission would do such a thing,  
8 but go ahead.

9 Q I understand your point, but the point is the  
10 difference between FPL's totals per books and the number  
11 you used on your exhibit, which you used to compute  
12 ratios, is about \$1.9 billion, right?

13 A The difference is 1.876205 billion dollars.

14 Q Yes.

15 A And the numbers I used are the numbers that  
16 are the basis for the rate request in this case which  
17 this Commission has jurisdiction over. The numbers you  
18 put up there have nothing to do with this case.

19 Q Your testimony focuses on, doesn't it, what  
20 you think Standard & Poor's would think of a rate case  
21 result in this case, right?

22 A It does focus on it, and to be clear so that  
23 you truly understand, all I can -- this Commission can  
24 focus on are the numbers that they have jurisdiction  
25 over and what they produce for financial metrics. This

1 company has a lot of affiliates which this Commission  
2 has no jurisdiction over that produce capital, all sorts  
3 of things. This Commission doesn't consider those  
4 values when making its rate estimates, and nor did I,  
5 nor should I.

6 Q Just doing the ratio of the difference,  
7 1,876,205,000 divided by the \$5,377,787,000, that's a  
8 35 percent difference, right?

9 A I don't know. Do you want me to calculate it?

10 Q It comes to 34.88 percent.

11 A Okay, 34.88 percent.

12 ACTING CHAIRMAN EDGAR: Go ahead, Mr.  
13 Anderson.

14 MR. ANDERSON: Thank you.

15 ACTING CHAIRMAN EDGAR: Tell us what we've got  
16 here, please, if you would.

17 MR. ANDERSON: I believe we're up to 439, is  
18 that right?

19 ACTING CHAIRMAN EDGAR: Yes, sir.

20 MR. ANDERSON: Short title is FPL's Debt in  
21 OPC's Ratio Calculations, as stated on the cover sheet.

22 (Exhibit No. 439 marked for identification.)

23 MR. ANDERSON: And the purpose of this, just  
24 to take a moment, this is kind of housekeeping, because  
25 when you do an easel like this, you can't fold it up and



1 make 30 copies. I just want to make sure that the  
2 witness has a chance to check and see that the same  
3 numbers appear on Exhibit 439 as on the easel.

4 THE WITNESS: That is correct.

5 MR. ANDERSON: Okay, then we can move on.

6 MR. MOYLE: Madam Chair, presumably this will  
7 be used for cross-examination of the witness and is not  
8 going to be offered. They had a chance to prepare  
9 rebuttal to the extent this witness filed testimony. So  
10 I just -- I think it's appropriate if it's going to be  
11 used for cross, but if it's being used for something  
12 that should have been part of the rebuttal, I think  
13 FIPUG would object.

14 THE WITNESS: Can I make one correction?  
15 There is a mistake on this exhibit, I think.

16 BY MR. ANDERSON:

17 Q I'm sorry?

18 A I think there is a mistake on the exhibit.

19 Q I'm happy to have you call it out.

20 A I believe it's the third heading, "FPL Total  
21 Debt Per Books." The Footnote 1 says it's from the  
22 schedule, which I think is Exhibit 438.

23 Q Yeah, D-1A.

24 A Yeah. And there's no number like that on that  
25 page. You'd have to add the numbers to get it.

1 Q No, sir. Looking at 438, that's a Schedule  
2 D-1A, do you have that?

3 A Yes, sir.

4 Q You see FPL -- and to be clear, this is  
5 Florida Power & Light Company, this is not FPL Group --  
6 "FPL Long-Term Debt," you see under column 2, "Company  
7 Total Per Book," see 7,072,377,000, is that right?

8 A Yes, sir.

9 Q Was that the number you're questioning?

10 A No, it was the 7,000,253,992.

11 Q And that's the sum, we agreed, of the number  
12 we just related, the 7,072,377,000, plus the short-term  
13 debt, which you agreed should be added for purposes of  
14 ratios, and that's the total debt per books, which is  
15 the sum of the long-term and short-term debt per books,  
16 right?

17 A Right. That's absolutely correct. I'm just  
18 trying to tell you your footnote is wrong, because it's  
19 not on that page, it's the sum, and it should state so.

20 Q I accept the point. I want to make sure our  
21 numbers are correct.

22 ACTING CHAIRMAN EDGAR: Mr. Anderson, No. 440?

23 MR. ANDERSON: Yes, ma'am. Short title,  
24 Lawton S&P Reference Documents.

25 (Exhibit No. 440 marked for identification.)

1 MR. ANDERSON: May I proceed?

2 ACTING CHAIRMAN EDGAR: Yes, sir.

3 BY MR. ANDERSON:

4 Q Mr. Lawton, showing you Exhibit No. 440,  
5 Lawton's S&P Reference Documents, this consists of a  
6 cover sheet and one, two, three, four, five, six pages.  
7 Do you have them?

8 A I have them, sir.

9 Q These are the pages you produced in discovery  
10 in this case, is that right?

11 A Yes, I believe as part of your request for  
12 production of documents at some point.

13 Q Okay. And these are the documents that,  
14 looking at your exhibit, DJL Supp 6, our Exhibit No.  
15 437, the marked, when you talk about S&P guidelines and  
16 things, this is your source for S&P guidelines and  
17 things, is that right?

18 A Yes. You're referring to six in my direct  
19 testimony, page 2?

20 Q Yes, I am.

21 A Okay.

22 Q Okay. The six pages that you produced in  
23 discovery, as Exhibit No. 440 labeled here, they're not  
24 from the same S&P article, isn't that right?

25 A I'm sure they're probably from a number of

1 different articles, or two different articles, at least,  
2 from what I see here.

3 Q The first three pages, which have Bates  
4 numbers OPC 011241 through 243, these are three of 19  
5 pages from one June 2, 2004, article, right?

6 A Correct.

7 Q The fourth page, OPC 011244, is one page from  
8 a second document now, entitled *U.S. Utilities Ratings*  
9 *Analysis Now Portrayed in S&P Corporate Ratings Matrix*  
10 right up there at the top, right?

11 A Yes.

12 Q Then the fifth and sixth pages are from a  
13 third document. This is OPC 011245 and 011246, right?

14 A That's correct.

15 Q And we can see at the bottom left-hand corner  
16 of OPC 011246, that's a page number 54, which means that  
17 the fifth and sixth pages you've given us here are two  
18 pages from at least a 54-page document, right?

19 A Correct.

20 Q Okay, let's look at the first three pages.  
21 I'm just going to use the last three digits, 241 through  
22 243, right?

23 A Give me a moment. I'm there.

24 Q This is the June 2nd, 2004, document. It's  
25 titled *New Business Profile Scores Assigned for U.S.*

1        *Utility and Power Companies Financial Guidelines -*  
2        *Revised, right?*

3            A        Correct.

4            Q        Isn't it true that this document is obsolete  
5        and is no longer used by Standard & Poor's?

6            A        It may have been superseded, but the results  
7        are consistent with the new, current document, so it  
8        doesn't make any difference.

9            ACTING CHAIRMAN EDGAR: Mr. Anderson, go ahead  
10        and describe for us, this will be 441.

11            MR. ANDERSON: Short title, Table of Contents,  
12        S&P Ratings Criteria.

13            (Exhibit No. 441 marked for identification.)

14        BY MR. ANDERSON:

15            Q        Looking at Exhibit 441, please look at page 3  
16        of this document. The page number is in the lower  
17        right-hand corner.

18            A        I'm at page 3.

19            Q        Please look at the top portion under the Table  
20        of Contents words. Am I reading this right? "Here is  
21        the list of all current criteria for this subject area,  
22        which we update regularly as we publish new criteria.  
23        We most recently republished this Table of Contents on  
24        the date shown above," and the date is on the cover  
25        sheet, June 26, 2009, right?

1           A     I see it.

2           Q     Okay.  Isn't it true that the document you  
3           relied on dated June 2, 2004, and produced in discovery,  
4           Bates marked OPC 011241 through 011244, does not appear  
5           in the current Table of Contents for S&P's ratings  
6           criteria?

7           A     It's true, it doesn't appear in the current  
8           Table of Contents of S&P's rating criteria, but the  
9           numbers employed are consistent with the numbers used by  
10          S&P today.

11          Q     So your testimony is it doesn't matter if you  
12          rely on a superseded document, right?

13          A     In this case, it doesn't.

14          Q     Looking now at your OPC Bates marked page  
15          011244 --

16          A     244, sir?

17          Q     Yes.

18          A     I'm there.

19          Q     This is a page from an S&P article entitled  
20          *U.S. Utilities Ratings Analysis Now Portrayed in S&P*  
21          *Corporate Ratings Matrix*, right?

22          A     Yes.

23          Q     Looking at that same current S&P Table of  
24          Contents which we just distributed, isn't it true that  
25          the article from which you took the page 01244 also is

1 not included as a current criteria article?

2 A That's correct, and if you look at the current  
3 S&P rating matrices, you will see the numbers are the  
4 same.

5 Q So your testimony to this Commission is if we  
6 take the latest and greatest ratings for debt leverage  
7 and the like, they're exactly the same, right?

8 A I'm going to show you one. Hold on a moment.

9 Q I'm not going to ask you to show me, I'm  
10 just --

11 ACTING CHAIRMAN EDGAR: He asked for a moment,  
12 give him a moment.

13 MR. ANDERSON: Sure.

14 THE WITNESS: Yes, they're essentially the  
15 same as what I used.

16 BY MR. ANDERSON:

17 Q Those are the same as what you used, right?

18 A Yes. Isn't that what the testimony is about,  
19 what I used?

20 Q Okay. The question is, are you using current  
21 S&P guidelines, and we'll take that up separately.

22 A Okay.

23 Q Looking at your sixth S&P document, Bates-  
24 stamped OPC 011246.

25 A I'm there.

1 Q And we see it says *U.S. Industrial Long-Term*  
2 *Debt, Three-Year 1998 to 2000 Medians, et cetera, right?*

3 A Yes, sir.

4 Q Isn't it true that this document shows data  
5 that's more than eight years old?

6 A Yes, those are industry medians, that's  
7 correct.

8 Q From eight years ago?

9 A Yes.

10 Q In fact, the most recent data that this  
11 document contains is the 12 months ended September 2001  
12 in the second table, right?

13 A Yes.

14 Q And these S&P document pages that you produced  
15 and relied upon are also outdated and not contained in  
16 the current S&P 2008 corporate ratings criteria, is that  
17 right?

18 A It's not contained in that Table of Contents  
19 we talked about, that's correct.

20 Q And it's not contained in the 2008 corporate  
21 ratings criteria, either, is it?

22 A Right. These wouldn't be contained in the  
23 corporate ratings criteria because they're median  
24 results of what was produced by actual companies.

25 Q From about 2001, right?



1           A     Yes, sir.

2           ACTING CHAIRMAN EDGAR:  Commissioner Skop?

3           COMMISSIONER SKOP:  Would it be possible to  
4 maintain a quorum to take a brief five-minute break?

5           ACTING CHAIRMAN EDGAR:  We can take a brief  
6 five-minute break, and if I hear a motion to adjourn  
7 until Wednesday, it will be entertained.

8           MR. ANDERSON:  I was at the end of my cross.  
9 I was just checking with my colleagues.  Let me check  
10 for just one last second, but I think we're good.

11          ACTING CHAIRMAN EDGAR:  We will take a very  
12 short break in just a moment.  Let's just get kind of a  
13 status so we know where we are.

14          (Brief pause.)

15          MR. ANDERSON:  We have no further questions.  
16 Thanks.

17          ACTING CHAIRMAN EDGAR:  You took me completely  
18 by surprise when you said -- I thought you told us you  
19 had a lot of questions, and --

20          MR. ANDERSON:  I tried to move as quick as I  
21 could.

22          ACTING CHAIRMAN EDGAR:  Thank you.

23          Staff, do you have questions on cross for this  
24 witness?

25          MS. WILLIAMS:  Whether we have questions or

1 not will depend on whether the parties agree to  
2 stipulate to the exhibits we handed out to them.

3 ACTING CHAIRMAN EDGAR: Let's take five  
4 minutes so that Commissioner Skop and I and maybe others  
5 can take a brief stretch, and while we're on this short  
6 recess, I would ask staff to get with the parties and  
7 let's see if we can answer that question when we come  
8 back. And we're on recess.

9 (Brief recess.)

10 ACTING CHAIRMAN EDGAR: Okay, we're back on  
11 the record, and I need to look to staff.

12 MS. WILLIAMS: The parties have indicated to  
13 me that they have no objection to staff's exhibits from  
14 Staff Composite Exhibit No. 37, so if I could read those  
15 off at this time and we could enter them?

16 ACTING CHAIRMAN EDGAR: Ms. Williams, please  
17 do so.

18 MS. WILLIAMS: It's short this time. They're  
19 items numbers 32 through 36 on Staff's Composite Exhibit  
20 List No. 37, and they include OPC's Responses to Staff's  
21 First Set of Interrogatories No. 27 through 31.

22 ACTING CHAIRMAN EDGAR: Is that it?

23 MS. WILLIAMS: That's it.

24 ACTING CHAIRMAN EDGAR: Okay. Any objection  
25 to the item just described by Ms. Williams being entered

1 into the record at this time?

2 Seeing none, make it so.

3 (Staff Composite Exhibit No. 37, Item Nos. 32  
4 through 36 as heretofore described, admitted into the  
5 record.)

6 ACTING CHAIRMAN EDGAR: That leaves us --  
7 Commissioners, anything? Nothing?

8 Mr. McGlothlin?

9 REDIRECT EXAMINATION

10 BY MR. MCGLOTHLIN:

11 Q Mr. Lawton, please refer to what was marked as  
12 437.

13 A I have it, sir.

14 Q In response to a question from counsel for  
15 FPL, you agreed that the debts shown on line 15 under  
16 the first and second columns are identical, and said it  
17 would be inappropriate to do anything else. Would you  
18 explain why it would be inappropriate to use any other  
19 value for the debts shown there?

20 A Yes. You're going to want to use what -- the  
21 debt level that the company requested in this case, as  
22 well as the associated interest. The debt level that  
23 Mr. Anderson was asking that I look at is something  
24 that's outside this case. It was what's on the books of  
25 the company, not the jurisdictional amount of debt or

1 the jurisdictional amount of interest. It's no  
2 different than examining this company's financials when  
3 you periodically review how much their earnings are, if  
4 you do that on an annual or quarterly basis to track the  
5 earnings of the company.

6 Q Would the same answer apply to line 14,  
7 "Interest," which is identical in both columns?

8 A That's correct.

9 Q Please turn to what was marked as 438.

10 A I'm there, sir.

11 Q And with respect to the value of 7,072,377,  
12 you've indicated that you would not do such a thing, in  
13 your words. Would you explain to the Commissioners what  
14 you meant?

15 A Yes. That's the book level of long-term debt.  
16 That's not what's being requested in this case, that's  
17 not what should be examined. Rather, it's column 7,  
18 which is the requested amount of jurisdictional debt and  
19 the associated interest that I answered in the prior  
20 question. That's what the Commission has jurisdiction  
21 over, that's what's been filed here and that's all that  
22 should be examined.

23 Mr. Anderson is gravely mistaken if he thinks  
24 we should go off and look at the book level numbers.  
25 That's just wrong.

1           Q     In one of the questions to you, Mr. -- counsel  
2     for FPL referred to the use of the S&P methodology. Can  
3     you enlighten the Commissioners as to what was meant by  
4     that and why you did or did not use it?

5           A     Yes. The calculations are done exactly the  
6     way S&P would calculate it, only we would use the  
7     jurisdictional level dollars. That's what this  
8     Commission looks at, that's what this Commission sets  
9     rates based on. And if -- you know, you look at the  
10    financial metrics that will generate from your decision.  
11    You can't make up other numbers and give the company  
12    additional cash to make financial metrics for dollars  
13    that are off the books of the jurisdiction. That makes  
14    no sense at all.

15          Q     Okay. Now, turn to what was marked as 439,  
16    which is the same as the easel after it was filled out.

17          A     Yes, sir.

18          Q     First of all, did you make those calculations,  
19    or were they provided to you?

20          A     This was provided to me. It is, again, based  
21    on book data, most of it.

22          Q     Do you accept the calculations and the values  
23    shown for any meaningful purpose in this case?

24          A     Not a meaningful purpose. It shows that there  
25    is a 35 percent difference between the jurisdictional

1 amount of debt the company has requested and what is  
2 reflected on the books of the company.

3 Q Now, the title, this says, "FPL Debt in OPC's  
4 Ratio Calculations," what ratio do you think counsel had  
5 in mind when he prepared this?

6 A I don't know what was in counsel's mind. The  
7 only ratio he calculated was the one billion 876 over  
8 five billion 377 to show a percentage. That's the only  
9 ratio I see.

10 Q If you were to substitute the appropriate  
11 values that correspond to the ones that FPL used on the  
12 easel, to what would you refer as the source for those  
13 appropriate values?

14 A The appropriate values would be found out of  
15 the company's own rate filing before this Commission,  
16 and they have been duplicated and sourced on my exhibit  
17 schedule DJL-6, page 1 of 2, which is in my original  
18 direct testimony, and on -- and I forget the exhibit  
19 number for that, but it was OPC Exhibit something.

20 Q So that the Commissioners can see the side-  
21 by-side comparison, I have asked Mr. Poucher of our  
22 office with -- at the witness's direction to show the  
23 values that would correspond to those on 439.

24 Now, FPL's handout shows "FPL Long-Term Debt  
25 Per Books" as 7,072,377. What should have been entered

1 as the appropriate value there?

2 A Mr. Poucher, the number is 5,377,787, and the  
3 source for that number is MFR D-1A, which is in the  
4 company's filing as part of this request.

5 Q The second entry is, "FPL Short-Term Debt Per  
6 Books" showing at 181,615. What should the appropriate  
7 value be?

8 A I did not -- I would include zero for the  
9 short-term debt. We did not include that in this part  
10 of the calculation.

11 Q And what was your reason for excluding short-  
12 term debt, Mr. Lawton?

13 A I was only calculating -- the short-term debt  
14 is a variable that changes radically from time to time,  
15 it could be any number at any time, because short-term  
16 debt is typically employed to pick up things like fuel  
17 changes. If there's no fuel change, there is less  
18 short-term debt. So I did not include short-term debt,  
19 and it makes a *de minimis* difference in this whole  
20 calculation.

21 Q The third entry is, "FPL Total Debt Per  
22 Books," that is the 7,253,992, which was the sum of two  
23 other figures, as you pointed out?

24 A Right, and that would be 5,377,787, which is  
25 the same as the top number.

1 Q And again, what does that figure represent,  
2 Mr. Lawton?

3 A That was to represent the total debt that the  
4 company has filed to this Commission in this case that  
5 has to be serviced from revenue requirements. In other  
6 words, the interest has to be paid and the maturities  
7 when they come due have to be paid.

8 Q The next entry is, "OPC Debt Per Ratio  
9 Calculations," shown as 5,377,787. What is the  
10 corresponding value for that?

11 A Well, that's the same number, and the only  
12 different number is the company, at the bottom of their  
13 schedule, had a 35 percent, our number would be  
14 100 percent. We put in 100 percent of the debt that the  
15 company requested from this Commission.

16 Q The next entry says, "Difference Between FPL  
17 Total Debt Per Books and OPC," shown as 1,876,205.

18 A That would be zero.

19 Q And explain to the Commissioners why it would  
20 be zero.

21 A Because the company, or Mr. Anderson proposed  
22 we use a book number and subtract it from a  
23 jurisdictional number, or an apples-and-oranges kind of  
24 calculation, to get a third number that's part of the  
25 fruit basket, and it just makes no sense, so that you



1 wouldn't -- as you can see, my number comes out zero,  
2 the difference.

3 Q Now, the next entry shows, "Difference as  
4 Percent," 35 percent. What import should that have to  
5 this case?

6 A None at all. It makes no sense, the  
7 calculation.

8 Q Now, you were asked several questions about  
9 the items that you provided in response to discovery  
10 requests.

11 A Yes, sir.

12 Q And counsel asked you to agree that you  
13 provided excerpts from three different documents. Why  
14 did you provide excerpts from three different documents?

15 A Because it was three different documents that  
16 I looked at to gather the numbers employed in the  
17 testimony. I was being responsive to his request. I  
18 have a whole stack of various S&P documents that -- and  
19 I used what was responsive to his request and provided  
20 it as soon as I got the request.

21 Q Okay. Now, you were also asked some questions  
22 about the most recent criteria in the S&P publication,  
23 and several times you indicated that the numbers were  
24 the same, or essentially the same. Would you give the  
25 Commissioners some explicit examples of criteria that

1 did not change after the document was superseded?

2 MR. ANDERSON: I object, because we  
3 specifically did not ask for any specific figures. If  
4 we want to get into that, we have the actual numbers,  
5 the numbers have changed very substantially, and that --  
6 and I did not ask these questions of the witness. It's  
7 improper redirect.

8 MR. McGLOTHLIN: It's entirely proper for this  
9 reason: Counsel questioned the witness and made the  
10 point that the document he used was -- had been replaced  
11 by a more recent version, implying that had the most  
12 recent version been used, the answer might have been  
13 different, somehow. I think it's entirely appropriate  
14 for me to make the point through the witness that --

15 ACTING CHAIRMAN EDGAR: Overruled.

16 THE WITNESS: And I will be quick.

17 You can look at my S&P guidelines, those are  
18 the numbers in dispute that Mr. Anderson suggests are  
19 out of date. You can find these exact same numbers in  
20 the Florida Progress case, which is another case at this  
21 Commission, by the Progress witnesses. I mean, it's  
22 the -- they're consistent with current S&Ps that I've  
23 reviewed. So I have not used out-of-date or wrong  
24 numbers, if that's the suggestion.

25 / / / / /

1 BY MR. MCGLOTHLIN:

2 Q Using the criteria that were in the document  
3 that you used as your source, or the more recent  
4 criteria in the document that FPL gave you, under what  
5 rating would the indices fall for FPL if all of the  
6 OPC's adjustments were made?

7 MR. ANDERSON: Object; beyond the scope of the  
8 cross-examination. This is well beyond.

9 ACTING CHAIRMAN EDGAR: Mr. McGlothlin?

10 MR. MCGLOTHLIN: The same argument applies.  
11 Again, they were trying to imply that if the more recent  
12 criteria were applied, somehow Mr. Lawton's conclusions  
13 would no longer be valid. This goes to the very heart  
14 of his cross-examination.

15 ACTING CHAIRMAN EDGAR: Overruled.

16 THE WITNESS: There is no basis to conclude  
17 that it would be not investment grade. Moreover, there  
18 is certainly ample evidence that it would be in the  
19 range of the single A range where it currently has such  
20 a bond rating.

21 BY MR. MCGLOTHLIN:

22 Q Now, you were asked the question about your  
23 participation in the Atmos docket?

24 A Yes, sir.

25 Q And the point was made that your name and

1 Mr. Pous's name both appeared in certain documents. In  
2 that case, who was your client?

3 A My client was a group of cities that Mr. Pous  
4 did not represent. It was a different group of  
5 municipalities, and I -- what we do in Texas sometimes  
6 in cases, so as not to duplicate the same issues, one  
7 group of cities and their attorney and consultants will  
8 address one set of issues, another group of cities may  
9 address another set of issues, so that there is cohesion  
10 in the ratemaking process and there's not duplication of  
11 unnecessary efforts. And Mr. Pous was not part of my  
12 team.

13 Q So he was working for a different client  
14 than you were?

15 A Yes, sir.

16 Q With respect to one of your documents, counsel  
17 for FPL made the point that certain of the data was  
18 eight years old --

19 A Yes, sir.

20 Q -- and you said that was not problematic.  
21 Would you explain why it's not a problem?

22 A Well, the data on that is an indication of  
23 what the median measures were from the utilities.  
24 They're not real different today.

25 Moreover, on that exhibit it was basically an

1 example of how the calculation is done. None of the  
2 numbers from that page of the exhibit were employed in  
3 making the evaluation, the analysis, in this case. It  
4 was used mostly for informational purposes, and it's  
5 obvious from the exhibit.

6 MR. MCGLOTHLIN: Those are all my questions on  
7 redirect.

8 ACTING CHAIRMAN EDGAR: Thank you.

9 Let's take up the exhibits. Mr. McGlothlin?

10 MR. MCGLOTHLIN: I move the exhibits attached  
11 to the prefiled original and supplemental testimony. I  
12 have -- I'm almost hesitant to use my numbers, because I  
13 think I may be off by one.

14 ACTING CHAIRMAN EDGAR: If you can get me in  
15 the general ballpark area, we'll figure it out.

16 MR. MCGLOTHLIN: Okay. I have 250 through  
17 254, and then I believe there would be one more for the  
18 supplemental --

19 ACTING CHAIRMAN EDGAR: Let me get there.

20 Okay, I have 249 through 254.

21 Hearing no objections, Exhibits 249 through  
22 254 are entered at this time.

23 (Exhibit Nos. 249 through 254 admitted into  
24 the record.)

25 MR. MCGLOTHLIN: Commissioner, I want to make

1 sure that this list covers the exhibit that was marked  
2 6-Supp, because it is for a different purpose and it may  
3 have been treated as one replacing the other, and that  
4 was not the case.

5 ACTING CHAIRMAN EDGAR: I'm going to look to  
6 staff for help.

7 MS. BENNETT: I don't believe that this list  
8 includes 6-Supp.

9 MR. MCGLOTHLIN: If that's the case, I will  
10 ask that a number be assigned to that one as well.

11 MS. BENNETT: No. 442.

12 (Exhibit No. 442 marked for identification.)

13 ACTING CHAIRMAN EDGAR: Hold on, give me a  
14 moment.

15 And that's different than the exhibit that was  
16 marked as 437?

17 MR. MCGLOTHLIN: It differs from what was  
18 marked originally as 254.

19 ACTING CHAIRMAN EDGAR: As 254?

20 MR. MCGLOTHLIN: Yes.

21 ACTING CHAIRMAN EDGAR: We just have supps and  
22 sixes going, okay.

23 MR. MCGLOTHLIN: For clarity's sake, the first  
24 DJL-6 was a calculation based upon only the treatment of  
25 this reserve surplus. Subsequently, the witness, after

1 receiving all of our adjustments, prepared a similar  
2 exhibit, but taking into account not only the reserve  
3 surplus, but all of the accounting adjustments that were  
4 sponsored by the witnesses, and that's why they serve  
5 different purposes.

6 ACTING CHAIRMAN EDGAR: Okay, so am I hearing  
7 from both our staff and Mr. McGlothlin to go ahead and  
8 mark another exhibit, which would be 442 for clarity, et  
9 cetera, per Mr. McGlothlin's explanation of a moment  
10 ago?

11 Tell me again, Mr. McGlothlin, what you would  
12 like to label that, or what it's labeled?

13 MR. MCGLOTHLIN: It's labeled DJL-6 Supp,  
14 which is short for supplemental.

15 ACTING CHAIRMAN EDGAR: Okay. Is everyone  
16 clear?

17 We will go ahead and enter that at this time.  
18 That will be No. 442.

19 (Exhibit No. 442 admitted into the record.)

20 ACTING CHAIRMAN EDGAR: That brings us --  
21 Mr. Anderson?

22 MR. ANDERSON: We offer Exhibits 436 through  
23 441 into the record.

24 MR. MCGLOTHLIN: I object to 439, as the  
25 witness demonstrated through his responses he did not

1 prepare the calculations, he disagrees with them, they  
2 were not made by him. He testified that they're  
3 meaningless in terms of the matters that are within the  
4 jurisdiction of the Commission. I think it would be  
5 inappropriate to admit it.

6 ACTING CHAIRMAN EDGAR: Mr. Anderson, before I  
7 ask for your response, are there any objections to any  
8 of the other exhibits? Hearing none, we will go ahead  
9 and admit 436, 437, 438, 440 and 441.

10 (Exhibit Nos. 436, 437, 438, 440 and 441  
11 admitted into the record.)

12 ACTING CHAIRMAN EDGAR: And now, Mr. Anderson,  
13 if you would speak to the objection on 439?

14 MR. ANDERSON: Yes. As is ordinarily the  
15 case, if you mark on a board or write on an easel in a  
16 hearing, there is no easy way to put that into the  
17 record. The witness did verify that these numbers are  
18 the numbers which I specified and had the sources that  
19 they specified. They therefore are an important part of  
20 the record in this case.

21 I understand counsel's point that Mr. Lawton  
22 disagrees with them, he explained that disagreement on  
23 redirect, but we believe this should be in the record.

24 Thank you.

25 ACTING CHAIRMAN EDGAR: Mr. McGlothlin?



1 MR. MCGLOTHLIN: I think what the witness  
2 agreed is that the arithmetic appears to be correct, but  
3 he did not agree that they serve any probative value in  
4 the case, and since they were not performed by him or  
5 validated by him, they're essentially -- it's counsel  
6 testifying. That's my objection.

7 ACTING CHAIRMAN EDGAR: Ms. Sabula?

8 MS. SABULA: I think the witness indicated how  
9 he disagreed with the exhibit, and that's in the record,  
10 so I think we should admit it and give it the weight  
11 that the Commission deems appropriate.

12 ACTING CHAIRMAN EDGAR: I concur. So that's  
13 my ruling, and 439 will be admitted at this time.

14 (Exhibit No. 439 admitted into the record.)

15 ACTING CHAIRMAN EDGAR: Anything else for this  
16 witness while we have him with us before he leaves the  
17 geographical area?

18 MR. ANDERSON: Just so the record is clear,  
19 436 through 441 are all in, then, is that right?

20 ACTING CHAIRMAN EDGAR: Yes, sir.

21 Mr. McGlothlin?

22 MR. MCGLOTHLIN: We appreciate the  
23 Commissioners' lasting this long and accommodating his  
24 needs.

25 ACTING CHAIRMAN EDGAR: I'm glad we were able

1 to get there together. Thank you very much. You're  
2 excused.

3 THE WITNESS: Thank you.

4 ACTING CHAIRMAN EDGAR: Any other matters  
5 before we call it a night?

6 Okay, then my understanding is that we will,  
7 as of now, start Wednesday morning at 9:30, beginning  
8 with Witness Brown. According to our technical staff,  
9 the room can be locked and secured if anybody would like  
10 to leave materials. There is no scheduled usage of this  
11 room tomorrow, so I will leave that to your independent  
12 decision, but the room will be locked and secured here  
13 very shortly. We will see you back all Wednesday  
14 morning.

15 We are adjourned for the evening.

16 (Hearing adjourned at 6:50 p.m.)

17 (The transcript continues in sequence with  
18 Volume 19.)

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## CERTIFICATE OF REPORTER

STATE OF FLORIDA )

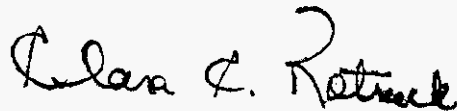
COUNTY OF LEON )

I, CLARA C. ROTRUCK, do hereby certify that I was authorized to and did stenographically report the foregoing proceedings at the time and place herein stated.

IT IS FURTHER CERTIFIED that the foregoing transcript is a true record of my stenographic notes.

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

DATED this 3rd day of September, 2009, at Tallahassee, Leon County, Florida.



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CLARA C. ROTRUCK